EMPLOYMENT TRIBUNALS

Claimant:		**Respondent:**
Mr G McCracken	**v**	Fugro GB Marine Limited

Heard at: Reading **On:** 31 March and 1 April 2022, 28 April 2023 and in chambers on 26 May 2023

Before: Employment Judge Hawksworth
Ms L Farrell
Mr A Morgan

Appearances
For the Claimant: In person
For the Respondent: Mr S Way (counsel)

RESERVED JUDGMENT

The unanimous judgment of the tribunal is that:

1. The claimant did not make a protected disclosure. This means that his complaint of being subjected to detriments on the ground of having made a protected disclosure under section 47B of the Employment Rights Act 1996 fails and is dismissed;

2. The claimant resigned and was not constructively dismissed. His complaint of dismissal by reason of having made a protected disclosure under section 103A of the Employment Rights Act 1996 also fails and is dismissed.

3. The remedy hearing due to take place on 6 October 2023 is vacated as it is not needed.

REASONS

Claims and responses

1. The respondent is the UK subsidiary of Fugro, a multi-national company which provides geo-data services to clients in sectors including construction, energy and transport. The claimant was employed by the respondent from 19 August 2019 as a sales manager in the UK metocean

forecasting team. The team provides metocean (meteorological and oceanographic) forecasting services to the offshore energy industry. The claimant resigned on 30 October 2020.

2. In a claim form presented on 10 November 2020, the claimant brought a complaint of constructive automatic unfair dismissal because of whistleblowing. The claim included an application for interim relief. (The claimant did not notify Acas for early conciliation, relying on the exemption where the claim consists only of a complaint of unfair dismissal which contains an application for interim relief.)

3. The application for interim relief was heard on 3 December 2020. Employment Judge Gumbiti-Zimuto first considered whether the application for interim relief had been presented within the time limit in section 128(2) of the Employment Rights Act 1996. In doing so, he had to decide whether the claimant's resignation on 30 October 2020 was with or without notice. The judge decided that the resignation was without notice. and took effect immediately, on 30 October 2020. The application for interim relief had been presented on 10 November 2020 more than 7 days after 30 October 2020, the effective date of termination. The judge decided that the application for interim relief was out of time and could not be considered by the tribunal. The claimant's application for reconsideration of this decision was unsuccessful. The claimant's appeal to the EAT was unsuccessful as it was out of time.

4. The response was presented on 15 December 2020. The respondent defends the claim.

5. The claimant presented a second claim on 23 January 2021, after Acas early conciliation which started and ended on 22 January 2021. In the second claim, the claimant brought complaints of whistleblowing detriment.

6. The response to the second claim was presented on 3 March 2021. The respondent defends the second claim.

7. A preliminary hearing for case management took place on 4 February 2022 before Employment Judge Bedeau.

Hearing dates

8. The full merits hearing had been listed for three days starting on 30 March 2022 but, for judicial resourcing reasons, this had to be reduced to two days starting on 31 March 2022. The reduced hearing time, and some time taken to hear applications on the first day, meant that it was not possible to complete the evidence in the time available.

9. A third day was arranged to take place on 19 May 2022. Unfortunately, for an unforeseen reason which has been explained to the parties, that date had to be postponed and could not be rescheduled for some months. On 2 December 2022 the tribunal contacted the parties to ask for dates to avoid in the period January to April 2023, so that a new date could be set for the

third day of the hearing. Once the availability of the tribunal, parties and representatives had been taken into account, the third day was set for 28 April 2023.

10. As there had been a long break between day two and day three of the hearing, in our pre-reading on day three and in our deliberations on 26 May 2023 we re-read the documents we had read in our pre-reading on day one of the hearing (that is, the ET1s, the ET3s, the list of issues, the witness statements and the documents referred to in the statements). We also read the judge's notes of the evidence from days one and two of the hearing.

11. The first two days of the full merits hearing were hybrid. The claimant and all members of the tribunal attended in person. The respondent's representative attended by video. The respondent's witnesses attended in person except Ms Vos who attended in person from the Netherlands, permission from the Taking of Evidence Unit of the FCDO having been granted to the respondent for this. The third day of the hearing was fully in person, no-one attended by video.

Applications by the claimant on day 1 and day 3 of the hearing

12. On the first day of the hearing, the claimant made an application for strike out of the response and an application that the respondent should not be permitted to redact a client name as it had done in some documents in the bundle. (The claimant said he was also considering making an application to postpone the hearing. The judge gave an indication of the likely wait for new hearing dates and the claimant did not pursue this.)

13. We took some time for reading in the morning (we read the documents explained above). We also considered the claimant's applications and gave our decisions shortly before the lunch break. For reasons explained at the hearing, we decided as follows:

    13.1. We decided that the response should not be struck out. In short, we said that as the central facts relied on by the claimant were in dispute, we should hear the evidence and make findings of fact to decide the claims. That meant that strike out was not appropriate.

    13.2. In relation to the redactions of the client name in the bundle, we reminded the parties of the fundamental principle of open justice, and the decision of the EAT in *Frewer v Google* [2022] EAT 34 which emphasises the need to give full regard to the open justice principle, including the importance of naming names so that the press can report, exercising its editorial judgment (paragraph 47.4). We decided to approach the application in two parts, first whether the bundle could be used in its current form for the hearing, and secondly whether the client name could and should be omitted from the judgment and reasons. In terms of the practicalities for the hearing, we decided that, as only one client name had been redacted and 'client A' had been typed over the redactions, this was unlikely to lead to confusion. The parties and witnesses would

understand who was being referred to. No members of the public were in attendance at the hearing. Requiring the production of a new unredacted bundle would lead to delay and expense. For these reasons, we decided that we would use the bundle with the redactions and if there was any confusion in the course of the hearing arising from a redaction, or if any members of the public or the media arrived to observe the hearing, we would deal with that as and when it occurred. In the event, no issues arose with the redacted versions of the documents and no members of the public or the media attended. We decided that we would consider the second question, that is the question of whether the name of the client should be anonymised in or omitted from the judgment, once we had heard the evidence and submissions. (Jumping ahead briefly in the procedural chronology, we record that at that point, we decided that there was no basis to anonymise the respondent's client, Technip. We explain our reasons for this at the end of our conclusions.)

14. There was also an outstanding application by the claimant to be considered. This was an application made in writing on 5 March 2022 for reconsideration of an earlier case management order by Employment Judge Bedeau (an application to amend the claim to rely on an email of 4 September 2020 as an additional protected disclosure). We considered this on the first day of the hearing. We considered whether the order should be varied under rule 29, and refused the application, for reasons we explained after the lunch break on the first day. In short, we did not agree with the claimant that EJ Bedeau had made a mistake when he said the claim form did not refer to the email of 4 September 2020, because the claim form did not refer to the email as a protected disclosure. We decided that there had been no error, and that it was not necessary in the interests of justice to vary EJ Bedeau's earlier case management order.

15. When the hearing recommenced on 28 April 2023, the claimant made three applications. We considered these during our reading time and gave our decisions mid-morning, explaining our reasons for reaching those decisions. In short, the applications and our decisions were as follows:

    15.1. The claimant asked us to make an order relating to the redactions in the bundle. He said the redactions had been made unilaterally by the respondent without permission. We said that this had already been considered at the start of day one of the hearing. We said there was no reason to reach a different decision on this point. We said it was not proportionate to order an unredacted copy of the bundle, for the reasons we gave on day one of the hearing. (In closing remarks, we came back to the question of whether the respondent's client's name should be anonymised. as explained in our conclusions below).

    15.2. The claimant said that he had discovered that there were documents missing from the bundle. He said that an email sent on 27 October 2020 (page 371) had three attachments, but none of the

attachments were included in the bundle. This was raised by the claimant for the first time on 28 April 2023. He had not raised it with the respondent during the long break between day two and day three of the hearing. We considered the email and the attachments. It was clear from the text of the email what the attachments were; they were examples of the points he was making in his email. The attachments themselves were unlikely to add anything. An order for disclosure at this late stage would be likely to lead to delay. We decided that an order for specific disclosure of the attachments was not necessary for the fair disposal of the hearing and would not be in line with the overriding objective as it would be likely to lead to a further delay in a case in which there had already been a lengthy delay. The claimant did not seek an order in relation to any other documents.

15.3. The claimant also made a written application shortly before the hearing reconvened, for the response to be struck out. We considered this on the papers, for reasons of proportionality and to save time in line with the overriding objective in rule 2. We decided, for the same reasons explained on the first day of the hearing, that the response should not be struck out. The claim should be decided once the tribunal had heard the full evidence, not on a summary basis.

16. After we gave our decision on these applications, the claimant asked us to order that the respondent provide a signed document confirming that it had disclosed information to its client Technip, in line with the duties to do so contained in a commercial agreement between the respondent and Technip. We declined to make such an order. We said that the claimant could ask the respondent's witness about it, but it was not an appropriate matter for us to make an order about.

17. The respondent's counsel said it was a matter of concern that the claimant was continuing to make allegations without reasonable foundation, and invited the tribunal to consider whether the claimant's applications were vexatious (made with the intent of harassing the respondent) and totally without merit. We find that the claimant's applications on 28 April 2023 in relation to redactions in the bundle and for strike out of the response were repetitive and without merit, because substantially the same applications had already been considered by the tribunal on 31 March 2022.

