EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4110416/2021

Held in Glasgow on 22, 23, 26, 27, and 28 June 2023 with deliberations on 29 and 30 June and 6 July 2023

Employment Judge D Hoey

Members LJ Grime and M McAllister

Mr J McNeil	**Claimant** **In person**
Arnold Clark	**Respondent** **Represented by:** **Ms MacLellan – Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

1. The claimant was not unfairly constructively dismissed. He resigned.

2. The claimant was not subject to any detriment on grounds of any protected disclosures. That claim is ill founded.

3. Each of the claims is therefore dismissed.

REASONS

1. The claimant had presented an ET1 to the Tribunal, with the benefit of legal advice. The ET1 was in narrative format, claiming unfair constructive dismissal, automatic unfair constructive dismissal, whistleblowing detriment and unlawful disability discrimination and victimisation. The respondent denied all claims.

2. At a preliminary hearing on case management, at which the claimant was legally represented the discrimination and victimisation claims were

withdrawn and the remaining claims were discussed and focussed in sharp detail. In particular details as to the specific acts relied upon were set out. A Note was issued to the parties to allow any comment or adjustment to the claims that were being advanced. Neither party made any adjustment to the claims being advanced in terms of the Note.

3. By the time of the hearing the claimant was not legally represented. The respondent was represented by a solicitor. I explained to the parties how evidence is heard and the importance of ensuring relevant evidence is provided to the Tribunal. The claimant was an articulate and intelligent person and he was able to ask relevant questions (and make submissions) as the case proceeded. I assisted the claimant by ensuring relevant questions were put to the witnesses and that each of the points in the claimants case was put to the relevant witness.

Case management

4. The parties had worked together to focus the issues in dispute and had provided a statement of agreed facts and a list of issues. It appeared to me at the commencement of the case that a larger number of the facts in this case ought to be capable of being agreed. The issues arising in the main were not in dispute, with certain key matters not being agreed. Both parties had initially sought to lead a large number of witnesses but that appeared to relate to matters that could be agreed between the parties. The parties agreed therefore to spend the first day (of the five day hearing) working together to set out what facts were agreed and what facts were in dispute, that covering each of the facts necessary to determine each of the claims. The parties were working on finalising the list of issues that required to be determined, thereby making it clear for the parties what the key facts were.

5. The parties worked together to assist the Tribunal in achieving the overriding objective, in dealing with matters justly and fairly taking account of the issues, cost and proportionality. The parties were able to carefully focus the legal issues in light of the claims the claimant wished to advance and the facts agreed and in dispute.

6. As a result, the hearing was able to proceed expeditiously in accordance with the overriding objective and conclude within the allocated time.

7. I ensured the claimant was given sufficient time to prepare questions for each witness and if further time was needed he was given it.

8. Following conclusion of the evidence, on day 4, upon asking if either party wished to raise anything, the claimant had said that having spoken to a relative (who was present at the first two days of the hearing) he felt the respondent's agent had unfairly not told him that Mr Green would be giving evidence on day 3 and not day 4. While that was the position that had been noted at the outset of the case, during the case management discussion, it was noted that the parties would have to work together given the large number of issues and ensure the hearing would be concluded within the allocated time. It was important the parties worked together to progress matters expeditiously.

9. On day 3 when the respondent indicated that it intended to lead Mr Green a discussion took place with the claimant and he was given time to reflect how he wished to proceed. He agreed that Mr Green's evidence in chief would be heard and the claimant would decide how he wished to proceed thereafter. The claimant was advised that, if needed, his cross examination could commence the following day. Following examination in chief the claimant confirmed that he was happy to proceed with his questions of Mr Green and did so comprehensively.

10. The claimant was able to put the key parts of his case to Mr Green and asked a large number of questions, assisted by the Tribunal. Following conclusion of his questions the claimant confirmed that he was satisfied he had asked the questions he wished to raise and he did not require further time. (He had been given time over an extended lunch to ensure his questions were prepared). Given the claimant was comfortable proceeding and that he had put they key parts of his case to the witness, Mr Green was re-examined and he concluded his evidence on day 3. Given Mr Green was an important

witness, it was likely that the claimant knew the key issues arising and he was able to ask the relevant questions.

11. The claimant accepted on day 4 that he had been able to put the key questions to Mr Green but would have preferred greater notice from the respondent of the decision to lead him on day 3 and not day 4. At the submissions stage on day 5 the claimant accepted that no action was needed as he had put the key parts of his case to Mr Green and the other matters which would have arisen would have been background matters.

Issues to be determined

12. The parties had agreed the issues to be determined in this case following lengthy discussion with the issues being finessed during the hearing, including at the submissions stage where the claimant withdrew some aspects of his case (the first protected disclosure and the 3 detriments related to that and one detriment that pre-dated a disclosure), his accepting there was no factual basis to support those matters, having heard the evidence of the respondent and having accepted the detriment occurred before the disclosure (and as such the disclosure could not have influenced the detriment). The parties agreed that the outstanding issues the Tribunal requires to determine are as follows:

Protected disclosure

13. Did the claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996? The claimant says that he made disclosure on these occasions:

    a. 20 October 2020 and 23 November 2020 in emails to 'Ask the Boss'. He says he disclosed information that the Respondent was not following COVID procedures by failing to inform those in proximity to isolate and stay away from work, namely: The alleged protected disclosure on 20 October 2020 was “the colleague was also in close contact with other staff members including management who it appears have not had to self isolate.” The alleged protected disclosure

on 23 November 2020 was “then again was that said to cover up the fact 1 person in his office hasn’t self isolated despite sharing a office almost all day with 2 colleagues who have tested positive.”

b. December 2020 to Ms Henderson. He says he disclosed information that the respondent was not following COVID procedures by failing to inform those in proximity to isolate and stay away from work.

c. February 2021 to Ms Corrigan in a grievance. He says he disclosed information that the Respondent was not following COVID procedures by failing to inform those in proximity to isolate and stay away from work.

14. Did he disclose information?

15. Did he believe the disclosure of information was made in the public interest?

16. Was that belief reasonable?

17. Did he believe the disclosures tended to show that a person had failed, was failing or was likely to fail to comply with any legal obligation and/or the health or safety of any individual had been, was being or was likely to be endangered?

18. Was that belief reasonable?

19. If the claimant made a qualifying disclosure, it was a protected disclosure because it was made to the claimant's employer.

Detriment under section 48, Employment Rights Act 1996

20. Did the respondent do the following things:

a. Transfer the claimant to another department;

b. Refuse holidays and refuse to allow the claimant to leave for a doctor’s appointment in January 2021;

c. Falsely accuse the claimant of reporting matter to Safety Support.

21. By doing so, did it subject the claimant to detriment?

22. If so, was it done on the ground that he made a protected disclosure?

Unfair constructive dismissal (and automatically unfair constructive dismissal)

23. Was the claimant dismissed?

24. Did the respondent do the following things:

    a. Fail to report an accident (March 2019);

    b. Deny the claimant time off to consult a physiotherapist;

    c. Fail to give proper consideration of his points at the mediation;

    d. Poor treatment from Mr Green (specifically ignoring the claimant and not giving him the time of day);

    e. Transfer the claimant to another department;

    f. Refusing holidays and to allow the claimant to leave for a doctor's appointment in January 2021;

    g. Falsely accuse the claimant of reporting matter to the Safety Support?

25. Did that breach the implied term of trust and confidence?

26. Was the breach a fundamental one (with (g) being the final straw)?

27. Did the claimant resign in response to the breach?

28. Did the claimant affirm the contract before resigning?

29. What was the reason for the breach of contract?

30. Was the reason or principal reason for dismissal that the claimant made a protected disclosure (such that the dismissal would be automatically unfair)?

Remedy

31. What financial losses has the detrimental treatment caused the claimant?

32. Has the claimant taken reasonable steps to replace their lost earnings?

33. What, if any, award should be made?

Evidence

34. The parties had agreed the productions running to 363 pages with a separate remedy bundle running to 93 pages.

35. The Tribunal heard evidence from the claimant, Ms Crumlish (HR adviser), Ms Kelly (HR adviser), Ms Henderson (Senior HR adviser), Ms Corrigan (HR adviser) and Mr Green (Group Transport Manager). The Tribunal assisted the claimant to ensure witnesses were each asked appropriate questions and that the overriding objective was achieved.

Facts

36. The Tribunal is able to make the following findings of fact which it has done from the evidence submitted to it, both orally and in writing. The Tribunal only makes findings that are necessary to determine the issues before it (and not in relation to all disputes that arose nor in relation to all the evidence led before the Tribunal). The majority of the facts were not ultimately in dispute and the Tribunal was able to draw on the statement of agreed facts. The Tribunal was able to reach its decision from the evidence presented determining what was more likely than not to have occurred.

Background

37. The respondent is an automotive retailer operating more than 200 branches throughout the UK. The respondent employs approximately 10,000 members of staff.

The claimant's employment

38. The claimant commenced employment with the respondent on 25 October 2010. The claimant was employed as a Plate Driver and was based at the Hamilton Road branch.

39. The claimant worked as part of a team who drove the respondent's vehicles between its branches and sites. The claimant was managed by a planner. Mr Green was Group Transport Manager who was ultimately responsible for the team in which the claimant worked. Mr Green was responsible for around 300 staff, managing 10 depots. There is a team of planners who manage drivers and allocate tasks and day to day matters.

