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EMPLOYMENT TRIBUNALS

Claimant: **Mr A. Dobbie**
Respondent: **Ms Paula Felton, trading as Feltons Solicitors**

London Central

Hearing 5-8 June 2023
Panel deliberation 9 June

Employment Judge Goodman
Mr R. Pell
Ms N. Sandler

Representation:
Claimant: Adam Ohringer, counsel
Respondent: Susan Chan, counsel

RESERVED JUDGMENT

The claimant was not subjected to detriment for making protected disclosures. The claim is therefore dismissed.

REASONS

1. This hearing was to determine whether the claimant was subjected to detriment for having made protected disclosures. It has already been determined that two disclosures were protected.
2. We have worked to an agreed list of issues, which is appended to this judgement. Eleven detriments are alleged, some comprising several acts. A twelfth detriment relates to a report prepared by Claire Duncan, now deceased, formerly third respondent in these proceedings.
3. We are also asked to decide how long the claimant's engagement would have lasted had it not terminated when it did, but not how much he should be awarded if successful. A hearing has been listed on 4 and 5 December 2023 to decide remedy if required.

Procedural History

4. The claimant worked for the respondent as solicitor under a contract for services. That contract was terminated by her on the 15th March 2016.
5. These proceedings were commenced in July 2016. It was determined on 5th October 2017 that he was a worker, but not an employee.

6. It then was determined in June 2019, by Employment Judge Gordon, sitting with lay members, following a 10 day hearing, that two of the three disclosures for which protection was claimed disclosed information, but that they were not made in the public interest. It was also held that if the disclosures had been protected the termination was not because of them. No determination was made in respect of the other detriments. The written judgment was sent to the parties in December 2019.
7. The claimant appealed successfully, and the case was remitted back to a different tribunal. On 22nd September 2022 Employment Judge Gordon-Walker, sitting alone, determined that the disclosures made on the 29th February and 4th March 2016 were protected.
8. As well as the claim of detriment for making protected disclosures, there was a claim of unlawful deductions from wages. Employment Judge Elliott made findings in that claim in a judgement dated 4 December 2020, but as there was insufficient information of payments made, determination of the amounts due was postponed to a further hearing,. Some findings made in that judgement are relevant in this decision. The claimant has applied for reconsideration of that decision. It was listed for hearing, but then postponed to the outcome of the appeal, and will now be re listed by Judge Elliott to decide the reconsideration application, and determine quantum.

Anonymity

9. In 2017 an order was made under rule 50 to anonymise the names of all clients of the respondent firm, with the exception of the claimant's parents.

Evidence

10. We were provided with a bundle of pleadings and orders (179 pages), a main bundle C (2,542 pages), a respondent's supplementary bundle PF (615 pages, and a BSB bundle (478 pages) containing correspondence with the BSB and some miscellaneous material. There was also a bundle of "Claimant's New Documents" (522 pages). Its admission was controversial and we only used it to read a more legible version of text messages in the main bundle.
11. There have been complaints from a number of judges in these proceedings about lack of cooperation in preparing bundles – see E J Gordon, paragraphs 6, 8, 8, 18 of the December 2019 judgment, E J Elliott, paragraph 18 of the December 2020 judgment, and E J Gordon-Walker's note of several unagreed bundles in her judgment of September2022. In view of this, in November 2022 E J Snelson laid down a careful timetable for disclosure of additional material and agreement of the contents, all to be finalised by 28 April 2023. It was disappointing then to receive so many bundles and to be told that as of midnight the day before the hearing start the respondent was restoring documents omitted by the claimant, and for the index for the main bundle to be unusable. We did not conduct any enquiry into why this had happened, and all were resigned to working with what was available, but numbering discrepancies increased the difficulty for counsel, and for the panel when trying to follow what had occurred.
12. We heard live evidence from the claimant, Alastair Dobbie, and from the respondent, Paula Felton.

13. We admitted to evidence written witness statements of M_ B_ and Rachel Robertson for the claimant, and of John Crosfill, Chris Makin and the late Claire Duncan for the respondent. The claimamt had no questions for Mr Makin and Mr Crosfill. Ms Duncan had given evidence at the Gordon hearing. A number of documents were attached to Ms Duncan's statement which had appeared in an earlier hearing bundle.
14. The claimant had prepared his own witness statement, which tended to argue his case rather than set out a factual narrative. Ms Felton provided more narrative, but both in her statement and in replies to questions it was clear that she relies to a large extent on the documents for the detail of what happened eight years ago. We were provided with a detailed chronology which we could cross reference to bundle pages. In a case this old and with bundles so big this was particularly helpful.
15. This case is part of a long and bitter conflict, and we are obliged to counsel for their calm professionalism in marshalling the evidence and presenting the arguments on the issues.
16. At the conclusion of the evidence, the parties having exchanged written submissions, we heard oral submissions supplementing the written material before reserving judgment and setting the date for a remedy hearing if required.

Findings of Fact

17. Findings were made on the termination detriment in the Gordon judgment of December 2019, where it was said that the disclosures had "little influence" on that decision. We need to set out in more detail the background and reasons for that decision in order to decide what effect the protected disclosures had on it, as well as to understand the reasons for the other matters alleged as detriment.
18. The respondent was a solicitor and the principal in her practice, trading as Feltons solicitors. Other solicitors were contracted to work for her from time to time. All worked from home; conferences and client meetings would be held at serviced offices. From time to time there were some employed administrative staff.
19. The claimant was called to the bar in 2006 but has not served pupillage. From about 2009 or 2010 he worked for the respondent as a paralegal, in parallel with other business commitments. In 2013 he passed the qualified lawyer transfer test with a view to qualifying as a solicitor. The respondent agreed to assist him in demonstrating relevant experience, and in March 2014 he was admitted a solicitor.

Contract Terms

20. On qualifying, on 6 March 2014 he and Ms Felton signed a contract as a consultant for a term of 6 months, which was renewed for a further 6 months as each term ended. Clause 3 provided that he was to be paid a consultancy fee of 40% of the "fees billed which have been paid and received by the practice, net of VAT and disbursements, on receipt of an appropriate invoice which shall be rendered at the end of each month by the consultant". Where the consultant had introduced the client to Feltons, the consultant's share of the profit costs paid by the client was increased to 50%. He was to be paid within 30 days of receipt of payment from the client.

21. Other terms stipulated that he was self-employed and not an employee. He could not be concerned in any business venture of a legal nature during the continuance of the agreement without the written permission of the practice, which was not to be unreasonably withheld.
22. By clause 10 the practice could terminate the agreement forthwith if there was default, which included being guilty of serious misconduct or wilfully neglecting to perform his duties, any act of fraud or dishonesty, or being guilty of any conduct bringing or likely to bring the practice into disrepute in the eyes of the profession or its clients. Clause 11 provided that termination for any other reason could be effected by giving one month's notice in writing. On termination the consultant was to deliver to the practice forthwith all records and papers relating to the firm's affairs and business, and any other property belonging to it.

The Parents Building Dispute

23. The claimant lived with his parents. They were in dispute with a firm of builders, Lewis and Minton, about some attic conversion work to their bed and breakfast business in Kew. On 5th June 2014 the claimant emailed Paula Felton. He said: "my parents have claimed against their builders for breach of fiduciary duties. On the indemnity principle I am not allowed to seek costs from the other side that I would not seek from clients. As such, I would like to represent them via Feltons and would request in this instance that the firm does not take a percentage of profit cost on this. Would you accept this?".
24. Ms Felton replied: "assuming this does not become too contentious yes. I would just ask that you continue to help me on a few matters on this basis from time to time".
25. The claimant calls this the special arrangement, that is, he would get all profit costs paid for the work on the case, not just 50%. In evidence, he called it a contract to which there were three parties, himself, his parents, and Feltons. In our finding, there are two contracts. One is the contract between Feltons and their client, his parents. The other is the contract between himself and Feltons that in this instance he would get 100% of the profit costs recovered, provided the matter did not become "too contentious".
26. The claimant then drafted a client care letter dated 11th June 2014 which his parents signed. Page 2, outlining the matter covered by the agreement, starts: "it is our understanding that you require us to conduct litigation in the case listed above, which have been commenced already", in other words, court proceedings had already begun. The claimant is to do the work, assisted by another consultant A C, supervised by his principal Paula Felton. Her hourly rate is £320 per hour, it is £300 for the claimant and £210 for AC. He emailed the draft to Ms Felton on 17 July. His parents signed a copy which he kept at home.
27. In the course of the building dispute, Counsel for the builders pointed out that the claim form was defective, and in December 2014 the claimant served an amended particulars claim on behalf of his parents. There was an order that the parents pay the costs thrown away of the amendment, and the claimant paid the builders' direct access barriste, (Crosfill) with a personal cheque. There had been a notice of hearing from the court in October 2014. It might be thought that by this stage the matter was contentious if it had not already been contentious when the claimant said to Ms Felton that they had

"claimed".