Documents and evidence

18. There was a joint bundle which had 595 pages. Unfortunately the pdf page numbers in the electronic copy did not match the paper copy numbers. In these reasons we refer to the page numbers in the paper copy.

19. There was a small supplemental bundle but we were not taken to any pages in this.

20. As explained above, there were redactions on some pages of the joint bundle in relation to the respondent's client Technip. The words 'client A' had been inserted above the redactions. All copies of the bundle including the tribunal copies had these redactions: the tribunal did not have an unredacted version. However, as explained above, because of the limited scope of the redactions, all the parties, witnesses and the tribunal understood who the redacted information was referring to.

21. There was a dispute between the parties about the transcript of a meeting on 28 August 2020 at page 201 of the bundle. This was resolved by agreement between the parties in the course of the hearing. An additional page with transcripts of two comments by Dr Rizwan Sheikh was added to the bundle, again by agreement.

22. We heard evidence from the claimant on the afternoon of day one and until mid-morning on day two of the hearing. We then heard from the respondent's witnesses on the afternoon of day two: Ms Vos, Mr Smith and Ms Griffiths.

23. There was insufficient time to hear from the respondent's last witness, Mrs Williams, and to hear closing remarks from the parties.

24. As explained above, we reconvened on 28 April 2023. After we had taken some time for reading and had considered the claimant's applications as set out above, we heard from the respondent's last witness, Mrs Williams. Her evidence was concluded by the lunch break.

25. The respondent's counsel had prepared written closing submissions. They had been sent to the tribunal and the claimant and the tribunal on 1 April 2022 (the second day of the hearing).

26. The respondent's counsel and the claimant both made oral closing remarks. The parties left the hearing at 3.30pm. There was insufficient time to deliberate and deliver judgment, so we reserved judgment. A further deliberation day was held on 26 May 2023.

Issues

27. The parties produced an agreed list of issues based in part on the legal complaints section of the claimant's second claim. This list was discussed at the preliminary hearing and included in the case management summary which was sent to the parties on 19 February 2022.

28. In his closing remarks, the claimant invited us to reconsider the list of issues and include an email of 4 September 2020 as an additional protected disclosure. We decided not to do so, as the claimant's application to amend to include the email as a protected disclosure was refused by EJ Bedeau and we had already refused the claimant's application to reconsider this at the start of the first day of the hearing.

29. The issues for us to decide are therefore as follows (the original numbering from the list has been retained for ease of reference).

Claimant's resignation

1. The Claimant asserts that (i) the Respondent's actions in investigating his conduct during a Microsoft Teams meeting on 19 October 2020, and (ii) the manner in which the investigation was conducted by the Respondent amounted to a fundamental breach of contract:

    a. Died the respondent breach the Claimant's contract of employment, as alleged?

    b. If so (which is denied), was that breach serious enough to be a repudiatory breach?

    c. Did the Claimant waive the alleged breach?

    d. Did the Claimant resign in response to the alleged breach, or for another reason?

    e. If there was a repudiatory breach (which is denied), and the Claimant resigned in response to said breach (which is denied), was the principal reason for the repudiatory breach that the Claimant had made any of the Alleged Protected Disclosures?

    f. The Claimant's case is that he resigned in consequence of this treatment in relation to the protected disclosures on 30 October 2020, working up to 3 November 2020.

2. Protected Disclosures

    a. The claimant asserts that the following are qualifying protected disclosures (referred to collectively as "Alleged Protected Disclosures") in terms of section 43B of the Employment Rights Act 1996 ("ERA"). These are breaches of the legal obligation, section 43B(1)(b); the health and safety of a person had been, was being or was likely to be endangered, s43B(1)(d); and information relating to the two disclosures were likely to be concealed, 43B(1)(d). These are denied by the Respondent:

b. Alleged Protected Disclosure 1:

   i. August 2019 (exact date unspecified) – verbally raising matters relating to Respondent's standard contractual terms with its clients, at Metocean forecasting weekly commercial meeting. Not obtaining signed agreements but operating on clients' standard terms exposing the respondent to unlimited liability. C WS para 12-14

   ii. April 2020 (exact date unspecified) – verbally raising matters relating to the Respondent's standard contractual terms with its clients, during a commercial training session on commercial contract terms, at a training event with Rachel Griffiths; C WS para 18

   iii. 22 April 2020 – Email to Neville Smith – relating to the Respondent's standard contractual terms with its clients, with Claimant suggesting ways he considered these could be improved;

   iv. 24 April 2020 – Email to Rachel Griffiths – relating to the Respondent's standard contractual terms with its clients;

   v. 18 May 2020 – Email to George Grangeon and Rachel Griffiths relating to the Respondent's standard contractual terms with its clients;

   vi. 27 October 2020 (10:42) – Email to Rachel Griffiths relating to the Respondent's standard contractual terms with its clients;

   vii. 27 October 2020 (13:54) – Email Rachel Griffiths relating to the Respondent's standard contractual terms with its clients;

c. Alleged Protected Disclosure 2:

   i. 27 October 2020 – In writing via the Company's Speak Up procedure alleging a breach of a confidentiality agreement between the Respondent and one of its clients, CLIENT A

d. Alleged Protected Disclosure 3

i. 27 October 2020 – Email to Caroline Williams and Neville Smith alleging a breach of confidentiality and anti-competitive practice;

e. Alleged Protected Disclosure 4:

i. 10 November 2020 (after the termination of the Claimant's employment) – Email to Annabelle Vos alleging that the Respondent was in breach of a legal obligation by withholding his personal data

f. In respect of each of the Alleged Protected Disclosures, the Tribunal must determine the following:

g. Was there a disclosure of information?

h. If so, did the Claimant reasonably believe that the information disclosed tended to show that:

i. A criminal offence had been, was being or was likely to be committed; or

ii. There had been or was likely to be a failure to comply with a legal obligation; or

iii. A miscarriage of justice had occurred, was occurring or was likely to occur; or

iv. The health and safety of a person had been, was being or was likely to be endangered; or

v. The environment had been, was being or was likely to be damaged; or

vi. Information relating to the above was being or was likely to be deliberately concealed.

i. If so, did the Claimant reasonably believe the Alleged Protected Disclosures were in the public interest?

3. Detriment

a. If any of the Alleged Protected Disclosures are found to be qualifying disclosures under section 43B ERA (which is denied), the Tribunal must

determine whether the Claimant was subjected to any detriment by any act or deliberate failure to act by the Respondent on the grounds of having made any such disclosure. At page 22-25 of the Particulars of Claim attached to Claim 2, the Claimant sets out the acts and/or omissions which he relies on as detriments. The Tribunal will be required to determine whether:

i. Any of these acts or omissions relied upon by the Claimant amount to a detriment as set out in the second claim at pages 22 to 25 of the Grounds of Complaint?

ii. If so, which is not accepted, whether the Claimant was subjected to any such detriment on the grounds that he had made the Alleged Protected Disclosures?

4. Remedy

a. If the Claimant's claims are upheld:

i. What financial compensation is appropriate in all of the circumstances?

ii. Was any disclosure made in good faith?

iii. If the disclosure was not made in good faith, is it just and equitable in all the circumstances to reduce any award by up to 25%?

iv. Should any compensation awarded be reduced in terms of Polkey v AE Dayton Services Ltd [1987] ICR 142 and, if so, what reduction is appropriate?

v. Has the Claimant mitigated their loss?

List of detriments relied on From Claimant's second claim form [79]

1. Following Alleged Disclosure 1:

a. The Metocean Forecasting commercial team meeting with NS: being laughed at mockingly by he and fellow team members was highly undermining especially as I had just started with the Company.

b. Commercial terms in contracts training session with AV and R as a result of their inaction not taking my disclosure seriously. They did not follow up with me nor appoint someone to do so.

c. Email to NS and subsequent inaction.

d. Emails (multiple) to RG as responsible person

   i. Consistent inaction / being ignored

   ii. Later seeking or accepting role as Investigating Officer (IO) for the purported disciplinary investigation against me

   iii. Not recusing herself of the role when I raised the issue of potential for bias which I was appropriately concerned about during the 23/10/2020 investigation meeting with me

   iv. Not recusing herself immediately from this function when I raised this again in writing more than once after the investigation meeting

2. Following Alleged Disclosure 2

   a. Not investigated responsibly by AV nor RG upon receipt

   b. My case is that, given the very serious contents of my disclosure of illegality, AV must have urgently spoken to AG in respect of this urgently, almost immediately. It is reasonable to draw this conclusion, I submit. Accordingly, it must have been a conscious decision to not include myself as part of the investigation. This amounts to a senior level cover up instead of dealing with the matter responsibly and correctly. Crucially, I was the only Fugro attendee at the recording of the meeting disclosed to AV and RG who was manifestly not aware of the commercially and legally illegitimate enterprise being undertaken.

   c. In the event, by conducting myself as a responsible professional and duly seeking that we comply with our legal duties whilst I subsequently proceeded to handle the tender bid to CLIENT A I thus ended up mitigating any further damage to Fugro and client CLIENT A averting a potentially much worse outcome for all stakeholders concerned.

d. Regardless, the decision makers senior to me who were involved (AV, AG, RG, NS) pressed on pursuing my hostile removal from the Company after my disclosure. I submit this was to ensure the cover up so other Company employees and the important client CLIENT A remaining ignorant of the real facts. This, I contend, was the Respondent's real intention and ulterior motive for the predetermined objective of securing my dismissal.

e. It was an invention that I was ever guilty of anything in respect of my own conduct. The Respondent's supposed genuine 19/10/20 complaint against me from Jo Elver-Evans (JEE), as they have previously contended, was simply a malicious act. NS knew this and accepted this himself when the matter was dealt with informally the following morning on 20/10/2020 which took place at just after 11am. As my documentary evidence shall show, JEE was a colleague who disruptively and unjustifiably objected to sharing her responsibilities with me in the team, as was her job, ever since I first joined the Company. Moreover, this was no secret to anyone as a consequence of her sustained disruptive conduct towards me. Least of all my managers NS and AG who nevertheless allowed the disciplinary action to proceed against me on the basis of her complaint.

f. In any case, my alleged breach of Company policy was objectively nothing of the sort. The document I shared with my team – the focus of JEE's complaint against me – was an innocent act. It simply did not have the qualities of a confidential document. It was a historical document from 2016 containing nothing more than information in the public domain. I explained this to NS and he no objective basis to find otherwise.

g. Taken together, the detriments I was suffering amounted to dismissal by completely undermining the implied term of trust and confidence in my employment contract, forcing me to leave the Company unwillingly on 3/11/2020.

