EMPLOYMENT TRIBUNALS

BETWEEN

Claimant	**AND**	**Respondent**
Mrs E Belson		Jewellery Validation Service Ltd

Heard at: London Central **On**: 17-21 April 2023 and (in chambers) on 24-25 April 2023

Before: Employment Judge Stout
Tribunal Member D Shaw
Tribunal Member P Secher

Representations
For the claimant: In person
For the respondent: Mr M Cameron (consultant)

RESERVED LIABILITY JUDGMENT

Reissued 5 June 2023 under Rule 69 to rectify typographical errors that were inconsistent with the Rule 50 orders made

The unanimous judgment of the Tribunal is:

(1) The Claimant's claim of unfair dismissal under Part X of the Employment Rights Act 1996 (ERA 1996) is well-founded.

(2) The Claimant's claim of wrongful dismissal under art 4 of the *Employment Tribunals (Extension of Jurisdiction) (England and Wales) Order 1994* is well-founded. The Claimant was entitled to five weeks' notice.

(3) The Claimant's claim of automatic unfair dismissal under s 103A of the ERA 1996 is not well-founded and is dismissed.

(4) The Claimant's claims that she was subject to detriments (iv) and (v) because she made protected disclosures contrary to s 47B of the ERA 1996 are not well-founded and are dismissed.

(5) The Claimant's claims that she was subject to detriments (i), (ii) and (iii) because she made protected disclosures contrary to s 47B of the ERA 1996 are well-founded, but are outside the Tribunal's jurisdiction having been brought outside the time limit in s 48 of the ERA 1996 and are accordingly dismissed.

(6) The Respondent did not directly discriminate against the Claimant because of age, disability or marital status in contravention of ss 13 and 39 of the Equality Act 2010 (EA 2010). Those claims are dismissed.

REASONS

Introduction

1. Mrs Belson ("the Claimant") was employed by Jewellery Validation Services Limited ("the Respondent") as a book-keeper and administrator. The Respondent runs a watch, clock and jewellery repair business based in Hatton Garden, London. The Chief Executive Officer of the Respondent is Mr Belson. Mr and Mrs Belson are married but separated in 2021 and are awaiting the final hearing in divorce proceedings. The Claimant was dismissed by Mr Belson by email of 28 February 2022, purportedly by reason of redundancy. In these proceedings, she brings claims that she was subjected to detriments and then dismissed because she made protected disclosures ("whistle-blowing") and/or that she was directly discriminated against by the Respondent because of her age, disability and/or marital status.

The type of hearing

2. This was an in-person hearing in a Tribunal room that was open to members of the public, the hearing having been listed on the Tribunal's public hearing lists.

The issues

3. The issues to be determined had been identified in the course of case management hearings to be as follows:-

<u>Whistle-blowing</u>

(1) Did the Claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996? The Claimant relies on the following:
   (i) A disclosure to Mr Martin Griffiths of Westell Accountants on 29 August 2021 at 17:50.
   (ii) An email dated 2 September 2021 to the Chairman of the Respondent, Mr Henrik Kjellin.
   (iii) A disclosure made to Wilson Solicitors. The document relied upon is not dated and has no names or address on it, but the Claimant said she sent it at some point in September 2021.
   (iv) Sending an official set of accounts for 2020 for the Respondent to Wilsons Solicitors on 30 September 2021.
   (v) A disclosure to the Respondent's Chairman Mr Kjellin on 28 January 2022 saying: "Hi, please find attached JVS LTD Preliminary Accounts 2021. This doesn't make any sense sorry".
   (vi) A disclosure to Wilsons Solicitors on 28 January 2022, sending the preliminary accounts of the Respondent for 2021.

(2) Were those communications qualifying disclosures within the meaning of section 43B of the Employment Rights Act 1996? Did those communications amount to a disclosure of information which, in the reasonable belief of the Claimant, was made in the public interest and tended 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...(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed."

(3) If so, were they protected disclosures in that the disclosure was made to the Claimant's employer, or to one of the class of persons set out in sections 43C - 43H of the Employment Rights Act 1996?

(4) If so, did the Respondent subject the Claimant to detriments as set out below on the ground that the Claimant made the protected disclosures?
   (i) At the beginning of September 2021 her belongings were removed from the marital home and the locks were changed;
   (ii) The payment of her salary for October 2021 was delayed by a week.
   (iii) Her health insurance was cancelled on 20th November 2021.
   (iv) Her November salary was not paid until the end of December 2021
   (v) Mr Kjellin threatened, in an email dated 29 November 2021, to exit her disabled son from the business.

(5) Were the Claimant's disclosures or any of them the principal reason for the Claimant's dismissal?

Unfair dismissal

(6) What was the principal reason for the Claimant's dismissal? If the dismissal was not because the Claimant made protect disclosures, was it for a potentially fair reason? The Respondent's case is that the Claimant was dismissed for redundancy. The Claimant's case is that there was no redundancy situation, and she was dismissed for making protected disclosures.

(7) If the Respondent can show that the dismissal was for a potentially fair reason, did the Respondent act reasonably in all the circumstances in treating it as a sufficient reason to dismiss her?

Disability

(8) Was the Claimant a disabled person by reference to coronary cardiovascular disease?

Direct discrimination because of marriage, disability and age

(9) The Claimant claims that she was treated less favourably because she was married/ because she was disabled/because of her age than her comparators and/or a hypothetical comparator would have been who was not married/ not disabled/younger.

(10) The less favourable treatment that she relies on in this respect is her dismissal and the detriments set out at paragraph 4 above.

(11) Did the Respondent treat the Claimant less favourably than it treated her comparators Sue Clarke and Beverly Middleton when she was dismissed and subjected to the detriments set out at paragraph 4 above? There must be no material difference between their circumstances and the Claimant's.

(12) In relation to those matters, did the Respondent treat the Claimant less favourably than it would have treated a hypothetical comparator in materially similar circumstances who was not married/not disabled/younger. In relation to age, the Claimant states that her age group is over 55.

(13) If so, was it because of age, disability or marriage?

(14) In relation to age if the Claimant was less favourably treated because of age was that treatment a proportionate means of achieving a legitimate aim.

Wrongful dismissal/notice pay

(15) What was the Claimant's notice period? Was she paid for that notice period?

4. In addition, it was agreed at the outset that we would consider the application of time limits to the Claimant's case and that we would also as part of the liability stage of the hearing consider the *Polkey* question of whether the Claimant would have been dismissed in any event if any unlawful conduct we may find did not occur. In the event, further *Polkey* issues were raised during the course of the hearing and we have found ourselves unable fairly to deal with *Polkey* as part of this Liability Judgment, which will accordingly remain an issue for the Remedy stage.

The Evidence and Hearing

5. There had been difficulties between the parties in preparing for the hearing. The Respondent was supposed to have produced the bundle for the hearing, and the Claimant was supposed to have notified the Respondent of all the documents she wanted in the bundle. Things had gone awry and we ended up with one main bundle provided by the Respondent in hard and electronic copy (references to this bundle are marked **R/page x**) and separate bundle provided by the Claimant only in hard copy (**C/page x**), together with a further supplementary bundle from the Respondent only in hard copy (**RSupp/page x**).

6. The Respondent objected to various documents in the Claimant's bundle at the start of the hearing, but for reasons given orally at the hearing we permitted the Claimant to rely on all her documents, provided she produced the complete copies of certain documents. There had also been a failure by the Respondent to include in the main bundle for this hearing a large number of the documents that had been in the bundle for a previous preliminary hearing and which were still relevant to liability.

7. In addition, both parties produced further documents in the course of the hearing, on every day of the hearing, the vast majority of which should have been disclosed to each other previously, and which were (in most cases) clearly relevant and necessary to the fair determination of the proceedings. We made clear to the parties that conducting the proceedings in this way was inappropriate, but we took the view that it was in accordance with the overriding objective to admit the documents to enable us to determine the case on the best evidence available. There remained, however, a number of shortcomings in the disclosure provided by both parties and we have considered the implications of this for the issues we have to decide at the relevant points in the judgment.

8. The parties had exchanged witness statements prior to the hearing. The Claimant then produced a revised version of her witness statement on the day of the hearing that referred to her bundle and also contained a number of other amendments. For reasons given orally at the hearing, we permitted the Claimant to rely on the second version of her witness statement, with the Respondent being given over night to review it and refine cross-examination

questions as need be. The first version of the Claimant's statement also remained in evidence, and the Respondent was able to cross-examine the Claimant on the differences between the two.

9. An amendment application was made by the Claimant on Day 4 of the hearing for permission to bring new claims of subjection to detriment for whistleblowing as a result of sexual objects that had, she alleged, been sent to her in the post between September 2021 and April 2022, by Mr Belson or a person associated with him (Status Education Limited, a company of which he and his new girlfriend are directors). We refused that application for reasons we gave orally at the hearing, but which were in summary that the application had been made (without good reason) too late in the proceedings.

10. We explained our reasons for various other case management decisions carefully as we went along.

Rule 50

11. For reasons given orally at the hearing, we made a Rule 50 order anonymising the vulnerable individual who is referred to as Person X in this judgment and the individual referred to as Mr Y. Neither of them have been witnesses in this case. They are third parties about whom we have received evidence of a very personal nature engaging their rights under Article 8 ECHR. We do not consider that it is necessary for their names to be known to the public in order for our judgment to be understood.

12. In the circumstances, despite giving full weight to the principle of open justice and the Convention right to freedom of expression, we considered it appropriate to make orders under Rule 50 requiring that these individuals be anonymised at the hearing and in this judgment.

13. Any person who objects to this Rule 50 Order may apply to the Tribunal (marking the correspondence for the attention of Employment Judge Stout) for reconsideration of this order, setting out the grounds for the application.

Adjustments

14. The Claimant has a heart condition. We made clear that if she required breaks at any point, she should let us know. In the end, there was only one occasion when she requested a break for this reason. We dealt with it by breaking early for lunch and the Claimant was content with that.

The facts

15. We have considered all the oral evidence and the documentary evidence in the bundles to which we were referred. The facts that we have found to be material to our conclusions are as follows. If we do not mention a particular

fact in this judgment, it does not mean we have not taken it into account. All our findings of fact are made on the balance of probabilities.

Background

16. The Claimant was employed by the Respondent, a watch, clock and jewellery repair business based in Hatton Garden, London. She carried out bookkeeping and administrative services. She is also married to Mr Belson, who is the Chief Executive Officer (CEO) and a director of the Respondent. They were married from 2009 until 2021 when they separated in circumstances detailed further below. The Claimant had no written contract of employment.

17. Divorce proceedings are ongoing as between Mrs and Mr Belson. A *decree nisi* was issued in October 2021, and the final hearing at which it is expected a *decree absolute* will be issued is set for May 2023. As part of this hearing, we received evidence from both parties to the effect that the other has been hiding assets from the divorce proceedings and the parties remain in dispute as to who is likely to owe money to whom as a result of the breakdown in their marriage. For the most part, we do not have to determine any issue in relation to this and we do not attempt to do so, recognising that it will be a matter for the family court in due course. However, one aspect of this property/asset dispute is said by the Respondent at least to be relevant to the employment dispute that we are tasked with determining, and that is the issue relating to the Claimant's purchase of 58 Capital Wharf. We return to this further below.

18. We also mention here another matter we have not dealt with, which is that in the Respondent's ET3 response to the proceedings it made allegations that the Claimant had misled Mr Belson from the outset of their relationship about her nationality, personal history and hair colour. These allegations were not repeated in the Respondent's witness statements. Allusions to them surfaced only briefly in cross-examination of Mr Kjellin by the Claimant very close to the end of the hearing. They were not pursued in any detail. We have therefore not made any findings in relation to them and cannot see how they would have assisted us in our consideration of the case in any event.

19. The Claimant's son, James, was also employed as a bookkeeper by the Respondent and remains employed by the company.

The Claimant's employment dates

20. The Claimant started working for the Respondent on 1 May 2016. Prior to that she had worked for Mr Belson's other company, Belson & Sykes Ltd from (according to her witness statement) 1 April 2006 to 25 February 2016. Belson & Sykes has been in liquidation since 2018. In oral evidence the Claimant was less clear about when her employment with Belson & Sykes had terminated, suggesting that 25 February 2016 was merely the date that

the company went into administration and that no employees had been dismissed, the government had just paid employees' wages. On this question of when her employment terminated, we prefer the Claimant's evidence in her witness statement in the absence of any documentary evidence to assist us on the point. We therefore find there was a gap in her employment between Belson & Sykes and employment with the current Respondent that would have broken continuity of employment for the purposes of s 212 of the ERA 1996 if the two companies were associated. In any event, the shareholdings of Belson & Sykes are: 38% Mr Belson, 38% Mr Sykes and 24% the Claimant. The shareholdings of the Respondent are: 85% Mr Belson, 10% Mr Dhangar and 5% Mr Kjellin. We therefore also find that the two companies are not 'associated' for the purposes of s 231 of the ERA 1996 because Mr Belson was not a majority shareholder in Belson & Sykes and thus did not have 'control' of it within the meaning of that section. It follows that 1 May 2016 is when the Claimant's period of continuous employment started with the Respondent for the purposes of the various statutory rights that hinge on that.

The Claimant's role

21. The Claimant's job prior to the Covid-19 pandemic involved administration and bookkeeping. She was responsible for data entry bookkeeping, payroll, VAT, liaising with the Respondent's accountant, communicating with suppliers, monitoring bank statements and producing monthly financial reports. The Claimant said that before the pandemic she went into the office every day to do this, from 9am to 5pm and that she also worked overtime and weekends. She said the Respondent had 360 suppliers, about 120 supplier contacts per week. The Claimant said that she would answer the phone 'constantly' when in the office and that no one else would answer the phones. The Respondent broadly agreed with the Claimant's list of the duties that she was doing, but disputed how much time these duties took and the extent to which the Claimant was in the office and answering the phone. Mr Belson said that the Claimant came in when she wanted, went on holiday when she wanted, certainly was not working 9am to 5pm and was not primarily responsible for answering the phone as that would mostly be done by other employees, the Respondent having a single number that rang all phones in the office and which as a matter of policy was required to be answered within five rings. The Claimant did not dispute what Mr Belson said about flexibility, her dispute was with how much time the role took up.

22. We do not have to determine precisely what the Claimant was doing prior to the pandemic work-wise in order to resolve the issues in dispute, but we find that the truth likely lies somewhere between the parties' two positions. In particular, we do not accept that the Claimant's role was a full-time role that took up the whole (or even more than the whole) of a working week. We so find because the Claimant's own case in these proceedings, as articulated in her oral evidence and the first version of her witness statement, was that Mr O'Driscoll, an accountant, was given her job at the point that she and Mr Belson decided to separate. Although in the second version of her witness

statement (the one she formally adopted as her evidence in these proceedings), she amended her evidence to state that it was only 'some' of her job that was given to Mr O'Driscoll, in oral evidence she maintained that he had been given her job and did not dispute the Respondent's evidence that what he is doing is a basic accounting and bookkeeping function on a part-time basis, and as a contractor who is part of an accountancy company. If she really considered her role amounted to much more than that, we do not consider that she would have maintained that he had been given her job rather than only a small part of her job. As such, we find that the Claimant worked on a flexible basis, somewhat less than full-time, that the core of her role (and all Mr Belson expected her to do) was administration and book-keeping, but we accept that when in the office she answered the telephone as she said and we also accept that she may well have done some work on most days of the week, or chosen to be in the office most days of the week. It does not follow, however, that the role was, or needed to be, a full-time role.

23. There were only 5 or 6 other employees on the payroll prior to the Covid-19 pandemic: the Claimant, Mr Belson, Mr Dhangar, the Claimant's son and Ms Middleton. Other people who worked for the business were contractors. Only the Claimant and her son were responsible for bookkeeping and general administration. The Claimant worked with the Respondent's (external) accountant, Mr Griffiths.

Training and qualifications

24. The Claimant self-funded herself for a qualification in jewellery valuation but felt she was 'not allowed to practice her skills'. She wanted to progress with her career but felt that she was not supported in that way by Mr Belson. She contrasted her treatment in this respect with Ms Middleton and Ms Clarke, who were unmarried women, who she asserted in particulars of claim (R/60) were funded by the Respondent to undertake jewellery qualifications.

25. In the event, we have received no evidence about Ms Clarke being trained, but Ms Middleton was (R/84). Mr Belson's explanation for this was that Ms Middleton was employed in a claims manager role where she had to value jewellery claims for insurance purposes and therefore needed training and qualifications, whereas the Claimant was employed as a bookkeeper and did not. The Claimant also asserted that Mr Belson's view was that married women should be practising their cooking skills rather than pursuing careers. Mr Belson disputed this but did, by way of what he said in oral evidence was a joke, refer to what he regarded as her poor cooking skills, calling her *"darling"* at this point in his evidence. He said that he understood she felt overqualified for her role, he said she had never asked him about going on jewellery courses and was unaware that she had done so or wanted to do so. He denied that he had ever seen the Claimant's certificate for the course, which she put to him in cross-examination was on the wall in his office. We have seen no documentary evidence of her having done the course or obtained the certificate either.

26. On this issue, we accept Mr Belson's evidence that there was no reason or need for the Claimant to undertake jewellery qualifications in order to carry out the administration and book-keeping role she was doing. The Claimant's evidence as to when she had asked Mr Belson about this course, or told him that she had done it, was very vague and we prefer his evidence that he was ignorant of her wish to pursue such training, and also ignorant that she had done it. We also reject the Claimant's case that Mr Belson held derogatory views about married women and their roles. We accept the remark about her cooking was a joke and we have seen no other evidence that suggests he holds such views. We observe that the fact that the Claimant did have a role working in the business suggests that he is not a person who considers that a wife's role should be confined to the home.

27. We also reject the Claimant's evidence that Mr Belson was motivated by her age on the basis that he had 'left her for a younger woman'. We accept Mr Belson's evidence that as a matter of fact his new girlfriend is older the Claimant. Further, it is clear that it was the Claimant who left the marital relationship. This was not a case of Mr Belson instigating a relationship break-up because he had met a younger woman.

2020 and the Belson & Sykes' litigation

28. All employees were furloughed from 6 March 2020 to 30 September 2021 during the Covid-19 pandemic. The business was closed altogether during this period.