28. In January 2015 the claimant emailed Ms Felton saying that the defendants in the building claim were challenging whether there was a genuine indemnity on legal costs, adding he had the client care letter at home. Ms Felton replied that there should be no difficulty with the indemnity principle as "the client care letter should be sufficient", and on 7th January the claimant signed a costs schedule in Feltons' name for the purposes of the imminent case management hearing. Cost costs and disbursements to date were stated as £46,348. A precedent H form, which added in expected future costs, was sent to the court by the claimant for the costs budgeting hearing in a total of £92,190. The existence of an indemnity was confirmed in the statement of truth.
29. In February 2015 the claimant asked the respondent to promote him to partner in the parents matter, so that when costs were capped his work would not be restricted to £200 per hour, and he could claim the partners rate. Ms Felton did not agree.
30. The respondent was not involved further in this case until 25 November 2015, when the case was settled at a joint settlement meeting, which she attended in order to show that the parents' liability to pay costs to the respondent firm was genuine. The claim settled for £110,000 without being spilt for damages and costs, and counsel were to daft a Tomlin order. It is clear that around half of this must have represented the costs shown in the budget.
31. By then a joint single exert surveyor (French) had prepared a report which had been rejected by the court and another was instructed. The claimant had instructed a forensic accountant (Makin) on the consequential loss to the bed and breakfast business of the building work. Clara Johnson of counsel had been instructed by him from August 2015 and she conducted the settlement meeting.
32. A few days after the settlement meeting, on the 29th November, the claimant emailed Paula Felton about a payment having been made by another client on an invoice, of which presumably 40% would have been paid to him under the consultancy agreement. He said: "would you like to keep that as a thank you from my parents for your very helpful engagement". He suggested this was more tax efficient (no invoice, no VAT). We do not have her full reply in the bundle, but the it concludes with Ms Felton protesting: "are your parents going to pay Feltons anything? Given the discussion I had with Crosfill and what I told him they should", a reference the challenge to the parents' liability to pay costs to Feltons which had been countered by producing the client care letter.
33. The terms of settlement were recorded in a Tomlin order, whereby £5,000 was to be paid to the claimants forthwith, then £50,000 before the 24th January 2016, and £55,000 before 24th March 2016. The claimant was to register a legal charge over the builders' two properties to secure payment of the money. The order provided for payment to the claimant, not the claimant's solicitors, as would be expected if the solicitor were not holding money on account of costs
34. On 30 November Paula Felton sent counsel details of the firm's bank account for inclusion in the agreement. She also advised about a proposed term for release of the charge proposed by the builders' solicitors. Clara Johnson said

that she was not a conveyancer. Paula Felton said that she would draft the charge to be registered at the Land Registry, but the messages show that she became too ill. The claimant asked if he could get his parents' conveyancers to draft it, and they did. The draft was sent to Ms Felton to register. She did so on 18 January, while she was still in hospital, as the claimant was pressing to have it lodged before the imminent trial. Form CH1 drafted by the parents' conveyancer and signed by the claimant and his parents contains on page 3 several recitals in very small print. Towards the bottom of the page, still in very small print, is a provision that the charge will be released when the money is paid to Calvert Smith Sutcliffe, the parents conveyancing solicitors. Ms Felton seems not to have noticed. The claimant made no arrangement for Calvert Smith Sutcliffe to send the money to Feltons. This meant that when the money was paid by the builders it went direct to the parents.

35. As for the immediate payment, on 30th November the claimant had sent the builders' solicitors details of his parents' personal bank account for payment of the £5,000, so that did not go to Feltons either. He told the tribunal he did not copy it to the respondent because she was not particularly well at the time.
36. In January 2016 the claimant and his parents disputed counsel's fee. This did come to the respondents attention, until on 5th March 2016, when she was checking the claimant's email inbox. Emails showed Ms Johnson was owed £8,200 in all, £1,100 from an August 2015 hearing, and £7,100 for the mediation meeting. It was being suggested that she had left the job undone by not drafting a legal charge. In a vigorous defence of the work she had done she said: "you are simply scraping the barrel to come up with reasons not to pay me. Are you doing this with all the professionals you instructed in the case? It is highly improper. I know you are trying to keep hold of as much money as you can for your parents but Feltons are under contractual obligations (and I would say moral obligations) to pay the professionals who patiently assisted you with the case".
37. As for other disbursements, unknown to Paula Felton, the claimant's parents disputed their liability for the Makin bill, asking in February 2016 for details of the medication he was receiving following a heart attack he suffered in March 2015, which delayed finalisation of his report, though he had made a recovery from a triple by-pass operation by the date of his report in August 2015. Mr Makin brought a claim for his fee in the county court, and in May 2017 obtained judgement for the £4,480 fee, plus £4,393.46 costs, an unusual award for a small claim.
38. In August 2018 Feltons issued county court proceedings against the parents to recover their fees. The firm received £9,378 for the VAT due.
39. Reviewing the story of the costs arrangements between the claimant, his parents, and the respondent firm, there was some agreement to vary the usual terms as to profit share, without clarity on what "too contentious" meant. The respondent was not kept up to date on the developing position, and given that by the date of the joint settlement meeting, less than three months from trial, it must have been contentious, she would have expected some profit costs for Feltons, though the matter had not been discussed in any detail, and it is also possible that she had forgotten the brief exchange of emails 18 months earlier. She knew there was an indemnity agreement with the client -

she had defended it at the settlement meeting. She sent the firm's account details to counsel for the agreement, expecting settlement money would be channelled through the firm. The claimant did not tell her the initial £5,000 was going to the parents direct, nor did he arrange for the conveyancing solicitors to remit the money to Feltons, nor did he draw the respondent's attention to the small print in the CH1. Had she seen it, she would have queried it and checked if there was money on account or an arrangement with Calvert Smith. In our finding, a principal required to sign a document in the name of the firm is entitled to expect the fee earner conducting work in the name of the firm to draw her attention to this. Even if the agreement were that the claimant should have 100% of the profit costs in this case, it is still the case that by reason of the indemnity, Feltons were still liable for the VAT on profit costs, for expert fees and counsel's fees. Had there been no indemnity, the parents would have recovered around half the settlement figure. She had at the end of November protested the "offer" to forgo the claimant's share of an interim payment on another matter as a payment for her involvement in the settlement meeting. She did not follow it up, probably because she was ill and in and out of hospital. It was understandable that when she did pay it full attention, Ms Felton concluded, rightly or wrongly, that there had been underhand treatment and that she had been misused and cheated.

<u>The client A litigation</u>

40. Feltons acted for a consortium of insurers in Germany, client A, in high value contentious proceedings in the UK. The claimant was assigned to this. He spoke German, and established a good relationship with the client.
41. Around May 2015 the claimant drafted Particulars of claim with a view to issuing proceedings. As it later turned out, he had already issued a claim form, which therefore had to be served within four months, on 27th August. He asked Claire Duncan to review the draft for him. She advised that it was impossible to discern the case from the pleading and counsel should be ask to advise - the claimant was not competent to settle, and would be struck out or forced to amend if the draft were filed in the present form. The claimant made some changes after speaking to counsel. Ms Duncan looked at it again. She commented it was still made little sense, there was no tangible case pleaded, it was unclear on dates, the cause of action, the facts, and was altogether not CPR compliant. She made some specific comments on the draft which she sent to the claimant. She also told the Paula Felton that the claimant was out of his depth. On the 18th August the claimant asked Ms Duncan whether he should issue proceedings in the commercial court or TCC. He told her counsel had reviewed the draft pleading; he was going to issue the claim form protectively, but she was concerned he could not tell her the limitation date. On the 28th August he asked her to meet him, and they met on the 1st September. It turned out that the claimant had instructed another firm of solicitors as process servers to draft the brief particulars and serve the claim form on 25 August. The claim form had not been signed, and did not have a concise statement of the cause of action. The process serving firm had attempted to contact the claimant on several occasions during the day but without response, so it had been served unamended. The claimant asked counsel to advise, who told firmly he should pass responsibility to

another firm or a locum litigator to run it full time, because the claimant had insufficient experience to run a case of this complexity and size to trial on his own. The claimant's report to Paula Felton was not very clear, but she understood enough to write that "it is clear someone more experienced needs to be hands on with this. The risk is too high to allow me to continue with this case otherwise in the current manner".