3. Following Alleged Disclosure 3:

a. No action taken. Moreover, the response I received from my line manager NS swiftly the same day at 15:57 displayed:

i. He was determined not to investigate this disclosure. I submit this was likely because he was clearly already aware of the misconduct of senior colleagues, documented by the information contained within the disclosure, yet had not acted previously.

ii. That the supposed genuine disciplinary investigation into myself was a sham: he did not attempt to even hide the fact he, my line manger no less, had predetermined I was going to be guilt of misconduct. This was in spite of our 10/11/2020 11am meeting where we had resolved to close the matter informally. Something must have occurred when he spoke to AG and/or AC subsequent to his initial swift and reasonable handling of the matter causing by my consistently disruptive colleague JEE.

4. Following Alleged Disclosure 4:

a. By email response 20/11/2020 Ineke Keek-Rog a senior Company head office lawyer, who reports directly to and takes instruction from AV, responded on behalf of the company and denied my SAR stating that "we cannot comply with your request". Not only could the Respondent have done so, the Company should have done so in view of their clear legal obligation to do so. Instead, the company resisted their obligation to disclose. I therefore do not have information I presently could and should have in line with my lawful right following my request. Indeed, I must have a relatively limited volume of records compared to other Company employees of many years' service.

30. At the start of the third day of the hearing, the claimant said that we also need to decide the date of his effective date of termination. The respondent does not agree that this is an issue for us. The respondent's counsel says that the effective date of termination has already been decided by Employment Judge Gumbiti-Zimuto at the interim relief hearing. We return to this in our findings of fact below.

Findings of fact

31. We make the following findings of fact about what happened. Where there is a dispute about what happened, we decide what we think is most likely to have happened, on the basis of the evidence we have heard and the documents we have read. We have not included here everything that we

heard about during the hearing. Our findings include those aspects of the evidence which we found most helpful in determining the issues we have to decide.

32. On 19 August 2019 the claimant began employment with the respondent. The respondent is the UK subsidiary of Fugro, a multi-national company which provides geo-data services to clients in sectors including the construction, energy and transport sectors. The claimant was employed as a sales manager in the UK metocean forecasting team. The team provides metocean (meteorological and oceanographic) forecasting services to the offshore energy industry.

The claimant's concerns about the respondent's standard terms and procedures

33. In the early months of his employment, the claimant raised concerns on a number of occasions about the respondent's standard contractual terms and their procedures for contracting with clients. The communications he had at this time with the respondent about these concerns include five which the claimant says are protected disclosures. We refer to these as they were referred to in the list of issues as disclosure 1(i) to disclosure 1(v).

34. Disclosure 1(i): In August 2019, during one of the weekly sales team meetings shortly after he joined the respondent, the claimant verbally raised issues relating to the respondent's standard contractual terms with its clients. The claimant was concerned that the standard offer documentation sent to potential clients did not include a signature page. He was concerned that this meant that the terms contained in the purchase order sent by a client who wished to proceed would take precedence over the terms in the respondent's offer documentation (a 'battle of forms' situation). He thought this could expose the respondent to unlimited liability, as the cap on liability contained in the respondent's standard terms would not apply.

35. The claimant did not say at the time he made this disclosure that he thought the respondent was failing to comply with a legal obligation. Although it is not necessary to identify a relevant failure in a disclosure, it must contain information which the claimant believes tends to show a relevant failure. Here, the claimant's concern was a question of commercial best practice, and was not about a failure to comply with any legal obligation.

36. The claimant suggested in his claim that exposing the respondent to unlimited liability could be a breach of the respondent's insurance policies, or of its employees' contracts of employment, but he was very unspecific about this, and this was after the disclosures were made. We have decided that it is more likely that at the time this disclosure was made, the claimant believed he was pointing out something which he thought was not best practice in commercial terms, or something which was not in line with a company policy, rather than something he thought was a failure to comply with a legal obligation. For this reason, we find as a fact that the

claimant did not, at the time he made this disclosure, believe that the information he disclosed tended to show that the respondent had failed, was failing or was likely to fail to comply with any legal obligation to which it was subject.

37. There was no evidence on which we could find that the claimant believed that this disclosure of information tended to show that someone's health and safety had been, was being or was likely to be endangered, or that information relating to a relevant failure under section 43B had been, was being or was likely to be concealed.

38. We also find that the claimant did not, at the time he made this disclosure, believe that the disclosure was made in the public interest. It was a disclosure about the terms adopted by the respondent in its commercial relationships with its clients. That is not on the face of it a matter in which the public or a section of the public would have an interest, and the claimant did not explain how or why he thought this was a matter of interest to the public (or to a section of the public).

39. When the claimant made the point at the team meeting in August 2019, the rest of the team were happy to listen to his view but did not seem convinced. In a last attempt to make his point, the claimant said, in a light-hearted way and over-exaggerating for effect, "I see you're not convinced but I bet if I called our CEO now he would immediately agree how critical this is." There were some laughs in response to this comment.

40. Disclosure 1(ii): In April 2020 the claimant attended an internal training event on commercial contract terms. He raised his concerns about the respondent's standard terms again at this event. Annabelle Vos, General Counsel and Chief Compliance Officer for Fugro (the multi-national company) and Rachel Griffiths, a contract manager who was part of the respondent's legal team, were leading the training.

41. For the same reasons set out above in relation to disclosure 1(i), we do not find that the claimant believed the disclosure of information in disclosure 1(ii) to be in the public interest, or to have been a disclosure of information which tended to show a relevant failure. It was a suggestion by the claimant that the respondent should change its procedures to ensure that the terms on which it contracted with clients were more favourable for it.

42. Disclosure 1(iii): On 22 April 2020, after the training event, the claimant emailed Neville Smith, the manager of the metocean forecasting team (page 195). The claimant started by saying he was writing about 'obtaining favourable payment terms while also reducing contractual liabilities'. He explained his concerns about the 'battle of forms', identified the implications for the respondent, and suggested ways it could be addressed such as by obtaining signed agreements before service delivery. He said this would provide legal certainty and a mechanism to assist cashflow.

43. For the same reasons set out above in relation to disclosure 1(i), we do not find that the claimant believed the disclosure of information in disclosure 1(iii) to be in the public interest, or to have been a disclosure of information which tended to show a relevant failure.

44. Mr Smith replied to the claimant's email of 22 April 2020 saying, 'All good points Gordon, let's have a chat about it tomorrow?' (page 195). The claimant and Mr Smith did not get round to a discussion about this, probably because they were busy and because Mr Smith thought that the claimant's points, while worth further consideration, were not an urgent priority. The claimant did not chase this up with Mr Smith.

45. Disclosure 1(iv): On 24 April 2020 the claimant forwarded his email exchange with Mr Smith to Ms Griffiths. He set out a suggested approach to contract formation and asked Ms Griffiths for her comments (page 194). Ms Griffiths was pleased that the claimant understood and was genuinely engaged in commercial contract issues such as those discussed at the training event, but she did not reply immediately to the claimant, probably because of her workload.

46. Disclosure 1(v): On 18 May 2020 the claimant forwarded the email chain to George Grangeon, copying in Ms Griffiths (page 194). This email repeated but did not add to the email of 24 April 2020.

47. For the same reasons explained in relation to disclosure 1(i), we do not find that the claimant believed the disclosures of information in disclosures 1(iv) and 1(v) to be in the public interest, or to have been a disclosure of information which tended to show a relevant failure.

48. Ms Griffiths replied to the claimant's email of 18 May 2020 saying, "Don't worry, this is still on my list."

49. The respondent did not take any further steps to address the points raised by the claimant at that time, and the claimant did not chase them up until 27 October 2020.

Sharing of the framework agreement

50. On the evening of 19 October 2020 an incident occurred which led to a disciplinary investigation concerning the claimant's conduct.

51. The claimant and some colleagues were involved in a business discussion on Microsoft Teams. During the discussion, the claimant shared a document and uploaded it to the Teams chat (page 287). It was a framework agreement between the claimant's previous employer and one of its clients (page 218). It included a price list for services similar to those provided by the respondent. It was marked confidential.