40. Mr Green was primarily office based (albeit he would be on the road at times). The claimant spent the majority of his time driving vehicles. He would be in the office occasionally (in a different section of the office from where Mr Green was based). Mr Green would occasionally see the drivers in the office (including the claimant) and acknowledge them.

March 2019 accident

41. The claimant was involved in a collision whilst on site at the respondent's Armadale branch in March 2019. The stationary van the claimant was sitting in was struck by another vehicle which was being driven by another employee of the respondent. Only minor damage was caused to the vehicles and the claimant believed he had sustained a whiplash injury,.

42. Both the claimant and the driver of the other vehicle completed a Motor Accident Report Form and submitted these to the respondent some time following the accident upon request. The claimant was given a full opportunity to set out the precise circumstances of the incident, including those at fault, any injuries and anything else he wished to include. While the claimant would have preferred a one to one discussion about the incident, he was given the chance to put his full position forward.

Grievance and mediation

43. On or around September 2019 the claimant raised a grievance. He was unhappy about treatment at work following accidents he had been involved in. He maintained that Mr Green had not spoken to him or asked about him.

44. The respondent gave the claimant the opportunity to deal with matters via a workplace mediation. The claimant attended the mediation as did Mr Green,

head of transport (who was responsible for the transport department, of which the claimant's team formed a small part).

45. The mediation provided the claimant with a chance to explore the issues of concern to him with Mr Green also being given the chance to explain his position. While there remained matters of disagreement (such as the relevance of a doctor's letter the claimant had taken to the mediation), an agreed resolution was reached as stated in the mediation outcome letter which noted that the claimant could (and should) approach Mr Green or his manager if he wished to raise any concerns.

46. While the outcome letter had stated that matters were to be investigated, Mr Green did not see the letter and the parties were both unclear what, if anything, was outstanding that required to be investigated. That passage may have been included in the letter in error or was something of little significance. It was not anything that was important enough for the claimant to pursue as the claimant could not recall any outstanding matters and did not raise anything further following the mediation about outstanding issues.

47. Mr Green led the Transport Department and held a senior role responsible for many staff. Mr Green had no issue or ill feeling towards the claimant and treated the claimant as he did his other colleagues. Mr Green was surprised to have been invited to the mediation. He had not seen the claimant's grievance and he had understood that his relationship with the claimant was the same as his relationship with the other drivers, which was professional and courteous. While he would not see them often, he acknowledged them in passing. Mr Green did not understand the claimant's concern that Mr Green was not engaging with him, since on the infrequent occasions Mr Green saw the claimant (as with other drivers) he would engage with him.

48. Mr Green believed the mediation had gone well and the parties would continue to communicate and if any issues arose the claimant would raise them. The claimant did not take the matters he had raised any further.

Incident on 11 February 2020

49. On 11 February 2020, the claimant reported to his manager that he had been physically assaulted by a colleague, when they had both been carrying out a job in Ayrshire. Both individuals were suspended to allow an investigation to take place. The claimant's colleague alleged that it was the claimant who had assaulted him. Written statements were taken from the claimant, his colleague and Mr Green.

50. A disciplinary hearing was held on 21 February 2020 and adjourned for further investigations.

51. The outcome was that both individuals were found to be at fault and it was not possible from the information within the respondent's control to find one party solely to blame. Both parties received a final written warning.

52. The claimant appealed against the outcome and a hearing took place. The appeal outcome was confirmed to the claimant by letter dated 25 June 2020 dismissing his appeal.

53. The conclusion reached during the disciplinary process was that given the altercation that had taken place, it would not be in the interests of either employee to be within the same team within the Transport Department. There were a number of teams within the Department. Each employee within the team did the same job (drove cars from location to location) but had different managers and would not require to share a car with employees from the other teams.

54. Mr Green decided that the claimant would move to another team. This was not a sanction nor a punishment but a decision he took. There was no specific reason why the claimant was chosen and it was equally likely that his colleague could have been selected. The choice was made entirely at random. None of the disclosures the claimant had made was in any sense a reason for or influence of the decision. It was for both individuals' benefit that both would not be in the same team to allow them to get on with their work without having the potential of being in a vehicle together.

55. The claimant's take home pay slightly increased in his new team as the team bonus was dependent upon performance of the team. As the team performance had improved the bonus was paid.

56. In his original team the claimant had been a hard worker and had been keen to do as much overtime as possible. If time was needed to deal with personal issues, that would be given (irrespective of the team in which the individual worked).

57. The job title, salary and official hours did not change. Broadly speaking the start and end time was the same. The key difference was the type of journeys that were undertaken, with the new team usually involving longer (but fewer) journeys each day.

Mr Green contracts COVID

58. On or around October 2020 Mr Green (as with other individuals) contracted COVID. As soon as he felt unwell he did not attend the office and isolated at home (in a room away from his family).

59. Mr Green was tested. The result was delayed but when received the test result was positive. The respondent's policies mirrored the Government and NHS guidance. Mr Green spoke with the relevant NHS team member and answered questions as to those with whom he had been in contact, how the office was structured and his day to day activities within the period prior to testing positive. Mr Green followed the advice he was given (and the respondent's policies) and the relevant NHS team contacted those whom they considered necessary as deemed close contacts of Mr Green.

Ask the Boss email – 20 October 2020

60. On 20 October 2020 the claimant sent an email to the Managing Director through the Ask the Boss medium (an electronic way to communicate with the head of the company to raise concerns or issues). He stated:

61. "…I and a few of the team were sent home from work last Wednesday due to a colleague testing positive for covid. I've been told to use my holidays so that

I can get paid. I didn't think this was correct as it was my line manager that sent me home. I've been advised by track and trace to self isolate. I was told I should be getting paid without using holidays. Can you please advise.

Can you help with another query please. I have an email from my line manager stating that car sharing in work was ok. He has stated there is no limit on how many can be in a car as long as we are wearing face masks and the windows are down. I wouldn't be comfortable to be in the back of a car with 2 other people. I have taken advice on this and was told this is breaking the law! Would you kindly confirm this either way.

As you can gather I'm concerned that with the current situation the compound may not be adhering to covid rules and I'm concerned for any repercussions to the respondent.

I know for a fact a lot of the drivers aren't happy with office staff not social distancing and quite often not adhering to the 1 way system. I was sent home as I was in a car with the colleague that tested positive and from what I understand the colleague was also in close contact with other staff including management who appears have not had to self isolate. I am deeply sorry for having to contact you at this time as I'm sure you must have enough on your plate but I am only looking after myself, my family and my livelihood.

I look forward to hearing from you in regard to my issues regarding holidays and car sharing."

62. The context and purpose of the email was the claimant's private concern about the working environment upon his own health and position (and how it could potentially impact upon his son who was unwell). The communication was not connected with any third party.

Ask the Boss email – 23 November 2020

63. The claimant sent a second Ask the Boss email on 23 November. In it he said:

64. "Sorry again for having to contact you under the current circumstances as you are probably working 24 7 to keep things moving. I know you said you will get

back to me asap when my issues have been investigated and resolved but I have been advised to see if you have any feedback. Unfortunately things have changed dramatically for me. Since my last email my son had to have major surgery… While my son was in hospital I was still being harassed by certain managers for allegedly doing wrong. I did nothing wrong.

I have been holding back this email for weeks but the seriousness of my complaint is always on my mind. While at work just over 3 weeks ago word has spread about Mr Green having COVID. On my return to the compound I asked to speak to Mr Hutchison in regards when Mr Green had been tested positive. My reason was my son was due to have an operation and I was terrified in case I had caught COVID and passed it to my son before he was admitted to hospital. I thought it was a reasonable request as I was in the office earlier in the week. At first I was told it was nothing to do with me then I was given information that proved to be false.

While I was out working I was told my son might have COVID. To make matters worse I found Mr Clark had COVID and there was 2 managers from the same office, the same office I was in previously that week. On my return that day I wanted to know if there was any other information I could get to put myself at ease, ie had the office been deep cleaned. I was refused. On 16 November I asked to speak to Mr Green and Mr Hutchison. I stated over the last 2 years I had been constantly harassed bullied as well has having plates smashed in my face yet I am always in the wrong. I said any personal vendetta must stop. He basically said things in the past are finished and we will move on. To be honest I don't think so as he has shown no sympathy to me or my son.

Mr Green stated he was maybe too hasty in sending me home when a colleague caught COVID. If the rules state I must self isolate I must do that but that was said to cover up the fact 1 person in the office hasn't self isolated despite sharing an office almost all day with 2 colleagues who have tested positive.

I have also been told I must solely apply for holidays through Mr Green. Noone else has to.

As previously stated I have done absolutely nothing wrong and if only certain individuals take responsibility for their actions and some cases lack of action.

I emailed data protection in March for information from my files. I keep getting the same response until I mentioned ICO taking care of my complaint. My data was there the following day except a meeting with HR and Mr Green regards a grievance. I was told the minutes had been binned.

I am really sorry bothering you like this but I have put it off as long as I could. I have sent a couple of photos to show you as to show you the reason for my concerns."

65. The purpose and context of this email was the same as his initial email, the claimant's sole concern being bout his personal position and impact upon his son.

Knowledge of Ask the Boss emails

66. Mr Green had never seen any of the claimant's Ask the Boss emails and was unaware they had ben sent. At no stage had the emails (nor their existence or content) been communicated to Mr Green.