42. The claim was struck out on the 10th September because of its defects by order made on the application of the defendant, and the claim form had to be re issued later, paying a further issue fee of £10,000, and £6,000 costs.
43. On 11th of September 2015 Paula Felton notified her professional indemnity insurers of an event likely to give rise to a claim. She wrote on the form that she would be terminating the claimant's contract, adding "I am sacking Alastair as he did not ask me to check the form or notify me that he was lodging it that date".
44. She did not sack him, but when they met on the 1st of October 2015 she explained that on the instructions of the insurer she now had to keep a close cheque on all external communications, to prevent the risk of a recurrent mistake. She had to read and approve everything before it was sent out.
45. Despite that, on 21st October the claimant told the process serving solicitors that they were now in the pre-action protocol stage for professional negligence, and they should inform their insurers. When Paula Felton saw that he had written this, she told the claimant that claiming against agents was "her call" and could he run stuff like this past her first.
46. The claimant suggested that Claire Duncan was added to work on the file and the client be asked to agree to pay for her time as well on the monthly retainer. Paula Felton wrote to client A explaining that payments on account were billed and transferred, there was unlikely to be any overpayment because of the intensity of her time and the work ahead. In October she told the claimant that she was likely to agree a team retainer with client and at the end of October she went to meet the client in Stuttgart, with the claimant, though as found by the Gordon tribunal he did not stay for that part of the meeting where she stated that other fee earners besides the claimant would work on the file from then on. She noted at that meeting that the client spoke good English and the claimant was not needed to translate. It was agreed that there would be a monthly retainer for the next four months and thereafter itemised bills. The client care letter that followed showed a retainer of 50 hours per month for the claimant and another 50 hours for other members of the team, equating to £25,000 per month from the 1st of November. Leading counsel was brought in to advise and direct.
47. At the beginning of November the claimant complained to Paula Felton that while he understood that she had been withholding payment to meet the costs he had incurred in client A matter, he had to be paid on time each month or he would look for work elsewhere. Miss Felton replied that she was working out a schedule of payments, and it was difficult to receive emails like this from him when she had been "fully supportive of you throughout this mess, when I have been encouraged by everyone, including my insurer, to dismiss you". Until his mistake she had had a 16 year no claim history on her insurance. He was free to look elsewhere. The claimant responded blaming the process server, a paralegal for not delivering papers in time, Claire Duncan for not

meeting him before the 1st September, and said he needed money for child support payments.

48. On 21st of December 2015 the claimant told Paula Felton that his work on the client A matter was increasing and he wanted to suggest a higher monthly payment to the client.
49. In January 2016 Paula Felton told the claimant that they should read in Claire Duncan on client A and get her to attend the client meeting, and also she had a new litigator coming on board, and insurance/ banking specialist. A few days later she explained as another contractor (Ed Jones) was also reading in. The claimant said that he had spoken to MR of client A about the costs. Client A would like a costs review at the end of February. In the meantime the claimant wanted £10,000 for January and February "as I'm pulling most of the weight here". That would mean all client A's payments were going to the claimant, and none to other Feltons' fee earners. The claimant has alleged that on the 19th January 2016 miss Felton agreed to this, but Judge Eliot has found that there was no such agreement.
50. There were two other problems going on with the client A litigation. First of all, a new claim form having been issued, it had now to be served with particulars of claim, and despite the fact that the claimant was said to be the only one with a complete grasp of the factual matrix, he was unable to draft particulars of claim satisfactorily or explain that to others. The other problem that arose was that the defendant said the litigation should be stayed because the contract included in arbitration clause. The claimant had not noted this. Leading counsel advised.
51. Difficulty also rose in December 2015 with another client, M. The claimant had like accepted instructions to act in a commercial lease. He had little conveyancing experience.
52. The question of payments to the claimant came to a head at the end of February. On the 25th February the claimant sent Paula Felton an invoice for his work in January based on £10,000 work, not £5,000. She replied that the invoices he was sending were not correct, specifically challenging the addition of VAT. He re-sent his invoice without it. The claimant is not registered for VAT.

<u>The correspondence background to the protected disclosures</u>

53. On 26th February 2016, immediately prior to the first protected disclosure, Paula Felton wrote to the claimant saying she was becoming: "deeply uncomfortable with the amount of issues that are continually arising in this case such as claim form and procedural problems, failing to clearly confirm arbitration excluded and this... MR (client A) was very anxious about costs. I'm going to have to do a deal with him and we need to ensure (A's) costs are not driven up by constantly clearing up problems from earlier case handling".
54. It is in response to this that the claimant wrote to her the 29th February the e-mail which contains the first protected disclosure. The e-mail covers a lot of ground besides the protected disposure He addresses whether they can recover pre-action costs, about instructions in 2010 from one JS, whether the arbitration issue is problematic, and then the section on costs and the need for a new costs budget. He suggests that leading counsel delivered particulars of claim at the very latest stage, so extending the costs of the pre-service stage, before addressing the invoicing to the client showing team

costs, rather than just himself. It is at this point that he makes the protected disclosure observation that on a detailed assessment “the firm is highly vulnerable to later disparity” and has to explain why it has billed more hours than have been recovered. He states this vulnerability has been protected by his increased billing in January and February “as agreed on the day of service of the claim form”, (the agreement on which Judge Elliot found against the claimant) but that there could be deficiencies for October to December.

55. Miss Felton replied soon after asking when she could collect the client A files from him that week, as she was sending them to be costed. She would reply separately to his e-mail.
56. Shortly after, she emailed client A saying she had not been proposing additional costs to bring in a litigation specialist, quite the reverse, she was allocating lead responsibility to someone new with a vast amount of legal and technical experience, “Alastair has been useful thus far but we need a strong team leader closer to Anthony's (leading counsel) calibre technically to ensure that his costs are kept within reason too”.
57. Next, the claimant proposed Friday for the collection of client A files so that he could “trim out the duplication” and give her the most ordered set.
58. An hour and a half after that, he sent her an invoice for his work in February 2016 on client A, again for £10,000, not £5,000. This came 4 days after his January invoice. Client had not yet paid for February; the money was due within 30 days of client A doing so.
59. Later that afternoon he said that if she was feeling ‘uncomfortable’ – a reference to her e-mail of 26 February - they should meet to discuss the confidence and trust between them, including “the need, *if any*, for the involvement of a supervising senior solicitor in litigation” (emphasis added). He proposed bringing in a third party for the meeting. Ms Felton replied on the 2nd March that she could do a meeting on Thursday the following week, but they did not need a mediator. The files would be collected on Friday “what time is good for you and where from? I'm going to have the files collated and costed, it is a big job and need starting asap”. The end of February was of course the end of the standard retainer period with client A, after which costed bills would have to be delivered.
60. The claimant replied, in the e-mail which was claimed as a protected disclosure but found not to disclose information tending to show wrongdoing, and so not qualify for protection, questioning whether the new solicitor proposed would be breaching restrictive covenants if brought in. He also said that she would not be able to cost the file accurately from the hard copy as it probably only represented 10% of the work he had done, though there were several boxes worth of papers. Most of it was on e-mail which needed to be collected together. On the meeting, and whether they needed a mediator, he said “of course we are in contractual dispute on payment”. He then referred to client A being disappointed at the delay in providing their costs budget, and the claimant had not been able to answer his questions on a new team member. Client A considered that “the essential knowledge of the case history is with me”. All this, and “the firm's policy to hold me liable for adverse costs in a scenario where in reality there are substantial firm profits on the case to cover such a cost” made him consider whether the working relationship should be continued by him providing his services through a limited company

which had a tax loss (this was his maths tutoring business). Paula Felton replied that she had discussed James Driver with him before. He himself had said that he did not feel procedurally competent to deal with the matter alone. She could access the emails herself. He had been seeking to undermine her. She had done nothing but support him even when she had to notify her insurer of a potential claim. His payments were up to date, with the exception of disbursements where she was waiting for his outline. Finally, she moved from client A to the parent dispute: "you have dictated to me how my firm should be paid for the substantial amount of work undertaken on your parents personal matter. A large costs award was made on the basis of the cost schedules for Feltons time you prepared and submitted the other side. You had indicated that Feltons would receive at the meeting with counsel. I do not consider this to be acceptable and reserve my right to bill under the retainer". As for the following weeks meeting, "either we agree a position or we simply terminate the consultancy agreement". As he was looking elsewhere perhaps he would prefer this.