52. One of the claimant's colleagues (a colleague with whom the claimant had a difficult working relationship) said immediately in the Teams chat that the

document was a confidential agreement and that sharing it was a breach of any confidentiality terms signed by an employee (page 287).

53. The claimant replied:

> "Quite right, strictly speaking…In practical terms though there's a balance - of zero consequence to [previous employer] who I'm 100% certain will not be spending any time seeking to hack our security systems to access our private platform to monitor if I've shared historical, pretty standard agreements with my present immediate colleagues (who I share with in confidence) regarding one of their smaller (if even present) clients. On the other hand, can really help us now to get a reliable sense of what pricing [the client] has been used to. Thus my judgment. Moreover, restrictive covenants in employee contracts are in every case time-limited and I respected my obligations to them to the letter. Indeed, I dutifully waited the period before being able to join a competitor to continue doing what I'm passionate about - metocean services for the energy industry. Hope that explains/reassures."

54. In summary, the claimant's response was that he was aware that the sharing of the document was strictly speaking a breach of confidentiality, but he had made a decision to share it because he thought the previous employer was unlikely to find out, and the information about pricing which it contained was helpful for the respondent.

55. On 20 October 2020 two of the claimant's colleagues who had been on the call spoke to Mr Smith to report their concerns about the incident. Mr Smith reported the incident to his manager, Anthony Gaffney, Metocean Director. The second complainant was the colleague with whom the claimant had a difficult working relationship.

56. On the same day, Mr Smith took steps to address the issue that had been raised with him. He removed the document from the Teams chat (page 217) and added a message to the Teams chat asking all members of the group to delete the document and to confirm to him that they had done so (page 229). He also spoke to the claimant. He reminded the claimant of the respondent's Fair Competition Policy and asked the claimant to revisit a training module on the Code of Conduct (page 224). The claimant confirmed that he had done so, and said he appreciated the reminder (page 282). We find the steps taken by Mr Smith on this day were an initial response to the concerns raised, rather than a final resolution of them.

<u>The investigation into the sharing of the agreement</u>

57. The respondent took steps to investigate the incident promptly.

58. Mr Gaffney reported the incident to the respondent's HR team. Caroline Williams, a senior HR advisor at the time, was asked to provide HR assistance (page 225). Mrs Williams spoke to Mr Gaffney. They agreed

that an investigation should be undertaken into the incident to decide whether there had been a breach of the respondent's procedures, including the Fair Competition Policy.

59. Rachel Griffiths, a contract manager, was appointed to undertake the investigation. Mrs Williams had first identified three other individuals as potential investigation managers, but when she spoke to them she found that they were already aware of the incident, and she decided that it was not appropriate to appoint a manager to conduct the investigation if they had prior knowledge of the incident (page 225).

60. On 21 October 2020 the second employee to have raised concerns with Mr Smith made a report about the sharing of the Framework Agreement via the respondent's anonymous Speak Up Procedure (page 233). The report gave details about the circumstances in which the agreement had been shared. It said that the employee had had 'run-ins' with the claimant in the past but they did not want their report to appear to be some kind of retaliation for previous poor behaviour on his part.

61. The Speak Up report was sent to the Senior Compliance Counsel for Fugro (the multi-national company) and she brought it to the attention of Ms Vos, Fugro's General Counsel and Chief Compliance Officer.

62. Ms Vos considered the report. She was concerned about what it said, as she felt the conduct described breached a number of Fugro's procedures. She spoke to members of the Corporate Integrity Committee. They agreed it would be best for HR in the UK to take the lead in investigating the incident. When Ms Vos made contact with HR in the UK, she found they were already aware of the incident and were investigating. It was agreed that the Speak Up report would be included in the UK investigation, and that once completed, the investigation findings would be reported back to the Corporate Integrity Committee.

63. On 22 October 2020 Mrs Williams gave Ms Griffiths an investigation documentation pack which included the Teams chat, a copy of the document shared by the claimant, the Speak Up report, the respondent's Code of Conduct and policies on Confidential Information and Fair Competition (page 295).

64. On 23 October 2020 Ms Griffiths had various interviews, with Mr Smith and the claimant's colleagues, about what had happened. Mrs Williams took notes (pages 330-341).

<u>The investigation meeting with the claimant</u>

65. The investigation meeting with the claimant took place on Friday 23 October 2020 on Teams.

66. The claimant was not notified about the meeting in advance or given an written invitation. This was in line with the respondent's policy which

expressly said that no notice or a written invitation was needed for an investigation meeting (page 318).

67. Mrs Williams called the claimant on Teams at 2.45pm. She said she and Ms Griffiths needed to speak to him urgently about an investigation. She declined the claimant's request to wait until Monday. Ms Griffiths joined the call. Mrs Williams' notes of the meeting are at pages 342 to 345. We find that the notes are not verbatim but are an accurate record of what was discussed, including the approach taken by the claimant.

68. At the meeting the claimant was told that the reason for the meeting was as follows:

> "On the evening of Monday 19 October 2020, a Third-Party Confidential Document was shared on a Teams Chat. It is believed that the posting of this information contravenes the Fugro Code of Conduct, the Fair Competition Policy and the Policy on Confidential Information. This meeting forms part of the fact-finding investigation to establish the series of events leading to this potential breach."

69. During the meeting the claimant was extremely apologetic about his actions. He said:

    69.1. he believed the document was harmless and he had been trying to help out a colleague;
    69.2. it was quite right that he had been told by a colleague that it was not appropriate to share the information;
    69.3. he had apologised to Mr Smith;
    69.4. he had made a wrong judgment;
    69.5. on realising he had done something wrong, he immediately issued an apology and he would also like to apologise to Ms Griffiths and Mrs Williams;
    69.6. if he found anything similar again
    69.7. it would go in the bin.

70. On Monday 26 October 2020 the claimant emailed Mrs Williams and Ms Griffiths to ask for their notes of the meeting. At 5.45pm that evening Mrs Williams sent the claimant her notes of the meeting (page 351).

71. Ms Griffiths wrote up the first draft of her report on the evening of 26 October 2020 and sent a copy of the draft to Mrs Williams on 27 October 2020 (page 232 and page 387). Mrs Williams sent some comments on the report later that day (page 397).

<u>The claimant's emails of 27 October 2020</u>

72. After the investigation meeting on Friday 23 October, the claimant sent various emails to the respondent on Tuesday 27 October 2020. Four of these emails are said by the claimant to be protected disclosures (disclosures 1(vi), 1(vii), 2 and 3).

73. Disclosure 1(vi): The claimant sent two emails at 10.42am on 27 October 2020. One was to Ms Griffiths and related to the Respondent's standard contractual terms with its clients, a subject the claimant last raised with the respondent in April/May 2020 (page 372). The claimant said that something said in a meeting the week before had reminded him of the question he had brought to the attention of Ms Griffths and Mr Smith in April. He said it was 'absolutely critical to protect the company's financial interests' because of the 'frankly terrifying' liability which had the potential 'to wipe out the company's professional negligence cover many times over, with consequent terminal risk to the company'.

74. At the same time, the claimant sent an email to Mrs Williams about the notes of the investigation meeting with Ms Griffiths (page 466). He had not opened the notes Mrs Williams had sent him. He wanted some more information about whether Ms Griffiths had also taken notes. He asked why he could not have been given prior notice of the meeting. He said that he had sent Ms Griffiths a critical email that morning regarding a red flag he raised in April in respect of the respondent's contractual risk exposure. He asked for an assurance that Ms Griffith's decision making in relation to the investigation would not be influenced by his email.

75. Later the same day Ms Griffiths replied to the claimant's email about standard contractual terms. She said that developing a format for the standard terms to protect the respondent when a client tabled the conditions was 'still on [her] list'. She suggested that 'in the meantime, if you continue to work on the principles in the attached [standard terms], then you won't go too far wrong'.

76. Disclosure 1(vii): At 1.54pm, the claimant replied to Ms Griffiths (page 371), repeating his concerns that the respondent should be taking additional steps when contracting with clients. He gave an example, to assist, attaching to his email some contractual documents generated in the course of client agreements. The documents referred to in the email were the respondent's proposal to a client, the client's purchase order accepting the proposal, and an example of a short form commercial offer/agreement document the claimant had created to address his concern.

77. For the same reasons set out above in relation to disclosure 1(i), we do not find that the claimant believed the disclosure of information in disclosures 1(vi) and 1(vii) to be in the public interest, or to have been a disclosure of information which tended to show a relevant failure. The claimant was engaged in an exchange of emails about commercial risk arising from the respondent's contractual terms with clients. We find that he did not believe in these emails that he was saying that the respondent was in breach of any legal obligation (or that he was disclosing information about danger to health and safety or concealment of any relevant failure).

78. Disclosure 2: Also on 27 October 2020 (at 1.12pm) the claimant sent an email to Ms Vos and Ms Griffiths which had the subject line: 'Protected

Disclosure pursuant to Fugro's Speak Up policy' (page 435). In the email the claimant alleged that there had been a breach of a Non-Disclosure Agreement (an NDA) between the respondent and one of its clients, Technip. The background to the allegation was that, in the course of discussions about the respondent tendering to provide services to Technip for a new project, the respondent and Technip had entered into an NDA in which the respondent agreed not to disclose information about the new project. The confidentiality obligations were to last 15 years. In his email, the claimant said that at a meeting on 28 August 2020 to consider whether to tender for the project, the respondent had provided information which was subject to the NDA to a consultant of the respondent (page 201).