Discussion with Ms Henderson (December 2020)

67. On or around 27 November 2020 the claimant had a discussion with Ms Henderson, an HR officer, discussing issues he was encountering at work. The claimant explained health issues pertaining to his family and that he was unhappy the respondent had not given him information as to when Mr Green had tested positive as he was worried the claimant had passed COVID to his son as a result of entering Mr Green's office. The claimant explained that he was unhappy with how Mr Green had been treating him and believed that he was being bullied and harassed,

68. The claimant had said to Ms Henderson that he believed the respondent was not following COVID procedures by failing to inform those in proximity to

isolate and stay away from work. This issue related to his previous concerns about the potential for the claimant to contract covid and pass to his son.

69. Ms Henderson had not discussed the content of her email correspondence with the claimant (nor his discussions with her) (which took place in November and December 2020) with anyone outside the respondent's People Team. Mr Green was unaware of the discussions.

Holidays and doctor's appointment in January 2021

70. Holiday requests are submitted on an electronic system and only a specific number of drivers can have the same days off as annual leave.

71. The claimant had applied to his manager, in the usual way, for a holiday. This could not be accommodated by the respondent. Mr Green spoke to the claimant about this. It was too late for the claimant to take the holiday he wished as he only raised it with Mr Green on the day he wished to take the holiday and at the end of the day.

72. Mr Green had explained to the claimant that although there are limits for drivers taking holidays (given the way the department was structured) if the limit had been reached and a holiday was sought, staff were welcome to speak to Mr Green directly. It was often possible for Mr Green to arrange other cover to allow a holiday to be taken even if the normal tolerance level was breached. The claimant understood that he had been told he was to speak with Mr Green about holidays but he had in fact been told he was only to contact Mr Green if his holiday was not approved due to other holidays being taken. Mr Green had explained to the claimant that holidays were to be sought in the usual way and contact only need be made with Mr Green if the request was refused, and he would see if the request could still be accommodated. This was how all staff were treated. The claimant considered (incorrectly) that he was being treated differently.

73. During this day Mr Green also spoke with the claimant generally. Mr Green explained that if the claimant had any issues he could speak with him

74. At no stage did Mr Green refuse the claimant time off work for holidays or doctor's or physiotherapy appointments. While the claimant may have perceived Mr Green to have done so, in fact Mr Green was supportive of the claimant (as was the respondent generally) and any time off that was sought, was accommodated where possible.

Safety support accusation claimant submitted anonymous communication

75. On or around January 2021 members of staff within the respondent's admin department had a private discussion at work commenting as to who may have sent an email to Safety Support complaining about failures to follow COVID guidelines. The claimant did not hear the discussion (which was a private discussion amongst colleagues). The colleagues had hypothecated as to who it was who had made the complaint. 3 names were mentioned. The claimant learned around January 2021 that he was one of the names mentioned (albeit he had not witnessed the matter and was not present when it was discussed at the time). He believes he was told this by a manager.

76. The claimant had raised this discussion during his grievance which was subsequently investigated by Ms Corrigan in February 2021. The grievance outcome letter said that gossiping would not be tolerated within the workplace. It is agreed that the matter was addressed internally.

77. Mr Green met with those involved who admitted to having a discussion. The discussion had been a private discussion amongst colleagues. It had been taken out of context. Those who had the discussion had not been aware of any of the claimant's emails to Ask the Boss nor his discussion with Ms Henderson (or Ms Corrigan, below).

Reason for resignation

78. It was the knowing that staff had been suggesting it was the claimant who had made the communication that led the claimant to resign. The claimant did not like the fact that he had been suggested as the author of the communication and for him that was the final straw. Although he had not resigned immediately he had decided that he could no longer work in an environment

where such matter occurred and when he ultimately resigned, this was the last straw that had led him to do so.

79. He did not, however, resign immediately. Instead he remain in post for around another month, deciding what to do and reflecting upon matters.

Grievance and issues February 2021

80. Although he had decided to leave his employment around January/February 2021 time, in February 2021 the claimant lodged a grievance. In it he stated that he had been sent to a wrong location which resulted in time being wasted. The claimant had been told by a colleague who was present that a manager had shouted at him at the length of time it had taken. An issue arose as to a scratch on the vehicle. The claimant said his manager began to complain about previous jobs and alleging the claimant was not truthful. The claimant believed his manager was bullying him and others and was not accepting it. The matter was investigated by Ms Corrigan and a hearing took place and outcome sent to the claimant.

81. The claimant had advised Ms Corrigan that he did not feel comfortable with employees in the department failing to follow COVID 19 guidance and social distancing. The claimant was advised that issues had been dealt with via the safety support team and if the claimant had any concerns he was to raise them with his manager. The discussions the claimant had with Ms Corrigan had not been disclosed to any other party.

82. The grievance outcome was confirmed to the claimant by letter dated 3 March 2021. His grievance was not upheld. He was given the right to appeal but chose not to do so.

Colleague checks up on claimant

83. On or around February 2021 a planner had asked one of the claimant's colleagues to check how long the claimant had taken to do a task. Mr Green was advised of the situation and he spoke to those involved. It had been a one off incident and was an exercise of poor judgment. The individual was

told that the behaviour was not acceptable (as was the claimant) and that an apology was to be issued to the claimant. The matter was addressed.

Claimant's employment ends – March and April 2021

84. The claimant resigned (with notice) from his employment by letter dated 1 March 2021 which stated he had chosen to resign. The claimant gave no reasons for his resignation

85. The claimant was on sickness absence at the time he submitted his resignation. He remained on sickness absence during his notice period and did not return to work prior to his employment ending on 31 March 2021.

Other roles the claimant secures

86. The claimant's gross basic salary per annum was £18,454.80 at the time his employment terminated. He had not applied for any relevant benefits following his employment ending.

87. The claimant had applied for a job in advance of his employment ending and was actively seeking other roles whilst in the respondent's employment. The claimant had learned that an application he had made some time prior to his resignation was being actively progressed, such that disclosure checks were being made. It was more likely than not that the claimant had been told his application had been successful prior to the claimant issuing his written resignation. The claimant commenced the new role almost immediately following the end of his notice period expiring.

88. The claimant was employed with his new employer from April 2021 for around 5.5 months on 30 hours per week. The claimant left that role as the income he received was less than that he secured from the respondent and he wanted a role that provided comparable money.

89. The claimant secured a new role with the NHS from September 2021 on a three month rolling contract on 36 hours per week. The salary banding was between £19,609 to £21,615. The claimant chose to leave that role because

he believed his hours would be reduced to 22 hours per week from June 2022 which would yield lesser sums than that he had enjoyed with the respondent.

90. The claimant secured another role in April 2022 for around three weeks which he chose to leave as he believed the working conditions were prohibitive.

91. The claimant was employed via an agency from June 2022, for around nine months. The claimant choose to leave because he was not guaranteed working hours and the Claimant has been unemployed since April 2023.

Observations on the evidence

92. Each of the witnesses sought to recollect matters to the best of their abilities. The passage of time had affected some passages in evidence. An example of this was Ms McCrumlish and her recollection as to who was present at the mediation, over a year ago.

93. The Tribunal found the respondent's witnesses were clear and cogent. Mr Green in particular was candid and fair in his approach. He accepted, fairly, when the respondent could have improved their position and response.

94. The Tribunal was not, however, similarly satisfied with the claimant's approach in evidence. While the claimant undoubtedly did his best to recall matters, the Tribunal found that on many occasions the claimant viewed matters entirely subjectively. In other words there were a number of occasions where the claimant was unable to accept the objective position, even although the matter had been set out in writing. An example was in relation to the claimant being absolutely clear he had not received slightly more money when he had been transferred into the new team. His payslips clearly showed this to be correct but this was not something the claimant was initially prepared to accept. The claimant was also initially not prepared to accept that disclosures that had occurred after specific treatment could not have caused (or been a factor) in the treatment. The claimant was absolutely clear in his belief that the respondent was seeking to treat him adversely, despite, objectively viewed, the respondent's attempts to work with the claimant (and other staff)

in an accommodating fashion. While that may have been the claimant's view and belief, it was misplaced.

95. The claimant was unable to concede points that ought fairly to have been conceded. As noted above the claimant clearly put to Mr Green that he had not received a bonus in the transferred team. However, when Mr Green was taken to the payslips clearly showing the claimant had received the £50, the claimant initially maintained his position and then subsequently suggested that he was not sure he had received the sum and then ultimately (the following day during submissions) said it was likely that the payslips were correct and he had been unable to recollect this. That was, however, despite clearly putting the contrary position to Mr Green.

96. During the submissions stage the claimant eventually accepted that Mr Green had not been mistaken and had properly and candidly set the position out.

97. Another example was the claimant's suggestion that Mr Green had not engaged with him and had essentially ignored him. However, upon the claimant's own evidence Mr Green had spoken to the claimant directly about holiday entitlement and had a discussion with the claimant which ended with Mr Green telling the claimant that Mr Green was always around if the claimant needed to discuss anything. Mr Green also chose to attend the voluntary mediation and had fully engaged with it.

98. When this was put to the claimant during submissions, the claimant suggested that if Mr Green had been telling the truth when giving evidence Mr Green would have been speaking to all staff. However, there was no evidence Mr Green had not in fact spoken to all staff and he had spoken with the claimant. The claimant maintained his position despite having heard Mr Green set out his response, which flatly contradicted the claimant's position.