61. As a panel we noted that the relationship was in difficulty even before the second protected disclosure, and there was much more going on than the overbilling protected disclosure.
62. The claimant responded later that day stating that in the parents' matter "it is clear that we agreed that no profit costs or percentage would be taken as a firm", forwarding the 10th June 2014 e-mail about not becoming too contentious. He had kept his side of the bargain by working without pay on three matters. They should collaborate because he intended to bill the entire file against the single joint expert (Mr French), RICS having finished its investigation; she could be engaged as supervising solicitor and so recover costs. In other words, he was offering her a cut of new litigation arising from that dispute as compensation.
63. On 4th March followed the second protected disclosure. This is also a discussion of the arrangement for his parents case, saying she was making an unlawful deduction from his pay, and threatening to hit his parents with a bill when he pushed for contractually due payments. The case had settled in November but only when in March he took a firm stance on his pay did she raise these issues. She should discuss it with her his father in the light of impending actions against another builder. He had also raised "how the firm stands if there are costs review. This is not to attack you or question your integrity, it is to protect you". This is a clear reference back to his e-mail 2nd March, and it does of course question her integrity. Although she had lost a great deal of confidence in him and his judgement, he said, he had a right and duty to express his professional opinion within the firm. Later in the e-mail he refers back to the "haphazard claim form service" and that he had offered to forgo payment to himself to make sure litigation continued "without pushing Feltons into insolvency", but he did not admit personal liability, Including liability for any increased insurance premium. He blamed the difficulty drafting the claim form the previous year on Claire Duncan for not attending a meeting. He wanted an agreement that nobody would sue anybody else, by which he would not bring a claim for unfair treatment or unlawful pay deductions, and she would not claim against him or his parents. In the client A litigation, the files were not to be transferred to a new supervising solicitor,

and instead there should be a regular two hour meeting once a week “where I can address within the expanding fact matrix of the litigation” his concerns issues and questions with James Driver as mentor**.**

64. It was at this juncture that the respondent came across the correspondence with Clara Johnson disputing her fees, and she wrote to her saying “I had absolutely no idea that this is going on”.
65. On 8th March Paula Felton recorded her discussion with MR of client A, to discuss her meeting with an expert witness the previous day,. Going forward, she would deal with consolidation of the case, making sure the fact matrix was consistent with the statements. She also discussed the claimant’s ongoing involvement. She said the claimant had achieved what he could by extracting facts, but they needed someone who was technically competent to tie everything together. They needed a more experienced solicitor for the next stage. The claimant could possibly help with research but she now had a copy of every single document, so he was not to worry.
66. On 9th March Paula Felton asked the claimant for copies of his time recording notes on the file. They were needed for cost draftsman to prepare a bill. It was clear from the client's evidence in tribunal that he did not keep time records on this case, as he had on his parents building dispute. He thought a costs draftsman would somehow allocate time to tasks from the specimen hours of the monthly retainer.
67. On 9 March Ms Felton saw an email the claimant had sent to the joint expert’s (French) solicitors’ on behalf of his parents, so she could see more litigation on that was coming, and next day she terminated the retainer of the claimant's parents, saying it had only covered the dispute with the builders. She would come back to him about the costs schedules; as their son had acted: “I do not expect to receive the type of correspondence I have seen other professionals receiving in this matter”. She asked them to deal with Clara Johnson's account, as counsel had been instructed via Felton’s.

Termination of the consultancy agreement

68. On 15th March the claimant wrote to Paula Felton saying he had not been paid since 2015 (i.e. no payment for January or February) 2016. There was £29,435 outstanding. She must complete payment “before i engage in further work”.
69. Later that day he and his father engaged in correspondence with her about Feltons not being entitled to payment in the building dispute. Paula Felton replied to the father that it was a genuine indemnity as represented in the joint settlement meeting, which settled relying on a cost schedule for Feltons’ charges. The claimant replied on behalf of his parents that they would pay her for 9 hours work, £2,880. Clara Johnson had settled on a no cost basis, and then declined to continue negotiating the terms of the order after the meeting.
70. Paula Felton then emailed the claimant terminating the consultancy agreement. She began: “following the communications from you of the last few weeks and those in relation to your parents’ matters with various threats and accusations I feel I have no option but to terminate our consultancy agreement. I have tried to remain patient and hope that we could work through this but I can see now that this is simply not going to happen”. On the parents matter, whether she got paid or not, a representation had been made in conference and to counsel as to costs, which he now said was false. She

also had complaints from professionals about his conduct and competence. On the client A file, the records were incomplete and there was no time recording, so there would be great expense in having his part of the file rebuilt, organised and costed. She had tried to support him over the claim form. There have been further concerns about his competence; he was upset that she had looked at the need for his continued involvement in the move toward trial. He had ignored direct instructions. She had not intended to sue him. She had never objected to him getting work with other firms. His legal adviser status was shown on many of his website presences, "But you have threatened to be several times the tribunal?";all she had done was to explain that he must undertake regulated activities only via solicitors' firms.

Events following Termination

71. Next day the claimant said he had been reviewing the SRA requirements for managing a firm and he found her management sorely lacking. He also had serious concerns about Feltons' solvency. He might have no option but to report the entire situation to the SRA (the solicitors' regulator). He questioned why she had progressively eroded the infrastructure of what was "a promising firm two years ago", suggesting it was to do with her personal life.
72. Paula Felton replied that her firm was solvent. She asked the claimant to direct all correspondence to Claire Duncan. As to billing, she could not follow how he reached a total of £29,000+, he had billed for unagreed amounts, he had not recorded his time, and he had billed for February before the month was finished. As she was concerned about *his* personal solvency, she had sent him a cheque for £10,000 on account, to help with his cash flow problem. We have seen the cheque, which the claimant returned and did not cash. It says on the back that it is "on account of final settlement". The claimant maintains that this meant he would accept it in full and final settlement, which we considered to be a mistaken understanding.
73. After that, on 17th March, there was more correspondence about what the claimant was owed for client A work, and what work Claire Duncan and Ed Jones had been doing on it. He did not think it right that Claire Duncan should be dealing with their dispute, as she would be a witness of fact if the SRA investigated the firm.
74. At the same time, Clara Johnson said that she was still owed £2,100 for attending the joint settlement meeting in the parents' building dispute. Paula Felton said that she would arrange to pay that, although subsequently Ms Johnson said that she did not wish to hear anything more about the matter.

Reports to the SRA and BSB

75. On 24th March Paula Felton emailed the Solicitors Regulation Authority with a report about the claimant's conduct in his parents matter. Although this is identified in list of issues as a report signed on the 5th March 2016, on comparing the handwritten date on the various copies in the bundle, and based on internal evidence, we conclude that it was in fact written on the 15th March 2016, the date of the termination**.**
76. After outlining the retainer and the settlement meeting, she stated "the issue I feel I need to report is the element of purposeful misrepresentation by Alastair and his subsequent behaviour which has left Feltons unpaid. He arranged for his parents to instruct another solicitor to collect the settlement sum of £115,000 without my knowledge and presumably to take this out of reach of

payment of legal costs and disbursements without discussing this with me again". He had been hostile and aggressive to counsel. There was "at least a question over Alastair 's integrity" which she felt she had to report. She had given him opportunities to correct the situation, pointing out that he could not say one thing to the court and professionals and act in another, "but he just became more hostile. Issuing spurious threats that I must do as he says. I had no alternative than but to view this behaviour as a risk and end my working relationship with him". She wanted this report on the record in case of "further complaints about his integrity and aggressive manner in the future". In her covering e-mail she said she was not asking for action, but felt bound to report as his behaviour could bring the profession into disrepute.

77. However on 10th April she wrote saying that after "almost four weeks worth of extremely insulting emails from Mr Dobbie and his continued abuse towards Clara Johnson, a female barrister, I do wish to make this a formal report. His conduct is unbefitting of a solicitor." The prompt for this was his reply to Claire Duncan (see below) suggesting her memory was defective ad asking for her medical records.
78. On 4th April 2016, she had also written a report to the Bar Standards Board. She sent it on 13th April. She said she did this because she remembered the BSB was also his regulator. The report concerns the dispute over whether the retainer was real in the parents' building dispute. She attached her report to the SRA. That was further poor professional conduct in his correspondence with Clara Johnson and John Crosfill (counsel for each side in the building dispute) and herself. He had accused her of being insolvent, under the influence of medication affecting her mental capacity, and had launched attacks on others, he had made false representations to the court, encouraged his parents to refuse to pay counsel's fees, and been aggressive towards fellow professionals. At the end, in an apparent afterthought, she complained that he had discussed private practice matters with third parties, with allegations of dishonesty on her part to her client "in that I have charged for work not done, which is a lie". In a section asking for witness details she said: "see above and make your own enquiries please I do not wish witnesses to be harassed".
79. The reference to medication is because on the 9th April the claimant wrote to Claire Duncan 'surmising' the allegations Paula Felton was making about him were because she was suffering "some serious or transitory memory deficiency due, I would suggest, perhaps to her current or past medical history" as "she has undergone both scheduled and emergency medical treatment, presumably supported by medication".
80. Following up the history of the BSB complaint, the BSB wrote asking her for evidence and when she did not reply, dismissed the complaint because there was no further information. Then on 16th of August 2016 she emailed the BSB asking for a review of their decision, attaching emails in which the claimant had criticised John Crosfill in April 2015, saying that omitting te word "loft" from the defendants' company name he had used a false name which was a criminal and civil offence. In September 2016 the BSB reopened the complaint. On 22nd November 2016 they contacted the claimant about it. We can see that in November 2018 Feltons told the BSB they were suing the claimant's parents for the sums claimed for solicitors' fees.