79. We find that the claimant believed that the information he was giving in this email tended to show that the respondent had failed to comply with a legal obligation, namely the obligations in the NDA with Technip. We do not find that he believed that this was done in the public interest. The email was sent some two months after the alleged breach, but a few days after the investigation meeting into the allegation against the claimant. Based on this timeline, we find that the claimant made the disclosure because, in response to the allegation which had been made against him, he was looking for other examples of commercial information having been shared.

80. It is of course possible to have more than one reason for making a disclosure, but, in the claimant's case, we do not find that a belief in the public interest of the matters raised played any part in any of his disclosures on 27 October 2020. They were prompted by and focused purely on his desire to defend his own position.

81. We move forward slightly in the chronology at this point to explain the steps taken in response to the claimant's Speak Up report. The report was investigated by Ms Vos. She read the documents the claimant had provided. She was unable to open a link to a Teams conversation because she did not have the required permission. She noted that the NDA was for 15 years' duration, and that this was longer than the maximum 5 years provided for in Fugro's protocols. She noted that information about the project appeared to have been shared with a consultant without Technip's permission.

82. On 3 November 2020 Ms Vos spoke to Mr Gaffney about the report. Mr Gaffney explained that the respondent had decided not to tender for the project, and that there was also a confidentiality agreement in place between the respondent and the consultant. Ms Vos highlighted the breaches to Mr Gaffney and reminded him of the need to comply with the relevant protocol.

83. Ms Vos concluded that, while there had been a breach of Fugro's confidential information policy, it was not a material breach. She reported to her colleagues on the Corporate Integrity Committee that the complaint was partially substantiated but appropriate measures (an oral reprimand) had been taken (page 511). She recommended that the matter be closed.

84. Ms Vos updated the claimant by email on 12 November 2020 that his Speak Up complaint had been investigated and appropriate remedial action taken (page 514).

85. Disclosure 3: Returning to the emails the claimant sent on 27 October 2020, at 11.56am he sent an email to Mrs Williams and Mr Smith alleging another breach of confidentiality by the respondent (page 492). The claimant said that he had been doing some housekeeping with his emails, and had come across an email exchange in which an example of a competitor's weather forecast product had been shared. The email exchange had taken place in December 2019. The claimant said it seemed that the respondent's employees had been gathering and widely sharing competitor information to which they should not have had access, and that it was unwise to do so.

86. We find that the claimant did not believe that the information he was giving in this email tended to show that the respondent had failed to comply with a legal obligation. It is not clear what legal obligation, if any, the claimant thought was being breached here; he did not suggest any unlawful conduct, only saying that the sharing of the forecast was 'unwise'.

87. Further, for reasons similar to those in relation to disclosure 2, we do not find that the claimant believed that this was done in the public interest. The email was sent some ten months after the alleged breach, but a few days after the investigation meeting into the allegation against the claimant. We find, as strongly suggested by the timeline, that the claimant made the disclosure because he was looking for other examples of commercial information having been shared as part of his defence of the allegation which had been made against him, not because he thought the sharing of a competitor's product was a matter of public interest.

88. Mr Smith considered the claimant's email. He decided that it related to the ongoing investigation into the claimant's actions on 19 October 2020, which Mrs Williams was supporting, and he noted that she had been copied into the email. He anticipated that it would be considered further in that context. He sent a brief response to the claimant later that day in which he gave his view (page 460). He said that he thought there was a distinct difference between a widely circulated non-confidential forecast, and a commercially sensitive confidential contract.

<u>Events during 28 to 29 October 2020</u>

89. The fact-finding investigation and discussions with the claimant continued on 28 and 29 October 2020.

90. On 28 October 2020 Ms Griffiths was continuing to work on the draft investigation report. She sent an updated version to Mrs Williams at 5.27pm that evening (page 409). Ms Griffiths concluded that the claimant had shared a commercially sensitive document. She recommended that

the claimant's conduct warranted consideration of disciplinary action (page 414).

91. On 29 October 2020 at 10.35am, the claimant resent his email of 11.56am on 27 October 2020 to Mr Smith and Mrs Williams (page 461). This was the email about the circulation of the competitor's weather forecast. The claimant made further comments about this and added other recipients (Ms Griffiths, Mr Gaffney and Ms Vos).

92. Later on 29 October, at 11.49am, the claimant sent an email to Mrs Williams raising grievances about the investigation (page 474). He said the investigation should be ceased. He said that the failure to expand the scope of the investigation to identify all those who may have committed comparable breaches meant that he was being intentionally singled out or was negligent to the interests of the company. He said that Ms Griffiths was not an independent and impartial investigator, because he had suggested that her actions in relation to the respondent's standard terms had put the company at risk, and she had failed to address the concerns he had raised in April 2020.

93. Mrs Williams reported the receipt of the grievance to the respondent's HR manager for the UK. An Aberdeen-based manager was identified to conduct the grievance investigation process, supported by an HR business partner who was also based in Aberdeen. Mrs Williams and the respondent's HR manager decided that the disciplinary investigation should be placed on hold until the claimant's grievance had been dealt with.

94. On the afternoon of 29 October 2020 Mr Smith spoke to the claimant by Teams. The meeting was arranged because Mr Smith and Mr Gaffney were concerned about how the claimant might be feeling about the investigation and wanted to reassure him. The claimant recorded the discussion without telling Mr Smith that he was doing so. An extract of the transcript of the call starts at page 480.

95. In his discussion with the claimant, Mr Smith said that he had been speaking to Mr Gaffney in the background, it was purely a fact-finding mission, the aim was to try and clear things up quickly and cleanly, and put a lid on it and move on. He said that Mr Gaffney's idea of best outcome was to re-do the training, possibly have a minor slap on the wrist, and move on. Mr Smith said the claimant had his and Mr Gaffney's full support. In this conversation, Mr Smith was talking about the investigation into the claimant's conduct on 19 October, the aim of the investigation and Mr Gaffney's preferred outcome of the investigation.

96. The claimant seemed receptive to the reassurance Mr Smith was providing: he said he was delighted to hear it, he thought they were in entire agreement, and that was very sensible. However, the claimant had mis-understood the thrust of what Mr Smith was saying. The claimant thought Mr Smith was talking, not about the investigation into the

claimant's sharing of information, but about the concern which the claimant had raised with Mr Smith two days earlier in the email he had resent earlier that day (the sharing of a competitor's weather forecast by other employees). The claimant interpreted Mr Smith's comments about putting a lid on things, moving on and a minor slap on the wrist as indicating that the concern raised by the claimant about the conduct of other employees was not going to be fully investigated, while the complaint against the claimant was being investigated. We make this finding based on the claimant's later summary of this conversation in his resignation letter (page 485).

97. In the same discussion with Mr Smith, the claimant asked for some kind of assurance that he would not suffer any detriment as a result of pointing out things that he thought it was his duty to point out. He asked to see a copy of his HR record, to verify nothing had been inserted on it, and for the senior HR advisor to confirm that no actionable circumstances had been identified 'with the investigation as presently constituted and on that basis my concerns with that will have been addressed appropriately'. Mr Smith said he was not privy to details or aware of the status of the investigation, but it would come out in the wash and he was hopeful that it would be fair.

98. Again, it seems that the claimant was talking here about the concerns he had raised, while Mr Smith was talking about the investigation into the claimant's conduct.

The claimant's resignation

99. On Friday 30 October 2020 the claimant resigned. He sent an email to Ms Vos and the UK country manager in which he said that it had become necessary to submit his resignation on the basis of constructive unfair dismissal (page 485). He informed his manager Mr Smith in a separate email sent at the same time (page 484).

100. He said the final straw was the discussion with Mr Smith in which Mr Smith told him that, in relation to the policy breaches by the claimant's colleagues, Mr Gaffney was operating in the background with the intention of ensuring that his colleagues would be given a slap on the wrist, and that Mr Gaffney intended to put a lid on any possible wider investigation into a widespread culture of selectively observing confidentiality obligations. The claimant said that he could not reconcile this intended leniency in respect of breaches by others with the way he had been treated, that is what he saw as a concerted effort to ensure his removal from the company. He said it was clear that he was being treated differently and detrimentally as a consequence of having submitted a public interest disclosure.

101. The claimant's resignation email did not say whether he was resigning with or without notice (although in an email on 10 November 2020 he said his intention was to resign with immediate effect, page 516). At the preliminary hearing on 3 December 2020, EJ Gumbiti-Zimuto decided that the claimant's resignation was with immediate effect, and therefore his

termination date was 30 October 2020. EJ Gumbiti-Zimuto had to consider this issue in order to decide whether the application for interim relief had been made within the 7 day time limit.