29. In 2020 a dispute was ongoing in relation to the liquidation of Belson & Sykes Ltd. The dispute was between the liquidators and Belson & Sykes Limited (as claimants) against that company's directors (Mr Belson, Mr Sykes and the Claimant) and also Mr Kjellin (as defendants). Mr Kjellin's involvement was on the basis of a legal charge he had been granted by Belson & Sykes in 2014 over a property owned by the company as security for a loan. The dispute was settled after many years of correspondence but before legal proceedings had been commenced on the basis that Mr Belson, Mr Sykes, Mr Kjellin and the Claimant would between them pay £300,000 to the claimants in or around November 2020. Both sides sought to rely on this settlement agreement in these proceedings. The Respondent produced a full copy. The Claimant asserted that the allegations made by the claimants in relation to that dispute were as set out in the settlement agreement and that they included allegations of misfeasance, breach of fiduciary duty and transactions to defraud creditors. Mr Kjellin asserted that no such allegations had been made and that this paragraph of the settlement agreement was just 'boilerplate' wording. However, that is not how the agreement, which Mr Kjellin signed, is drafted. The paragraph in question (RSupp/49, (7)) is drafted to state that those were assertions actually made by the claimants against the defendants in relation to that dispute, and we accept that the Claimant (who was a party to the settlement agreement but not as deeply involved in the negotiations as Mr Belson and Mr Sykes – having been granted 'absolution' from involvement by Mr Belson) could in the circumstances

reasonably have reached the conclusion that such allegations were made. We emphasise that it does not follow that any such allegations even had any arguable basis, let alone that they were proved. Nor does the fact that the dispute was settled indicate that: indeed, the settlement agreement states that it was *"entered into without any admission or acceptance of liability"*.

30. We further accept that the Claimant could in the light of the administration and subsequent liquidation of Belson & Sykes Limited reasonably have been concerned about Mr Belson's financial affairs in a general sense. Although she had been doing the company's bookkeeping, she is neither a lawyer, nor an accountant, and in our judgment the bare facts of what happened with Belson & Sykes could reasonably lead a lay person to be concerned about Mr Belson's financial affairs. We have in mind the administration, liquidation, the complication of the loan and legal charge from Mr Kjellin, the acknowledgment by Mr Belson that he had (as a matter of 'honour') settled debts with creditors other than the bank in preference to the bank, and years of out-of-court legal arguments with the bank and liquidators ending with a settlement in which allegations were listed as per the settlement agreement and the directors were required to pay substantial sums out of their pockets. This is so notwithstanding that we have no reason to doubt that Mr Belson and Mr Kjellin for their part genuinely believe that the Belson & Sykes' administration and subsequent liquidation was a 'no fault' situation caused by a supplier suddenly ceasing to do business with them, and for which the directors only ended up being personally liable because they had been paying themselves from the company by way of director's loans rather than salary (an accounting arrangement for which they sought at this hearing to blame the Claimant) and because they had 'honourably' settled with creditors other than the bank (action which would have raised the spectre of breach of s 239 of the Insolvency Act 1986).

31. We also need to mention here that the Claimant was indemnified by Mr Belson in respect of her potential liability in relation to the Belson & Sykes dispute. By email of 19 May 2020 (C/45) Mr Belson provided the Claimant with confirmation she had nothing whatsoever to do with Mr Kjellin's loan and that any settlement would be paid solely from his (i.e. Mr Belson's) assets and not from their joint assets. At this hearing, the Claimant suggested that she sought this 'absolution' because Mr Belson had forged her signature on a document connected with that legal case and she had confronted him with this. This allegation was denied by Mr Belson, who said that he gave the indemnity because he genuinely considered the situation not to be her fault. The Claimant has produced no evidence to support her very serious allegation – not even the allegedly forged document. We also note that in her first alleged protected disclosure to the accountant on 29 August 2021 she wrote that she was *"unfairly involved"* in the Belson & Sykes litigation by Mr Belson *"despite the fact that my signature was <u>not</u> on any asset/commercial mortgage and sale of the Property without making me aware of all commercial asset dealings"* (our emphasis added) which is on its face inconsistent with her assertion now that her signature had been forged. In the circumstances, we reject the Claimant's allegation and we prefer Mr Belson's evidence as to why the indemnity (or 'absolution') was given.

32. On 4 November 2020 the Claimant was on standby to fly to Antigua on holiday, but in fact the flight did not happen and she did not go until December 2020. She authorised Mr Belson and Mr Kjellin to sign the final version of the settlement agreement in the Belson & Sykes case on her behalf while she was away (R/88) (although she had already signed the electronic version of the document). She wrote: *"Personally between me and in order to avoid further complications I think [Mr Belson] can sign with my signature as he has done before".* She said that she was being sarcastic in her email and that this was a reference to Mr Belson previously using her signature without her authorisation. We have rejected that allegation as a matter of fact and observe that there is nothing in this email to indicate sarcasm. We find it to be a straightforward authorisation for Mr Belson to sign with her signature on the final settlement agreement.

33. Around this time, Mr Kjellin was asked by Mr Belson to become a director of the Respondent and Chairman, and accepted. Mr Belson explained, and we accept, that this was because he had found Mr Kjellin to be very helpful in relation to the Belson & Sykes dispute and other matters. The Claimant's evidence was that she was disturbed by this development as she considered Mr Kjellin had played a significant role in what she says she regarded as *"unscrupulous"* business practices that had led to the Belson & Sykes' dispute. We return to the issue of the Claimant's views of Mr Kjellin later; in short, we do not accept her evidence that she mistrusted Mr Kjellin at this stage.

2021: the Claimant's holiday and relationship with Mr Y

34. The Claimant was due to return to the UK in January 2021, but told Mr Belson that she could not as she was ill with Dengue fever. The Claimant's position at this hearing was that the principal reason she could not return was because there was a travel ban, although she accepts she was ill with Dengue fever as well, and in her witness statement stated that it was in January/February 2021 that she *"experienced clinical death as a result of severe episode of haemorrhagic fever"*.

35. Mr Belson alleges that the Claimant was in fact on holiday with Mr Y, a neighbour of theirs, during this period and having an affair with him. The Claimant denies this, maintaining that she was in Antigua visiting a friend called Julie and assisting her with her charitable work. Since her return from Antigua, the Claimant has lived in Mr Y's flat at no. 62. The Respondent has also produced evidence of documents that on their face show that Mr Y has added a Codicil to his Will (RSupp/2) leaving the Claimant $1 million and an unsigned revision to her Will leaving all her property to Mr Y (RSupp/3).

36. The Claimant maintains that she has never had a romantic relationship with Mr Y, and suggested in oral evidence that he is old ("83" she said), unfit and gay. The Claimant said that although she is living at the same address as Mr Y, she is doing so as the guest of her friend Amy, who is Mr Y's daughter.

She says the Will and the Codicil are 'forgeries'. She said that the concierge who had purportedly witnessed the signing of the Codicil had said that he did not see Mr Y signing the document and she argued that it could be seen from the copy that the Codicil had been folded so that the concierge could not see Mr Y's signature. When it was put to her that in February 2022 when challenged by Mr Kjellin about this Codicil as part of his efforts to mediate their divoice, that she commented on the mediation documents (in red at R/126) that the Codicil was a *"joke"* and did not assert it was a forgery, she said that she had told Mr Belson separately it was a forgery. The Claimant denied having any part in producing the draft revision of her Will that the Respondent had produced; she had no explanation for why, if Mr Belson was willing to forge documents, he had not forged her signature on that draft Will. She did in the summer of 2021 purchase with Mr Y a flat at no. 58 in the same block, but the parties agree that she has a Deed which states that the flat is to be held for the benefit of her son so that, on the face of it, she has no beneficial interest in the property (although Mr Belson is contending that the Deed should be ignored for the purposes of the divorce proceedings).

37. The Respondent adduced evidence that Mr Y is only 76 and 'fit' and both Mr Belson and Mr Kjellin insisted that the Claimant had been seen on multiple occasions with Mr Y, including *"shopping in Waitrose"*. Mr Belson, consistent with an email he wrote to the Claimant on 2 June 2021 (R/90) maintained that the Claimant in May 2021 had told him that she was going to live with Mr Y, although everything else about her alleged relationship with Mr Y and time allegedly spent with him in Montserrat mentioned in this email, he acknowledges is all him 'joining up the dots' rather than having any hard evidence. We also record here that the Claimant in answer to this email (R/91) did not deny Mr Belson's allegation that she was in a relationship with Mr Y. She did deny a number of other things. She wrote: *"1. I can swear to God that I wasn't in Montserrat!!!!!! 2. I am on heavy medication for 6 weeks but able to work and if need to go to hospital it will be not earlier than 10 weeks after the end of medication course! 3. I haven't made decision to end our marriage! 4. I was very supportive during a year and a half during your different cancer treatments so you can wait till I at least I finish all my treatments."* In our judgment, points 2, 3 and 4 of the Claimant's email on their face suggest that at this point the Claimant was at least equivocal about whether, notwithstanding the breakdown in their relationship, she actually wanted to end either her marriage or her employment relationship immediately (the termination of both of which Mr Belson was proposing in that email and to which we return). The Claimant in oral evidence insisted that this email was a 'typo' and that she had meant to type *"3. I **have** made decision to end our marriage!".* We reject the Claimant's evidence that this was a 'typo' as what the Claimant maintains she intended to write makes no sense given both the content of Mr Belson's email and her own point 4. We find that in saying this was a 'typo' the Claimant was trying in oral evidence retrospectively to make the evidence fit with what is now her case, *viz* that there was no equivocation about what she wanted at this point: she wanted the marriage to end, but the employment to continue.

38. It does not matter to the legal issues we have to decide whether the Claimant was in a romantic relationship with Mr Y or not, but the Respondent maintains the above arguments as a credibility issue and so we have sought to determine the facts so far as we can. We find that it is clear that the Claimant has a strong personal relationship with Mr Y. We accept that she told Mr Belson that she had moved out to live with Mr Y, and that she is living with Mr Y and that Mr Y's daughter also lives sometimes in that property. There is also no dispute that she has bought flat no. 58 with Mr Y (albeit that it is on the face of it on trust for her son). As to whether she was in Antigua or Montserrat with Mr Y, there is insufficient evidence for us to decide either that she was or that she is lying about it and we decline to do so as it is not necessary to our judgment. However, the Codicil and the draft Will appear on the face of it to be genuine documents. We reject the Claimant's allegation that they are forgeries. Her suggestion that the Codicil had been folded in a way that permitted a 'forgery' to be created was implausible as, if folded as it appears from the copy, it could not have been signed by anyone. It has to be open for it to be signed both by Mr Y and the witnesses. We further reject the Claimant's evidence that she had no hand in her draft revised Will. It is implausible that it was produced by Mr Belson or Mr Kjellin because if they had gone that far it is implausible that they would have stopped short of forging her signature on the draft Will, particularly if, as the Claimant alleges, they forged Mr Y's Codicil and Mr Belson forged her signature previously. As such, we find that both the Codicil and draft Will are genuine documents and indicative of the strong personal relationship between the Claimant and Mr Y.

Person X's Trust Fund

39. The Claimant states in her witness statement that on 2 April 2021 she was informed by Wilsons Solicitors LLP of a new legal investigation into Mr Belson regarding the 'disappearance' of £91,500 from Person X's trust fund. The £91,500 was Person X's share of Mr Belson's late mother's estate. Under the terms of his mother's Will (RSupp/6-13), Mr Belson was appointed executor (with a solicitor) and was appointed (with the solicitor) trustee of Person X's share. We do not need to set out the late mother's Will in full, but in summary Person X was to be the primary beneficiary of that Trust, with a number of other individuals, including Mr Belson, as secondary beneficiaries. The capital of the Trust fund was to be applied during the lifetime of Person X for the benefit of Person X and the other beneficiaries as the trustees thought fit *"so long as not leass than half of any capital appointed"* was applied for the benefit of Person X. After Person X's death, the capital was to be applied for the benefit of any of the other beneficiaries as the trustees thought fit. The Will gave wide powers to the trustees (see clause 6.2) *"to invest as if they were beneficially entitled"* including *"the right … to invest in unsecured loans"* and the statutory duty of care in s 1 of the Trustee Act 2000 was, on the face of clause 7.1 of the Will, excluded. We emphasise that we make no findings as to the validity or propriety of the Will or as to its legal effects: we merely record our reading of it.

40. The Claimant says that it was as a result of hearing about the investigation by Wilsons, following on as it did from the previous legal dispute regarding Belson & Sykes, that she became so concerned about Mr Belson's financial dealings that she decided to leave the marriage and that she told Mr Belson this. We accept the Claimant's evidence in that respect as there is no reason to doubt that these matters formed at least part of why she wanted to leave the marriage, although her strong personal relationship with Mr Y must also have something to do with it.

41. On 4 May 2021 the Claimant returned to the UK and told Mr Belson that she wished to end the marriage. Both parties agree that she made this decision. However, the Claimant says she had been talking to Mr Belson previously about leaving the marriage because of her concerns about his financial conduct and his use of her signature on a document. Mr Belson denies this. He says it came as a shock to him that she wanted to end the marriage. We accept Mr Belson's evidence that the Claimant's decision to end the marriage came as a shock to him as that is what he wrote in his 2 June email at the time and there is no reason to disbelieve him, particularly given that we have rejected the Claimant's allegation that he had previously forged her signature and she had confronted him about it. It is otherwise immaterial what discussions they had had previously about their personal relationship. Relationships are complicated and misunderstandings are normal.

42. On 22 May 2021 the Claimant sent a WhatsApp message to Mr Kjellin saying that she would *"love"* to have a confidential conversation with him about her marriage to Mr Belson (R/150), signing off with a heart emoji.

43. On 24 May 2021 Mr Belson emailed Mr Aspden at Wilsons LLP stating that the £91,500 allocated to Person X's trust fund had been invested into Jewellery Direct Supply Ltd (C/23) ("JDS"), another company of which Mr Belson is a director. He provided the same assurance to Southampton City Council Social Services on 20 June 2021 (C/24). Southampton social care services pointed out that there was no record of Mr Belson having legal Power of Attorney for health, welfare or finance for Person X (C/24). We infer from this that Southampton social care services were unaware of the terms of Mr Belson's mother's will, which appointed him as trustee for that fund (and thus gave him, so far as the trust monies were concerned essentially the same powers as a person with legal Power of Attorney). We add here that Mr Belson gave evidence that he understood Southampton social services had a claim on Person X's trust fund monies for the purposes of funding his residential care and he was concerned to ensure that they were unable to exercise that claim or access the funds.

<u>Outsourcing of the Claimant's job</u>

44. By email of 28 May 2021 (R/89), Mr O'Driscoll (an accountant who Mr Kjellin had known for some years) emailed Mr Kjellin asking whether he had managed to speak to Mr Belson as *"that would be a good for me job to get"* (sic). It is evident that this was a reference to the Claimant's job as Mr Kjellin

replied *"yes – very likely to happen – he has issued divorce proceedings so s*** is about to hit the fan"*. In a further email later that day Mr Kjellin indicated he was expecting a meeting on 9 June when there would be a *"friendly negotiated exit from both the marriage and the business"* and that after that, whether it was a *"friendly transition"* or an *"unfriendly exit"*, Mr O'Driscoll would be needed to take over the accounts. We asked Mr Belson in oral evidence about this email from Mr Kjellin and put to him that it appeared to tie the Claimant's exit from the business to her marital status. Mr Belson's evidence was that he did not think it made any difference that they were married, that there would be a similar process of separation if they had been together for 15 years and not married. Indeed, he suggested that there might have been other grounds for dismissal that they would have used such as gross misconduct when (he alleged) she 'took' a computer from the company property. We deal with the significance of the Claimant's marital status to what happened between the parties in our Conclusions.

45. On 2 June 2021 at 16:24 Mr Belson sent the Claimant the email to which we have already referred. He stated that it had 'come as quite a shock' when a couple of weeks previously she had told him she wanted a divorce and was moving in with Mr Y (R/90). He said he had 'joined the dots' and thought she had not been in Antigua but in Montserrat with Mr Y. He stated that, as a result of their personal situation, he was finding it difficult to work with her in the business and that her *"last email highlighted some health issues which are quite concerning and would put the business at risk"*. He asked that she and James hand over Quickbooks to him together with all passwords. He wrote that he had arranged for an accountant to meet on 10 June 2021 for handover. He wrote that he had filed for a "quickie" divorce and would be looking for a 50/50 financial settlement. He acknowledged in this email that the Claimant was keen to continue working. The Claimant replied at 18:39 with the four point email apparently denying various aspects of Mr Belson's email (R/91) that we have dealt with above. We consider that the true position was that at this stage, the Claimant having announced that she wanted to end their relationship, Mr Belson started moving more quickly than she wanted both towards a formal end of the marriage and her employment. We asked Mr Belson what the *"health issues"* were he was referring to in this email and he could not recall, but said he did not really believe in her alleged health issues at this stage and was just deploying this as a further argument in what might be termed a 'war of words'. We accept his evidence on this point as the Claimant's evidence about her *"health issues"* prior to this point (Dengue fever, clinical death experience, etc) has been vague and inconsistent as to dates and effect – eg she told Mr Belson at the time that Dengue fever delayed her return from Antigua, but she told us that it was non-availability of flights that was the problem – and these medical experiences are also unsupported by any contemporaneous medical records. As such, we find it plausible that Mr Belson did not believe in them when he wrote this email.

46. In June 2021 there was discussion between the three witnesses. The Claimant in oral evidence said there was a meeting between her and Mr Kjellin on 9 June 2021 at which Mr Belson was not present. Mr Kjellin did not

deal with this meeting in his statement, but contended there had been a three-way meeting on that date as Mr Belson's email proposed. Mr Belson in his statement said that he had a discussion with the Claimant in June (i.e. without Mr Kjellin) and that she agreed to the appointment of Mr O'Driscoll and to handover Quickbooks, passwords etc on 10 June 2021. We find that there must have been discussion between each of the witnesses during June 2021. We do not need to decide how or when or in what combination, save that we do find that the Claimant met with Mr Kjellin without Mr Belson present to discuss the divorce and that she did so freely and not under 'ultimatum' from Mr Belson for reasons we deal with below. We further find that, although the Claimant did not want to give up her job or its associated benefits (particularly health insurance), she did as a matter of fact agree to the appointment of Mr O'Driscoll and the handing over of her bookkeeping/accounting duties to him. We so find because there is significant further correspondence about this, in the course of which the Claimant never indicates any disagreement or protest about the arrangement.

47. On 5 July 2021 Mr Belson emailed the Claimant (R/92) introducing her to Mr O'Driscoll who he said would *"eventually be taking over day to day control"* of the accounts for the Respondent and JDS. He confirmed that the Claimant's son James would continue in his role as administrator and could do all the invoicing and that Mr Griffiths' firm would continue to be responsible for tax returns to HMRC.

48. The Claimant confirmed by emails in July and August 2021 that she had handed files and passwords to Mr O'Driscoll (R/94-97). The Claimant in her originally exchanged statement stated that she had been forced to hand over 'most of [her] working duty' to Mr O'Driscoll, but changed this to 'some' in the second version of her statement. We have already made findings about this change above. We find that 'most' is more accurate.