99. The difficulty with this case was that the claimant had developed an understanding and firm belief that the respondent and in particular Mr Green had developed a dislike of the claimant. The claimant sought to interpret what occurred through that view and he viewed any interaction with the respondent in a negative light. This was most notable in the claimant's assertions that the

disclosures he relied upon had led to the detriments set out. The claimant candidly accepted, after some time, following the evidence that for some of the detriments there was no evidence to support the claim and those were withdrawn. The claimant had, however, never had any such evidence and he had always assumed that the disclosures "must have" been a reason for the treatment. On at least 2 occasions that was despite the detriments occurring before the disclosures had taken place. It was therefore impossible for the disclosures to have been in any way connected to such disclosures. Despite that, it was not until the submissions stage following discussion and putting these points to the claimant that he accepted the position. Despite the clear evidence of the respondent's witnesses that they had not known of the disclosures (which could not therefore have influenced the treatment) the claimant maintained that his disclosures must still have been the reason for the treatment, due to his belief that the respondent sought to treat him in a negative way without, in the claimant's view, any justification.

100. It was regrettable that the claimant had chosen to interpret the actions of his colleagues and managers in this way since it resulted in the claimant leaving his employment. Had matters been viewed objectively, which is challenging in a workplace environment, the claimant may well have retained a role that he clearly enjoyed.

101. With regard to conflicts in evidence, one dispute related to discussions Mr Green had with the claimant as to his holiday entitlement. The claimant believed he had been told he was to seek Mr Green's approval for holidays whereas other staff were not. The Tribunal did not find that credible and preferred the evidence of Mr Green. Mr Green explained to the claimant that where the level of tolerance had been reached such that a holiday could not be accommodated it was sometimes possible to find a way around this, often by redeploying other staff. For those reasons staff (and not just the claimant) could ask Mr Green who could ascertain the position (if the holiday request was being refused, using the electronic request method via planners). It was more likely than not that this was the case. It was not credible that the claimant had a different approach to holiday approval in contrast to all over staff given

the number of staff involved, the electronic process for holiday requests and the nature of the organisation. Mr Green's position in evidence was clear and more likely than not to be the position and the Tribunal accepted it.

102. The Tribunal did not accept the claimant's assertion that Mr Green had kicked the door shut during a meeting. Mr Green's evidence that the door could not be kicked shut as it had a safety closure mechanism had not been challenged and the Tribunal accepted his evidence. The claimant had also accepted that at the same time Mr Green had advised the claimant that he should speak to him if he had any concerns. In other words, during the discussion Mr Green was being empathetic and seeking to accommodate the claimant and consider his welfare and offer support. The evidence of Mr Green as to that discussion was preferable to that believed by the claimant and more likely than not to have been the position and the Tribunal accepted it.

103. The claimant accepted Mr Green's evidence that at no stage did he refuse the claimant time off for physiotherapy or doctor's appointments. The claimant accepted in fact he had not missed any such appointments but believed that Mr Green was acting as a block to his attendance at such appointments. He also believed that a colleague had told him Mr Green had instructed that blockers be put in the way of the claimant. The Tribunal carefully considered the evidence of the claimant and that of Mr Green. The Tribunal found Mr Green's position to be more likely than not to be the case. The claimant had interpreted the actions of Mr Green in a negative way. For example he was of the view that Mr Green would not "give him the time of day" nor speak to him. In fact Mr Green on a number of occasions had gone out of his way to engage with the claimant and on the claimant's own evidence had specifically told the claimant that he should be approached if the claimant wished to discuss anything (in a compassionate way). The claimant was also unable to be specific as to the particular occasions when this happened and what precisely had happened. Mr Green was clear and consistent in his approach. Mr Green would also accept in his evidence when he could have done things better and was prepared to concede points fairly put to him. That contrasted starkly with the claimant's position whereby he would not accept the position despite clear

evidence (such as his pay slips clearly showing his receiving £50 bonus which the claimant initially denied).

104. Having considered the evidence as a whole, the Tribunal chose to prefer Mr Green's evidence where it conflicted with the claimant's evidence.

Relevant Law

Protected disclosures

105. Section 43A of the Employment Rights Act 1996 provides: "In this Act a 'protected disclosure' means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H."

106. A qualifying disclosure is defined in section 43B as "any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following:

    a. That a criminal offence has been committed, is being committed or is likely to be committed;

    b. That a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject;

    c. That a miscarriage of justice has occurred, is occurring or is likely to occur;

    d. That the health or safety of any individual has been, is being or is likely to be endangered;

    e. That the environment has been, is being or is likely to be damaged; or

    f. That information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed."

107. Section 43A states that a protected disclosure is one which is made in accordance with any of sections 43C to 43H.

108. Section 43C states that: '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...."

109. In *Williams v Michelle Brown AM* UKEAT/0044/19, HHJ Auerbach summarised the position as follows: "It is worth restating, as the authorities have done many times, that this definition breaks down into a number of elements. First, there must be a disclosure of information. Secondly, the worker must believe that the disclosure is made in the public interest. Thirdly, if the worker does hold such a belief, it must be reasonably held. Fourthly, the worker must believe that the disclosure tends to show one or more of the matters listed in sub-paragraphs (a) to (f). Fifthly, if the worker does hold such a belief, it must be reasonably held. Unless all five conditions are satisfied there will not be a qualifying disclosure.'

110. In *Kilraine v London Borough of Wandsworth* [2018] EWCA Civ 1436, at paragraphs 35 and 36, the Court of Appeal set out guidance on whether a particular statement should be regarded as a qualifying disclosure: "35. The question in each case in relation to section 43B(1) (as it stood prior to amendment in 2013) is whether a particular statement or disclosure is a 'disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the matters set out in subparagraphs (a) to (f).' Grammatically, the word 'information' has to be read with the qualifying phrase 'which tends to show [etc]' (as, for example, in the present case, information which tends to show 'that a person has failed or is likely to fail to comply with any legal obligation to which he is subject'). In order for a statement or disclosure to be a qualifying disclosure according to this language, it has to have a sufficient factual content and specificity such as is capable of tending to show one of the matters listed in subsection (1)."

"36. Whether an identified statement or disclosure in any particular case does meet that standard will be a matter for evaluative judgment by a tribunal in light of all the facts of the case. It is a question which is likely to be closely aligned with the other requirement set out in section 43B(1), namely that the worker making the disclosure should have the reasonable belief that the information he discloses does tend to show one of the listed matters. As explained by Underhill J in *Chesterton Global* at [8], this has both a subjective and an objective element. If the worker subjectively believes that the information he discloses does tend to show one of the listed matters, and the statement or disclosure he makes has a sufficient factual content and specificity such that it is capable of tending to show that listed matter, it is likely that his belief will be a reasonable belief."

111. In *Simpson v Cantor Fitzgerald Europe* [2020] ICR 236, the Employment Appeal Tribunal confirmed these principles, stating: '43...As the Court of Appeal in *Kilraine v Wandsworth London Borough Council* [2018] ICR 1850 made abundantly clear, in order for a statement or disclosure to be a qualifying disclosure, it has to have sufficient factual content and specificity such as is capable of tending to show breach of a legal obligation.

112. The Tribunal is thus bound to consider the content of the disclosure to see if it meets the threshold level of sufficiency in terms of factual content and specificity before it could conclude that the belief was a reasonable one. That is another way of stating that the belief must be based on reasonable grounds. As already stated above, it is not enough merely for the employee to rely upon an assertion of his subjective belief that the information tends to show a breach.'

113. Even if the disclosure is of information showing the relevant breach, the worker must hold a reasonable belief that the disclosure is made in the public interest, which is not defined but was considered in *Chesterton Global v Nurmohamed* 2017 IRLR 837. Underhill LJ in the Court of Appeal held that the question of whether a disclosure is in the public interest depends on the character of the interest served by that disclosure. It should serve a wider interest than the private or personal interest of the worker making the

disclosure, taking into account all of the circumstances of the particular case. Underhill LJ confirmed that it is not enough for there just to be more than one person's interest at stake and it is not simply a question of whether the issue 'extends beyond the workplace'. A multi-factorial approach may be useful when undertaking the assessment and relevant factors may include:

a. the number in the group whose interests the disclosure served (the larger the number, the more likely the disclosure is to be in the public interest)

b. the nature of the interests affected (the more important they are, the more likely the disclosure is to be in the public interest)

c. the extent to which those interests are affected by the wrongdoing disclosed (the more serious the effect, the more likely the disclosure is to be in the public interest)

d. the nature of the wrongdoing disclosed (the disclosure of deliberate wrongdoing is more likely to be in the public interest than the disclosure of inadvertent wrongdoing)

e. the identity of the alleged wrongdoer (the larger and more prominent the alleged wrongdoer, the more likely the disclosure is to be in the public interest)

114. This was followed in *Harris*. Describing whether something in the private interest of the employee was also in the public interest as being 'all a question of scale' (as the tribunal had done), was not a fair reflection of the discussion in *Chesterton* and each of the factors should be considered.

115. In *Dobbie v Fenton* 2021 IRLR 679 the Employment Appeal Tribunal made clear that the public interest test can be made out even if the disclosure is made in circumstances which suggest that the purpose of making it was primarily private in nature. The claimant was a consultant solicitor who emailed his firm to set out his concerns that a particular client had been overcharged. His primary motivation in doing so was to avoid the client losing out on recovering part of his costs from the other side in the litigation when

they were assessed by the court after the case. The Tribunal found this made the disclosure private and not in the public interest. The Employment Appeal Tribunal overturned the decision.