102. The claimant invited us to decide the effective date of termination, on the basis that EJ Gumbiti-Zimuto's decision was a preliminary assessment only. We do not agree. The assessment of the merits of a complaint of automatic unfair dismissal for the purposes of an interim relief application is a summary assessment. However, in this case, EJ Gumbiti-Zimuto first had to consider whether the interim relief application had been brought in time, and to do so he had to decide the effective date of termination. He had to make a factual finding on this point. That is a judicial decision. We are not able to reopen it.[1]

103. Mr Smith was on annual leave when the claimant sent his resignation on 30 October 2020. Mr Smith saw the claimant's email about his resignation early the next day, a Saturday. Mr Smith spoke to Mr Gaffney and then emailed the claimant at 8.59am (page 505). He said the claimant's resignation was disappointing news. He said he wasn't sure where the investigation had got to but, 'everyone makes mistakes and I feel that is just what it was and therefore not something to resign over'. He ended the email asking, 'Is there anything we can do to change your mind?'.

104. Mr Smith's email was not received by the claimant until Monday morning (2 November 2020).

105. The claimant said that Mr Smith and the respondent did not really want him to remain in employment, and that Mr Smith's email asking whether they could change the claimant's mind was only sent to make things look better for the respondent in any future tribunal claim. We do not agree with this. We are satisfied that Mr Smith's offer was entirely genuine. It was consistent with his earlier attempts to reassure the claimant that the outcome of the investigation process would not be serious, and that Mr Gaffney hoped they could put it behind them and move on. The email was sent because the respondent valued the claimant as an employee, and wanted him to stay.

106. Mr Smith's email did not result in the claimant changing his mind about his resignation.

Communications after resignation

107. There was an exchange of emails between the claimant and Ms Vos after the claimant's resignation. The claimant says that his email was a protected disclosure (disclosure 4).

[1] We note, as we said at the hearing, that even if it had not already been decided, the question of whether the termination date was 30 October 2020 or 3 November 2020 as the claimant argued at the interim relief hearing has no impact on any of the issues we have to consider. It was only significant in the context of the interim relief application.

108. Disclosure 4: On 10 November 2020 the claimant sent an email to Ms Vos (page 516). The claimant said the final paragraph of the email was a protected disclosure (page 518). In that paragraph the claimant said that, in proposal documents drafted, approved and issued to clients, the respondent had relied on an expired certificate of compliance with ISO management systems standards. The claimant said that in doing so the respondent was in breach of a contractual obligation owed to the issuer of the certificate, citing section 3.1 of the provider's terms. However, the clause he included only said that a customer has the right to use the valid certificate and certification marks, as provided for by the issuer of the certificate.

109. We find that the claimant did not believe that the information he was giving in this email tended to show that the respondent had failed to comply with a legal obligation. The clause he cited in his email did not support that.

110. We do not find that the claimant believed that this disclosure was made in the public interest. We find that the claimant made the disclosure in the context of the allegation which had been made against him and because of a wish to identify other occasions on which the respondent's conduct could be criticised, not because he thought this was a matter of public interest.

111. The email of 10 November 2020 to Ms Vos also included a data subject access request by the claimant. He said:

> "I hereby also submit a subject access request in order to obtain your full records as they apply to myself. Please supply at your soonest convenience. Please also confirm if this information shall be delivered to me either digitally or physically or via both means."

112. Ms Vos replied to the claimant on 12 November 2020 (page 514).

113. In respect of the ISO compliance certificate, Ms Vos said that there was an extension to the certificate in place, and that both the main certificate and the extension certificate were available on the intranet.

114. In respect of the subject access request, Ms Vos said she would pass the request on to the relevant internal department to deal with, and that they would respond to the claimant separately.

115. Fugro's global privacy coordinator replied to the claimant on 20 November 2020 (page 522). The email said:

> "3. **How we deal with your request**
> We cannot comply with your request, as this is not sufficiently specific and therefore can be considered excessive. If you would like us to reconsider your request, please make the request more specific (e.g. to your personal data included in your personnel file) and take into account the rights of other individuals.

> We will carefully consider any new or adjusted data subject request you may choose to file and will determine whether such further request falls under the scope of Article 15 GDPR.
>
> 4. **Future requests**
> Even though we cannot comply with your current request, Fugro would like to stress that it is willing to comply with any future lawful and specific data access request that you may submit, always provided such request falls within the scope of GDPR."

116. We find that the reason the respondent did not comply with the claimant's data subject access request was because the privacy co-ordinator thought that it was not sufficiently specific. The respondent deals with all unspecific subject access requests in the same way. There was no evidence before us that Ms Vos was involved in the decision to respond in this way to the claimant's data subject access request.

117. The claimant did not respond to the email and did not make a more specific request.

The claims

118. The claimant presented his claims on 10 November 2020 and 23 January 2021.

The law

Protected disclosures

119. Section 43A of the Employment Rights Act 1996 provides that a protected disclosure is:

119.1. a 'qualifying disclosure' within section 43B;

119.2. which is made in accordance with one of six specified methods of disclosure set out in sections 43C to 43H.

120. Section 43B defines a qualifying disclosure. Sub-sections 43B(1) and (5) say:

> *"(1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—*
>
> *(a) that a criminal offence has been committed, is being committed or is likely to be committed,*
>
> *(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,*

> *(c)that a miscarriage of justice has occurred, is occurring or is likely to occur,*
>
> *(d) that the health or safety of any individual has been, is being or is likely to be endangered,*
>
> *(e) that the environment has been, is being or is likely to be damaged, or*
>
> *(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.*
>
> *…*
>
> *(5) In this Part "the relevant failure", in relation to a qualifying disclosure, means the matter falling within paragraphs (a) to (f) of subsection (1)."*

121. In summary then, a qualifying disclosure is i) a disclosure of information that ii) in the reasonable belief of the worker making it, is made in the public interest and iii) (again, in the reasonable belief of the worker making it) tends to show that one or more of six 'relevant failures' has occurred, is occurring or is likely to occur. Relevant failures include failing to comply with a legal obligation, endangering health and safety, and deliberately concealing information about another relevant failure. The claimant must have both these beliefs at the time they make their disclosure.

122. Points ii) and iii) both have two elements: that the claimant has the required belief (as a matter of fact and on a subjective basis) and, if they do, that their belief is a reasonable belief to hold (on an objective basis). The definition is concerned with what the worker believed at the time when they made the disclosure, not what they may have later come to believe (*Dodd v UK Direct Solutions Limited* at paragraph 55 [2022] EAT 44). A belief may be reasonable even if it is incorrect (*Babula v Waltham Forest College* [2007] EWCA Civ 174 CA.)

123. In *Chesterton Global Ltd v Nurmohamed* [2017] EWCA Civ 979 the Court of Appeal considered the public interest element of the definition. It held that:

> *"where the disclosure relates to a breach of the worker's own contract of employment (or some other matter under section 43B (1) where the interest in question is personal in character), there may nevertheless be features of the case that make it reasonable to regard disclosure as being in the public interest as well as in the personal interest of the worker."*

124. The court said that the question of whether a disclosure about a personal interest is also made in the public interest is one to be decided by considering all the circumstances of the case, but these might include:

> *"(a) the numbers in the group whose interests the disclosure served;*
>
> *(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…the larger or more prominent the wrongdoer (in terms of the size of its relevant community, i.e. staff, suppliers and clients), the more obviously should a disclosure about its activities engage the public interest."*

125. A disclosure of information includes a disclosure of information of which the person receiving the information is already aware (section 43L(3)).

126. To decide whether a qualifying disclosure is a protected disclosure, the method of disclosure must be considered. Section 43C says:

> *"(1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure -*
>
> *(a) to his employer, or*
>
> *(b) where the worker reasonably believes that the relevant failure relates solely or mainly to—*
>
> *(i) the conduct of a person other than his employer, or*
>
> *(ii) any other matter for which a person other than his employer has legal responsibility,*
>
> *to that other person."*

Protected disclosure detriment

127. Section 47B of the Employment Rights Act says:

> *"A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure."*

128. 'Detriment' is given a wide interpretation. It means treatment that a reasonable worker might consider to be a detriment (*Jesudason v Alder Hey Children's NHS Foundation Trust [2020] ICR 1226*).

129. The test for whether a detriment was done 'on the ground that' the worker has made a protected disclosure is set out in *Fecitt and others v NHS Manchester* [2012] IRLR 64, CA. What needs to be considered is whether the protected disclosure materially influenced (in the sense of being more than a trivial influence) the employer's treatment of the worker.

130. This may require consideration of both the conscious and subconscious motivation of the person who carried out the detrimental treatment. However, a tribunal will not have to consider in every case whether a respondent has a subconscious motivation which is materially influenced by a protected disclosure. A tribunal's findings on the conscious motivation of the relevant employees may leave no room for a finding of subconscious motivation (*Watson v Hilary Meredith Solicitors Ltd* UKEAT/0092/20/BA (V), paragraph 61-63).

131. In *Malik v Cenkos Securities Plc* UKEAT/0100/17 at paragraph 46, the EAT held that, for a detriment claim to succeed, a person who subjects a whistleblower to a detriment must personally be motivated by the protected disclosure; another person's knowledge and motivation cannot be imputed to the person responsible for the detriment. A different conclusion was reached in *Ahmed v City of Bradford Metropolitan District Council and ors* EAT 0145/14 in which the EAT held that treatment could be 'influenced' by a protected disclosure where a person who provided a negative reference was motivated by it, even though the person who acted on the reference to the worker's detriment was not.

Burden of proof in protected disclosure detriment

132. In a complaint of detriment, section 48(2) provides that it is for the employer to show the ground on which any act, or deliberate failure to act, was done. This means that the burden shifts to the employer where the other elements of a complaint of detriment are shown by the claimant.