Divorce mediation

49. The Claimant also in her original statement said that Mr Belson had given her an ultimatum that Mr Kjellin should act as divorce mediator, but in her own WhatsApp messages (R/150-151) it appears that it was she who approached Mr Kjellin. Following her initial approach on 22 May, on 5 July she messaged to say that Mr Belson had filed for divorce asking him to help with an agreement for separation as divorce now seemed 'unavoidable'. We find that the Claimant willingly approached Mr Kjellin to act as mediator because he was a family friend who they both trusted. Her initial WhatsApp message to him is not 'sarcastic' as she suggested, but warm, with an emoji heart and it is clear from subsequent messages (including the 10 September WhatsApp from the Claimant to Mr Kjellin about her having saved his wife's pictures of naked men from flat no. 55 and her forwarding the dismissal email of 28 February 2022 to him as if she really believed he would not already know about it) that she remained on friendly terms with Mr Kjellin for quite some time, and trusted him. Indeed, we infer from Mr Kjellin's disingenuous email of 8 March 2022 (as to which see below) that he deliberately tried during the

course of acting as mediator to give the Claimant the impression that he was acting neutrally as between the two of them, and he does appear genuinely to have approached his role on that basis to begin with. However, once the Claimant refused to accept his first efforts at settlement, it is apparent from the correspondence we have seen that Mr Kjellin sided with Mr Belson and that his efforts were focused on getting the Claimant to agree to his proposals, and investigating the truthfulness of her assertions regarding her property, rather than seeking to persuade Mr Belson to raise his offer to meet the Claimant's expectations, or investigating or taking seriously the allegations that she made against Mr Belson about him hiding or incorrectly valuing assets. The Claimant pursued cross-examination questions with Mr Kjellin along the lines that he failed to act as an independent mediator, but as he pointed out, he was not appointed as an independent mediator, he was (we find) freely appointed by both of them as a family friend who had previous divorce experience (his own and his daughter's). The Claimant freely appointed him despite her knowledge about Mr Kjellin's history of making loans to Mr Belson, such as that which formed part of the Belson & Sykes litigation.

Further developments with Person X and the Trust/Will proceedings

50. The Claimant in her witness statement states that on 2 August Person X asked her to help recover his Trust money, and on 3 August 2021 Wilsons Solicitors asked her by email to help investigate what had become of the £91,500 Trust money. We accept the Claimant's evidence of these communications despite the lack of documents. It was also around this time that Mr Belson was told not to have any further contact with Person X, Person X having previously said to him that he felt he (Mr Belson) had 'stolen' his money and Mr Belson's sister also having accused him of this. Mr Belson had denied and sought to explain what he had done with the money (an explanation which we infer from the documents we have been provided in the Will/Trust proceedings was similar to that which we have been provided in these proceedings and which we detail below).

51. By email of 9 August 2021 (R/98) Mr Belson emailed the Claimant stating that he 'considered' that her eventual departure from both businesses would be part of the overall financial divorce settlement which he hoped to be able to agree with Mr Kjellin's involvement. He stated he was prepared to pay her until the end of furlough. He asked for medical evidence of her illness. He asked her to hand *"everything"* over to Mr O'Driscoll that afternoon. The Claimant replied that the GP could not provide a backdated fit note as she had been 'working every day on the online accounts' and that she did not have medical evidence from Antigua (R/99). She said nothing to express disagreement with the notion that she was departing from the business.

52. The Claimant obtained a letter from her GP dated 12 August 2021 (C/43) which referred her to a consultant in respiratory medicine which stated that she had 'reported' having haemoptysis when she had Dengue in January to

February 2021 and has a persistent cough since February 2021 and feels short of breath when walking, but had no chest pain.

53. On 26 August 2021 the Claimant says that she visited Person X in his care home and was told by him that Mr Belson had not had permission to take money from his account and she personally bought him an iPad as Mr Belson had told Person X that he did not have enough money in his account. Mr Belson denies that he had ever told Person X that he did not have money and maintains that he has always ensured Person X's needs are met, that Person X already has an ipad he uses for communication with the assistance of care home staff and that he (Mr Belson) bought him (Person X) a computer and keyboard suitable for him with his disability to use. He also stated that he had arranged funds for a cruise so that Person X could be married by a ship's captain and that he subsequently arranged a wedding anniversary lunch. Mr Kjellen confirmed Mr Belson's evidence in these respects. Mr Belson considers that the Claimant and his sister (another beneficiary of his mother's Will's Trust fund) have been manipulating Person X into believing the worst of him.

54. We note that issues relating to Mr Belson's mother's Will and the Trust fund created thereby are currently the subject of legal proceedings between Mr Belson and other interested parties (who do not include the Claimant). We will call those proceedings "the Trust/Will proceedings". We have at our request been provided by the Respondent (after the conclusion of evidence and closing submissions) with documents relating to those proceedings to enable us to understand the scope of those proceedings. It is apparent from those documents that there is more evidence in relation to what has happened with Person X than we have received in these proceedings. Although we have received substantial evidence as to what happened with the £91,500 from Person X's Trust Fund, and some evidence about purchases that were made for him, we have found that it is unnecessary for the purposes of determining the issues that are before us to decide factually what has happened in relation to the purchase of items for Person X. On this issue, however, we do accept that the evidence we received from both parties as to their beliefs regarding what has happened with the purchase of items for Person X was reasonable and reflects their genuine beliefs about what has happened with Person X. In this respect, we note that what the Claimant told us at the hearing about her beliefs is consistent with the witness statements filed by the claimants and by (or on behalf of) Person X in the Trust/Will proceedings, while what Mr Belson told us about his was detailed, specific and credible.

<u>The Claimant's alleged protected disclosures commence</u>

55. On 29 August 2021 the Claimant emailed Mr Griffiths at Westell Accountants complaining that Mr Belson's actions in putting all revenue through the Respondent and all costs through JDS was devaluing her shareholding in the latter. She continued that her 'greatest concern' was that she had *"recently been approached by [Mr Belson's] sister and Person X regarding [Person*

X's] missing inheritance money" (C/27). She stated that she had received an email from Wilsons regarding Person X's inheritance having been invested in the business and no longer available. She expressed concern that she was going to become involved in another legal case (i.e. in addition to the Belson & Sykes litigation). She stated that she could see transactions in the JDS Ltd accounts for November 2020 which led her to the *"suspicion that [Mr Belson] has used Person X's inheritance money to pay off the debt"* from the Belson & Sykes' litigation. Mr Griffiths replied that he had no information about the missing inheritance money (C/38).

56. This email of 29 August 2021 is the Claimant's first alleged protected disclosure. Her oral evidence, which we accept, was that she emailed the accountant first about this issue because she wanted to check her facts before approaching Mr Belson, and that she did this because she suspected she would be subjected to a detriment if she raised the matter with Mr Belson directly and wanted to be sure of her facts. We accept this evidence as it is plausible. We further accept that the Claimant at the time subjectively believed that Mr Belson might have used Person X's Trust Fund money for his own purposes and that she considered this to be a matter of importance that needed to be brought into the light. We deal with the reasonableness of this in her conclusions. We acknowledge that Mr Belson believes that the Claimant has been acting spitefully regarding the Trust Fund monies and trying to use Person X as a 'pawn' in their divorce negotiations. However, although this is a very acrimonious divorce with multiple allegations of wrongdoing made by both parties, and the Claimant may at times have overstated the extent of her concern about Mr Belson's financial probity, we accept the 'core' of her evidence about her beliefs as to Person X's Trust fund. The Claimant herself has no personal financial interest in Mr Belson's mother's Will or the Trust Fund monies and we accept that she was genuinely concerned about what Mr Belson had done with the £91,500. We deal with the reasonableness of her concerns in our conclusions.

57. On 2 September 2021 (C/29) the Claimant emailed Mr Kjellin complaining about Mr Belson's practice since the previous year of putting all revenue from both JDS and the Respondent into the Respondent and all suppliers/creditors through JDS. We understand from Mr Kjellin's evidence in these proceedings that this was his idea so that during the year the Respondent's accounts would look profitable as the debts/losses would be hidden in JDS Ltd, but then the two sets of accounts would be amalgamated at the end of the year. Mr Kjellin said a number of times in oral evidence that it *"was the job of a director to make accounts look good – truthful and honest but good-looking"*. The Claimant in her email complained that this practice was devaluing her small shareholding in JDS. She mentioned that Mr Belson had emailed that she was not going to have a job/salary after September and that Mr Kjellin would send formal notice of termination, but Mr Kjellin had told her that was not the case. This email of 2 September 2021 is the Claimant's second alleged protected disclosure. She explained in her witness statement that she considered that the practice of putting all revenue in one company and all costs in the other was a breach of s 993 of the Companies Act 2006, which she states (correctly) provides: *"If any business of a company is carried on*

with intent to defraud creditors of the company or creditors of any other person, or for any fraudulent purpose, every person who is knowingly a party to the carrying on of the business in that manner commits and offence".

58. On 2 September 2021 the Claimant was diagnosed with cardiovascular coronary artery disease and irregular heart palpitations. This is confirmed by retrospective letters from her consultant of 9 December 2022 and 21 December 2022 (R/166, 167). She put to Mr Belson that she told him about this the same day, although he was on holiday at that point, and there was no evidence in her witness statement to this effect. Mr Belson denied in oral evidence being aware of her diagnosis at any point prior to 18 November 2021. We accept Mr Belson's evidence on this point as the Claimant in her written communications to Mr Belson that we have seen does not mention at this point that she has a heart condition, she refers only to Dengue fever and associated symptoms. In her WhatsApp message at R/153 she attaches a picture of her with a heart monitor, but that message must be dated after 18 November 2021 as she refers to the cancellation of her health insurance of which she was only notified on 18 November 2021.

59. At the beginning of September 2021 Mr Belson was on holiday with his new partner, Ms Lawn, who is older than the Claimant. On 7 September 2021 the Claimant was contacted by Colchester Police who were looking for gold items allegedly taken by Mr Belson from Person X, as well as the £91,500. The Claimant in her witness statement did not mention that after this she entered her former marital home (No. 55 Capital Wharf, which she owns jointly with Mr Belson) and removed from the property paintings that she regarded as hers as well as paintings of naked men by Mr Kjellin's partner, Georgina. Early in oral evidence, the Claimant had been very clear that in May 2021 Mr Belson took her key to the flat, purportedly in order to make a copy, and that she was thereafter prevented from accessing the flat and that Mr Belson also changed the locks in September 2021. When it was put to the Claimant by Mr Cameron that she must have had a key to get in between 7 and 10 September 2021 to take the paintings, she said that she entered with the police, but this is inconsistent with her WhatsApp message of 10 September 2021 (below) which says that the police 'may' have to come and search, not that they have been to search. In the circumstances, we find that the Claimant did not tell the truth when she said Mr Belson took her key in May 2021 and that she must have used the key to enter the flat between 7 and 10 September 2021.

60. On 10 September 2021, the Claimant sent a WhatsApp message to Mr Kjellin (R/152) stating: *"there are some disturbing development with connection of disappearance of [Person X] inheritance and some gold items that [Mr Belson] has made Person X to pay for but [Mr Belson] took them back from Person X and has not returned for almost a year. Now I have a Scoop Legal team on the phone and most disturbing Police calling me and apparently Police called [Mr Belson] when he is now on holiday with his girlfriend. Mr Belson told police that [Person X's] money not available … Police wanted to come and search property I told them that I've looked and gold pendants not at our home …. I am panicking as Police said they may have to come and*

search for 'stolen' items. I've removed my paintings including Georgina's naked men as afraid that they can send Bailiffs and etc" (R/153). The Claimant in oral evidence when asked about the later incident of her entering the property on 22 October 2021 was adamant that she had not taken any paintings from the property prior to 27 September 2021, but accepted on being confronted by Mr Cameron with this WhatsApp that she had. Mr Belson's case is that among the artwork taken in September by the Claimant was one of a pair of Picasso prints. The Claimant maintained she had not taken that until 22 October 2021, but we find she had taken it previously. What she later took on 22 October 2021 was, we find, an oil painting of a French street only, consistent with Mr Belson's emails of that date. The Claimant's position was that this artwork was all her property, the Picasso prints being one of a pair of prints they were given as a wedding present. We note that this is in dispute as Mr Belson at RSupp/21 asserted the prints were a gift to him from his parents.

61. On 12 September 2021 the Claimant alleges that she informed "the Respondent" about her findings but he called her an *"old menopausal"* and said that the Claimant should not report about her findings if she wants to keep her job. These particular allegations were not put by the Claimant to Mr Belson and we are not satisfied, given the unreliable elements of other evidence she has given us, that either of these things were said. However, what does not appear to be in dispute is that in this conversation Mr Belson realised (probably because the Claimant told him directly) that she was at least in part behind the investigations by the police and Wilsons LLP into what he had done with the £91,500 from Person X's Trust Fund and a gold locket. After this conversation, Mr Belson returned the locket, which he explained he had only taken at his sister's request in order to try to put a tiny photo into it. We should record here that we asked both parties during the course of the hearing whether the police were still interested in any of the matters that they had both reported to the police over the course of the last two years. They both confirmed that the police were no longer interested (save that Mrs Belson said the police had advised her to pursue a private prosecution for malicious communication in relation to the sexual objects she says she received in the post and which formed the basis of her amendment application which we refused as set out at the start of this judgment).

62. The Claimant also said in oral evidence that on this occasion she had a heart monitor and that should have been obvious to Mr Belson. Mr Belson denied seeing it. On this point, we prefer Mr Belson's evidence. The Claimant was very vague about when and how she had told Mr Belson about her heart condition. Although in Tribunal she wore her shirt in such a way that her heart monitor was often visible, we do not consider that, even if she had the heart monitor on 12 September (she has given no evidence as to when it was fitted), and even if she was wearing her shirt as she did in Tribunal, that anyone seeing that who was not a medical professional or otherwise familiar with heart monitors would have realised that this is what it was or what it signified medically speaking. We also observe that Mr Belson's mind would on this occasion have been fully occupied with thoughts about having returned from holiday to find the Claimant had been in the flat and taken some

of what he regarded as 'his' things, as well as the realisation that the Claimant was behind or involved with allegations that had been made to the police and Wilsons LLP that he had stolen money and gold items from Person X. We accept that all this was, as he told us in oral evidence, a source of great upset to Mr Belson. We accept his evidence that he has always cared for Person X, including his evidence about arranging Person X's wedding aboard ship, and anniversary dinner, which is evidence of someone going significantly beyond the bare minimum in terms of care. We note that Mr Belson's mother evidently recognised Mr Belson as having been the primary 'carer' for Person X, hence making her Will in the terms that she did, and we accept his evidence that the thought that Person X after a lifetime now believes that Mr Belson has stolen from Person X, and the forced estrangement from Person X since August 2021 that has been a consequence of that, is a source of real distress for Mr Belson. At this meeting on 12 September 2021, all of these matters would have been very 'raw' for Mr Belson and in the circumstances we accept that he was not aware that the Claimant had a heart condition at this point.

63. On 14 September 2021, the Claimant provided an email statement to Mr Aspden at Wilsons regarding Person X's Trust Fund money investigation (C/30). In this statement, her third alleged protected disclosure, she identifies what she describes as *"suspicious transactions"* on the bank account of JDS Ltd in November 2020 whereby there was recorded an incoming loan of £175,000, then three outgoing transactions totalling £227,046 which she in her disclosure suggests could be Mr Belson and Person X's combined inheritance funds. She points out that JDS at that time had an operating loss and already had one business loan of £50k and other credit liabilities. She notes in her statement that it was around that time in November 2020 that Mr Belson, Mr Kjelllin and Mr Sykes were required to pay £300k by way of settlement of the Belson & Sykes litigation to the liquidators and Belson & Sykes. She concluded her email statement: *"[Mr Belson] has 'invested' his disabled relative money in a loss making business. [Mr Belson] did not advise [Person X] of this transaction nor did he obtain [Person X's] permission. [Mr Belson] was fully aware that [Person X] can't read or write – that is a true indication of [Mr Belson's] criminal intention, financial abuse and embezzlement"*.

64. On or around 27 September 2021, Mr Belson changed the locks on No. 55 and removed the Claimant's remaining belongings, packing them up to take up to No. 62 where she was then living with Mr Y, but she was not in and the belongings were then moved to storage where they remain. In email exchanges during October 2021 (RSupp/19-27), after the Claimant had broken back into the property on 22 October 2021, Mr Belson explained the changing of the locks as having been done to enable a new tenant to move in under a tenancy agreement for No. 55. The new tenant was Status Education Ltd and the tenancy agreement (which we have not seen) was supposedly dated 27 September 2021. A tenant was needed for the flat as the Belsons had purchased it on a buy-to-let mortgage, a condition of which was that it was to be let. Status Education Limited is a company of which Mr Belson and his new girlfriend, Ms Lawn, were or have at some point been

directors. Pursuant to the tenancy agreement, Mr Belson was permitted to continue to reside in the property for three months. The Claimant maintains, consistent with the emails we have been shown, that she was unaware of this until later (an assertion by Mr Belson in his email of 23 October (RSupp/19) that he wrote to her on 27 September has not been 'made good' by the production of any communication of that date). The Claimant also maintains that the tenancy agreement was illegal because she, as joint owner of the property, had not signed it. Mr Belson's response to that was that they were tenants in common of the property, so he believed he could let it out without her approval. We do not have to resolve who is right about this property law issue. Mr Belson further suggested that under the tenancy agreement Status Education was making active use of the property with people other than him, his new girlfriend or her daughter using the flat, but we do not accept this aspect of his evidence. We consider that the tenancy agreement was entered into in order to satisfy the bank, but that on the balance of probabilities it made little difference to the use of the flat on a day-to-day basis. We found Mr Belson's evidence on this vague and implausible and he has not proved to be such a reliable witness in other respects that we are disposed to accept this oral evidence.

65. Mr Belson did not deal with the changing of the locks in his witness statement, despite it being a specific allegation of detriment in these proceedings. In oral evidence, Mr Belson said that the reason he changed the locks on 27 September was not only because of the tenancy agreement, but because the Claimant had been into No. 55 while he was away at the start of September and taken her belongs and, he alleged, some of his. We deal in our Conclusions with whether these were the true or only reasons for his actions in changing the locks.

66. The Claimant reported the changing of the locks and removal of her belongings to the police.

67. On 29 September 2021 (R/100) Mr Belson communicated to Mr Kjellin that the proposal was for the Claimant and James to be given one month's notice with full pay and for the Claimant then to be free to negotiate any final payment as part of the divorce settlement and James could then be re-employed if he agreed on a self-employed basis for two days per week. Mr Belson wrote that Mr O'Driscoll was 'now in control' and could arrange for all of the Claimant's access 'to be cut forthwith'. He asked Mr Kjellin if he was happy with that course of action. We take it from Mr Kjellin's oral evidence, as well as what happened next, that Mr Kjellin told Mr Belson not to give the Claimant and James notice at this point.