Claire Duncan's Report

81. Paula Felton asked Claire Duncan to deal with the correspondence from the claimant from the time of termination because, as she put it, she had a "mini nervous breakdown" and could not cope with the claimant. We were told Claire Duncan worked for the Government Legal Department in the employment law team, but had her own practice which contracted with Feltons. Paula Felton had a number of conversations with Claire Duncan, and sent her the correspondence. On the 5th April Claire Duncan sent a report to the claimant. She recited that he worked on an ad hoc basis as a self-employed consultant until entering a consultancy agreement in March 2014. He had continued to undertake work for third parties as an Internet legal advisor, a director of QuickBooks and Richmond Maths Limited and as a lecturer of Dobby Associates. He had also registered with an agency for additional work in 2015. The terms of the agreement were recited. She moved on to the current position, saying that it had been clear in the latter part of 2015 that he was not capable of running the client A case; solutions had been discussed in November 2015 but he had insisted on retaining control. In 2016 he had tried to amend the agreement by demanding payments of £10,000. Then in early 2016 it had come to light that he had sent unprofessional correspondence to professionals which reflected badly on Feltons, and that he was conducting personal work through Feltons and retaining payments for his own benefit while leaving Feltons liable for 3rd party fees (a reference to the parents building dispute). Then in February March 2016: "you sent a number of unprofessional emails to Paula Felton which made any future working relationship impossible and the agreement was terminated with immediate effect on the 15th March 2016".
82. She then said that following inquiries (which she did not specify) it was evident that he may have used confidential information, diverted valuable opportunities for his own profit, failed to act in good faith, acted where his own interests conflicted with his duties to the practice, failed to account for personal profit, solicited the practice's clients for his own benefit, brought the practice into disrepute, misled the court and defendants in relation to costs on the parents' case, failed to maintain files in an acceptable manner and conducted himself in a manner unbefitting a solicitor. The practice had thereby suffered loss and damage, including significant management time and costs investigating his misconduct, loss of reputation, disruption of relationships with clients and loss of revenue.
83. He had suggested that some of his allegations were whistle blowing. They related mainly to alleged late payment of his invoices. She considered that was not in the public interest, and amounted to a personal grievance.
84. On his invoices, the files were being sent to a cost draftsman. It was not agreed that his £5,000 monthly payment for client A had increased by agreement to £10,000. He was also seeking payment for fees which had not yet been received. The practice calculated that he was owed £7,306.75, after deducting money paid to Clara Johnson and 50% of the adverse costs paid to the defendant solicitors. He would be paid £2,306.75 fourth with and the balance when he had retuned all files, books and receipts for disbursements due to him. The £10,000 cheque he had not cashed had been cancelled. He was reminded of his obligation to account for personal profit made while

holding himself out to be acting on behalf of the practice, and to disclose correspondence, invoices and payments on named matters.

85. The claimant replied saying he would tell the SRA of the disclosure, anonymously, and in challenging some of the assertions, he included the suggestion that Paula Felton's health and medication affected her powers of recall, adding a demand that she immediately disclose to him: "all medical records of Ms Felton including but not limited to operations, admissions, both scheduled and unscheduled, and medication. If memory or neurological function have been specifically annotated by any member of the medical establishment please disclose also these notes".

Relevant Law

86. By section 47B(1)A of the Employment Rights Act 1996:

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

This includes acts done

> "by another worker of W's employer in the course of that other worker's employment" - section 47B (1A

Detriment means being put at a disadvantage. The test of whether someone has been disadvantaged is set out in **Shamoon v Chief Constable of RUC (2003) UKHL 11,** and the test is whether a reasonable worker would or might take the view that the treatment accorded to them had in all the circumstances been to their detriment - **Jesudason v Alder Hay Children's NHS Foundation Trust (2020) EWCA Civ 73,** but **"**An unjustified sense of grievance cannot amount to detriment" **Barclays Bank v Kapur no2 1995 IRLR 87.**

87. The test of whether any detriment was "on the ground that" she had made protected disclosures is whether they were materially influenced by disclosures– **NHS Manchester v Fecitt (2012) ICR 372**. This is less stringent than the sole or principal reason required for claims about dismissal.
88. The Tribunal is required to make a careful evaluation of the respondent's reason or reasons for dismissing her - or subjecting her to other detriment. This is in essence a finding of fact, and inferences to be drawn from facts, as a reason is a set of facts and beliefs known to the respondent - **Abernethy v Mott, Hay and Anderson 1974 ICR 323 CA,** and **Kuzel v Roche Products Ltd (2008) IRLR 530, CA.**
89. In assessing reasons, tribunals must be careful to avoid "but for" causation: see for example the discussion in **Chief Constable of Manchester v Bailey (2017) EWCA Civ 425 (**a victimisation claim), and **Ahmed v Amnesty International [2009] IRLR 884** . However, it is not necessary to show that the employer acted through conscious motivation – just that a protected disclosure was a ground for detriment– what caused the employer to act as he did - **Nagarajan v London Regional Transport (1999) ITLR 574**. These cases concern the Equality Act, but the same considerations apply to analysis of why the employer acted as it did in the context of a protected disclosure: "the reasoning which has informed the European Union analysis is that

unlawful discriminatory considerations should not be tolerated and ought not to have any influence on an employer's decisions. In my judgment, that principle is equally applicable where the objective is to protect whistleblowers, particularly given the public interest in insuring that they are not discouraged from coming forward to highlight potential wrongdoing." – **Fecitt.**

90. If we find that a protected disclosure was a material ground for the termination of the contract, we are asked to consider how long the claimant would have continued to work for the respondent if it had not been terminated on 5 March. This finding will be relevant to remedy for detriment. We must consider what would have happened if the respondent had acted lawfully -**Hill v Governing Body of Great Tey Primary School 2013 ICR 691.** While this involves a degree of speculation, the finding must be based on evidence of what this particular employer would have done if it acted fairly- **Teixeira v Zaika Restaurants Limited 2023 IRLR 176.**

Discussion

Detriment One

91. The first detriment is that from 2 March Feltons pursued the claimant's parents for legal fees for which they were not liable other than beneficially to the claimant, on the basis of the special arrangement between the claimant and the respondent about fees in this case, and the £2,435 accepted in settlement between claimant and respondent. It also includes issuing a claim in the county court in August 2018 against his mother and father.
92. It was suggested that pursuing the parents for fees was not a detriment to the claimant. In his witness statement the claimant described this as a "campaign of harassment" against him and his parents, but said nothing else of how he experienced it. Despite that, we considered that this did involve the claimant. He lived at home with them. It is possible that they may have reproached him for not getting the costs arrangements clearer. Whatever the precise arrangements about costs between him and his parents, he may well have derived some benefit. He represented them, and although on occasions he made a show of consulting his parents on their views before responding, he sometimes drafted his father's replies to Paula Felton. Further, if he genuinely thought (and that we are not wholly convinced of this) that the proceedings had not become "too contentious", it might be reasonable to consider that being pursued for the fees was at a disadvantage.
93. Why did the respondent do this? In our view, it was in part because the parents had been represented by Feltons, who would be liable to pay counsel and experts if not instructed by direct access. Even if the claimant was entitled to 100% of the profit costs under the special arrangement, Feltons were still liable for VAT, and only recovered it nearly five years after the settlement, after starting proceedings. Ms Felton was also outraged by what she saw as the duplicity of stating one thing to the court while maintaining to her the arrangement was something else. She will also have been upset by the diversion of settlement funds under her nose, and was upset by the attack on counsel in the name of Feltons. In our view these were the real reasons. Many of them preceded the disclosure on 29 February. We do not accept that Ms Felton "accepted" the offer to let her withhold a payment to him when he

proposed it in 2015. She was clearly angry even then that he suggested Feltons would not share the profit recovered in the usual way. Not until after the first disclosure did the claimant send her the July 2014 email - until then she could genuinely have forgotten all about it, and after it, she did not accept that it had not become contentious.. Finally, when the claimant himself maintained that the special arrangement meant Feltons were entitled to nothing (not even disbursements and VAT) it was hard for Ms Felton to act otherwise. If there had been no overbilling suggestion on 29 February, and no repetition on 4 March, she would have acted just the same. The disclosures had no effect on any detriment.