133. Unlike the operation of the burden of proof under the Equality Act 2010, a failure by the employer to show positively the reason for an act or failure to act does not mean that the complaint of whistleblowing detriment succeeds by default. It is a question of fact for the tribunal as to whether or not the act was done 'on the ground' that the claimant made a protected disclosure (*Ibekwe v Sussex Partnership NHS Trust* UKEAT/0072/14/MC).

Automatic unfair dismissal

134. Section 103A of the Employment Rights Act says:

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

135. A dismissal which is contrary to section 103A is 'automatically' unfair. The tribunal does not need to consider whether the dismissal was reasonable in the circumstances.

136. Where, as here, the claimant has less than two years' service, the burden is on the claimant to show, on the balance of probabilities, that the reason for dismissal was an automatically unfair reason (*Smith v Hayle Town Council* 1978 ICR 996, CA).

137. The definition of dismissal which applies to section 103A includes constructive dismissal. Section 95(1)(c) provides that an employee is dismissed where:

> *"the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct."*

138. *Western Excavating (ECC) Ltd v Sharp [1978] IRLR 27* sets out the elements which must be established by the employee in constructive dismissal cases. The employee must show:

138.1. that there was a fundamental breach of contract on the part of the employer;
138.2. that the employer's breach caused the employee to resign; and
138.3. that the employee did not affirm the contract, for example by delaying too long before resigning.

139. The claimant in this case relies on breaches of the implied term of trust and confidence. This term was explained by the House of Lords in *Malik v Bank of Credit and Commerce International SA 1997 ICR 606, HL* as a term to the effect that neither party will, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee.

140. The causation question for the tribunal in relation to automatic unfair dismissal under s103A is different to that which applies in complaints of detriment under section 47B. In a complaint of automatic unfair dismissal, the tribunal must consider whether the sole or principal reason for dismissal is that the employee made a protected disclosure (*Kuzel v Roche Products Ltd* [2008] ICR 799 and *Fecitt and others v NHS Manchester*).

141. In a complaint of constructive dismissal on the ground of protected disclosures, the question is whether the protected disclosure was the sole or principal reason for the conduct which constituted the fundamental breach of contract by the employer which triggered the claimant's resignation.

142. As with complaints of detriment, when considering the reason for dismissal, the starting point is generally the motivation of the decision-maker. However, in some cases, the tribunal may need to consider the motivation of someone other than the decision-maker, in order to decide the real reason for dismissal. Where, for example, the real reason for dismissal is hidden behind an invented reason by someone other than the decision-maker, their state of mind, rather than the innocent decision-maker's state of mind, can be attributed to the employer (*Royal Mail Group Ltd v Jhuti* 2020 ICR 731, SC).

Conclusions

143. We have applied these legal principles to the facts as we have found them, to reach our decisions on the issues for determination by us. We have first considered whether the claimant made protected disclosures, then the complaints of detriment and the complaint of dismissal. Finally, we set out our reasons in respect of the naming of the respondent's client Technip.

Protected disclosures

144. We first consider whether the claimant's disclosures were qualifying disclosures. We have considered each of the disclosures in the order set out in the list of issues.

Disclosure 1

145. The claimant says he made disclosures (1(i) to 1(vi)) on seven occasions when he raised concerns about the respondent's standard contractual terms and procedures for contracting with its clients.

146. The claimant did make disclosures of information on each of these occasions. He gave the respondent information about the implications and risks of its standard offer documentation and practices. However, we have found that, at the time he made disclosures 1(i) to 1(vi), the claimant did not believe that they tended to show that there had been a failure to comply with a legal obligation, or any other relevant failure for the purposes of section 43B. We have also found that the claimant did not believe that these disclosures were made in the public interest. The concerns he was raising were about the respondent's commercial relationships with its clients, and he did not at the time believe that to be about a failure to comply with a legal obligation, or to be something which was a matter of public interest.

147. Subjective beliefs by the person making the disclosure that it tends to show a relevant failure and that it is made in the public interest are essential elements of a qualifying disclosure. As we have found that the claimant did not have the required beliefs, none of the claimant's disclosures 1(i) to 1(vi) were qualifying disclosures. They were therefore not protected disclosures.

Disclosure 2

148. Disclosure 2 was an email sent on 27 October 2020 to Ms Vos and Ms Griffiths about the respondent's breach of an NDA at a meeting on 28 August 2020.

149. There was a disclosure of information by the claimant on this occasion, and we have found that it was information which the claimant believed tended to show that there had been a breach of a legal obligation, namely a breach of the confidentiality obligations in the NDA.

150. However, we have not found that the claimant believed his disclosure was made in the public interest. We found that he made the disclosure because he was looking for other examples of commercial information having been shared, as part of his defence of the allegation which had been made against him, not because he thought any breach of the NDA was a matter of public interest.

151. As the claimant did not believe that his disclosure 2 was made in the public interest, it was not a qualifying or protected disclosure.

Disclosure 3

152. Disclosure 3 was an email sent on 27 October 2020 to Mr Smith and Mrs Williams alleging a breach of confidentiality in relation to the circulation of a competitor's weather forecast product in December 2019.

153. There was a disclosure of information by the claimant on this occasion, but we have found that it was not information which the claimant believed tended to show that there had been a failure to comply with a legal obligation or any other relevant failure.

154. Further, we have not found that the claimant believed his disclosure was made in the public interest. We found that he made the disclosure because he was looking for other examples of commercial information having been shared, as part of his defence of the allegation which had been made against him, not because he thought it was a matter of public interest.

155. As the claimant did not believe that his disclosure 3 tended to show a relevant failure or that it was made in the public interest, it was not a qualifying or protected disclosure.

Disclosure 4

156. Disclosure 4 was an email sent to Ms Vos on 10 November 2020, after the claimant's resignation. It alleged a failure to comply with the terms of an ISO standards certification scheme.

157. There was a disclosure of information by the claimant on this occasion, but we have found that it was not information which the claimant believed

tended to show that there had been a failure to comply with a legal obligation or any other relevant failure.

158. Further, we have not found that the claimant believed his disclosure was made in the public interest. We found that he made the disclosure because he was trying to identify occasions on which the respondent's conduct could be criticised, in response to the allegation which had been made against him, not because he thought it was a matter of public interest.

159. As the claimant did not believe that his disclosure 4 tended to show a failure to comply with a legal obligation or any other relevant failure, or that it was made in the public interest, it was not a qualifying or protected disclosure.

160. For these reasons, we have decided that none of the claimant's disclosures were qualifying or protected disclosures.

Protected disclosure detriment

161. As we have decided that the claimant did not make any protected disclosure, the complaint of protected disclosure detriment fails.

162. However, and in any event, none of the detrimental treatment of which the claimant complained was because of any of the disclosures he made. We have found, in relation to the alleged detriments, either that they did not take place as alleged, or that the treatment was because the claimant had shared a framework agreement from a previous employer on a Teams chat on 19 October 2020. Therefore, even if the claimant's disclosures had been protected disclosures, his complaints of protected disclosure detriment would not have succeeded.

163. In relation the alleged detriments because of disclosure 1:

    163.1. The claimant's colleagues laughed at his comment made in a team meeting because he was deliberately exaggerating for effect in a light-hearted way, not because he was making a disclosure about the respondent's contractual terms.
    163.2. The claimant complains about inaction in response to the concerns he raised. The respondent did acknowledge the claimant's concerns, but did not address them further. Mr Smith suggested that he and the claimant have a follow up chat, but they did not get round to it. Ms Griffiths was pleased to have the claimant's input, but did not make any changes to policies and procedures because she was busy. She told the claimant it was 'still on her list'. To say that any inaction was a detriment because of raising those concerns is conceptually quite difficult, as it is circular. We have not found that, because the claimant raised concerns about the respondent's commercial terms, the respondent's managers decided not to take any action or deliberately failed to take any action in respect of those concerns. The failure to take further

steps in relation to the matters raised was because the respondent did not think they were as serious as the claimant did.

163.3. Ms Griffiths did not seek or accept the role (or fail to recuse herself from the role) as investigating officer for the investigation into the claimant's sharing of the framework agreement as some sort of retaliation for the claimant having raised concerns about the respondent's commercial terms. Ms Griffiths was asked by HR to take on the role. She was only asked after three other managers had been approached. There is no evidence that Ms Griffiths sought out the role or remained in it when she should not have done.

164. The alleged detriments because of disclosure 2 are not all understandable as complaints of detriment. We return to some of these points in our conclusions on constructive dismissal. In relation to points a, b, e and d:

164.1. We have not found that the respondent failed to investigate or sought to cover up the breach of the NDA which was the subject of disclosure 2. Ms Vos investigated the allegation by reading the documents provided by the claimant and by speaking to Mr Gaffney. She concluded there had been a policy breach, but not a material one, and that it should be dealt with by an oral reprimand. She reported the matter to the Corporate Integrity Committee. In choosing to approach matters in that way, Ms Vos was not materially influenced by disclosure 2 (or any of the earlier disclosures). She took that approach because she felt it was an appropriate way to deal with the matter raised by the claimant.