68. On 1 October 2021 (C/31), the Claimant emailed Mr Aspden (her fourth alleged protected disclosure) to state that JDS Limited's final accounts for 2020 as filed with Companies House did not show the alleged investment of £91,500 from the Trust Fund.

69. The above email was not shared with Mr Kjellin or Mr Belson. However, it is convenient at this point to deal with the Respondent's explanation for what

happened with the £91,500 from Person X's Trust Fund. This is not an explanation that had been set out anywhere in the parties' pleadings in these proceedings, or in the Respondent's witness statements, or in any correspondence that has been put before us, save that it does appear to be broadly consistent with the account that has been given to the claimants in the Will/Trust proceedings. The Respondent does not dispute that the alleged investment has not appeared on any end of year accounts for JDS Limited. Mr Belson's position is that after he received the £91,500 on trust (following the sale of his late mother's property) in mid 2020, he put it in his own bank account. He did not put it in Person X's bank account because he was concerned to keep the money away from Southampton City Council Social Services. Then, in November 2020, in the transactions identified by the Claimant in her emails to Wilsons LLP, he initially in oral evidence on Day 4 said he put the money into JDS Ltd *"as a loan or share and it was then taken out again in three days"*. He *"passed the funds to Mr Kjellin to take into care, the funds were then invested on a secure basis during which time they earned 5% of interest and then returned to [him, i.e. Mr Belson]"*. He put the money into his HSBC account in April 2022, at which point there was a balance of £92,034.76 (C/44). He then put the money into a professional Trust Fund managed by Fidelis in October 2022. By that time, the deposit was £94,000.

70. On Day 5, Mr Belson gave a fuller account. He said that he and Mr Sykes were in difficulty finding funds to meet the Belson & Sykes settlement payment (which they had agreed to share £150k each). He took £50k from the Respondent, £50k from JDS and £50k from his own personal money to meet his £150k share of the settlement. Mr Sykes needed assistance to make his share of the payment and the idea was to use the Trust fund to help out. The money was put into JDS's bank account, then taken out again and given to Mr Kjellin, who then entered into a loan agreement with Mr Sykes, lending him the Trust Fund money, secured on a property, pursuant to which it was agreed Mr Sykes would pay 5% interest. He paid it back in April 2022 and it was put into Mr Belson's personal HSBC Bank Account at that point. He provided no explanation as to how the above sequence of transactions constituted an *"investment"* in JDS, which is what he told Wilsons LLP and Southampton City Council had been done with the money. Further, although Mr Kjellin and Mr Belson sought to explain the absence of reference to the £91,500 on JDS Ltd's accounts as being because the transaction was just an 'in and out' and not on the accounts at year end, if the money had been invested in JDS Ltd as a loan from Person X's Trust Fund to JDS Ltd, then as at the 2020 year end in December 2020 that loan ought to have been shown as still outstanding to Person X, since on Mr Belson's evidence the loan was not paid back to Person X (or him, acting as trustee for Person X) until April 2022, but the loan/'investment' does not appear in JDS Ltd's accounts at any point. So far as we can see, the Trust fund monies were just paid into and then taken straight out of JDS Ltd's account. They were not 'invested' in the JDS Ltd. The loan (for which we have been shown no supporting documentary evidence) seems in reality to have been from the Trust Fund to Mr Kjellin and then on to Mr Sykes.

First mediation proposals

71. On 4 October 2021 Mr Kjellin emailed Mr and Mrs Belson (R/101) with preliminary divorce settlement proposals. We observe that this email and the Claimant's response are inconsistent with Mr Kjellin's oral evidence (which we therefore reject) that the Claimant did not like a settlement figure he had proposed in the summer of 2021 and that this was the reason why she started making what she now relies on as her protected disclosures. Mr Kjellin's evidence does not fit the chronology in this respect because it is clear that the preliminary divorce settlement proposals were not made by him until 4 October 2021, which is some time after the Claimant started making her alleged protected disclosures.

72. The Claimant in her reply email of 7 October 2021 viewed Mr Kjellin's initial mediation proposal as 'a good start' (R/104), but raised a number of issues. We do not have her comments on the proposals that this point as we do not have the attachments to the 7 October email. We do note that in this email she complains that her furlough salary for September had been paid by Mr Belson *"with big unexplained delay only after [Mr O'Driscoll] involvement …"*. The proposal from Mr Kjellin, which we do not know whether she agreed with at this stage, included keeping the Claimant employed in the business until her 60th birthday in June 2022, with the payments to her and James counting towards the divorce settlement. The proposal also refers (R/103) to the Claimant owning three other flats, but having made them subject to Deeds of Trust for her son James so that she appears to have 'zero ownership' of them and 'zero rental' income. It also refers to her having made a 'joint purchase' with Mr Y of 58 Capital Wharf, which Mr Kjellin notes her as having 'taken care' not to 'bear her name'. The Claimant suggested that it was clear from this document that Mr Kjellin and Mr Belson were at this point aware that she was a legal owner of no. 58 and that she had it on trust for James, and that they were therefore lying when they claimed only to have discovered this in February 2022. However, on this point we accept Mr Kjellin's and Mr Belson's evidence because it is apparent from R/103 that Mr Kjellin does not know at this point that the Claimant is a legal owner of no. 58. He evidently knows that she has 'jointly purchased' it with Mr Y and it is unclear what exactly he means by that, but what we accept is clear from his reference to no. 58 'not bearing her name' that he does not know she is a legal owner of the property. We therefore accept Mr Belson and Mr Kjellin's evidence that they only learned of this later and that it was this discovery that led to the decision to send her a notice of termination on 28 February 2022. We return to this below.

73. During October 2021 the Claimant's solicitors corresponded with Mr Belson about the alleged illegality of his actions in changing the locks and removing her possessions from the marital home and asking for a copy of the tenancy agreement that he claimed to have entered into, but this was never provided.

74. On 22 October 2021 the Claimant went with her solicitor and a locksmith to no. 55 Capital Wharf and forced access to the property. We have already referred to his incident. On this occasion, she removed from the flat an oil

painting of a French street and a rug. She found in the flat a derogatory note referring to her, expressing anti-Russian sentiments, said by Mr Kjellin to have been written by Mr Belson's new girlfriend Ms Lawn.

75. Mr Belson reported this accessing of the flat to the police and subsequently changed the locks again.

Late payment of salary

76. The Claimant's October salary was due on 27 October 2021 but she says that she was not paid when other employees were paid, or on the date stated on the payslip. Mr Belson was responsible for making the actual salary payments. He did not deal with this in his witness statement (despite it being a specifically alleged detriment), but in oral evidence said that he did salary payments manually and that payments were not necessarily made on the date stated on the payslip. He maintained that he had not deliberately delayed salaries. He explained that normally payments go out on the same day, but may not do so, the *"golden rule"* was that salaries must be paid before end of month. However, on this issue, and despite the failure of either side to produce bank statements, we prefer the oral evidence of the Claimant that she was paid late as there is documentary evidence supporting her claim to have been paid late in November 2021, she had in her email of 7 October 2021 (above) complained about being late for September and we are prepared to accept that the same thing happened with the October salary as well.

77. On 5 November 2021 the Claimant's solicitors wrote to Mr Belson again.

78. By email of 10 November 2021 timed at 05:46 the Claimant wrote to Mr Kjellin and Mr Belson accusing Mr Belson of trying to steal her son's and Person X's inheritance and asserting that he had taken her office keys in order to hide stock that was not on the books (C/32). Mr Belson's reply to this (R/105) is timed at 04:26 but there must be either a computer clock error or a time zone difference if one of them was not in the country. In his reply, Mr Belson asked the Claimant to keep her correspondence with Mr Kjellin limited to the settlement and stated that Person X's Trust fund *"has always been maintained and protected"*.

Health insurance cancellation

79. In November 2021 Mr Belson cancelled the Claimant's company health insurance. Again, despite this being a specifically alleged detriment, he did not deal with this in his witness statement, but in oral evidence he sought to explain his actions in this respect by saying he thought he may have thought that the Claimant was not an employee any more and he was not sure whether a settlement had been agreed or not agreed or whether the medical care or mobile phone was included in the deal or not. In oral evidence, he stated that he was unaware that she was undergoing any treatment at that

time, and that he was unaware of her heart condition. We accept his evidence that he was unaware that the Claimant was undergoing treatment at that time as there is no evidence that the Claimant told him she was (the last mention of treatments in correspondence was in their emails in June 2021 prior to her diagnosis) and we have set out elsewhere why we accept that he was at this point unaware of her heart condition. However, we reject Mr Belson's evidence that his reason for cancelling the Claimant's company health insurance was because he thought she was not an employee any more as it is clear from the divorce settlement proposals that the parties were in negotiation about when her employment would end (and thus that he knew it had not ended) and his email of 30 November 2021 (below) makes explicitly clear he is aware that she is still an employee.

80. By letter of 18 November 2021 the Claimant was informed that her company health insurance was terminating as from 1 December 2021 (C/33). The Respondent's case now is that this was a mistake and it was subsequently reinstated. The Claimant contends that this was revenge action by the Respondent for her protected disclosures and also her solicitors' letters to Mr Belson. In a WhatsApp message to Mr Kjellin after this, attaching a picture of herself with a heart monitor (R/153) she wrote: *"[Mr Belson] is aware of my treatments it is why he cancelled my Health insurance. The best solution if contact WPA and tell him that he has cancelled."*

81. By email of 19 November 2021 (produced on our order in the course of the hearing), Mr Belson emailed the health insurance company asking to reinstate it (R Supp/36). He wrote: *"I will need to extend [the Claimant's] Health policy until we reach a settlement. Please can you make the necessary arrangements. This legal advice received … Sadly"*. We infer that the advice received actually came from Mr Kjellin as he gave oral evidence to the effect that there were couple of times when he had found that Mr Belson had acted detrimentally towards the Claimant during the negotiations and he instructed him to rectify the situation. This was, we find, one such occasion. We further find that the cancellation of the health insurance in the first place by Mr Belson was deliberate – that is why he said he had *"sadly"* to reinstate it in his further email.

Late payment of November salary and 'offsetting' agreement

82. By email of 22 November 2021, the Claimant sent to Mr Kjellin and Mr Belson Mr Kjellin's "Second Attempt" at financial separation document with red comments by the Claimant and her advisors, the Womens Advisory Group (R/106-110). In this, the Claimant suggested that she needed to remain employed with the same salary at a minimum for a few months until her 60th birthday on 18 June 2022, that she was willing to continue to work and assist Mr O'Driscoll and would then resign on 19 June. In the interim she would continue to work and assist the new accountant. In oral evidence, she emphasised that this was part of settlement negotiations and before she knew all that she knows now. We note that in this document the Claimant's advisors refer (R/108) to a medical report from the Claimant's cardiologist

and that this is the first written communication that we have seen that would have put Mr Kjellin and Mr Belson on notice of her having a cardiac condition rather than just being in the course of undergoing treatments for an assortment of symptoms that she had mentioned. The advisors also urge both parties to be *"extremely careful especially with regards of Professional Employment Law"* (R/110).

83. By email of 30 November 2021 (R/113) the Claimant requested to start the 'off setting' from January 2022. She said she was having a small medical procedure and even typing the email was challenging for her. Mr Kjellin replied on 2 December 2021 asking her to agree to the offsetting of her salary against the divorce settlement starting from 1 December, in default of which Mr Belson would start to "exit" both the Claimant and her son from the business.

84. On the same date (RSupp/42) Mr Belson emailed Mr Kjellin stating he was, *"prepared to continue with James until January. I can agree to pay Eleanor' medical insurance also until January but that's as far as it goes. As her employer I need now to see Doctors report and info about medical procedure. Do you agree?"*.

85. In WhatsApp messages of 3 December 2021, the Claimant told Mr Kjellin that she had just come out of hospital and found her salary had not been paid although she stated she personally had set it up to be paid as she was still dealing with payroll as referred to in this WhatsApp (R/154). The Claimant wrote that according to Mr Belson's email (which neither side has been able to produce despite our order to do so) her salary had not been paid 'because of Mr Kjellin'. Mr Kjellin urged her to agree to the proposal he had made that salary payments from 1 December should count towards the divorce settlement. He said that, if she wanted to keep negotiating, 'good luck' and he would 'tell Mr Belson to pay her salary'. The Claimant in her WhatsApp (R/155) wrote *"I agree from 1st of December I just understood what you meant in your email"*. In her witness statement, she explains that she agreed to start the off-setting process from December because she considered that her 'disabled son' James had been threatened. In the light of this exchange, we accept the Claimant's evidence that her salary for November was paid late. We reject Mr Belson's evidence that there was no late payment, or that if there was it was not deliberate, because the missing email from him referred to in the Claimant's WhatsApp of 3 December, and Mr Kjellin's response, indicate that both were aware that her salary had not been paid by the end of November as it should have been.

86. By email of 4 December 2021, Mr Kjellin (R/112) explained that the £3k reference in his previous communication was just the effect of her suggestion to delay commencing the offsetting from December to January. He explained that he had understood her WhatsApp as agreeing to the offsetting process starting on 1 December, which means that both the Claimant and her son would be paid until 30 June 2022, including health insurance. In the event, Mr Belson has retained James in employment.

87. At the end of December 2021 to 4 January 2022 the Claimant made a further trip to Antigua for about 8 days. This was a free flight as compensation for a previous cancelled flight. The Respondent suggested that she was abroad for much longer than this, but there is no evidence to support that contention and we therefore accept the Claimant's oral evidence.

2022

88. On 2 January 2022 (R/116) the Claimant emailed further regarding settlement proposals. This refers to the first hearing in the divorce proceedings coming up on 18 March 2022 and the Claimant expresses a hope that they would settle before that.

89. The Claimant maintains in her witness statement that she otherwise continued to work during this period, on the advice of her solicitors. She states that she does not have documentary evidence of this because she does not have access to her company emails. Mr Belson's case is that the Claimant did not carry out any work for the company from November 2020 when he believes she went to Antigua until February 2022 when she was dismissed. Based on all the evidence before us, we find that the Claimant was not expected to work during this period, the principal elements of her role having been handed over to Mr O'Driscoll. We find that she did do some further work, but that this amounted to little more than maintaining an interest in the Respondent's business, including by 'checking up' on the Respondent's online accounts and doing some minimal minor administration alongside Mr O'Driscoll, possibly duplicating work he was doing or had been asked to do anyway.

90. On 28 January 2022 (C/34) the Claimant emailed Mr Kjellin with what she alleges is her fifth protected disclosure. This attached the Respondent's preliminary accounts for 2021, and went on to make points about the rent that she believes Mr Belson is receiving for No. 55 Capital Wharf and the flat's valuation and queried the valuation of the Respondent business on the basis that it generates £200k per year but had been valued by Mr Kjellin only at £200k. She wrote: *"This doesn't make any sense sorry."* Mr Kjellin replied: *"Thanks for this. Happy to revisit the JVS valuation, but these accounts have been prepared solely to make JVS look good so big companies will do business with them! They ignore: Massive losses in JDS, £300k settlements for FRP, Undeclared credit notes (which you point out to me). Plus – any re-valuation is based on pre divorce trading – i.e. last years accounts."* The Claimant in her witness statement suggests that she was in this email exchange raising again the issue of the 'missing' £91,500, but there is no reference to it in the emails and in any event that Trust Fund money was allegedly invested in JDS Ltd, not the Respondent, which is the company being referred to in these emails. The Claimant is in this email simply querying the valuation of Mr Belson's assets for the purposes of the divorce settlement negotiations.

91. Also on 28 January 2022 (C/35), the Claimant emailed Mr Aspden (her sixth alleged disclosure) pointing out that £91,500 was missing from JDS Ltd's preliminary accounts for 2021 and that JDS Ltd is showing a loss of £162k while the Respondent's preliminary accounts were showing a 'big' profit of £204k. She wrote *"Those accounts made me incredibly anxious. I am so worry and I have expressed my greatest concern again to our Chairman but sadly with no effect."* We observe that the point she raises with Mr Aspden in this email is not the same as the point she raised with Mr Kjellin in her previous email, but returns to her previous concern about the £91,500.

92. On 6 February 2022 (R/118) Mr Kjellin sent the Claimant a "Pretty Much Final" attempt at a proposed settlement saying that the only way she would achieve her wish of being awarded 60% of the property was going through the courts, which he sought to deter her from doing. In the attachment to this email setting out the proposals, he wrote regarding the issue the Claimant had raised about the valuation of the Respondent: *"The current apparent success in [the Respondent] means that [the Claimant] will argue that the shares in [the Respondent] are worth a lot of money – and there will be a large debate about valuation, and how to account for the £300k payments by [Mr Belson] and [Mr Sykes] – which essentially created the value"*. The Claimant regarded this revelation as indicating that the previous settlement of the Belson & Sykes litigation was a sham. This is not a point that was explored any further in evidence between us and we make no findings on it.

93. On 11 February 2022 (R/122) the Claimant emailed Mr Kjellin saying that her legal advice was that a 50/50 split divorce settlement was inappropriate where they had both been working for the same family business. She complained about a number of matters including the financial proposal for the divorce settlement, Mr Belson's actions in changing the locks on the jointly owned family home, the creation of an illegal tenancy agreement without her consent, the retention of rental income from that tenancy, the removal of her possessions, the cessation of her salary and the cancellation of her health insurance and his failure to pay Council Tax on the property, all of which she described as 'illegal'. She stated that she had been advised she was likely to be awarded 75% of the marital home by a court and would not accept less than 60% in settlement.

94. On 13 February 2022 (C/40) the Claimant wrote to Mr O'Driscoll regarding payments. Mr O'Driscoll replied that his firm were dealing with this.

95. On 23 February 2022 (C/36) the Claimant learned that solicitors had sent a letter re unpaid Council tax by Mr Belson. The Claimant in her witness statement states that it was this last act that triggered her immediate dismissal. However, Mr Belson and Mr Kjellin say that it was because around this time Mr Kjellin did another Land Registry search and found that, contrary to his previous understanding, the flat at No. 58 had been purchased jointly by the Claimant and Mr Y as legal owners. At this point, Mr Belson and Mr Kjellin recalculated the divorce settlement proposal and decided that, rather than Mr Belson needing to 'buy out' the Claimant by about £150k, she actually owed him money. We accept their evidence on this as it is a plausible

explanation for their change of heart regarding continuing the 'offsetting' arrangement previously agreed and (contrary to the Claimant's case) this is consistent with the 4 October 2021 document at R/103 which shows that Mr Kjellin was at that point unaware that the Claimant was a legal owner of No. 58 even though he understood her to have purchased it with Mr Y.

96. On 28 February 2022 Mr Belson emailed the Claimant stating that the Board of the Respondent had decided to make her position redundant with immediate effect as it had been *"decided to manage our Accountancy systems in a different way to the current methods"* (R/131). The Claimant forwarded this email to Mr Kjellin – a step which suggests to us that she did not think he would already know she had been dismissed, and had not at this stage formed the adverse view of him that she now holds and did not at that point regard him as having been in 'cahoots' with Mr Belson regarding the divorce negotiation. The termination was with immediate effect. There was no payment for any period of notice, no redundancy payment and no appeal offered.