116. The Tribunal in that case failed to focus on the nature of the information in the disclosure. There was a potential breach of regulatory requirements that could result in disciplinary proceedings which would be expected to raise matters of public interest because the regulations are there to protect the public.

117. The Tribunal did not analyse whether the public interest was affected by the identity of the alleged wrongdoer. The fact that the respondent was a firm of solicitors meant that, in the public interest, it was subject to high requirements of honesty and integrity. The matter should be look at in the round.

118. It is necessary top carry out a two-stage test: first, whether the worker believed, at the time that they were making it, that the disclosure was in the public interest, and, if so, whether that belief was reasonable. The public interest test can be satisfied even if the basis of the public interest disclosure is wrong and/or there was no public interest in the disclosure being made, provided that the worker's belief that the disclosure was made in the public interest was objectively reasonable.

119. The authorities in this area have noted that the worker's motive is not irrelevant. Thus if the disclosure was made for purely personal reasons that may make it less likely that it was reasonably believed to be in the public interest. In *Parsons v Airplus International* 2017 All ER (D) 177, the claimant had made disclosures about compliance issues solely in her own self-interest (to cover herself) and, while a disclosure made in self-interest could potentially also be made in the public interest, as a matter of fact, the claimant in this case had not reasonably believed that she was making the disclosures in the public interest

120. A Tribunal should bear in mind that an employee's predominant motive in making a disclosure is not necessarily the same thing as their belief. For example, in Ibrahim, the Court of Appeal held that, although the employee's motive in making a disclosure was said to be to clear their name and re-

establish their reputation, that did not deal with whether or not they believed that the disclosure was in the public interest.

Detriment – Protected disclosures

121. Section 47B Employment Rights Act 1996 states that 'A worker has the right not to be subjected to any detriment by any act, or deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.'

122. In *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] IRLR 285 confirms that a worker suffers a detriment if a reasonable worker would or might take the view that they have been disadvantaged in the circumstances in which they had to work. An 'unjustified sense of grievance' is not enough.

123. Whether a detriment is 'on the ground' that a worker has made a protected disclosure involves consideration of the mental processes (conscious or unconscious) of the employer acting as it did. It is not sufficient for the Tribunal to simply find that 'but for' the disclosure, the employer's act or omission would not have taken place, or that the detriment is related to the disclosure. Rather, the protected disclosure must materially influence (in the sense of it being more than a trivial influence) the employer's treatment of the whistleblower (*NHS Manchester v Fecitt and others* [2012] IRLR 64).

124. Helpful guidance on the approach to be taken by a Tribunal when considering claims of this nature is provided in the decision of *Blackbay Ventures Ltd (t/a Chemistree) v Gahir* [2014] IRLR 416.

Remedy

125. Where a detriment claim is successful, a claimant can recover such sums as can be shown to have been lost as a result of the unlawful action. That may include financial sums a claimant has lost because of the treatment but also a sum in respect of injury to feelings, applying the *Vento* bands.

Ordinary unfair constructive dismissal

126. The unfair dismissal claim was brought under Part X of the Employment Rights Act 1996. An unfair dismissal claim can be pursued only if the employee has been dismissed as defined by Section 95. Section 95(1)(c) which provides that an employee is dismissed by his employer if: "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."

127. The principles behind such a "constructive dismissal" were set out by the Court of Appeal in *Western Excavating (ECC) Limited v Sharp* [1978] IRLR 27. The statutory language incorporates the law of contract, which means that the employee is entitled to treat himself as constructively dismissed only if the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract.

128. The term of the contract upon which the claimant relied in this case was the implied term of trust and confidence. In *Malik and Mahmud v Bank of Credit and Commerce International SA* [1997] ICR 606 the (then) House of Lords considered the scope of that implied term and the Court approved a formulation which imposed an obligation that the employer shall not: "…without reasonable and proper cause, conduct itself in a manner calculated [or] likely to destroy or seriously damage the relationship of confidence and trust between employer and employee."

129. It is also apparent from the decision of the House of Lords that the test is an objective one in which the subjective perception of the employee can be relevant but is not determinative. Lord Nicholls put the matter this way at page 611A: "The conduct must, of course, impinge on the relationship in the sense that, looked at objectively, it is likely to destroy or seriously damage the degree of trust and confidence the employee is reasonably entitled to have in his employer. That requires one to look at all the circumstances."

130. The objective test also means that the intention or motive of the employer is not determinative. An employer with good intentions can still commit a repudiatory breach of contract.

131. In *Bournemouth University Higher Education Corporation v Buckland* [2010] ICR 908 the Court of Appeal confirmed that the test of the "band of reasonable responses" is not the appropriate test in deciding whether there has been a repudiatory breach of contract of the kind envisaged in *Malik*.

132. Not every action by an employer which can properly give rise to complaint by an employee amounts to a breach of trust and confidence. The formulation approved in *Malik* recognises that the conduct must be likely to destroy or seriously damage the relationship of confidence and trust. In *Frenkel Topping Limited v King* UKEAT/0106/15/LA the Employment Appeal Tribunal chaired by Langstaff P (as he then was) put the matter this way (in paragraphs 12-15):

"12. We would emphasise that this is a demanding test. It has been held (see, for instance, the case of *BG plc v O'Brien* [2001] IRLR 496 at paragraph 27) that simply acting in an unreasonable manner is not sufficient. The word qualifying "damage" is "seriously". This is a word of significant emphasis. The purpose of such a term was identified by Lord Steyn in *Malik v BCCI* [1997] UKHL 23 as being: "… apt to cover the great diversity of situations in which a balance has to be struck between an employer's interest in managing his business as he sees fit and the employee's interest in not being unfairly and improperly exploited."

13. Those last four words are again strong words. Too often we see in this Tribunal a failure to recognise the stringency of the test. The finding of such a breach is inevitably a finding of a breach which is repudiatory: see the analysis of the Appeal Tribunal, presided over by *Cox J in Morrow v Safeway Stores* [2002] IRLR 9.

14. The test of what is repudiatory in contract has been expressed in different words at different times. They are, however, to the same effect. In *Woods v W M Car Services (Peterborough) Ltd* [1981] IRLR 347 it was "conduct with

which an employee could not be expected to put up". In the more modern formulation, adopted in *Tullett Prebon plc v BGC Brokers LP & Ors* [2011] IRLR 420, is that the employer (in that case, but the same applies to an employee) must demonstrate objectively by its behaviour that it is abandoning and altogether refusing to perform the contract. These again are words which indicate the strength of the term.

15. Despite the stringency of the test, it is nonetheless well accepted that certain behaviours on the part of employers will amount to such a breach. Thus in *Bournemouth University Higher Education Corporation v Buckland* [2010] ICR 908 CA Sedley LJ observed that a failure to pay the agreed amount of wage on time would almost always be a repudiatory breach. So too will a reduction in status without reasonable or proper cause (see *Hilton v Shiner Builders Merchants* [2001] IRLR 727). Similarly the humiliation of an employee by or on behalf of the employer, if that is what is factually identified, is not only usually but perhaps almost always a repudiatory breach."

133. In some cases the breach of trust and confidence may be established by a succession of events culminating in the "last straw" which triggers the resignation. In such cases the decision of the Court of Appeal in London *Borough of Waltham Forest v Omilaju* [2005] IRLR 35 demonstrates that the last straw itself need not be a repudiatory breach as long as it adds something to what has gone before, so that when viewed cumulatively a repudiatory breach of contract is established. However, the last straw cannot be an entirely innocuous act or be something which is utterly trivial. The Court of Appeal recently reaffirmed these principles in *Kaur v Leeds Teaching Hospitals NHS Trust* [2018] EWCA Civ 978.

134. If the claimant proves that her resignation was in truth a dismissal, Section 98 governs the question of fairness.

Automatic unfair constructive dismissal

135. Section 103A Employment Rights Act states that: 'An employee who is dismissed shall be regarded for the purposes of this Part 20 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.'

136. In *Fecitt and ors v NHS Manchester* [2012] ICR 372, the Court of Appeal held that the causation test for unfair dismissal is stricter than that for unlawful detriment under s47B ERA: the latter claim may be established where the protected disclosure is one of many reasons for the detriment, so long as the disclosure materially influences the decisionmaker, whereas s103A requires the disclosure to be the primary motivation for a dismissal.

137. For constructive unfair dismissals, there requires to be a fundamental breach of contract by the employer which is considered to be a dismissal. The reason for the breach of contract requires to be the prohibited conduct. In this case the reason for the employer's actions that breached the contract (that amounted to the dismissal) would require to be the protected disclosures.

Compensation

138. Where an employee has been unfairly dismissed, compensation can be awarded which would comprise a basic award and a compensatory award.

Basic award

139. This is calculated in a similar way to a redundancy payment, namely half a week's gross pay for each year of employment when the claimant was under 22 (section 119 of the Employment Rights Act 1996).

Compensatory award

140. This must reflect the losses sustained by the claimant as a result of the dismissal. Section 123 of the Employment Rights Act 1996 states it shall be such amount as the Tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer. The amount that can be awarded is subject to a statutory cap.

Submissions

141. As had been agreed early in this case the respondent's agent had prepared written submissions setting out the key facts and legal principles and the respondent's submissions with regard to the applicable law as applied to the facts. The claimant had been given time to consider this in detail. The respondent's agent was able to supplement the submission orally.