164.2. The respondent's managers did not pursue the claimant's hostile removal from the company. The respondent's managers did not want the claimant to be dismissed, rather Mr Gaffney and Mr Smith tried to reassure him that any sanction was likely to be minor, and asked if there was anything they could do to keep him when he resigned. When the claimant raised concerns about the disciplinary process, the respondent decided to put the claimant's disciplinary process on hold, and to ask managers from another part of the business to investigate his grievance. That is not suggestive of a cover up or an agenda to remove the claimant from the company.

165. In relation to the detriments because of alleged disclosure 3:

165.1. We have not found that Mr Smith was determined not to investigate the sharing of a competitor's weather forecast product. He anticipated that it would be considered in the ongoing investigation into the claimant's actions on 19 October 2020.

165.2. We have not found that the investigation into the claimant was a sham or was pre-determined. There was a genuine basis for the investigation, namely the claimant's sharing of the framework agreement. Two colleagues had raised it with their manager. The agreement was marked confidential and the claimant had

accepted on the Teams chat that 'strictly speaking' it was confidential. Those were the reasons why the respondent decided to conduct an investigation. At the investigation meeting, the claimant accepted that he had made a wrong judgment and that he would not do it again; in the circumstances it was appropriate for Ms Griffiths to conclude that the claimant's conduct warranted consideration of disciplinary action. Any arguments the claimant wanted to make about whether the document really was confidential could have been considered later in the disciplinary process, if the claimant had not resigned.

165.3. We have not found that Mr Smith agreed with the claimant on 20 October 2020 that the matter had been dealt with informally and closed. The steps Mr Smith took on that day were to address the immediate requirements of the situation, not to reach a final resolution of it.

166. In relation to the detriments because of alleged disclosure 4:

166.1. The claimant says that because of his disclosure about the use of an ISO standards certificate, the respondent failed to comply with his data subject access request. We found that the reason the respondent failed to comply with the request was because the privacy coordinator considered that it was not sufficiently specific. It was a standard response. It was not because of the claimant's alleged disclosure 4.

167. We have been able to make findings of fact as to the reasons for the treatment of the claimant which he says was detrimental. We have concluded that none of the treatment was because of the claimant's disclosures. We have not found that any of the respondent's employees who were involved in the claimant's case were materially influenced in their treatment of the claimant by any of the disclosures he made, either consciously or subconsciously.

168. Therefore, even if we had found that the claimant's disclosures were qualifying and protected disclosures, we would have dismissed the claimant's complaints of protected disclosure detriment because the treatment the claimant complains of was not because any of those disclosures.

<u>Constructive unfair dismissal</u>

169. For this claim to succeed we would need to conclude that:

169.1. the claimant was constructively dismissed; and

169.2. the sole or principal reason for the respondent's fundamental breach(es) of the claimant's contract which led to his constructive dismissal was that he had made a protected disclosure.

170. As we have not found that the claimant made any protected disclosures, this claim cannot succeed. But in any event we have also concluded that the claimant was not constructively dismissed by the respondent. Rather, he resigned. We explain here our reasons for reaching that conclusion.

171. The following elements are required for a constructive dismissal to be made out:

    171.1. the respondent fundamentally breached the claimant's contract of employment (the claimant relies on breaches of the implied duty of mutual trust and confidence);
    171.2. the claimant resigned in response to the breach(es) without first affirming the contract (by delay or by other conduct).

172. The claimant relies on (i) the respondent's actions in investigating his conduct during a Microsoft Teams meeting on 19 October 2020, and (ii) the manner in which the investigation was conducted as the fundamental breaches of contract by the respondent. These were also allegations of whistleblowing detriment.

173. It was not a breach of contract for the respondent to conduct an investigation into the claimant's conduct on 19 October 2020. It was not, as the claimant alleged, an 'invention' to say that the agreement he shared was confidential. There was a genuine basis on which to consider that an investigation should be carried out. Two colleagues raised the matter with the team manager. It was not a breach of the implied term of trust and confidence for the respondent to follow up a complaint by a colleague with whom the claimant had a difficult relationship, especially as another colleague had complained about the same thing. The agreement itself was marked confidential, and the claimant's response on the Teams chat suggested that he agreed that it was confidential.

174. Further, the manner in which the investigation was conducted was not a breach of the implied term of trust and confidence. The decision to hold an investigation meeting without notice was in line with the respondent's policy. Ms Griffiths was an impartial investigator in that she did not have any knowledge of or involvement with the issue which she was investigating. Her prior contact with the claimant about the respondent's commercial terms did not make her an inappropriate person to conduct the investigation. The investigation meeting was conducted fairly and the decision reached that further action was justified was a decision which was clearly open to Ms Griffiths on the information she had. The respondent decided to put the process on hold pending the investigation of the claimant's grievance.

175. The claimant said that senior decision makers were pursuing his hostile removal to cover up the issue he had raised about the breach of the NDA. This is not supported by the evidence. The investigation was underway by the time the claimant raised the breach of the NDA, and so that could not have been the reason why the investigation was started. Mr Smith asked

the claimant if he could change his mind when he resigned. That is not consistent with the actions of an employer set on removing an employee.

176. Similarly, our factual findings do not support the suggestion by the claimant that Mr Gaffney and Mr Smith, motivated by the claimant's disclosures, were pulling the strings to influence others to carry out the conduct which breached trust and confidence and led the claimant to resign. Rather, viewed objectively, Mr Smith's conversation with the claimant on 29 October 2020, which was supported by Mr Gaffney, was conduct which was calculated to maintain trust and confidence, not to destroy or damage it.

177. Overall, the respondent's conduct in deciding to investigate the claimant and in the way in which the investigation was carried out did not breach the implied term of trust and confidence. The respondent's conduct was not conduct which viewed objectively was calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee.

178. Therefore the claimant was not constructively dismissed.

179. Even if we had found the claimant to have been constructively dismissed, the sole or principal reason for the respondent's treatment of the claimant which led him to resign was not any of the claimant's alleged protected disclosures. The reason was that the claimant had shared a framework agreement and the respondent had decided that an investigation into that conduct was required. That was the reason for the conduct which the claimant complains of, not any alleged protected disclosure.

180. If the claimant's grievance had progressed, the claimant would have had the opportunity to raise the points he made about whether the framework agreement was really confidential and about whether other breaches of confidentiality had been treated differently. The disciplinary process may have been stopped as the claimant asked in his grievance. If the disciplinary process had continued, the claimant's managers hoped and expected that the outcome would be a minor sanction, not dismissal. However, the claimant decided to resign before his points could be fully considered in the context of the grievance and disciplinary procedures.

181. As we have found that the claimant did not make any protected disclosure and was not constructively dismissed, the complaint of automatic unfair dismissal cannot succeed. That complaint fails and is dismissed.

Anonymity and naming names in reasons

182. Finally, we set out our reasons for our decision that there is no basis on which we should anonymise or omit the name of the respondent's client Technip in these reasons.

183. Technip was central to one of the claimant's alleged protected disclosures (disclosure 2). We found that the claimant believed that this disclosure

tended to show that there had been a failure to comply with a legal obligation to Technip, and this was a relevant failure for the purposes of section 43B. We were referred to the NDA itself. This was not a minor or peripheral part of the claimant's claim.

184. In closing remarks, the respondent's counsel said that the respondent's position was that it was not necessary for the tribunal to name the respondent's client in the reasons. He said that the reasons need to be sufficiently full to allow the parties to understand the reasons for the judgment, and that does not require the tribunal to set out the names of third parties.

185. This is a similar situation to that considered by the EAT in *Frewer v Google,* which also involved redaction of the names of clients of the respondent. As explained above, we drew the parties' attention to this authority on the first day of the hearing.

186. In *Frewer v Google*, HHJ Tayler explained the interplay between the legal principles relating to disclosure (in particular questions of relevance and necessity) and applications for derogation from the fundamental principle of open justice.

187. He emphasised that any order for redaction on grounds of confidentiality must be made only where necessary on an application supported by evidence having full regard to the open justice principle. Such application would usually be pursuant rule 50 of the Employment Tribunal Rules, which makes specific reference to section 10A of the Employment Tribunals Act 1996 (dealing with confidential information).

188. In relation to naming names, HHJ Tayler explained that:

    188.1. there is an additional public interest principle that usually requires the naming of those significantly involved in court proceedings (paragraphs 28 to 31 and 38); and
    188.2. there is a public interest in hearings being conducted so that the press can report names of those involved, even if the court could have done its job without the names being named, because in a strict sense the identities of the persons involved are not relevant to the issues in dispute. If the lack of relevance, in that sense, of the names of the persons involved was sufficient to grant anonymity, it could be granted in nearly all cases (paragraph 42).

189. It seems to us that the question in this case falls squarely within the principle explained in paragraph 42. It is not strictly necessary for us to name the respondent's client to explain our reasons for reaching our judgment, but focusing on whether we need to do so wrongly overlooks the public interest in open justice, which includes a requirement for naming names.

190. The principle of open justice is the starting point. Derogation from that principle is only permitted if the relevant legal tests are met, and cogent

evidence is required. The respondent did not make an application for an order under rule 50 or section 10A of the Employment Tribunals Act 1996, and we had no evidence on which we could consider such an application.

191. For these reasons, we have decided that there is no basis for us to derogate from the principle of open justice by anonymising Technip or omitting its name from our reasons.

Employment Judge Hawksworth

Date: 15 June 2023

Sent to the parties on: 20 June 2023

For the Tribunals Office