97. We interpose here that the Claimant has in these proceedings suggested that Mr Belson's girlfriend's daughter (Sophie Lawn) had been appointed to replace her, but she did not pursue that case at the hearing, apparently accepting that the young Ms Lawn is doing a different job. The Respondent's case is that the young Ms Lawn was employed five months' before the Claimant's dismissal (ie. from around October 2021).

98. On 4 March 2022 the Claimant issued her first claim in these proceedings (2201123/2022) claiming interim relief. In oral evidence (which was not challenged) she explained that it was only at this point that she became aware of Employment Tribunals and the right to bring a claim. When she talked to a friend and she explained the situation and the friend said she could bring a claim. Her previous solicitors were not employment law specialists and did not advise her.

99. On 8 March 2022 Mr Kjellin emailed the Claimant that Mr Belson had *"just told me that you own flat no 58 at Capital Wharf jointly with [Mr Y]. How does this square off with your statements to me that he is 'just a friend' and what you were no longer going to be with him after October 31st, let alone what it does to your Form E?"* (R/132). In oral evidence, he accepted that this email was somewhat disingenuous as (consistent with Mr Belson's evidence on this point) he had himself done the Land Registry search, not Mr Belson, and they had discussed terminating the Claimant prior to Mr Belson sending the email. Mr Kjellin said he did not want it to appear to the Claimant that he was the one who had been doing the investigations or that he was party to the dismissal decision. We infer that this was because he was still trying to appear to her as if he was a neutral mediator.

100. In March 2022 the Claimant went on another short holiday to Antigua.

101. On 18 March 2022 (R/133) Mr Kjellin sent a final email to the Claimant and Mr Belson with settlement proposals.

102. On 30 March 2022 Mr Belson informed Wilsons solicitors that the missing Trust Fund monies were in his private HSBC Bank Account.

103. On 19 April 2022 the Claimant's application for interim relief was heard by EJ Brown who refused the application.

104. On 25 April 2022 the Claimant contacted ACAS and a certificate was issued the same day.

105. On 16 May 2022 the Claimant presented a second claim to the Employment Tribunal (2203720/2022).

106. By email of 26 May 2022 the Claimant emailed Mr O'Driscoll asking him to confirm she was working until 28 February 2022 (R/134), but received no response that we have been shown.

107. By email of 7 June 2022 Mr Kjellin wrote to the Claimant setting out what he said he would say 'in Court' about the 'mutual agreement' to end her employment (R/135).

108. By email of 13 June 2022 the Claimant emailed Mr Kjellin, Mr Griffiths, Mr O'Driscoll and others an emailed headed *"The truth about my Employment Tribunal claim"* (R/138).

109. On 29 June 2022 the Claimant was sent her P45 by the Respondent. This had been prompted by EJ Brown at the preliminary hearing.

110. On 6 September 2022 the Claimant was awarded judgment in her Council Tax claim against Status Education Limited in respect of Council Tax she had paid on no. 55, and Mr Belson paid that.

111. In January 2023, legal proceedings were commenced against Mr Belson in respect of the money said to be owing to Person X. These are the Will/Trust proceedings we have referred to.

<u>The Claimant's alleged disability</u>

112. The Claimant relies on her cardiac condition as her disability, which was diagnosed on 2 September 2021. In her disability impact statement, she states she first noticed a problem in August 2021 when she *"started experiencing shortness of breath, fatigue, dizziness, chest discomfort and sometimes was even coughing and spitting up blood – (medical term is haemoptysis),* a letter from her GP dated 12 August 2021 (C/43) which referred her to a consultant in respiratory medicine which stated that she had 'reported' having haemoptysis when she had Dengue in January to February 2021, that she reported a persistent cough since February 2021 and shortness of breath when walking, but had no chest pain. The Claimant gave evidence that from August 2021 during telephone conversations she quite

often had to pause and put the phone down because she was feeling breathless or sick. Walking had also become difficult and remains an issue. She has to go slowly. She now has a regime of self-injections to control cardiac arrhythmia, and wakes to inject herself in the night. We accept the Claimant's evidence about the effects of her medical condition.

Conclusions

Disability

The law

113. By s 6 of the EA 2010, a person has a disability if they have a physical or mental impairment, and the impairment has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities. The term 'substantial' is defined by s 212 EA 2010 as 'more than minor or trivial'.

114. By para 2 of Sch 1 to the EA 2010, the effect of an impairment is long-term if: (a) it has lasted for at least 12 months, or (b) it is likely to last for at least 12 months, or (c) it is likely to last for the rest of the life of the person affected. If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur.

115. By para 5 of Sch 1 to the EA 2010 the effect of medical treatment, and any prosthesis or aid, is to be ignored in deciding whether the definition is met.

116. The Tribunal must have regard to the government's guidance *Equality Act 2010: Guidance on matters to be taken into account in determining questions relating to the definition of disability* (2011) (the Guidance) insofar is it considers it relevant: EA 2010, Sch 1, para 12. There is also guidance in Appendix 1 to the Code of Practice on Employment published by the Equality and Human Rights Commission (EHRC), which the Tribunal must take into account if it considers it relevant: Equality Act 2006, s 15(4).

117. In *Elliott v Dorset County Council* (UKEAT/0197/20/LA) Tayler J emphasised that the Tribunal must consider the statutory definition, which takes precedence over anything in the EHRC Guidance or Code of Practice and (at [43]): *"The determination of principle is that the adverse effect of an impairment on a person is to be compared with the position of the same person, absent the impairment. If the impairment has a more than minor or trivial effect on the abilities of the person compared to those s/he would have absent the impairment, then the substantial condition is made out."* The focus must be on the identification of day-to-day activities, including work activities, that the Claimant cannot do or can do only with difficulty: *ibid* at [82].

118. The question of long-term effect is to be judged at the date of the act of discrimination concerned: *Tesco Stores Limited v Tennant* (UKEAT/0167/19/OO) at [7].

119. Where the issue is whether the effect is *"likely"* to continue for 12 months, the question is whether it *"could well happen"* or is a *"real possibility"*. It is not a balance of probabilities question: *Boyle v SCA Packaging Limited* [2009] ICR 105, HL.

120. When determining whether or not a person has a disability, the Northern Ireland Court of Appeal in *Veitch v Red Sky Group Limited* [2010] NICA 39 at [19] held: *"The presence or absence of medical evidence may be a matter of relevance to be taken into consideration in deciding what weight to put on evidence of claimed difficulties causing alleged disability but its absence does not of itself preclude a finding of fact that a person suffers from an impairment that has a substantial long-term adverse effect."*

Conclusions

121. We find that the Claimant does – just – meet the definition of having a disability from the point at which she was diagnosed with a heart condition on 2 September 2021. That is because we accept her evidence as to its effect on her breathing, speaking and walking from around that time onwards, and that its effects just pass the 'minor or trivial' threshold so as to amount to a substantial adverse effect on day-to-day activities, particularly given that the effect on all of these things would, we infer, be worse without the regime of injections and other treatments the Claimant has received.

122. We note that the Claimant did experience some of the symptoms of the condition prior to diagnosis on 2 September 2021, but we do not think until the symptoms were diagnosed as cardiovascular coronary artery disease that anyone would have thought they were likely to continue for 12 months. Even after the Claimant was diagnosed, we have found it difficult to decide whether the 'long-term' requirement was met. The Claimant herself has produced no evidence in relation to that, beyond the bare fact of diagnosis and the fact that the condition has continued to affect her to date. However, we are mindful that 'likely' in this context means 'could well happen' or 'real possibility' rather than 'more probable than not' and we ourselves felt that on hearing of such a diagnosis, we would have thought that it 'could well' affect the Claimant in some form for the rest of her life and that without medical treatment it almost certainly would. We do not know whether a medical professional would have expected that, following an operation say, the problem would be completely fixed, so that it would not amount to a disability thereafter, but as that is not what has in fact happened, we infer that even a medical professional if asked as at September 2021 would have advised that the Claimant 'could well' continue experiencing adverse effects going forward.

123. As such, we are satisfied that the Claimant met the definition of having a disability from 2 September 2021 onwards.

124. It is convenient, however, to record here that we find as a fact that Mr Belson did not know the Claimant had a heart condition at this point. In our findings of fact above, we have set out the reasons why he did not become aware of

this during the conversation on 12 September 2021. After that, communication was done in writing and there is no evidence of it having been communicated in writing until it is referred to in the Claimant's advisors' comments on the divorce settlement proposals that the Claimant sent to Mr Belson and Mr Kjellin on 22 November 2021. She also sent a photo at some time between 18 November 2021 and 3 December 2021 showing herself with a heart monitor fitted to her chest. In combination, these two references would, we find, at this point have put Mr Belson on notice that she had a heart condition. This was, however, after he had given the instruction to terminate her health insurance, not before. We return to this below.

Protected disclosures

The law

125. Section 43A ERA 1996 defines a protected disclosure as a qualifying disclosure which is made by a worker in accordance with any of sections 43C to 43H. A qualifying disclosure is in turn defined in s 43B(1) as *"any disclosure of information which, in the reasonable belief of the worker making the disclosure, is in the public interest and tends to show one or more"* of a number of types of wrongdoing. These include, (b), *"that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject"*.

126. In order to be protected, a qualifying disclosure must be made in circumstances prescribed by other sections of the ERA, including, under section 43C, to the worker's employer and, under s 43G, to other persons in certain circumstances. In order to be protected under s 43G a disclosure must fulfil all the requirements of a disclosure qualifying under s 43B (as to which see below) and also the following requirements (so far as relevant to this case):

    a. The worker reasonably believes that the information disclosed, and any allegation contained in it, are substantially true (s 43G(1)(b));
    b. He does not make the disclosure for purposes of personal gain (s 43G(1)(c));
    c. At the time he makes the disclosure, the worker reasonably believes that he will be subjected to a dtriment by his employer if he makes a disclosure to his employer (s 43G(1)(d) and s 43G(2)(a)) **or** the worker has previously made a disclosure of substantially the same information to his employer (s 43G(1)(d) and s 43G(2)(c)); **and,**
    d. In all the circumstances of the case, it is reasonable for him to make the disclosure (s 43G(1)(e)).

127. As to the requirements of s 43B: in the light of *Cavendish Munro Professional Risks Management Ltd v Geduld* [2010] ICR 325, [24]-[26], it was for a time suggested that a mere allegation could not constitute a disclosure of information. However, in *Kilraine v Wandsworth LBC* [2018] ICR 1850 the Court of Appeal clarified (at [30]-[36]) that *"allegation"* and *"disclosure of*

information" are not mutually exclusive categories. What matters is the wording of the statute; some 'information' must be 'disclosed' and that requires that the communication have sufficient *"specific factual content".* In *Simpson v Cantor Fitzgerald Europe* [2020] EWCA Civ 1601, [2021] ICR 695 the CA at [53] approved the approach of the EAT (UKEAT/0016/18/DA) at [42] in relation to the use of questions in an alleged protected disclosure) that the fact that a statement is in the form of a question does not prevent it being a disclosure of information if it *"sets out sufficiently detailed information that, in the employee's reasonable belief, tends to show that there has been a breach of a legal obligation"*.

128. Information disclosed in cumulative communications can constitute a single protected disclosure; whether it does is a question of fact: *Norbrook Laboratories (GB) Ltd v Shaw* [2014] ICR 540, approved in *Simpson v Cantor Fitzgerald Europe* ibid at [41].

129. A 'disclosure of information' can take place when the information being communicated is already known to the recipient. This is clear from section 43L(3) ERA 1996, and was confirmed by the Employment Appeal Tribunal in *Parsons v Airplus International Ltd* (UKEAT/0111/17/JOJ).

130. What must be established in each case is that the Claimant has a reasonable belief that the information disclosed tends to show one of the matters in s 43B(1), i.e. that the information disclosed 'tended to show' that someone had failed, was failing or was likely to fail to comply with one of the legal obligations set out there. 'Tends to show' is a lower hurdle than having to believe the information 'does' show the relevant breach or likely breach: see *Twist DX Limited v Armes* (UKEAT/0030/20/JOJ) [66].

131. In the light of *Babula v Waltham Forest College* [2007] EWCA Civ 174, [2007] ICR 1026, [74]-[81], what is necessary is that the Tribunal first ascertain what the Claimant subjectively believed. The Court of Appeal in *Ibrahim v HCA International Ltd* [2019] EWCA Civ 2007, [2020] IRLR 224 (see especially [14]-[17] and [25]) has confirmed that it is the Claimant's subjective belief that must be assessed when considering the public interest element as well. The Tribunal must then consider whether the Claimant's belief in both respects was objectively reasonable, i.e. whether a reasonable person in the Claimant's position would have believed that all the elements of s 43B(1) were satisfied, specifically that the disclosure was in the public interest, and that the information disclosed tended to show that someone had failed, was failing or was likely to fail to comply with a relevant legal obligation. The Court of Appeal in *Babula* emphasised that it does not matter whether the Claimant is right or not, or even whether the legal obligation exists or not. As such, it is not necessary that the disclosure identify or otherwise refer to the legal obligation (or any of the matters in s 43B(1)), although whether it does or not may be relevant to the reasonableness of the claimant's belief that the information disclosed tends to show a relevant breach: see *Twist DX Limited v Armes* (UKEAT/0030/20/JOJ) at [87] and [103]-[104] *per* Linden J.

132. The reasonableness of the worker's belief is determined on the basis of information known to the worker at the time the decision to disclose is made: *Darnton v University of Surrey* [2003] ICR 615. It is to be assessed in the light of all the surrounding circumstances and as such witness evidence will be relevant to determining whether or not a written disclosure satisfies the statutory requirements or not. What was or was not known to the Claimant and relevant witnesses at the time will be relevant to whether or not the Claimant could reasonably believe that the disclosure met the statutory requirements: see *Twist* ibid at [57]-[59].

133. Prior to the amendment to s 43B of the ERA 1996 (by the Employment and Regulatory Reform Act 2013, s 17) to introduce the 'public interest' requirement, it had been held (in *Parkins v Sodexho* [2002] IRLR 109) that a disclosure concerning a breach of the employee's own contract could be a protected disclosure. In *Chesterton Global and anor v Nurmohamed* [2017] EWCA Civ 979, [2018] ICR 731 the Court of Appeal (*per* Underhill LJ at [36]) made the following observations about the policy intent of the introduction of the 'public interest' requirement:

> The statutory criterion of what is "in the public interest" does not lend itself to absolute rules, still less when the decisive question is not what is in fact in the public interest but what could reasonably be believed to be. I am not prepared to rule out the possibility that the disclosure of a breach of a worker's contract of the *Parkins v Sodexho* kind may nevertheless be in the public interest, or reasonably be so regarded, if a sufficiently large number of other employees share the same interest. I would certainly expect employment tribunals to be cautious about reaching such a conclusion, because the broad intent behind the amendment of section 43B(1) is that workers making disclosures in the context of private workplace disputes should not attract the enhanced statutory protection accorded to whistleblowers—even, as I have held, where more than one worker is involved. But I am not prepared to say never. In practice, however, the question may not often arise in that stark form. The larger the number of persons whose interests are engaged by a breach of the contract of employment, the more likely it is that there will be other features of the situation which will engage the public interest.

134. The Court of Appeal in that case approved guidance formulated by counsel as to the matters that may be relevant to assessing the reasonableness of the Claimant's belief in the matter being a matter of public interest which included the following ([34]):

> (a) the numbers in the group whose interests the disclosure served [see above];
> (b) the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed—a disclosure of wrongdoing directly affecting a very important interest is more likely to be in the public interest than a disclosure of trivial wrongdoing

affecting the same number of people, and all the more so if the effect is marginal or indirect;
(c) the nature of the wrongdoing disclosed—disclosure of deliberate wrongdoing is more likely to be in the public interest than the disclosure of inadvertent wrongdoing affecting the same number of people;
(d) the identity of the alleged wrongdoer—as Mr Laddie put it in his skeleton argument, "the larger or more prominent the wrongdoer (in terms of the size of its relevant community, ie staff, suppliers and clients), the more obviously should a disclosure about its activities engage the public interest"—though he goes on to say that this should not be taken too far.

Conclusions

135. We consider each of the Claimant's alleged protected disclosures in turn.

136. The **first alleged protected disclosure** was made to Mr Martin Griffiths of Westell Accountants on 29 August 2021 at 17:50. This first alleged disclosure includes the Claimant's complaints about devaluation of her shareholding in JDS Ltd, which we find is not a protected disclosure for the reasons dealt with in relation to the second protected disclosure below. It also sets out her concern regarding Mr Belson's use of £91,500 from Person X's Trust fund for his own purposes, a concern that was founded on what appeared to her to be an untruth that Mr Belson had set out in a letter to Wilsons LLP (and also Southampton Council) that he had invested the Trust Fund monies in JDS Ltd.

137. As regards the £91,500 Trust fund issue, there is no dispute that this email of 29 August 2021 constitutes a disclosure of information tending to show the matters that the Claimant alleges. As part of our findings of fact, we accepted the core evidence of the Claimant's beliefs about this issue. We find that she subjectively believed this conduct to be illegal, amounting either (as she put it in this letter albeit not using the legal terminology) to a breach of trust as the funds had apparently been used for Mr Belson's own purposes rather than Person X's or (as she put it later) to 'theft'. We also accept that she subjectively believed that this was a matter of wider interest that ought to be brought to light, given the vulnerability of Person X and, in other words, that she subjectively believed it was a matter of public interest, hence her communications with Wilsons LLP, the police and the accountant.

138. We further find that the Claimant's beliefs in both these respects were reasonable. She was not at any point prior to her dismissal provided by Mr Belson and Mr Kjellin with the explanation that they have given to us about what happened to the £91,500. On the information she had at the time of this first alleged protected disclosure, she knew in the light of her conversation with Person X that he had not seen the £91,500 or any benefit from it, that Mr Belson had stated he had 'invested' it in JDS Ltd, but that what was showing from transactions in JDS Ltd's account in November 2020 suggested the money had not been invested, but had gone straight out again.

It was reasonable for her to suspect that it had been used to meet the Belson & Sykes litigation settlement as in fact that is what happened (albeit that, unbeknownst to her, it was Mr Sykes' share rather than Mr Belson's share it had, on the explanation we have been given, been used to fund). It was not suggested to the Claimant that she had Mr Belson's Mother's Will at this point so that she should reasonably have known that the Will permitted Mr Belson to invest in unsecured loans etc, but in our judgment, even acknowledging the broad investment powers given to Mr Belson as Trustee by that Will, and even if the Claimant had that Will, it would still have been reasonable for the Claimant to believe that it would be unlawful for Mr Belson to use monies that he was supposed to be holding on trust for Person X for his own purposes. The view is reasonable in our judgment because it would be reasonable to suppose (indeed, it may in fact be the law – we do not know) that as trustee Mr Belson was required always to act in the interests of and on behalf of Person X, even though the Will gave him very wide powers to do anything with the money including making what might be regarded as 'bad investments'. Those powers – including the powers to invest the money in the same way as he could if it were his own – could reasonably be thought to be limited by the fact that he was only permitted to do these things *in his capacity as trustee*, and not on his own behalf.