142. The claimant was given time to set out his position in respect of each of the claims. I went through each of the claims, setting out the respondent's position and seeking input from the claimant where required, allowing him to expand upon the claims and set out his position.

143. Both parties submissions have been fully taken into account. Rather than simply duplicate the submission, the submissions are taken into account and referred to as appropriate in relation to each issue.

Decision

144. The Tribunal's decision was unanimous and was reached following detailed deliberation in respect of the oral evidence that was led, the agreed facts and the documentary evidence relied upon by the parties. The Tribunal approaches each of the issues in turn.

Protected disclosures

145. The claimant had originally relied upon 4 separate disclosures. The first disclosure related to an accident at work. The claimant accepted during the submissions stage it was his preference to have been asked verbally about the accident but he accepted he had been given (and taken) the opportunity to provide a written report about the incident (as had the colleague). Further the detriment relied upon (consequent upon that disclosure) was an alleged failure to deal with points arising at mediation but there was no clarity as to precisely what had not been dealt with (and the claimant had not asked about any outstanding issues following the meeting). In any event the claimant conceded at the submission stage that from the evidence led there was no basis to support the assertion the disclosure had any link at all to the detriment. The position was identical in respect of the detriments as to

transferring the claimant to another department and refusing holidays and a physio appointment.

146. The claimant, correctly, accepted that the evidence disclosed no connection between the first disclosure and each of the detriments initially said to be linked to the disclosure. The first disclosure was accordingly withdrawn by the claimant (as were the 3 detriments said to have been related to it).

147. The claimant also withdrew the fourth detriment (false accusations) in relation to the disclosure made to Ms Corrigan as the claimant accepted this had occurred before the date of the detriments relied upon. The disclosure could obviously not influence the treatment if the disclosure occurred after the detriment had happened.

148. The claimant's position was that the remaining disclosures must have been in some way related to the detriment (the discussion about the claimant), although there was no evidence, as such, linking the two. It was the claimant's belief that there must have been a connection. His position was that he assumed there was a connection, although he accepted there was no evidence to support that assumption.

149. In short, having heard the evidence and considered the disclosures and detriment relied upon, the Tribunal was satisfied the claimant's assumption was misplaced and the Tribunal concluded the authors of the treatment relied upon did not know of any of the disclosures made. The claimant accepted there was no evidence showing the individuals who made the decision actually knew of the disclosures and asked the Tribunal to prefer his position that the disclosures "must have been" the reason for the treatment. The Tribunal did not accept that submission, finding that the individuals who made the relevant decisions did not know of the disclosures (when they made their decision as to the treatment) and as such the disclosures could not be a reason for the treatment. Nevertheless the Tribunal considered each of the issues for completeness.

The first disclosure

150. The first disclosure was both emails relied upon by the claimant in Ask the Boss. The respondent argued that the emails did not amount to a disclosure of information. The claimant was making an allegation that the respondent was not complying with the COVID rules. He was not setting out what he knew the position to be but what he believed was happening. In other words, it was an allegation and not a factual position. While that does not necessarily mean the communication did not contain information, (since information can be contained within an allegation), that was the submission.

151. The disclosure relied upon in the first email was that a colleague had also been in close contact with other staff members including management who it appears had not also had to self isolate. However, the disclosure must be taken in context. What the claimant says in his email is 2 things. Firstly he says his line manager "stated there is no limit on how many people can be in a car as long as we are all wearing face masks and the windows are open". He then says he would not be comfortable to be in the back of a car with 2 people. What he is disclosing there is information. He is stating that his employer allows employees to drive with passengers. He says he is not comfortable, He is referring there to the risks created (as arising at the time of the pandemic) by being in close proximity to other people. That is disclosing information which he reasonably believed to be harmful to health and safety.

152. The claimant had not identified a specific legal obligation that had been breached and it may well be Government guidance to which the claimant refer but in any event the disclosure in the email is of information which the claimant reasonably believes to be a risk to health and safety. It was obviously a concern, during the pandemic, that being in close proximity to other people (ie less than 2 metres) could give rise to an increased risk of contracting COVID.

153. He also refers in that email to office staff not adhering to the rules with regard to social distancing and "quite often not adhering to the 1 way system". Again this is the claimant disclosing information – staff are (allegedly) not following the COVID rules with regard to the internal systems. That may well be an allegation but it is also information about a risk to health and safety which the

claimant held. The authorities make it clear Tribunals should not assume a disclosure can either be of information or an allegation. Care should be taken to assess context and decide whether the communication discloses information that tends to show the relevant matter. While finely balanced, in the first email, the Tribunal found that the claimant did disclose information that tended to show a risk to health and safety as a consequence of matters that the claimant understood to be happening during his employment. This was not a fanciful allegation or hypothetical situation but the factual position the claimant understood to exist.

154. With regard to the first email the Tribunal finds that he disclosed information. The Tribunal did not find the respondent's submission to have merit. The communication sent by the claimant looked at in context was disclosing information that tended to show a risk to health and safety.

155. The second disclosure was an email that raises the claimant's concerns. He noted that his son had not been well and the claimant wanted to know about Mr Green's position. He referred to a meeting with Mr Green who allegedly said he was too hasty in sending the claimant home. The claimant expressed an opinion that in the claimant's view Mr Green said that "to cover up the fact 1 person in his office hasn't self isolated despite sharing an office almost all day".

156. From the context in the second email the Tribunal did not consider the claimant to be disclosing information that tended to show a breach of health and safety or a risk to health and safety (or legal obligation). The claimant was disclosing an allegation of what he believed the position to be, rather than any information that was known to exist . This was not something the claimant knew to be true. It differed from the first email and was a situation where the disclosure was not, taken within context, of information. He was making an allegation of a situation he assumed to exist. The claimant was hypothecating about what had happened. He did not know, for example, that Mr Green had followed the relevant Government and respondent guidance. He was alleging something that might have happened or might not. He did not know if there

was in fact a situation that led to a risk to health and safety. Given the context, the claimant in the second email was not disclosing information (as required).

157. The Tribunal then considered whether the claimant believed the disclosure was made in the public interest applying the balance and authorities considered above. The situation in both emails was the same (but it was only the first email which amounted to a disclosure of information). In both emails the disclosure was purely about the claimant's personal position. He was concerned on one occasion he had entered an office where someone had contracted COVID. While he indicated, in the first email, others had raised the issue, this was by way of background to his personal concerns. This is underlined by the claimant ending his first email "but I am only looking after myself, my family and my livelihood" which underlines the Tribunal's conclusion which was reached from assessing the claimant's evidence as to what he intended in making the disclosures. Applying the words of the statute that the claimant required "to have believed the disclosure was made in the public interest". That was absent in both emails from the evidence.

158. The emails were purely about the claimant's personal position and had no public interest element. While others may have raised it, the claimant's issue was about his own position only. it was not a disclosure made in the public interest (and there was no suggestion from the claimant that there was a public interest element to the disclosures).

159. While purely personal interests can in some cases amount also to public interest, the Tribunal considered this was not one of those cases on the facts and the situation was similar to that in *Parson*. The claimant did not believe the disclosure to be made in the public interest given the context and the purely personal issue to which this related. The disclosure was solely about the claimant's position and he did not make the disclosure on the facts of this case in the public interest. While this was finely balanced (in relation to the first email), the Tribunal would not have found that the claimant made the disclosure in the public interest at the time he made it.

160. The Tribunal would have found that even if the claimant believed it to have been made in the public interest, it would not have been reasonable for the claimant to have the belief that he did. The respondent had complied with relevant Government and NHS guidance in relation to COVID. From the evidence before the Tribunal it would not have been reasonable for the claimant's disclosure to have been in the public interest.

161. In reaching this decision the Tribunal took account of the number in the group whose interests the disclosure served. In this case the disclosure only effectively related to him and his views of the matter. The nature of the interests affected were considered which related to the claimant's health, which was an important factor. The Tribunal considered the extent to which those interests are affected by the wrongdoing disclosed and put that into the balance. In this case the nature of the wrongdoing was not deliberate. The Tribunal also took into account the identity of the alleged wrongdoer and the nature of its operations.

162. Having balanced these factors, given the nature of the disclosure and context, from the evidence before the Tribunal, the Tribunal was satisfied that the claimant did not reasonably believe the disclosure of the information was in the public interest.

163. Therefore even if both disclosures had amounted to the disclosure of information, from the context in which they were made, the disclosure was not made in the public interest. Even if the claimant had believed the disclosure was in the public interest, that would not have been reasonable.

164. While therefore the first email does amount to a disclosure of information, it was not a disclosure made in the public interest (nor would such a belief have been reasonable on the facts). The second email was not a disclosure of information (and in any event was also not made in the public interest nor would such a belief have been reasonable).

165. The first a disclosure (both Ask the Boss emails) does not amount to a protected and qualifying disclosure.

The second and third disclosures

166. The second and third disclosures give rise to the similar issues relating to the first disclosure. While there was little evidence as to exactly what the clamant had said to both Ms Henderson and Ms Corrigan, the Tribunal assesses the matter on the basis of the claimant having disclosed to both individuals that the respondent was not following COVID procedures by failing to inform those in close proximity to isolate and stay away from work (in relation to the issue with regard to Mr Green and the claimant's concern he had been in the office Mr Green had worked when Mr Green subsequently tested positive).