Detriment Two

94. The first part of this is that on 3rd of March Paula Felton revoked his access to the office e-mail account. There have been various suggestions about whether this occurred innocently, such as an automatic password reset. Having considered the evidence on the contemporary documents we conclude that and you difficulty the claimant had accessing his e-mail account that day was accidental. Have miss Felton intended to lock him out, she would not have investigate it as soon as he raised it and sent him a new password link Later in the day. The claimant may have apprehended that this was the prelude to being taken off the case and out of the firm, but it was a misapprehension.
95. Next, it is asserted that the demand that he returned his files on client A was a detriment, because of his 29th of February disclosure about overbilling. We hold that Ms Felton wanted the files back so as to draft a bill. The contemporary material shows a request, not a demand, and ordinary exchanges about when they would be ready for collection. There is a factual connexion between the disclosure and Ms Felton wanting the files back so that costs draftsman could cost the work done by him, and incorporate work done by her and other consultants. But it was clear that at the end of February the four months of agreed monthly retainer had come to an end and from then on it had been agreed that bills submitted had to be based on work done. There would have to be a reconciliation of money paid under retainer and work done on the file. The claimant knew this. Miss Felton was also preparing for this much earlier: on 21st of January she asked client A's MR for copies of all invoices they had received from the various fee earners, and his spread sheet, so she could be clear about disbursements. Asking for the files so that a bill could be drawn is a legitimate request, and any sense of disadvantage was unreasonable - it was not a detriment.
96. Miss Felton may also wanted the files back because she was getting in a more senior person, James Driver, to run the case. That might be a detriment to the claimant – he would be billing fewer hours. But bringing in more senior people had been flagged up many months before, as she pointed out to the claimant on 2 March She had not taken active steps on this until then, perhaps because she was ill, perhaps because the new difficulty with the litigation in January undermined her lingering trust, suggesting as it did that the claimant's grasp on the factual matrix, or at any rate of the legal implications of the facts, was not quite what it seemed. In our finding, asking for the files back so they could be costed was not a detriment, and if it was, the request was made because of the client agreement on billing, not

because the claimant had suggested she was over billing. If the request was also made so that an incoming fee earner could grasp the whole case, that was also something long planned, which was not precipitated by a protected disclosure, but by developments in January and February which had made her act now.

97. There is an allegation that it was a detriment that the claimant was excluded from a scheduled meeting with a witness – JS - for client A, that took place on 7 March. We could see that as long ago as the 9th December 2015 Paula Felton had said that she would see JS to draft his witness statement. On 21st January 2016 she had asked the claimant for the latest versions of all witness statements, contact details, and "anyone we need to speak to" as she was "reading Claire in". She the arranged the meeting. The plan that she would draw up JS's witness statement long preceded any disclosure. For any other witness it was clearly already the plan that other fee earners should see witnesses rather than the claimant. Making the disclosure had no material effect.
98. The final part of detriment two is that the claimant was excluded from any further involvement with client A. We could see that from time to time Paula Felton had suggested to client A that the claimant would have a continuing, albeit diminished role, perhaps in research. Our reading is that a solicitor with a longstanding client with valuable litigation will take great pains to reassure the client that everything is in safe hands, whatever her personal reservations about the ability of any individual, and this is entirely compatible with a plan to drop the claimant from the case once the new litigator was on board and had gained the client's trust. The January communications just cited show that he was already being eased out of preparing witness statements. On whether the timing suggests that the disclosures of the 29th February or 4th March played a part in this, we concluded that the claimants representations in the contemporary correspondence that MR was unhappy about bringing in another litigator, and that he was meeting MR (having recently brought him over for London for no good reason) indicated to Paula Felton that he was stirring client A into retaining him, and now no longer agreed that a senior litigator should be brought in – the reference to "if any" on 29 February, carrying greater weight with her than any suggestion of overbilling.

Detriment Four

99. The next in time, listed as detriment four, is terminating the consultancy, and doing so without due process. The Gordon tribunal listed the respondent's reasons for terminating the consultancy agreement in order of importance paragraphs 53 – 58. They were firstly his insistence on being paid double the monthly fee for January and February 2016, ending with saying on the 15th of March that he would do no further work unless he was paid. The second in order of importance was the dispute about whether he was entitled to 100% or 50% of the fees for handling his parents claim, which was allied to the claimant deciding not to bill them at all, despite representing an indemnity agreement to the opposition, and then disputing counsel's fee, exposing the firm to sanction. The third in order of importance was concern about the claimant's competence. The Gordon tribunal discounted complaints made by third parties, before concluding that the information alleged to be protected disclosures "had little influence" on the decision to terminate. It is this finding

that has been remitted to us, to decide what influence the information about overbilling had – was it *an* effective cause of the decision to terminate?

100. Having examined the evidence for ourselves, we concur with the Gordon tribunal with the significant reasons for ending the agreement. His asserting she had agreed to double the fee was important. At the beginning of March they were in dispute on his fees, he stated, saying they needed a mediator, and then he said he was not working until paid, precipitating the termination.

101. We also agree on the significance of the parents' dispute. Some account has to be given of why the costs in the parents' dispute mattered in March. When she first learned that Feltons might not be getting paid, at the end of November, she was ill at least until mid January. It can also only come to her attention in the second half of February at the earliest that the money for which the charge was registered was going to the parents and not to Feltons, a diversion she was not until then aware of, however much the claimant seeks to argue she knew because she signed the CH1 form. The discovery on 5 March of his combative correspondence with counsel was a major influence. They made her believe he was underhand, dishonest, and damaging the firm's reputation. The sequence of emails on 15 March shows what will have been at the forefront of her mind.

102. As for competence, in September she had told the insurers she was sacking the claimant, and then seems to have changed her mind, contrary to advice. There was however already a plan to ease him out of anything but research and translation work; she had learned in Stuttgart that his language skills were not needed; she was already putting this plan into action in December, about interviewing JS. Her confidence in his competence was undermined still further in January and February over the pleadings difficulties in the client A litigation.

103. What evidence is there of the part played by disclosures? The claimant argues that the opening of the 15th of March termination e-mail "the communications from you of the last few weeks and those in relation to your parents matters with various threats and accusations" must be read disjunctively, as the parents dispute *plus* threats and accusations, which must include, it is argued, what he said about overbilling. This is possible, but not compelling, it could be loose drafting. The rest of the email concerns, in turn, the parents dispute, his competence running client A's matter, and his freedom to work elsewhere. Here there is the reference to "you have threatened me several times with Tribunal?" The meaning of this was obscure to us. It *could* mean that in referring to whistleblowing he had hinted at bringing employment tribunal proceedings for making protected disclosures, but in the context of that paragraph we considered it was about the Solicitors Disciplinary Tribunal, which is alluded to when speaking of him undertaking regulated activities, but not explicit from other material.

104. The next paragraph: "what is clear is that this relationship has come to an end and I will not be manipulated into continuing it by threats from you", we examined very carefully, as "threats" could include the assertion that she was overbilling client A and that this was whistle blowing. It could also refer to that part of his long e-mail of the 4th of March which had included his proposal that he would not "bring any claim for unfair treatment or unlawful wage reductions" if she would not make a claim against him or bill his parents, and

the challenge to her integrity in billing. We do not accept that the suggestion he would bring proceedings for unauthorised deductions from pay(which has nt been held to be a protected disclosure), or for unfair treatment (specified here as being locked out of his email account) was what she meant when she mentioned threats. In our finding, the threat she had in mind was his undermining her by his repeated suggestions that discussion with MR showed he was unhappy about the costs position and about her bringing in James Driver, such that she should keep him on the case. This is far more plausible as 'manipulation to keep him on' than either a challenge to the billing, which she saw as an attack to persuade her that he should be paid by reference to all the monthly payments rather half of them, or to the proposed compromise of possible future claims. We concluded that, having regard to the overwhelming force of his refusal to work if she did not accept the doubling of his monthly bill, the discovery of what had been going on in the parents building dispute, and the underlying plan which was to ease him out anyway, the overbilling assertion as an allegation of wrongdoing, or the assertion that he had been locked out of his account, had no effect on the decision to end the contract.