139. We further find that the Claimant could reasonably believe that this was a matter of public interest as it is a substantial sum of money that had possibly been misused and in respect of which not only vulnerable Person X but possibly also a public body (Southampton City Council) had a legitimate claim.

140. We also find that the requirements of s 43G ERA 1996 are met in relation to this disclosure. We accept that the Claimant reasonably believed the disclosure to be substantially true for the same reasons as we find that she reasonably believed the information tended to show a breach of a legal obligation. She did not make the disclosure for personal gain. Not only did she not stand to gain financially, but she was conscious that Mr Belson would react negatively towards her for raising it, which at least in the short term was not in her interests given that they were attempting to settle divorce proceedings. We accept that she reasonably believed that she would be subjected to a detriment if she made this disclosure to her employer as we find that, in fact, she was subjected to a detriment when she did so (see below) and it was reasonable for her to anticipate this would be the case.

141. And, finally, we accept that it was reasonable for her to make the disclosure first to Mr Griffiths as it was reasonable for her to check with him whether he, as the companies' accountant, was aware of an 'investment' in JDS Ltd in the previous financial year corresponding to the £91,500 Trust Fund monies. An 'investment' is reasonably understood as being either a loan or the purchase of shares. If money is simply given to a company or passed through its bank accounts it is not an 'investment', it is a 'gift' or just a 'transaction'. The transactions in November 2020 that the Claimant saw on the JDS bank account were labelled as 'loans' or 'repayments of loans' but their timing reasonably suggested to the Claimant that the money was being used for Mr

Belson's own purposes for the reasons we have set out above, and in those circumstances it was reasonable to check whether the accountant was aware of any loan or its terms. Indeed, had there been a formal loan agreement in place between Person X and JDS Limited, that would have allayed some of the reasonable concerns about these transactions, but as it turned out the accountant knew nothing about it, even long after year end when the loan (if it had existed) was still outstanding.

142. We therefore accept that the first alleged disclosure was a protected disclosure for the purposes of s 43A ERA 1996.

143. The **second alleged protected disclosure** is the Claimant's email of 2 September 2021 to Mr Kjellin. This email does not deal with the £91,500 Trust Fund issue. The alleged disclosure in this email is that relating to the decision by Mr Kjellin and Mr Belson to put all revenue from the Respondent and JDS Ltd through the Respondent's accounts and all costs through JDS Ltd. As a disclosure to Mr Kjellin who was Chair of the Respondent's board of directors, this is a disclosure to the Claimant's employer for the purposes of s 43B ERA 1996.

144. We accept that this constituted a disclosure of information that it is objectively reasonable to regard as tending to show a breach of a legal obligation. This is because running the accounts like this would result in misleading accounts for both companies: the Respondent would appear to be more profitable than it was and JDS would appear to be loss-making when it was not. Mr Kjellin maintained there was nothing unlawful about it because at the end of the year in the accounts filed with Companies House the position would be rectified. However, anyone shown just one set of accounts during the year would be likely to be misled and it is reasonable to think that deliberating misleading someone is unlawful and that it may amount to 'fraudulent' trading within s 993 of the Companies Act 2006 as the Claimant refers to in her witness statement. Indeed, Mr Kjellin's answer when questioned about this in cross-examination was that it was 'the job of a director to make the accounts look good' (echoing his email of 28 January 2022). He added in oral evidence that the accounts had of course to be 'honest and truthful', but that this obligation was fulfilled if at the end of the year the two sets of accounts were amalgamated. The difficulty with that evidence, however, is that it implicitly accepts that, during the year, and prior to amalgamation, each set of accounts, viewed separately, would not give a true picture. Anyone who had been persuaded to do business with the Respondent or JDS based on the mid-year accounts of one company alone may therefore have been misled by the accounts.

145. The difficulty for the Claimant is that we do not accept that the issue with this accounting practice that she has identified in these proceedings, and which we agree it was objectively reasonable to regard as tending to show a breach of a legal obligation, was in fact her subjective belief at the time. Her email at the time was, we find, solely concerned with her own personal concerns about the valuation of her shareholding for the purposes of the divorce proceedings. She does not suggest the accounting practice is unlawful and

we find that she did not hold any such belief at the time. Further, even if she might have believed that it was unlawful to prepare accounts in a way that devalued her shareholding, it was not her case to us in these proceedings that devaluing her shareholding was *as such* unlawful and, even if it had been, we would still have found that she did not believe, and could not reasonably have believed, that this was a matter of public interest. This is because the only people affected were her and Mr Belson and the only effect was a financial on that was relatively minor in the context of the substantial disputes that had arisen between the two parties in relation to the divorce settlement.

146. We therefore find that the second alleged protected disclosure was not a protected disclosure within s 43A ERA 1996.

147. The **third alleged protected disclosure** was the statement that the Claimant emailed to Wilsons Solicitors on 14 September 2021. This concerned the £91,500 Trust Fund monies. We have already held above that the Claimant's disclosure in this respect met the terms of s 43B ERA 1996 when the disclosure was made to Mr Griffiths on 29 August 2021. With the further information from Mr Griffiths that he knew nothing about an investment in the business by Person X, we find that this strengthened the reasonableness of her belief that this tended to show there had been a breach of a legal obligation. This is because it was then reasonable to believe that in fact the transactions in November 2020 that had been labelled as 'loans' were not in fact 'loans', since if they had been a 'loan' the accountant ought to have known about them. Mr Belson and Mr Kjellin sought to argue that there was no need for the accountant to know about the alleged loan because all that had happened was that the money had passed through JDS Ltd's account and there was no loan outstanding as at year end that needed to be recorded in the company's end of year accounts. We do not accept that explanation is factually correct or that it ought reasonably to have allayed the Claimant's suspicions. Since the Claimant knew that the £91,500 had not yet been repaid to Person X, it reasonably followed that any loan Person X had made to JDS Ltd as an 'investment' (according to Mr Belson's emails to Wilsons and Southampton City Council) must still have been outstanding as at JDS Ltd's year end on 31 December 2020 and should have been recorded in the accounts. As such, the fact that the accountant did not know anything about it reasonably suggested that Person X's money had not been 'invested' in JDS Ltd after all. And if it had not been 'invested' where Mr Belson had said he had invested it, and Mr Belson had not at that stage identified where the money actually was, it was reasonable for the Claimant in our judgment to consider that he was using it for his own purposes, whether in breach of trust or having 'stolen' it.

148. As we have noted, Mr Belson has not given the explanation that he gave to us at this hearing about the £91,500 to the Claimant prior to her dismissal. We observe that even on this account, the Claimant could reasonably have been suspicious as at the end of 2021 because it does not appear that there was ever a loan of the money by Person X to JDS Ltd. Rather, what happened on Mr Belson's account, was that the Trust Fund money was

passed through the JDS Ltd account and onto Mr Kjellin and then Mr Sykes, that the loan agreement was between Mr Kjellin and Mr Sykes and the money came back from them direct to Mr Belson, with JDS Ltd falling out of the picture altogether. There may in the end be found to be nothing improper in what Mr Belson did with the £91,500 (it is not a matter for us but a matter for the Trust/Will litigation in due course), but what reasonably raised suspicion was that he told Wilsons LLP and Southampton City Council that he had 'invested' the money in JDS Ltd when there is no evidence that he ever did invest the money in JDS Ltd, but only moved the money through JDS Ltd's bank account before loaning it to Mr Sykes via Mr Kjellin.

149. So far as the requirements of s 43G ERA 1996 are concerned, for the reasons already set out in relation to the first disclosure, we find that the Claimant reasonably believed the information disclosed and allegation to be substantially true and the disclosure was not made for personal gain. We consider it was reasonable for the Claimant to make the disclosure to Wilsons LLP as they had asked her to help and it was reasonable for her to act given Person X's vulnerability. The Claimant can also, we find, here rely on fulfilling the condition that she had previously made a disclosure of substantially the same information to her employer. She did this when she spoke to Mr Belson on 12 September 2021. That occasion is not one of the disclosures she relies on in these proceedings, but we consider that does not prevent her from relying on it when it comes to fulfilling the condition in s 43G(2)(c). For the reasons we gave in our findings of fact, on 12 September 2021 the Claimant conveyed enough information to Mr Belson for him to understand that she was at least in part behind the allegations that had been made to the police and Wilsons LLP about him misusing or stealing Person X's Trust Fund monies.

150. It follows that the third alleged disclosure was a protected disclosure within the meaning of s 43A ERA 1996.

151. The **fourth alleged protected disclosure** is the Claimant's email of 30 September 2021 sending to Wilsons LLP, JDS Ltd's end of year accounts for the year ending 31 December 2020 as filed with Companies House. This goes together with the third alleged protected disclosure and we regard it as a postscript to it that adds a further piece of the jigsaw, confirming the Claimant's reasonable suspicions as the final accounts do not refer to a loan either, despite it being at that point in theory still outstanding as between JDS Ltd and Person X (if Mr Belson was right that the money was invested in JDS Ltd). This disclosure therefore is protected under s 43A ERA 1996 for the same reasons that the third protected disclosure is.

152. The **fifth alleged protected disclosure** is the Claimant's email to Mr Kjellin of 28 January 2022. This email attaches the Respondent's preliminary accounts for 2021 and (we find) complains about the valuation that Mr Kjellin has attributed to the Respondent's business for the purposes of valuing Mr Belson's assets in the context of the divorce settlement negotiations. The Claimant's point in the email is that, on the basis of the Respondent's preliminary accounts, the valuation of the business for the purposes of the

settlement negotiations should have been higher. Mr Kjellin in response indicated he was happy to look again at the valuation but that the accounts had been prepared *"solely to make [the Respondent] look good, so big companies will do business with them"*, i.e., in effect, that the accounts are misleading and not a reliable basis on which to value the business. As with the second alleged protected disclosure, we consider that it is reasonable to believe that preparing even mid-year accounts on such a basis so as to present a misleading picture to people with whom the company trades would be likely to breach a legal obligation, but – again – we find that was not the Claimant's subjective belief at that time, nor did she have any subjective belief at the time that she was making a disclosure that was in the public interest. Her email is entirely concerned with her personal interest in the divorce negotiations and we do not accept therefore that it is a protected disclosure for the purposes of s 43A ERA 1996.

153. The **sixth alleged protected disclosure** is the Claimant's email of 28 January 2022 sending the preliminary accounts of JDS Ltd for 2021. We regard this as being again effectively a postscript to her third alleged protected disclosure, to be read with it, and therefore also a protected disclosure for the purposes of s 43A ERA 1996. We observe that it also contains a number of other allegations of unlawfulness.

Detriments

The law (i) Direct discrimination (age, disability, marital status)

154. Under ss 13(1) and 39(2)(c)/(d) of the Equality Act 2010 (EA 2010), we must determine whether the Respondent, by dismissing her or subjecting her to any other detriment, discriminated against the Claimant by treating her less favourably than it treats or would treat others because of a protected characteristic. The protected characteristics relied on by the Claimant are her age, disability and marital status.

155. In relation to age and disability, we remind ourselves that less favourable treatment because of a perception of age or disability is sufficient: it does not matter whether the Claimant is of the perceived age or has the perceived disability.

156. As to marital status, we have taken into account the guidance in *Hawkins v Atex Group Limited* [2012] ICR 1315, EAT (Underhill J) at [9]-[11]:

> 9. The starting-point must of course be the language of section 3 itself. In my view it is clear that (to use the terminology of the 2010 Act) the characteristic protected by section 3 (1) is the fact of being married 1 – or, to put it the other way round, that what is proscribed is less favourable treatment on the ground that a person is married. That is what the language used says. The same is true of the section in its pre-amendment form: "marital status" naturally means the fact of being married. The relevant comparator is thus, likewise, a person who is not married. Since in any comparison for the purpose of the section the relevant circumstances must be the same but for the protected characteristic (see section 5 (3)), the appropriate comparator will usually be someone in a relationship akin to marriage but who is

> not actually married: I will use the old and well-understood, albeit much deprecated, phrase "common-law spouse" rather than the modern "partner", which does not have so specific a meaning. …
>
> 11. A rather less straightforward case is where the reason for the treatment in question comprises both the fact that the complainant is married and the identity of her husband – that is, where she is (say) dismissed not simply because she is married but because of who she is married to. On ordinary principles such a case will fall within section 3 because the fact that she is married is an essential part of the ground of the employer's action, even though the identity of her husband is an additional element. But it is important to appreciate that this will not be so in every case where a woman suffers less favourable treatment because of her relationship to her husband. It is essential that the fact that they are *married* is part of the ground for the employer's action. As Ms Sen Gupta succinctly put it, it is important to get the emphasis in the right place: the question is not whether the complainant suffered the treatment in question because she was married *to a particular man* , but whether she suffered it because she was *married* to that man. Some subtleties are involved here. In many, perhaps most, cases of this kind the ground for the employer's action will not be the fact that the complainant and her husband are married but simply the closeness of their relationship and the problems to which that is perceived to give rise: applying the other half of the "two-part test" (see paragraph 7 (1) above), a common-law wife would have been treated in the same way. The employer may in giving his reasons for the conduct complained of have referred to the fact that the two of them are married, or have used the language of husband and wife, but if that merely reflects the fact that in their particular case the close relationship takes the form of marriage, and he would have treated her the same if they were common-law spouses, then section 3 will not apply. Deciding whether the fact that the complainant is *married* – rather than simply that she is in a close relationship with the man in question – is the ground of the employer's action (in either of the ways identified in paragraph 7 (2) above) will often be easy enough; but sometimes it may be more difficult. There will certainly be some cases where the reason is indeed "marriage-specific": one example is the case of *Chief Constable of Bedfordshire Constabulary v Graham [2002] IRLR 239* which I consider at paragraph 18 below.

157. A detriment is something that a reasonable worker in the Claimant's position would or might consider to be to their disadvantage in the circumstances in which they thereafter have to work. Something may be a detriment even if there are no physical or economic consequences for the Claimant, but an unjustified sense of grievance is not a detriment: see *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] UKHL 11, [2003] ICR 337 at [34]-[35] per Lord Hope and at [104]-[105] per Lord Scott. (Lord Nicholls ([15]), Lord Hutton ([91]) and Lord Rodger ([123) agreed with Lord Hope.)

158. 'Less favourable treatment' requires that the complainant be treated less favourably than a comparator is or would be. A person is a valid comparator if they would have been treated more favourably in materially the same circumstances (s 23(1) EA 2010). However, we may also consider how a hypothetical comparator would have been treated. In some cases construction of a hypothetical comparator may be difficult, and the Tribunal may instead focus on what is called the *"reason why"* question, using any evidence as to how others are treated (whether or not their circumstances are materially the same or not) to inform that assessment: see in particular *Shamoon* at [8] *per* Lord Hope and at [109]-[110] *per* Lord Scott.

159. The Tribunal must determine "what, consciously or unconsciously, was the reason" for the treatment (*Chief Constable of West Yorkshire Police v Khan* [2001] UKHL 48, [2001] ICR 1065 at [29] per Lord Nicholls). The protected characteristic must be a material (i.e non-trivial) influence or factor in the reason for the treatment (*Nagarajan v London Regional Transport* [1999] ICR 877, as explained in *Villalba v Merrill Lynch & Co Inc* [2007] ICR 469 at [78]-[82]). It must be remembered that discrimination is often unconscious. The individual may not be aware of their prejudices (cf *Glasgow City Council v Zafar* [1997] 1 WLR 1695, HL at 1664) and the discrimination may not be ill-intentioned but based on an assumption (cf *King v Great Britain-China Centre* [1992] ICR 516, CA at 528).

160. In relation to all these matters, the burden of proof is on the Claimant initially under s 136(1) EA 2010 to establish facts from which the Tribunal could decide, in the absence of any other explanation, that the Respondent has acted unlawfully. This requires more than that there is a difference in treatment and a difference in protected characteristic (*Madarassy v Nomura International plc* [2007] EWCA Civ 33, [2007] ICR 867 at [56]). There must be evidence from which it could be concluded that the protected characteristic was part of the reason for the treatment. The burden then passes to the Respondent under s 136(3) to show that the treatment was not discriminatory: *Wong v Igen Ltd* [2005] EWCA Civ 142, [2005] ICR 931. The Supreme Court has recently confirmed that this remains the correct approach: *Efobi v Royal Mail Group Ltd* [2021] UKSC 33, [2021] 1 WLR 38

161. This does not mean that there is any need for a Tribunal to apply the burden of proof provisions formulaically. In appropriate cases, where the Tribunal is in a position to make positive findings on the evidence one way or another, the Tribunal may move straight to the question of the reason for the treatment: *Hewage v Grampian Health Board* [2012] UKSC 37, [2012] ICR 1054 at [32] per Lord Hope. In all cases, it is important to consider each individual allegation of discrimination separately and not take a blanket approach (*Essex County Council v Jarrett* UKEAT/0045/15/MC at [32]), but equally the Tribunal must also stand back and consider whether any inference of discrimination should be drawn taking all the evidence in the round: *Qureshi v Victoria University of Manchester* [2001] ICR 863 per Mummery J at 874C-H and 875C-H.

162. We have also directed ourselves to *Bahl v Law Society* [2003] IRLR 640, in which Gibson LJ provided helpful guidance on the approach to reasonableness and unreasonableness in a discrimination context as follows:

> 98.. Accordingly, to the extent that the tribunal found discriminatory treatment from unreasonable treatment alone, their reasoning would be flawed and the finding of discrimination could not stand. That is the clear ratio of Zafar and that decision remains unaffected by Anya.
>
> The relevance of unreasonable treatment
>
> 99.. That is not to say that the fact that an employer has acted unreasonably is of no relevance whatsoever. The fundamental question is why the alleged discriminator acted as he did. If what he does is reasonable then the reason is

> likely to be non-discriminatory. In general a person has good non-discriminatory reasons for doing what is reasonable. This is not inevitably so since sometimes there is a choice between a range of reasonable conduct and it is of course logically possible the discriminator might take the less favourable option for someone who is say black or a female and the more favourable for someone who is white or male. But the tribunal would need to have very cogent evidence before inferring that someone who has acted in a reasonable way is guilty of unlawful discrimination.
>
> 100.. By contrast, where the alleged discriminator acts unreasonably then a tribunal will want to know why he has acted in that way. If he gives a non-discriminatory explanation which the tribunal considers to be honestly given, then that is likely to be a full answer to any discrimination claim. It need not be, because it is possible that he is subconsciously influenced by unlawful discriminatory considerations. But again, there should be proper evidence from which such an inference can be drawn. It cannot be enough merely that the victim is a member of a minority group. This would be to commit the error identified above in connection with the Zafar case: the inference of discrimination would be based on no more than the fact that others sometimes discriminate unlawfully against minority groups.
>
> 101.. The significance of the fact that the treatment is unreasonable is that a tribunal will more readily in practice reject the explanation given than it would if the treatment were reasonable. In short, it goes to credibility. If the tribunal does not accept the reason given by the alleged discriminator, it may be open to it to infer discrimination But it will depend upon why it has rejected the reason that he has given, and whether the primary facts it finds provide another and cogent explanation for the conduct. Persons who have not in fact discriminated on the proscribed grounds may nonetheless sometimes give a false reason for the behaviour. They may rightly consider, for example, that the true reason casts them in a less favourable light, perhaps because it discloses incompetence or insensitivity. If the findings of the tribunal suggest that there is such an explanation, then the fact that the alleged discriminator has been less than frank in the witness box when giving evidence will provide little, if any, evidence to support a finding of unlawful discrimination itself.