167. The claimant was disclosing information since it was being suggested that on a particular occasion the respondent was not keeping people safe since they were not requiring people to go home when they worked near a person who had tested positive (ignoring the fact that the Government guidance had been followed). The Tribunal found that on balance both disclosures were of information that tended to show a risk to health and safety but the disclosure was not a disclosure made in the public interest nor would such a belief have been reasonable from the context.

168. Both disclosures are purely about the claimant's personal position. He was unhappy about the potential risk the respondent put him in by allowing him to enter an office on one occasion where other staff had been exposed to COVID. He had no interest in any other aspect other than whether or not the particular occasion had led to him exposing his son to greater risk.

169. For both the second and third disclosures, which relate to the identical position (the allegation the respondent was not following COVID procedures by failing to inform those in proximity and to isolate and stay away from work) were concerns by the claimant about his personal position only. This was not a situation giving rise to issues to anyone other than the claimant. It was the claimant hypothecating. Given the context in which they were said to have been made, the claimant's view was that the respondent ought to have gone beyond the Government guidance and closed areas of the business down where someone had contracted COVID. It was the claimant's belief that a risk

arose simply by being in the vicinity of someone who had (or may have) tested positive. While purely personal interests can in some cases amount also to public interest the Tribunal considered this was not one of those cases on the facts and the situation was similar to that in *Parson*. The claimant did not believe the disclosure to be made in the public interest given the context and the purely personal issue to which this related. Even if the disclosure had been in the public interest the Tribunal did not consider the belief to have been reasonable. The respondent had followed Government rules. That was sufficient and reasonable. To require the respondent to go to the extent sought by the claimant even if believed to be in in the public interest would not have been reasonable.

170. For both disclosures there was no public interest. It was purely and solely a matter for the claimant alone. This was a one off occasion in relation to a situation in which the claimant was placed. It had no relevance to the public interest and was not made with any public interest intention (objectively or subjectively viewed).

171. The Tribunal would have found the respondent's submission that there was no reasonable belief in relation to each disclosure risking health and safety to have merit. The claimant had accepted that it was the relevant team who determined who was required to self isolate. The respondent followed Government guidance in relation to COVID. There was no evidence as to why the claimant had a reasonable belief that the health or safety of any individual had been, was being or was likely to be endangered. There was no evidence of any failure by the respondent to follow the guidance such as to endanger staff and there was no evidence that following the Guidance created a risk. The belief the claimant had was not reasonable.

172. In reaching this decision the Tribunal took account of the number in the group whose interests the disclosure served. In this case the disclosure only effectively related to him and his views of the matter. The nature of the interests affected were considered which related to the claimant's health, which was an important factor. The Tribunal considered the extent to which those interests are affected by the wrongdoing disclosed and put that into the

balance. In this case the nature of the wrongdoing was not deliberate. The Tribunal also took into account the identity of the alleged wrongdoer and the nature of its operations. Having balanced these factors, given the nature of the disclosure and context, from the evidence before the Tribunal, the Tribunal was satisfied that the claimant did not reasonably believe the disclosure of the information was in the public interest.

173. In short, the claimant was, rightly, concerned about his and his family's health. However, the claimant believed that the only and safest way to achieve that protection, amidst a pandemic, when a manager contracts COVID, was to close the entire area down. That was the basis of each of the claimant's disclosures. The Tribunal would not have considered that belief to have been reasonable given the context and evidence before this Tribunal at the time.

174. The second and third disclosures from the facts before the Tribunal do not amount to protected and qualifying disclosures.

Detriment

175. Although the Tribunal concluded the disclosures did not qualify for protection, given the issues arising in this case the Tribunal considered whether or not the claimant had been subjected to detriment and whether, if the disclosures had been protected and qualifying, the disclosures were in any sense connected to the detriments. The Tribunal considered each alleged detriment in turn, there being only 3 detriments relied upon by the claimant by the conclusion of his case.

Transferring the claimant to another department

176. The claimant was not moved department as he alleged (although the claimant did accept in reality he was not moved department). He was moved pots (or teams) within the department. He was not worse off in any reasonable sense. His day to day duties remained the same. His start time and end time finished. While he had to drive longer journeys each day, he carried out fewer of them. The role was different only in that sense. His start and end times remained the same and he was able to secure time off for personal issues if needed

(which the respondent would accommodate in the same way in both roles). The teams may have been different but being moved teams was not detrimental. Moreover, the claimant received a little more money as a consequence of the team into which he was transferred. It was not detrimental to move him there. There was no detriment in being moved teams.

Refusing holidays and to allow the claimant to leave for a Doctor's appointment in January 2021

177. This had not been established in evidence. The respondent had allowed the claimant to attend relevant appointments. There was therefore no detrimental treatment in this regard.

Falsely accusing the claimant of reporting the matter to the Safety Support

178. This had been discussed amongst colleagues. Detriment requires to be treatment by an employer (or those for whom an employer is liable). The detrimental treatment relied upon here was a conversation at work amongst colleagues. The Tribunal did not consider the discussion to have been a detriment, given the claimant was not a party to the conversation and did not hear it at the time. He was unhappy as he had been told, later, that there had been a discussion amongst colleagues that had mentioned his name.

179. The fact of the discussion happening was not, in the Tribunal's view a detriment in the sense required by the authorities. It was idle discussion amongst colleagues (which was not something within the respondent's control). It was not something which, at the time, affected or involved the claimant.

Reason for detriment

180. Notwithstanding the treatment had not been established as a detriment, the Tribunal considered the reason for each detriment in turn and whether the respondent, had it been necessary, established that the reason for each detriment was not the disclosure to any extent.

Transferring the claimant

181. With regards to transferring the claimant, the Tribunal was satisfied that the disclosure relied upon was in no sense an influence of or for the treatment. The disclosure played no part in the decision. Mr Green was unaware of the disclosures. The claimant accepted that there was no evidence linking the disclosure and the detriment and he believed there was a connection. He was of the view that he had not been the guilty party and he believed Mr Green bore a grudge towards him and that was why he was chosen but he accepted there was no actual evidential basis for his belief. It was his assumption and Mr Green was clear that he did not know of the disclosures (which the Tribunal accepted).

182. The Tribunal considered this carefully and at length. The Tribunal was entirely satisfied that Mr Green's explanation was accurate. It was solely Mr Green's decision to move the claimant and so it is his reasoning (and his alone) that is relevant. The disclosures were not known by him and he did not choose the claimant for any reason. It was a random decision. Someone had to move and the claimant was selected. There was no basis to find any adverse reason for choosing the claimant. The disclosure relied upon had no connection at all to the treatment.

Refusal to allow attendance at appointments

183. The other treatment had not been established in evidence. Mr Green (whose sole decision it was to allow attendance) had not refused the claimant permission. The Tribunal was entirely satisfied that as Mr Green did not know of the disclosures, the decisions he took could in no way have been a reason or influence for his treatment of the claimant. Mr Green had no knowledge of the other disclosures the claimant had made. In any event Mr Green had not acted in any way detrimentally towards the claimant as asserted. The claimant had been allowed to attend the relevant appointments he sought to attend.

Falsely accusing the claimant of reporting the matter to the Safety Support

184. This had been discussed amongst colleagues and was in no way a connection with any of the disclosures in any sense. The disclosures had been made to Ask the Boss and to Mr Henderson and Ms Corrigan. The recipient of those disclosures took no part in the discussion about who had made the communication (and the Tribunal was satisfied the content of the disclosures had not been communicated to those involved). There was no evidence at all that any of the disclosures the claimant had made had featured at all as a reason for the discussion. The discussion with Ms Corrigan (forming the disclosure) occurred before the detriment relied on (the false accusation) and so that disclosure could obviously not be a reason for that treatment. The Tribunal accepted the evidence of the respondent that those to whom the disclosures were made did not communicate the disclosures to those responsible for the treatment relied upon. The Ask the Boss messages and discussion with Ms Henderson were in no sense a reason for or influence of the treatment that was said to be detrimental.

Taking a step back

185. Taking a step back and carefully assessing the evidence in this case, the Tribunal was satisfied that even if the disclosures had amounted to protected and qualifying disclosures, and even if detrimental treatment had been established, the disclosures had no impact or relevance at all to the reason why the claimant was treated in respect of each of the detriments relied upon.

186. The Tribunal went through each of the detriments and assessed whether any of the disclosures had materially influenced the treatment. The Tribunal entirely accepted the respondent's witness evidence for the reason for the treatment which was that the disclosures were in no sense a reason for (or influence of) the treatment. The disclosures were not known by the persons responsible for the treatment relied upon as detriments. The respondent had satisfied the Tribunal on the evidence that the reason for the treatment relied upon in respect of each detriment was not any of the disclosures.

187. The claim in respect of unlawful detriment pursuant to making a protected and qualifying disclosure is unfounded and is dismissed.

Constructive dismissal

188. The Tribunal carefully considered the claimant's position that he believed he had been subject to a number of breaches of contract which individually or taken together led to his decision to resign such that he had been constructively dismissed.

Failure to report March 2019 accident

189. The Tribunal found no basis to support the claimant's assertion that the accident had not been properly recorded. The claimant was given the opportunity to set out in writing everything he wished to say about the accident. He accepted his issue was essentially that he would have preferred to have been asked about it verbally but he had set out the position in writing. The failure to have a discussion with the claimant was in no way a breach of contract, whether in the sense of breach of an implied or express.