105. The claimant draws our attention to the e-mail she wrote a few hours later, telling client A that the business relationship with the claimant had ended. She had "tried to talk things through with him but his constant stream of emails attacking my integrity and the other issue has meant that I simply cannot continue to work with him". She assured him that contrary to the claimant's assertion she had put in many more hours than she had built over the last six months and he would see that from the cost schedule in due course, then added other matters to reassure the client that the case would proceed smoothly and effectively. "Attacking my integrity" suggests at least a reference to the 4th March e-mail, a protected disclosure, which refers to her integrity. Despite this, we do not consider that this reference suggests that this disclosure was an effective cause of termination. She would not want to open up with the client about the claimant seeking to undermine her with him, let alone that he was trying to double his monthly payment from the retainer, or that this had led to confrontation and him downing tools. Attacks on her integrity was shorthand for the dispute about how the case should be handled, whether James Driver should take over, whether she had agreed to double his fee, whether she had agreed but rowed back from a special arrangement that he could retain 100% of the profit costs in the building dispute, and so on. We also consider that if she did include the allegation of overbilling in the attack on her integrity, it was not one that caused her particular concern. She knew that she and others had done billable work on the case, related both to the defective claim form, and to the developments in early 2016 in serving particulars of claim, and, unlike the claimant, she knew the client had been told that. It was not a credible threat, to her mind, and in our finding, it was not operating on her decision to terminate.

106. The second part of this detriment is that she terminated the engagement without any due process. As he was not an employee, no process would be expected on termination. At most it means that he was entitled to notice. On the respondent's analysis of his behaviour (on which Claire Duncan's analysis was no doubt based) he was not entitled to notice. For very similar reasons as

those for termination itself, we conclude that termination without notice was because of the parent retainer dispute, undermining her with client A, and asserting an agreement about doubling his fee which she believed to be dishonest. It was not because of any disclosure.

Detriment Three

107. This is the report to the SRA, drafted on the date of termination and submitted on the 24th March, followed by making it "formal" on the 10th April. (The list of issues does not specify what the "repeated complaints on dates unknown" are, and we have not been able to find it out from the case management orders or pleadings.)

108. The report itself is concerned with the retainer issue on the parents' building dispute. The claimant's case is that she only decided to send this because he had made protected disclosures. We considered carefully why in her view matters that come to a head now. It was important that over 4 and a half hours on the afternoon and evening of the date of drafting this report, there had been lengthy emails from the claimant and his father about the charging arrangements. It would be at the forefront of her mind. These emails included allegations from the claimant and his father that Clara Johnson had not done her work properly, and the claimant took this attack on counsel, a woman, hard. We considered that was relevant to why it was composed when it was. It was not a way of getting back at him for asserting wrongdoing. She was genuinely troubled by his behaviour.

109. There was no detriment to the claimant until it was submitted, on 24th of March. By that date the claimant had faced his accusation the firm was insolvent, an existential threat, particularly when he said he was going to report the entire situation to the SRA. This had nothing to do with either protected disclosure, but her "mini breakdown" at this point may well have been the reason for delaying submission, alternatively, his threat to report her may have made her want to get hers in. Neither reason had anything to do with the disclosures of wrongdoing.

110. She changed it to a formal complaint on the 10th April for the reasons she gave, namely, insulting emails. The requirement to disclose her medical records to establish that failure to accept that Feltons had no claim to costs from his parents, and that she had agreed to double his monthly payment, was due to faulty memory, was particularly insulting.

Detriment Five and Nine

111. This is the complaint to the BSB, first the initial complaint, then the revival on 16 August 2016 (we think the reference to 21 November is a mistake). Unlike the complaint to the SRA it contains less information underlying her allegations, though she did attach the SRA complaint itself. Counsel for the claimant described it as a "vengeful scrawl", an impression that the failure to respond to requests for further information might reinforce. Nevertheless, we considered that it was made for the same reasons (and on the same grounds) as the SRA complaint, and was done because she could not complain about the claimant to one regulator and not the other, as he was dual qualified. It was not done to get back at him because of the protected disclosures of wrongdoing. We reached this conclusion despite the addition at the very end saying that the allegation of overbilling was a lie. Clearly this is about the protected disclosure on 29th February and 4th March. It was tacked on to a

number of other matters which in her belief were unbecoming conduct, and may have been added after the 4th April. In our finding she was already outraged by his conduct, now aggravated by his post-termination allegations of insolvency and "memory loss". We do not find that the mention of overbilling at this stage was the real reason surfacing in an unguarded moment. We remain of the view that there were already several sufficient effective causes for complaining about the claimant's conduct relying in court proceedings and in representations to opposing counsel on Feltons' retainer to establish a genuine indemnity for costs payable in settlement, and then denying Feltons were entitled to anything, and his correspondence with counsel who had achieved a satisfactory settlement. This suggestion of overbilling she saw as one more ungrateful outrage, which made no difference to the decision to report his conduct to the regulator.

112. As for reviving the complaint, our reading was Ms Felton had overlooked the request for further information, and when she was turned down for that reason, she went to look for the evidence they wanted and then supplied it. Notably, it concerned the claimant abusing other counsel.

113. It is suggested that the correspondence with the BSB in the autumn of 2016 shows details being provided by the respondent that widen the range of complaints against the claimant, well after he had stopped working for her, and were vexatious - meaning designed to get him into trouble, not because there was genuine concern about his conduct. As far as we can see from the correspondence, this was a belated attempt to provide the information she had failed to provide earlier in the year. It is said that this shows she was coordinating complaints from clients, but the selections we were shown, heavily redacted as they are, show her collecting evidence of what she had already asserted, rather than digging up new material. If new, it shows examples of the claimant disputing the fees of other experts in the case, as well as disparagement of both sides' counsel, which provided evidence of her initial assertions and was of similar character. It was also contemporaneous with her correspondence with the costs draftsman preparing the client A bill (the claim was now settling) about the lack of any time recording by the claimant. If the continued supply of material about the claimants activity went beyond the scope of the original complaint, it was more likely fuelled by her irritation at the claimant's neglect of basic discipline in file keeping than any protected disclosure.

Detriment Six

114. This is failing to pay the claimant's invoice for legal work dated 29th February 2016. There is reference to not including sums agreed in a letter 5th April 2016, which we understand to be Claire Duncan's letter. In our finding, the respondent did not pay his invoice because she did not accept that there was any agreement to double his monthly payment on the client A matter. As for not paying the remaining £5,000 conditional on return of his files, we note that the claimant states that two boxes of files were returned, and that he agrees that there were other papers outstanding on termination which were not returned. Whatever the rights and wrongs of whether the condition was fulfilled, we think that this was the reason why there was any shortfall here, not the disclosures.

Detriment Seven and 3(a) to (i)

115. This is instructing Claire Duncan to conduct an investigation and produce a report into his conduct, referring to the initial report on the 5th April, a further communication on 30th May, and other unspecified communications. It is complained that this was detrimental, being unnecessary, and because Ms Duncan was not impartial. We will also discuss under this heading item three on the list of issues, which deals with the detail of Claire Duncan's findings.

116. It cannot be said that she was instructed to conduct an investigation and prepare a report into his conduct. Ms Felton asked Claire Duncan to deal with all the correspondence from the claimant because she could not face it herself. Claire Duncan chose to present it in a format closer to a grievance investigation. If it was a grievance investigation, there need not have been a meeting with the claimant, as he had left. She would have stated what she had found out from her investigation if it as a grievance, but it was not. She was answering letters on a variety of matters.

117. On the specifics alleged, (paragraph three of the list of issues) we discount a , d, e and f, as matters of interpretation of the law - for example, whether he was a worker rather than self-employed - which were legitimately arguable, and cannot be said to be detriment.

118. For the rest, item b. is that she made unjustified or unnecessary (or both) criticisms of the claimant's conduct. It is possible from her succinct formulation to attribute these accusations to the parents retainer issue, or to his discussion of firm's business with client A, or to others (we think client M). She may not have been right, but insofar as it was only published to the claimant it cannot be said to be detrimental when he had already adopted a combative tone with Feltons in his correspondence before and after termination. Item c. Is that she sought to deprive him of sums properly due under the contract with the respondent. We do not see that this can be viewed as more than reasonable correspondence about a matter in dispute (how much he was owed) and it was not unreasonable to insist on delivery up of books and files, as required by the contract, before the final payment was made. This was businesslike, and it was he who had asserted contractual breach. We can see for example Claire Duncan writing about practical arrangements for this on the 19th April. Item g. is that she had failed to engage in any due process after dismissal detriment judgement or termination or treatment by the respondent. As already stated we are not aware what the due process would be. If he wanted to assert that he was entitled to notice of termination, he could have said so or sued. If he thought there should be a meeting to negotiate, Ms Felton probably thought a meeting was futile. Item h is that she said counsel had been paid when she was not, which was an attempt at "further fraud on the claimant and/or his parents". In fact, Paula Felton had said she would pay counsel in full, and it was counsel who said she wanted no more to do with it. At the stage that this was said, it was true, not an attempt at fraud.