163. We have also taken account of *Network Rail Infrastructure v Griffiths-Henry* [2006] IRLR 865 at [22] where Elias J observed:

> "(I)t is crucial that the Tribunal at the second stage is simply concerned with the reason why the employer acted as he did. If there is a genuine non-discriminatory reason, at least in the absence of clear factors justifying a finding of unconscious discrimination, that is the end of the matter. It would obviously be unjust and inappropriate to find discrimination simply because an explanation given by the employer for the difference in treatment is not one which the Tribunal considers objectively to be justified or reasonable. If that were so, an employer who selected [for redundancy] by adopting unacceptable criteria or applied them inconsistently could, for that reason alone, then potentially be liable for a whole range of discrimination claims in addition to the unfair dismissal claim. That would plainly be absurd. Unfairness is not itself sufficient to establish discrimination on grounds of race or sex, as the courts have recently had cause to observe on many occasions: see *Bahl* and the House of Lords decision in *Glasgow City Council v Zafar* [1998] ICR 120."

The law (ii): Whistleblowing detriments

164. Under s 47B(1) ERA 1996, a worker has a right not to be subjected to a detriment by any act or deliberate failure to act on the part of her employer done on the ground that the worker has made a protected disclosure.

165. The Court of Appeal has confirmed that the same approach to 'detriment' is to be applied in whistle-blowing cases as in discrimination cases: *Tiplady v City of Bradford MDC* [2019] EWCA Civ 2180, [2020] ICR 965 at [42].

166. If a protected disclosure has been made, the Tribunal must consider whether the Claimant has been subjected to a detriment *"on the ground that"* she made a protected disclosure (s 47B(1)). This means that the protected disclosure must be a material factor in the treatment: *Fecitt v NHS Manchester* [2011] EWCA Civ 1190, [2012] ICR 372 at [43] and [45]. This requires an analysis of the mental processes of the worker who is alleged to have subjected the claimant to a detriment. In order for a decision-maker to be materially influenced by a protected disclosure, they must have personal knowledge of it: see *Malik v Cenkos Securities Plc* (UKEAT/0100/17/RN) at [85]-[87]. As Choudhury J explains there, that is because in whistle-blowing cases, as in discrimination, the focus is on what is in the mind of the individual alleged to have subjected the claimant to a detriment. As was held in the discrimination case of *CLFIS (UK) Limited v Reynolds* [2015] IRLR 562, it is not permissible to add together the mental processes of two different individuals.

167. The burden of proof is on the Claimant to establish a protected disclosure was made, and that she was subject to detrimental treatment. However, s 48(2) provides that it is then *"for the employer to show the ground on which any act, or deliberate failure to act, was done"*. It has been held that, although the burden is on the employer, the Claimant must raise a *prima facie* case as to causation before the employer will be called upon to prove that the protected disclosure was not the reason for the treatment: see *Dahou v Serco Ltd* [2016] EWCA Civ 832, [2017] IRLR 81 at [40] (deciding this point so far as dismissal cases are concerned, persuasive *obiter* on the same point for detriment cases). As such, the section creates a shifting burden of proof that is similar to that which applies in discrimination claims under s 136 of the Equality Act 2010 (EA 2010). Unlike in discrimination claims, though, if the employer fails to show a satisfactory reason for the treatment, the Tribunal is not bound to uphold the claim. If the employer fails to establish a satisfactory reason for the treatment then the Tribunal may, but is not required to, draw an adverse inference that the protected disclosure was the reason for the treatment: see *International Petroleum Ltd v Osipov and ors* UKEAT/0058/17/DA and UKEAT/0229/16/DA at [115]-[116] and *Dahou* ibid at [40].

Conclusions

168. We deal with each alleged detriment in turn.

169. The **first claimed detriment** is that at the beginning of September the Claimant's belongings were removed from the marital home and the locks were changed. There is no dispute that Mr Belson did this or that this constituted a detriment in law. The question is: what were the material elements of the reasons for his so acting? There are many potential reasons 'in the frame'. They include the obvious antecedents of the Claimant having moved out of the marital home in May 2021 to live in Mr Y's flat; Mr Belson's belief that she was having an affair with Mr Y; and their decision to divorce. There are also the reasons that Mr Belson advances as his reasons for so acting, being, first, that on his return from holiday it was distressing to find that the Claimant had been in the property and taken, not only belongings that he regarded as hers but also some that he regarded as his and, secondly, that he needed to let the property to a tenant, Status Education Limited – his new girlfriend's company. As to these two reasons, we accept that coming home to find that the Claimant had been in the property and removed belongings was genuinely upsetting for Mr Belson and it is easy to understand why the instinctive reaction to that would have been to change the locks, even if she was still a joint owner of the property. As to the second reason, regarding the tenancy with Status Education Limited, we are less persuaded by this. Even if it was legitimate for Mr Belson to enter into a tenancy without the Claimant's consent (about which we form no view), we do not accept that this tenancy necessitated an urgent changing of the locks in the way that Mr Belson arranged it. Even on Mr Belson's case, under the terms of the tenancy agreement he was to remain living in the flat for a period, and we do not accept that entering into this agreement signified any big change in the use of the flat at that stage or that there was any pressing need to change the locks. So far as Mr Belson's *reasons* for changing the locks are concerned, we consider the tenancy agreement fulfilled the role of 'cover' for the changing of the locks, rather than providing a reason for the change.

170. Finally, we have to consider the reasons that the Claimant contends played a material part Mr Belson's reasons for acting:-

171. We do not consider that age had anything to do with it. The Claimant's Whether or not Mr Belson's new girlfriend can be perceived as younger or older than the Claimant, this is not as we see it a case of Mr Belson ending his relationship with the Claimant on 'ageist' grounds or in search of a younger partner. There is no real doubt that it was the Claimant who instigated the ending of their relationship and we see no trace of age playing a part in that decision. It is even less likely that age played a part in his decision to change the locks and remove her belongings.

172. Nor did the Claimant's disability play any part. Mr Belson was not actually aware that she had the heart condition that she relies on as a disability as at September 2021. The reference in his email of 2 June 2021 to her health issues posing a risk to the company does not, we find, in the context of this case suggest that Mr Belson had a discriminatory mindset as regards disability. We accept his evidence that he did not believe in her health issues, but was just waging a 'war of words' with the Claimant in that email. Again, it

is even less likely that disability played a part in his decision to change the locks and remove her belongings.

173. Nor, we find, did the Claimant's marital status have anything to do with it. We rejected in our findings of fact the Claimant's suggestion that Mr Belson holds the view that a 'wife's place is in the home'. We further find no evidence that any part of his reaction to the break-up of their relationship was a reaction to it being the ending of a marriage, and the Claimant's marital status, rather than just the (acrimonious) end of a long relationship. In this respect, we acknowledge that there are some things that have happened between the parties that would not have happened if they were not married. It is the fact of the marriage that brings with it the legal stages of the dissolution of the relationship, including legally contested divorce proceedings. The mediation by Mr Kjellin might not have happened if they had not been married (although something like it would probably still have been needed). Litigation about the ending of non-marital relationships is much rarer. There may therefore be some things that would not have happened 'but for' the fact that they were married rather than 'merely' in a long-term relationship, but we do not consider that any of the detriments alleged in these proceedings happened 'because' of marital status – including this first alleged detriment in relation to changing the locks and removing the Claimant's belongings. That would have happened regardless of whether they were married or not.

174. Finally, we have considered the role played in Mr Belson's reasons by the Claimant's protected disclosures. Two protected disclosures had happened by this stage: the first protected disclosure email to the accountant on 29 August 2021 regarding the £91,500 missing Trust Fund monies and the third protected disclosure email to Wilsons LLP on 14 September 2021. Mr Belson did not specifically know the Claimant had made either disclosure. However, he did know from his conversation with the Claimant on 12 September 2021 that the Claimant was at least in part behind the disclosures of information about the £91,500 to the police and Wilsons LLP. We do not consider that it matters for the purposes of establishing liability whether Mr Belson actually saw the specific emails that the Claimant sent; what must matter (if the intended statutory whistleblowing protections are not to be emasculated) is that the person against whom the claim is made must be aware of the substantive content of the complainant's protected disclosure and that it has been disclosed to one of the statutorily permitted persons. In this case, Mr Belson was, we find, actually aware that she had disclosed information to Wilsons LLP the substantive content of which matched what the Claimant put in her email to Wilsons LLP of 14 September 2021. In other words, Mr Belson had actual knowledge of all the necessary statutory elements that made her third disclosure a protected disclosure, including knowing to whom she had made the disclosure. We find that this means that, at the point that he decided to change the locks and remove her belongings, he knew she had made at least one disclosure that has been relied on by the Claimant in these proceedings and that we have found to be a protected disclosure.

175. We are further satisfied that this knowledge was a material part of why he took that course of action. We so find because Mr Belson was evidently very

upset by the Claimant's allegations and the impact the allegations had on his relationship with his brother (which is indissociable from the disclosures in this case in our judgment) and we infer that his anger and upset at discovering the Claimant's involvement in making the disclosures was a material part of his reason for wanting to block the Claimant from further access to the flat and remove her belongings 'from his life' (if we may use that expression).

176. It follows that, subject to the question of time limits, the Claimant's first detriment claim succeeds under s 47B ERA 1996, but not as a claim of discrimination under the EA 2010.

177. The **second alleged detriment** was that the payment of the Claimant's salary for October 2021 was delayed by a week. We accepted as a matter of fact that this happened. We further find that it was a detriment. The Respondent submitted that a few days delay in salary was unimportant. We disagree. It distressed the Claimant who complained about it and Mr Belson's emphasis in evidence on 'the golden rule' being that salaries were paid by the end of the month makes clear that he regarded it as important to pay by the end of the month. The corollary is that the Claimant could reasonably consider it a detriment <u>not</u> to be paid by the end of the month.

178. We then consider the reasons for this treatment. We acknowledge Mr Belson's evidence that he did not deliberately pay the Claimant's salary late, but the evidence before us shows that a pattern of late payment started from the end of September 2021, with the Claimant first complaining about it by email of 7 October 2021. The timing of the start of this behaviour thus coincides with the changing of the locks and removal of her belongings from her flat. We infer, and find as a fact, that the delays in payment were not therefore inadvertent, but reflective of Mr Belson's changed attitude toward the Claimant as a result of what had happened in September – in other words, we find that the motivating factors in him so acting were the same as for changing the locks and removing her belongings. As such, for the same reasons as we have set out above in relation to the first alleged detriment, we find that the Claimant's protected disclosures were a material part of his reasons for so acting (along with the other factors we identified which were lawful reasons for the treatment). Disability, age and marital status, however, still played no part.

179. It follows, subject to the question of time limits, that the Claimant's second detriment claim succeeds under s 47B ERA 1996, but not as a claim of discrimination under the EA 2010.

180. The **third claimed detriment** is that Mr Belson cancelled the Claimant's health insurance on 18 November 2021 (the list of issues incorrectly dates this as 20 November 2021). Even though Mr Belson instructed the insurance company on 19 November 2021 to reinstate the health insurance, we accept that the cancellation constituted a detriment. This is because the Claimant was in the middle of treatment at that time and it was reasonable for her to find it distressing to be notified that her health insurance was cancelled at a

time when she had real need of it. Further, there is no evidence that the Claimant was notified immediately that the insurance had been reinstated. We infer there was some delay so that she was uncertain of the position at least for a few days (albeit not the much longer length of time she at times suggested in evidence).

181. We then consider the reasons for the cancellation. The Respondent's case on this prior to oral evidence was that this was a mistake, but it is clear from Mr Belson's email of 19 November 2021 (disclosed for the first time mid-trial) in which he notifies the insurers that *"sadly"* he needs to reinstate the health insurance that the cancellation was not a *"mistake"* in the sense of being inadvertent or accidental, but was a deliberate act on his part. Faced with this email in the course of oral evidence, Mr Belson's explanation for his action changed. He said that he perhaps did not think she was an employee any more, but we rejected that explanation in our findings of fact as it is clear that he knew full well she was still an employee.

182. As such, Mr Belson has not offered any plausible explanation for his action and it falls to us to infer what his reasons were. We reject the Claimant's case that her marital status or age had anything to do with it for the reasons we have set out above in relation to the first detriment. We also reject the Claimant's case that her disability had anything to do with it because he did not, we have found, at this point know either that she had a heart condition. There is also no evidence that he knew she was having treatment at the time of the cancellation.

183. We then consider whether the protected disclosures had anything to do with it. We find that, again, they were a material part of his reason for cancelling the health insurance at this point. In this respect, we note that, very shortly before this, on 10 November 2021, the Claimant had emailed Mr Kjellin and Mr Belson accusing Mr Belson (among other things) of trying to steal her son's and Person X's inheritance. In a testy reply, he asked her to keep her correspondence with Mr Kjellin limited to the settlement and asserted that Person X's Trust fund *"has always been maintained and protected"* – a protestation that reflects, we find, his sensitivity regarding that particular allegation. That email of 10 November 2021 is not itself relied on by the Claimant in these proceedings as a protected disclosure, but it repeats the substantive core of the Claimant's first, third and fourth disclosures, and we have already found above that Mr Belson was aware of all the necessary statutory elements of the third protected disclosure. As such, we find that the Claimant's 10 November 2021 email struck a raw nerve in reminding Mr Belson of the Claimant's third protected disclosure. We infer that the Claimant's protected disclosure was therefore again a material part of the reason why he cancelled her health insurance in November 2021. There were also other reasons, of course, related more generally to the acrimonious end of their relationship, but we find that the protected disclosure was nonetheless a material part at this stage.

184. It follows that, subject to the question of time limits, the Claimant's third detriment claim succeeds under s 47B ERA 1996, but not as a claim of discrimination under the EA 2010.

185. The **fourth alleged detriment** was that the Claimant's November salary was not paid until the end of December 2021. On the facts as we have found them to be, the Claimant's November salary was paid late, albeit not as late as the end of December 2021. We accept that the late payment constituted a detriment for the same reasons that we consider the late payment of the October salary caused a detriment.

186. When it comes to the reasons for this fourth alleged detriment, however, we consider that they are different. What happened with the cancellation and then reinstatement of the health insurance was, we find, that Mr Belson acted for emotional reasons, without advice from Mr Kjellin, and Mr Kjellin on hearing of it, told him to reinstate it. What happened with the November salary payment was, we find, quite different. The documentary trail in relation to this is incomplete as Mr Belson's email referred to in the Claimant's WhatsApp message of 3 December 2021 is missing, but we infer that it did exist and that it did say that Mr Kjellin had instructed that her salary be held back. We draw that inference not only because of the Claimant's WhatsApp message, but also because the sequence of messages between the Claimant and Mr Kjellin at this point shows that Mr Kjellin is trying to put pressure on the Claimant to agree to start the process of offsetting further salary payments against any divorce settlement (hence the threat about exiting both her and James from the business immediately if she does not agree: see the fifth alleged detriment below). It is, we find, he who has told Mr Belson to delay her salary payment as part of exerting that pressure because in their messages he does not deny it was him and says that he will tell Mr Belson to pay her salary. As such, we find that the Claimant's protected disclosures had ceased to be a motivating factor at this point. Mr Kjellin was in the 'driving seat' in relation to this detriment, and what both he and Mr Belson were trying to achieve was some forward movement in relation to the divorce settlement negotiations. Despite Mr Belson's strong feelings about the subject matter of the Claimant's protected disclosures, we find these were not a material part of the reason for this detrimental treatment.

187. Marital status also played no part. Although the divorce settlement negotiations were the context in which the detriment was inflicted, the Claimant's marital status was not itself a material part of either Mr Kjellin or Mr Belson's reasons for acting.

188. Nor was the Claimant's disability. Although by this stage we find that Mr Kjellin and Mr Belson had knowledge of her heart condition, there is no evidence from which we could infer that had anything to do with the late payment of salary.

189. Likewise, age had nothing to do with it for the reasons we have dealt with in relation to the first detriment.

190. It follows that all the Claimant's claims in relation to the fourth alleged detriment fail.

191. The **fifth alleged detriment** is that Mr Kjellin threatened in an email dated 29 November 2021 to exit the Claimant's disabled son from the business. We accept this was a detriment, but the reasons for it were exactly the same as for the fourth alleged detriment as the two detriments were, we find, part and parcel of the same attempt to place pressure on the Claimant to agree to commencing the offsetting process. For the same reasons, the Claimant's protected disclosures, marital status, age and disability had nothing to do with the reasons for the treatment.

192. It follows that all the Claimant's claims in relation to the fifth alleged detriment fail.

Unfair dismissal (including automatic unfair dismissal: s 103A) and Direct discrimination (marital status, age, disability) in relation to dismissal

The law on unfair dismissal

193. The test for unfair dismissal is set out in section 98 of the Employment Rights Act 1996 (ERA 1996). Under section 98(1), it is for the employer to show the reason (or, if more than one, the principal reason) for the dismissal, and that it is a potentially fair reason falling within subsection (2), i.e. in this case redundancy. A reason for dismissal is the factor or factors operating on the mind of the decision-maker which cause them to make the decision to dismiss (cf *Abernethy v Mott, Hay and Anderson* [1974] ICR 323, 330, cited with approval by the Supreme Court in *Jhuti v Royal Mail Ltd* [2019] UKSC 55, [2020] ICR 731 at [44]). (There are exceptions to that approach, as identified in *Jhuti*, but they are not relevant here.)