Denying the claimant time off to consult a physiotherapist

190. The claimant had not been refused time off by Mr Green or any other person from the evidence before the Tribunal. While the claimant believed this to be the case, there was no evidence of any specific appointment that was missed by the claimant or of any unreasonable treatment by the claimant of the respondent. This was something the claimant believed to have occurred, but Mr Green's position was clear and credible. There had been no refusal to allow the claimant time off. The respondent had sought to accommodate the claimant and allow him time off to deal with any personal issue that arose.

Failure to give proper consideration to his points at the mediation (September 2019)

191. The Tribunal considered the position carefully. The claimant attended the mediation voluntarily as did Mr Green. This was an opportunity to explore the issues in person and seek to move forward. It was clear that the claimant did not agree or accept all he was told at the mediation but the outcome letter was clear in agreeing a route forward. While there was a suggestion that further investigations were to take place, neither party had raised this at any subsequent juncture. Had the claimant considered there to be serious issues

that had to be investigated or matters that were outstanding he would have raised them, as he did other matters. There was no breach of any implied or express term of the claimant's contract in the way in which the mediation was carried out.

192. It is noted that the claimant had misunderstood the nature of this meeting in his pleadings, which was drafted by his solicitor. It was stated that this was a grievance meeting (and may explain why the claimant was asking for minutes of the grievance meeting). This was a mediation meeting which presented both parties with an informal opportunity to sit around a table to resolve workplace differences. It appeared, at the time, to have worked. Mr Green was unclear why the claimant had concerns given Mr Green had treated the claimant as he had his other staff but Mr Green attended and sought to assuage any concerns the claimant had to ensure the working relationship could continue.

Poor treatment by Mr Green (ignoring the claimant and not giving him the time of day)

193. The claimant asserted that Mr Green had a poor relationship with the claimant and did not "give him the time of day". The Tribunal did not accept that characterisation of the working relationship between Mr Green and the claimant. The Tribunal preferred the position set out by Mr Green. Mr Green had limited day to day interaction with the clamant and therefore little opportunity to do so. However, the Tribunal considered that Mr Green had interacted with the claimant and had acted professionally. Mr Green had engaged with the claimant and sought to be supportive. There was no breach of any express or implied term with regard to how Mr Green conducted himself with regard to the claimant, which was professional.

194. The Tribunal considered this issue arose as a result of the claimant's firm belief that Mr green had a grudge against him. That was not, however, the reality. Regrettably the claimant perceived each contact with Mr Green as negative and sought to identify a negative link on each occasion. The reality

was that this was a busy working environment and the claimant's belief was entirely misplaced.

Transferring the claimant to another department

195. The claimant accepted he was not transferred to another Department. The decision was to move one of the two individuals to a different team (within the same department). That was to avoid the potential for future car sharing and to seek to ensure there was no risk of repetition of both individuals having to work together given the breakdown in that working relationship. There was no specific reason why the claimant was chosen to move. It was just simply one of them had to move and the claimant was selected. There was no adverse reason as to why the claimant was selected (and it could equally have been the claimant's colleague).

196. The claimant again perceived this decision as a negative one. However in some respects the decision placed the claimant in a better position, not least in providing him with slightly increased take home pay. The claimant may well have preferred to have remained in his original team but the decision to move him to another team, doing the same work, with the same start and end time, with a slightly increased take home pay, was in no sense a breach of any express or implied term of his contract.

Refusing holidays and allowing the claimant to leave for a Doctor appointment

197. The Tribunal was entirely satisfied the way in which the respondent managed the claimant with regard to holiday entitlement and leave was professional and appropriate. The claimant had misunderstood Mr Green and believed that he was being singled out. However, the Tribunal accepted Mr Green's evidence that the claimant was being told that that he was being treated the same as every other employee, if not potentially more favourably. The claimant was told that if the normal holiday quota had been exhausted such that normally holiday requests would be refused (it not being possible to accommodate the days) the claimant should approach Mr Green who would see if it were possible to find a way to cover the other absence and grant the leave.

198. In other words, this was an attempt to assist the claimant to ensure he secured the leave he wished. It was in no sense a breach of any express of implied term of his contract.,

The last str\aw

199. The Tribunal is satisfied that there was no breach of the claimant's contract of employment, either expressly or impliedly. As such it is not necessary to consider the last straw relied upon.

200. Nevertheless, the Tribunal considered the last straw upon which the claimant relied. The claimant relied upon him being falsely accused of making a call to safety support to allege breach of the rules. However, this was not something that the claimant heard nor was a party to. The claimant had been advised of this via a colleague. It related to a discussion colleagues had in the office as to who had made the call.

201. The Tribunal was satisfied the action of the respondent was not of a nature to amount to a final straw. As submitted by the respondent, the actions regarding the conversation as to who had communicated the information to Safety Support was innocuous. This was a private conversation between three colleagues to which the claimant was not a party. The conversation amongst the three colleagues is not itself a breach of contract, rather office gossiping that routinely takes place in the workplace and which was addressed by management. That cannot, on the facts of this case, amount to a final straw.

Taking a step back

202. The Tribunal took a step back to assess the general behaviour to which the clamant was subject in assessing whether or not the claimant had been constructively dismissed. The claimant clearly believed that there had been a campaign by managers to treat him badly, as to leave him with no option but to resign. The Tribunal considered the full evidence carefully having taken a step back. The respondent was not a perfect employer and there were ways in which the respondent could have treated issues which arose in a better

way. The Tribunal must not, however, apply a counsel of perfection. There is no perfect employer.

203. There were occasions and situations where situations occurred within the working environment for which an apology had to be issued and where staff had not behaved impeccably. Regrettably that is life, particularly in a busy working environment.

204. The Tribunal noted that the claimant was very clear in his oral evidence that the last straw, the final matter that had caused him to resign, was the learning of staff mentioning his name as one of the three colleagues who could have made the anonymous communication. That was very clearly the claimant's evidence, on oath, as to why he decided to resign, having taken time to reflect on matters. This was confirmed very clearly before the Tribunal orally on a number of occasions (in addition to being set out in the written material the parties had worked on together).

205. The Tribunal contrasted that with what was originally set out in the ET1 that his then solicitor prepared which had stated that in fact the final straw was not the knowing about other staff mentioning the claimant as a person who could have made the communication but instead the fact a colleague had "kept tabs" on the claimant to see whether he was taking too long in carrying out his duties. This was something for which the respondent had apologised.

206. While this was not stated by the claimant in his evidence to be a final straw (and from the date of the preliminary hearing in this case had not in fact featured at all as a reason for the claimant's resignation) the Tribunal took a step back from the evidence to consider whether that conduct could have resulted in the claimant justifiably concluding that the trust within the employment relationship had broken down.

207. The Tribunal would not have been satisfied that this amounted to a breach of the implied term within the claimant's contract. It was clearly poor judgment, which was recognised and for which an apology was issued. It may well have damaged the relationship of trust and confidence but it did not destroy or seriously damage the trust and confidence such as to amount to a breach of

the implied term of trust and confidence on the facts of this case as before the Tribunal. Given there was no other breach of contract on the facts of this case, it could not have justified the claimant resigning so as to claim constructive unfair dismissal. It was notable that this issue did not feature at all in the claimant's oral evidence as to the reason why he resigned which supported the assertion that it was not as significant as the claimant's original solicitor had set out.

208. Having looked at all the evidence in this case, the Tribunal is satisfied that there was no breach of the claimant's contract. This was a case whereby the claimant relied upon the implied term of trust and confidence. While the claimant believed that trust had been destroyed, there was no actions of the respondent, objectively viewed, that could justifiably be considered as a breach of that implied term.

209. It is regrettable that the claimant found himself in the situation in which he did. He firmly believed that there were ulterior motives and steps being taken to treat him badly. Sadly, that belief coloured the claimant's perception and approach to normal workplace challenges. Consequently, the claimant interpreted normal workplace interactions in a negative way which led him to believe there were adverse forces at work. That was misplaced.

210. The claimant accepted in his evidence that in large part he was assuming that there were negative reasons for the treatment he had received. He had jumped to conclusions which were compounded on each occasion further workplace issues arose. Regrettably, when viewed objectively, there was no reasonable basis for doing so and the claimant's perception and belief led to him being unable to see the objective reality. There were undoubtedly challenging issues arising during his employment, as with most workplaces. It was regrettable that the claimant was unable to work with the respondent and move forward.

No breach of the claimant's contract

211. In all the circumstances and from the evidence before this Tribunal, there was no breach of the claimant's contract and as such he was not constructively unfairly dismissed. He resigned from his employment and the unfair dismissal claim is dismissed.

212. In light of there being no breach of the claimant's contract, the Tribunal did not consider it necessary to consider the other aspects of the claim nor the issues relating to remedy.

Automatic unfair constructive dismissal

213. The Tribunal considered the evidence carefully. The Tribunal was clear that the disclosures relied upon were in no sense whatsoever a reason for the treatment relied upon by the claimant as a breach of contract. In other words, even if there were a breach of contract (entitling the claimant to resign such that he had been dismissed) the Tribunal would have found that the disclosures were in no sense, individually or collectively, whatsoever a reason for the (constructive) dismissal.

214. Even if disclosures had been made, the disclosures (individually or cumulatively) were not the principal (or sole) reason for the claimant's dismissal (had he been dismissed).

215. The claimant had not been automatically unfairly dismissed.

Summary

216. Each of the claims is accordingly dismissed.

Employment Judge: **D Hoey**
Date of Judgment: **07 July 2023**
Entered in register: **07 July 2023**
and copied to parties