119. The final item is i, that she threatened the claimant with an injunction, costs and later a further complaint to the SRA "in relation to further protected disclosures or to dissuade the claimant from making them". This is about a letter written on 31st May 2016 covering recent things the claimant had said in correspondence. Under the heading "Public Interest Disclosure Act 1998" it is said that the matters of which he complained were personal complaints

against the practice and Ms Felton, the disclosure of which is not in the public interest. It went on: "if you persist in pursuing these false allegations and *continue to threaten public disclosure of your complaints*, (emphasis added) then we will have no option but to seek an injunction". The claimant was asked for an undertaking to provide at least five working days' notice of any "*proposed public disclosure*" otherwise they would seek an injunction and costs. We note that the injunction concerned "public disclosure" of his complaints, rather than persisting in false allegations, or making protected disclosures on matters of public interest. The proposed injunction was a legitimate protection of the firm's reputation if he was going to make the public allegations about hr firm's business and its clients to persons other than the firm or an appropriate regulator, for example, on social media or in the press. A reasonable person would understand that he was being asked not to make disclosures to the public, and that this was not putting him at a disadvantage.

Detriment Nine

120. This is that on 6th November 2016 Feltons asked the claimant's parents for legal fees "in breach of the special arrangement regarding fees in this matter". As far as we can see that this was a legitimate dispute both about Feltons liability for expert's and counsel's fees, and for VAT, and it was legitimate for Feltons to dispute that the matter was "not too contentious", thr condition on which he relied. This is a continuation of detriment 1. It was not because the claimant had made protected disclosures about overbilling client A, or that he was being mistreated for that.

Detriment Ten

121. This is making a "vexatious" subject access request to the claimant on the 10th January 2017. Miss Felton says she made this request because client papers had not been returned and she wanted to find out what he had retained, believing that as data controller of individual clients' data and under their client care letters she could do this. It was probably not the right procedure, and would not achieve what she wanted. In our finding however, she did not do it to vex the claimant, but because of the ongoing dispute about whether all papers had been returned; more particularly, whether he did have any time recording notes, the cost draftsman having pointed out to Paula Felton in October and November 2016 how few time records there were for his work. The claimant admitted to the tribunal that he still had many files about other clients in storage, so her concern about papers not having been returned was real. The subject access request was a misguided attempt to get the material, but was not done to vex the claimant because of protected disclosures.

Detriment Eleven

122. This is failing to pay the £5,000 promised by Claire Duncan on the 5th April. We know that this was conditional on delivery of his books and files. Some were returned in November 2016. Others we know have still not been returned. Not paying was probably for that reason, not because of making protected disclosures about overbilling or unlawful deductions from wages. We also know that there is lack of clarity on what the claimant has and has not been paid, which has still to be explored in the further hearing in the unlawful deduction from wages claim before Judge Elliot.

How long would the claimant have continued if not terminated on 15 March 2016?

123. If we are wrong about public interest disclosures not being an effective cause of the termination of contract, we should consider how long the claimant would have continued but for that.

124. We do not think it would have lasted long. The relationship was in trouble before any protected disclosure. Paula Felton would have continued to resist paying any invoice based on the doubling of his monthly payment. The claimant had already said he would stop work until he was paid. If he carried through with this, he may only have lasted a week before she reached the conclusion that employment should be terminated. Similarly, there is no reason to think that the claimant would have made any concession on the matter of his parents' retainer. We know that all he was prepared to offer the respondent was the opportunity to do work on satellite litigation, while she was concerned about VAT, paying counsel, settlement money being diverted away from Feltons without her knowledge, and the firm's reputation. For her the issues were what he said he was owed, the retainer issue, the deception associated with that, and the attacks on counsel. For the deception alone it is unlikely she would have given him a month's notice.

Conclusion

125. It is not shown that the claimant suffered any of the pleaded detriments because he had made protected disclosures.

Employment Judge Goodman
Dated: 13 June 2023

JUDGMENT AND REASONS SENT to the PARTIES ON

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. 14th June 2023

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FOR THE TRIBUNAL OFFICE

APPENDIX

LIST OF ISSUES

Whistleblowing claim

1. It has been determined that the Claimant made the following disclosures and that, for the purposes of Part IVA ERA 1996 they were protected disclosures in that they were made to the employer and tended to show in his reasonable belief that 'a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject':

a. On 29 February 2016, that Ms Felton was billing Client A incorrectly.

b. On 4 March 2016

i. That Ms Felton was billing Client A incorrectly;

ii. That the Claimant had suffered an unlawful detriment on 3 March 2016 as a whistle-blower.

2. Did the Respondent subject the Claimant to all or any of the following detriments:

One -a. On or from 2 March 2016, pursuing the Claimant's parents for legal fees which:

i. The Claimant's parents were not liable for other than beneficially to the Claimant, on the basis of the special arraignment and the £2,435 accepted in settlement between the Respondent and the Claimant;

ii. Departed from the special arrangement reached between the Claimant and the Respondent regarding the fees on this matter.

iii. Included issuing a Claim in the county court on 22 August 2018 (Claim No. E5QZ8N0T) against the Claimant's mother and father

Two -b. From 2 March 2016:

i. Revocation of the Claimant's access to his office email account;
ii. A demand that the Claimant return his files relating to Client A;
iii. Excluding the Claimant from a scheduled meeting with a witness for Client
iv. Excluding the Claimant from any further involvement with Client A.

Three - On 5 March 2016, making a false and/or vexatious complaint about the Claimant to the Solicitors Regulatory Authority ("the SRA"). And making repeated complaints on dates unknown.

Four- d. On 15 March 2016:

i. Terminating the Claimant's engagement with the First Respondent.
ii. Terminating the Claimant's engagement without any due process.

Five- e. On 4 April 2016, making a false and/or vexatious complaint about the Claimant to the Bar Standards Board. This included a copy of the complaint made earlier to the SRA. And making repeated complaints on dates unknown.

Six -f. Failing to pay the Claimant's invoice for his legal work, dated 29 February 2016, including sums which Claimant says the Respondent agreed were owing in her letter of 5 April 2016.

Seven-g. By instructing Claire Duncan to conduct an investigation and to produce a report into the Claimant's conduct which was provided on 5 April 2016 (and 30 May 2016, followed by further communications between Ms Duncan and the Claimant) which:

i. Was unnecessary;

ii. Was undertaken by the Claire Duncan who was not impartial;

Eight- h. On 6 November 2016, again pursuing the Claimant's parents for legal fees (while reserving their rights to bill further sums) in breach of the special arrangement regarding fees on this matter.

Nine- i. On 21 November 2016, renewing the false and/or vexatious complaint about

the Claimant to the Bar Standards Board ("the BSB").

Ten -j. On 10 January 2017, making a vexatious subject access request of the Claimant.

Eleven- k. Failing to pay the sum of £5,000 which the Respondent admitted was owing to the Claimant in a letter dated 5th April 2016, known by the Respondent to be earmarked for legal fees for the Claimant by at least 19 April 2016.

3. Did the Respondent subject the Claimant to a detriment in that Claire Duncan produced a report regarding his conduct on 5 April 2016 (and 30 May 2016, followed by further communications between Ms Duncan and the Claimant) which:

a. Denied as well as diminished the import of the Claimant's disclosures;

b. Made unjustified and/or unnecessary criticisms of the Claimant's conduct;

c. Sought to deprive him of sums properly due to him under his contract with the Respondent.

d. Denied the jurisdiction of the Employment Tribunal.

e. Denied worker status.

f. Denied that the disclosures were in the public interest and protected.

g. Failed to engage in any due process as to dismissal, detriment, termination or treatment by the Respondent.

h. Made false statements about having paid counsel when counsel had not been paid, and thus attempted a further fraud on the Claimant and/or his parents.

i. Threatened the Claimant with an injunction, costs and later a further complaint to the SRA in relation to further protected disclosures or to dissuade the Claimant from making them, in breach of the SRA Code of Conduct?

4. If so, were any such detriments on the ground that the Claimant had made a protected disclosure for the purposes of s.47B of the ERA 1996? In so far as it is found that Ms Duncan committed acts of unlawful detriment, the First Respondent accepts 'vicarious liability' for those actions under s.47B(1B) of the ERA 1996 and does not rely on the 'reasonable steps defence in s.47B(1D).

5. If so, what sum should be awarded to the Claimant by way of compensation under s.49 of the ERA 1996 taking into account:

a. The loss of earnings flowing from the detriments;

b. The financial losses incurred by the Claimant in responding to the complaints made to the SRA and BSB;

c. Injury to feelings; and,

d. Damage to reputation.