194. In this case, however, the Claimant contends that she was automatically unfairly dismissed for whistle-blowing. Accordingly, she must raise a *prima facie* case that the sole or principal reason for her dismissal was that she had made protected disclosures (s 103A). If she does, then it is for the Respondent to prove that the protected disclosures were not the sole or principal reason for the dismissal: see *Dahou v Serco Ltd* [2016] EWCA Civ 832, [2017] IRLR 81. As such, the section creates a shifting burden of proof that is similar to that which applies in discrimination claims under s 136 of the Equality Act 2010 (EA 2010). Unlike in discrimination claims, though, if the employer fails to show a satisfactory reason for the treatment, the Tribunal is not bound to uphold the claim. If the employer fails to establish a satisfactory reason for the treatment then the Tribunal may, but is not required to, draw an adverse inference that the protected disclosure was the reason for the treatment: see *International Petroleum Ltd v Osipov and ors* UKEAT/0058/17/DA and UKEAT/0229/16/DA at paras 115-116 and *Dahou* ibid at para 40.

195. If the Claimant does not establish that the reason for her dismissal was her protected disclosures, then we have to consider whether the Respondent has proved that the definition of 'redundancy' in s 139(1)(b)(i) ERA 1996 is satisfied, i.e. whether the requirements of the Respondent *"for employees to carry out work of a particular kind … have ceased or diminished or are expected to cease or diminish"* and whether the dismissal is *"wholly or mainly attributable"* to that state of affairs. The House of Lords in *Murray and ors v Foyle Meats Ltd* [2000] 1 AC 51 made clear that these are questions of fact for us as a Tribunal.

196. In deciding what the requirements of the business are for the purposes of s 139, Tribunals are not to investigate the commercial and economic reasons behind an employer's actions: *James W Cook and Co (Wivenhoe) Ltd v Tipper* [1990] ICR 716 and *Moon v Homeworthy Furniture* [1977] ICR 117.

197. If dismissal is for a potentially fair reason, then the Tribunal must consider whether in all the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee (s 98(4)(a)). The question of fairness is to be determined in accordance with equity and the substantial merits of the case (s 98(4)(b)). At this stage, neither party bears the burden of proof, it is neutral: *Boys and Girls Welfare Society v McDonald* [1997] ICR 693. The Tribunal must not substitute its own view for that of the employer, but must consider whether the employer's actions were (in all respects, including as to procedure and the decision to dismiss) within the range of reasonable responses open to the employer: *BHS Ltd v Burchell* [1980] ICR 303 and *Sainsbury's Supermarkets Ltd v Hitt* [2003] ICR 111.

198. As this is a redundancy dismissal, the principles in *Williams v Compair Maxam* [1982] ICR 156 apply. As adjusted to dismissals where there is not union involvement, they are as follows:

    (1) The employer must give as much warning as possible of impending redundancies so as to enable alternative solutions to be considered;

    (2) The employer must consult as to the best means by which the desired management result can be achieved fairly and with as little hardship to the employees as possible;

    (3) The employer must establish criteria for selection which so far as possible do not depend solely upon the opinion of the person making the selection but can be objectively checked against such things as attendance record, efficiency at the job, experience, or length of service;

    (4) The employer must seek to ensure that the selection is made fairly in accordance with these criteria and will consider any representations the union may make as to such selection;

(5) The employer must see whether instead of dismissing an employee he could offer him alternative employment.

199. Not every procedural error renders a dismissal unfair, the fairness of the process as a whole must be looked at, alongside the other relevant factors, focusing always on the statutory test as to whether, in all the circumstances, the employer acted reasonably or unreasonably in treating the reason as a sufficient reason for dismissing the employee: *Taylor v OCS Group Ltd* [2006] ICR 1602 at [48].

200. A failure to afford the employee a right of appeal may render a dismissal unfair (*West Midlands Cooperative Society v Tipton* [1986] AC 536), and a fair appeal may cure earlier defects in procedure (*Taylor v OCS Group* ibid), but an unfair appeal will not necessarily render an otherwise fair dismissal unfair. This is particularly the case in a redundancy dismissal where the *ACAS Code of Practice on Disciplinary and Grievance Procedures* does not apply. The Court of Appeal has confirmed that in such cases the absence of an appeal or review procedure does not of itself make a dismissal for redundancy unfair and it would be wrong to find a redundancy dismissal unfair *only* because there was no appeal procedure. However, it is one of many factors to be considered in applying a test of overall fairness: *Gwynedd Council v Barratt* [2021] EWCA Civ 1322 at [38].

Conclusions

201. We have considered first whether there was a redundancy situation within ERA 1996, s 139. We find that a redundancy situation arose in the summer of 2021 when the Claimant's role (or the vast majority of it) was outsourced to Mr O'Driscoll. At that point, the Respondent's requirements for (in-house) employees to carry out the book-keeping and administrative work that the Claimant did reduced by one. Although the Claimant had suggested that this redundancy was a sham, or that Sophie Lawn had been hired to replace her, in the end her case at this hearing was that it was Mr O'Driscoll who had been given her job. As such, since there is also no dispute that Mr O'Driscoll was not an employee of the Respondent but an external bookkeeper/accountant (and, moreover, that he would be doing the work on a more part-time basis than she had worked), the Respondent's requirements for employees to carry out work of the kind the Claimant did had reduced.

202. We have then considered whether the Claimant's dismissal on 28 February 2022 was wholly or mainly attributable to that state of affairs. We find that it was not. The redundancy situation had arisen six months previously, but the Claimant had been retained in employment after that because it was agreed as part of the settlement negotiations to continue her employment until June 2022. The reason why she was dismissed by Mr Belson on 28 February 2022 was, we find, not because she was redundant but because he and Mr Kjellin had discovered that she was one of the joint legal owners of flat 58 and they thought that in the light of that it was probable that actually she would be

required to pay Mr Belson money at the conclusion of the divorce proceedings rather than the other way round.

203. We find that the alternative reasons or factors in her dismissal for which the Claimant contends in these proceedings (her protected disclosures, marital status and disability) had nothing to do with Mr Belson's decision to dismiss on 28 February 2022.

204. Again, so far as the Claimant's protected disclosures are concerned, although they had upset Mr Belson, by the time the Claimant was dismissed in February 2022 the disclosures were 'old news' and the part that they played in his thinking at this time was, we find, immaterial. They were certainly not the sole or principal reason for the Claimant's dismissal.

205. Although Mr Belson knew of the Claimant's disability by this point, there is also nothing to suggest that this played any part in his decision to dismiss.

206. Likewise, age was not a factor: see our reasons in relation to the first detriment claim above.

207. Marital status also had nothing to do with it. Our reasons in relation to marital status so far as the detriments claims are concerned must be read together with this section of our judgment. The fact that the reason for dismissal was a further step (or further breakdown) in divorce settlement negotiations does not mean that the Claimant's marital status was Mr Belson's reason for acting. While the situation may not have arisen if they had not been married, he did not dismiss her because of her marital status but because of the discovery that she was one of the joint legal owners of flat 58 and because of what he and Mr Kjellin perceived to be the implications of that for who would owe who money at the conclusion of the divorce proceedings.

208. We therefore conclude that the sole or principal reason for the Claimant's dismissal was not redundancy (as the Respondent contends). No other reason that was potentially fair for the purposes of s 98(2) has been advanced. As such, the Claimant's unfair dismissal claim succeeds. We observe that, even if the Respondent had established its case that redundancy was the reason for dismissal, we would have found that it was procedurally unfair to dismiss the Claimant for that reason without notice or process of any sort.

209. We should make clear that we do not consider that the discovery of the Claimant's legal ownership of flat 58 in itself provided 'some other substantial reason' for dismissal at this stage. Mr Cameron for the Respondent did not argue at this hearing that it did. The Respondent in its ET3 response (R/69, [18]-[19]) outlined an argument that the Claimant could have been dismissed for gross misconduct because of this and other matters. This is a *Polkey* argument. Although we had at the outset of evidence indicated that we would deal with *Polkey* as part of the liability stage of the hearing, in the course of the hearing Mr Belson and Mr Kjellin sought to raise other arguments in evidence that might also go to *Polkey* and in the end we consider that this is

a case where *Polkey* arguments should be considered at the remedy hearing. We may not need to hear further evidence from the parties (although they will have the opportunity to adduce further evidence if they wish), but we will need to have a properly particularised case from the Respondent as to what the alternative fair reason for dismissal would have been and how long it would have taken for a fair dismissal process to have been conducted – a case which the Claimant will have a fair opportunity to answer.

210. Regarding the discovery of the Claimant's legal ownership of flat 58, we make the following observations in the light of the facts as we have found them to be that the parties will need to address at the remedy hearing:-

    a. We find that, threatened with both her and James being 'exited' from the business immediately on unspecified grounds, the Claimant did on 3 December 2021 agree that from December 2021 onwards any salary she was paid would be 'offset' against any divorce settlement. However, the parties had also agreed that her employment would continue and not be terminated at that stage. Other incidents of employment continued including the Claimant carrying out some minimal work and her health insurance and salary being maintained. The Respondent still regarded her as an employee, hence sending notice of dismissal purportedly for redundancy by email of 28 February 2022;

    b. We find that, as at October 2021 (R/103), Mr Kjellin and Mr Belson knew that the Claimant had 'jointly purchased' no. 58 but not that she was a 'legal owner' of it. The nature of the alleged deception by the Claimant as regards the purchase of this property has not been identified by the Respondent as yet, nor the relevance of that to the Claimant's employment (as distinct from the divorce negotiations);

    c. There is a significant question mark over whether Mr Belson and Mr Kjellin were right in their assessment of the likely outcome of the divorce proceedings in the light of the discovery that the Claimant was the legal owner of flat 58. The correspondence the parties have put before us show that the Claimant has been advised quite differently about the likely outcome of the divorce proceedings, and that she has many arguments about assets that she alleges Mr Belson has been 'hiding' from the settlement negotiations, just as Mr Belson argues that she has been 'hiding' assets. Who is right will not be known until final judgment in the divorce proceedings (the hearing is set for May 2023). The parties will need to address us at the remedy hearing as to the implications of this 'significant question mark' for the Respondent's argument that the Claimant could have been fairly dismissed for reasons connected with the divorce settlement negotiations as at February 2022.

Time limits (whistleblowing detriments only)

The law

211. Under s 48(3)(a) ERA 1996 there is a primary time limit of three months beginning with the date of the alleged act of detriment. By virtue of s 48(3)(b) where the Tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within the primary time limit, a claim will fall within the Tribunal's jurisdiction if it was presented within such further period as the Tribunal considers reasonable. These provisions are subject to the extensions of time permitted by the ACAS Early Conciliation provisions, i.e. by virtue of s 207B of the ERA 1996, any period of ACAS Early Conciliation is to be ignored when computing the primary time limit, and if the primary time limit would have expired during the ACAS Early Conciliation period, it expires instead one month after the end of that period.

212. For detriment claims under s 48 ERA 1996, there is a three month time limit for the claim to be presented to the employment tribunal. Where an act or omission is part of a series of similar acts or omissions, the three month limit runs from the last of them: s 48(3)(a) ERA 1996. This requires that there be some link between the acts which makes it just and reasonable to treat them as having been brought in time: *Arthur v London Eastern Railway* [2007] IRLR 58. An act may also be regarded as extending over a period under s 48(4), in which case time runs from the last day of the period over which the act continues. By analogy with discrimination cases, conduct extends over a period if it amounts to a 'continuing state of affairs': see *Commissioner of Police of the Metropolis v Hendricks* [2002] EWCA Civ 1686, [2003] ICR 530.

213. In discrimination cases it has been held that an in-time act that is not unlawful cannot provide the 'link' to an unlawful out-of-time act: see *South Western Ambulance Service NHS Foundation Trust v King* (UKEAT/0056/19/OO) at paras 32-33. We see no reason why the same principle should not apply to protected interest disclosure cases.

214. This is the same test as applies in unfair dismissal cases. The tribunal must first consider whether it was reasonably feasible to present the claim in time: *Palmer v Southend-on-Sea Borough Council* [1984] 1 WLR 1129. The burden is on the employee, but the legislation is to be given a liberal interpretation in favour of the employee: *Marks & Spencer plc v Williams-Ryan* [2005] EWCA Civ 470, [2005] IRLR 562, approved most recently by the CA in *Lowri Beck Services Ltd v Brophy* [2019] EWCA Civ 2490 at [12] per Underhill LJ giving the judgment of the Court. It is not reasonably practicable for an employee to bring a complaint until they have (or could reasonably be expected to have acquired) knowledge of the facts giving grounds to apply to the tribunal, and knowledge of the right to make a claim: *Machine Tool Industry Research Association v Simpson* [1988] IRLR 212. Where an employee has knowledge of the relevant facts and the right to bring a claim there is an onus on them to make enquiries as to the process for enforcing those rights: *Trevelyans (Birmingham) Ltd v Norton* [1991] ICR 488.

215. If the tribunal finds it was not reasonably practicable to present the claim in time, then the tribunal should consider whether the claim has been brought within a reasonable further period, having regard to the reasons for the delay and all the circumstances: *Marley (UK) Ltd v Anderson* [1996] IRLR 163, CA.

Conclusions

216. We found that the first three alleged detriments (changing the locks and moving belongings out of the marital home in September 2021, delaying her October 2021 salary payment and cancelling her health insurance on 18 November 2021) were all detriments to which the Claimant was subjected because she had made protected disclosures. Otherwise, the Claimant's detriments claims failed, as did her automatic unfair dismissal claim under s 103A ERA 1996. Likewise, the Claimant's discrimination claims failed and so we do not address the question of time limits in relation to those.

217. The Claimant's first claim filed on 4 March 2022 was filed before contacting ACAS and necessarily therefore only concerned her application for interim relief (based on her claim of automatic unfair dismissal) as other claims referred to in that claim form could not have been accepted by the Tribunal without an ACAS Certificate number. In any event, the Claimant's whistleblowing detriments claims were not set out in that first claim form. On 25 April 2022 the Claimant contacted ACAS and on 16 May 2022 she filed her second claim in these proceedings, and it is this second claim which contains the detriments claims that have in principle succeeded on liability, subject to the time point.

218. However, any detriment occurring before 26 January 2022 (i.e. three months less one day before the Claimant contacted ACAS) is outside the primary three-month time limit in s 48. All of the Claimant's detriments (that have succeeded) occurred prior to 26 January 2022. There is no link to any 'in-time' unlawful act of whistleblowing detriment that could save them as being part of series of a 'continuing act' or series.

219. We therefore have to consider whether it would have been reasonably practicable for the Claimant to bring her whistle-blowing detriments claims within the primary time limit. In our judgment, it would have been. Although the Claimant did not in fact find out about her employment rights or how to enforce them until after she was dismissed, we consider that, if she acted reasonably, she could have found out this information earlier. She was in contact with various legal advisors, including a solicitor, in relation to the divorce matter from at least September 2021 onwards, and her advisors' comments of 30 November 2021 refer to the need to be aware of employment law. Even if the Claimant's advisors/solicitors were not engaged by the Claimant to advise on employment law, we consider that the Claimant had all the information necessary to enable her to investigate her employment law rights from September 2021 onwards. We infer that the reason she did not do so was simply that until the Respondent dismissed her in February 2022 none of the Respondent's detrimental actions had 'hit her in the pocket' and

so she just did not consider it important enough to start investigating her employment law rights prior to that. That is not enough to make it 'not reasonably practicable' for her to do so. She is a resourceful person and could easily have researched and taken steps to enforce her rights earlier if she had wished to do so.

220. We therefore conclude that the Claimant's whistleblowing detriments claims are out of time and, accordingly, although the first three detriments have in principle succeeded on liability, the Tribunal had no jurisdiction in respect of them and those claims must accordingly fail.

Wrongful dismissal

221. The Claimant had no written contract of employment, but was entitled under s 86 of the ERA 1996 to statutory notice of 5 weeks. She was not given notice. The Respondent's argument was (R/64) that no notice was payable because *"it was agreed it would all be allowed for in the negotiations of marriage financial settlement"*. We do not accept that that is a lawful basis for not paying the statutory notice pay to which the Claimant was entitled as an employee. The agreement on which the Respondent seeks to rely was not a valid compromise agreement for the purposes of s 203 of the ERA 1996. The Claimant is entitled to her statutory notice pay.

Failure to give statement of employment particulars

222. The Claimant had no written contract of employment, so the Respondent was in breach of the duty in ss 1 and 4 of the ERA 1996 to provide a statement of employment particulars, and an award under s 38 of the Employment Act 2002 will need to be considered as part of the remedy hearing.

Overall conclusion

223. The unanimous judgment of the Tribunal is:-

(1) The Claimant's claim of unfair dismissal under Part X of the ERA 1996 is well-founded.

(2) The Claimant's claim of wrongful dismissal under art 4 of the *Employment* Tribunals *(Extension of Jurisdiction) (England and Wales) Order 1994* is well-founded. The Claimant was entitled to five weeks' notice.

(3) The Claimant's claim of automatic unfair dismissal under s 103A of the ERA 1996 is not well-founded and is dismissed.

(4) The Claimant's claims that she was subject to detriments (iv) and (v) because she made protected disclosures contrary to s 47B of the ERA 1996 are not well-founded and are dismissed.

(5) The Claimant's claims that she was subject to detriments (i), (ii) and (iii) because she made protected disclosures contrary to s 47B of the ERA 1996 were well-founded, but are outside the Tribunal's jurisdiction having been brought outside the time limit in s 48 of the ERA 1996 and are accordingly dismissed.

(6) The Respondent did not directly discriminate against the Claimant because of age, disability or marital status in contravention of ss 13 and 39 of the EA 2010. Those claims are dismissed.

Remedy Hearing

224. The Remedy Hearing will take place on **17 and 18 July 2023** at London Central Employment Tribunal (in person) before the full Tribunal panel commencing **at 10am**. In advance of that hearing:-

a. The Respondent must **by 2 June 2023** set out precisely what its case is on *Polkey*;

b. The Claimant must **by 16 June 2023** prepare and send to the Respondent a witness statement setting out her evidence and response to the Respondent's *Polkey* argument, together with evidence as to her efforts to mitigate her loss. She must append to the witness statement an **updated Schedule of Loss** setting out the amounts claimed in these proceedings and all documents relevant to the issue of *Polkey*, mitigation and remedy;

c. The Respondent must **by 30 June 2023** send to the Claimant its response, including any witness evidence or documentary evidence that it relies on in response;

d. The Respondent must prepare an indexed, paginated bundle for the Remedy Hearing containing all of the foregoing documents and send a hard copy to the Claimant **by 7 July 2023**;

e. The Respondent must send an electronic version of the bundle to the Tribunal by **10 July 2023** and bring **5 hard copies** to the Tribunal for the use of the Tribunal panel, witness table and members of the public. The parties must ensure they have their own copies of the bundle in addition to the 5 copies.

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Employment Judge Stout

11 May 2023 (reissued 5 June 2023)

JUDGMENT & REASONS SENT TO THE PARTIES ON

05/06/2023

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FOR THE TRIBUNAL OFFICE