EMPLOYMENT TRIBUNALS

Claimant: Mr J Crozier

First Respondent: Pragmatic Web Ltd (dissolved)
Second Respondent: Angry Creative (UK) Limited

Heard at: London South (Croydon) (in private)

By: Hybrid (CVP and in person)

On: 14th, 15th, 16th and 17th November 2023 and 11th December 2023 in chambers

Before: Employment Judge L Clarke
Members: Mr C Mardner
Mr S Moules

Appearances
For the claimant: In person
For the respondent: Mrs L Moor (HR Consultant)

RESERVED JUDGMENT

1. No order is made in respect of the First Respondent as it was dissolved on 2nd November 2023 and is no longer a legal entity.

2. The claim for breach of contract is dismissed on withdrawal by the Claimant.

The unanimous judgment of the Tribunal is as follows:

Detriment for making protected disclosures

3. The complaint of being subjected to detriment for making a protected disclosure is not well-founded and is dismissed.

Automatically Unfair Dismissal pursuant to s.103A of the Employment Rights Act 1996

4. The complaint of automatic unfair dismissal is not well-founded. The Claimant was not dismissed because he made a protected disclosure.

The majority decision of the Tribunal is as follows:

Ordinary Unfair Dismissal

5. The complaint of unfair dismissal is well-founded. The claimant was unfairly dismissed.

REASONS

Introduction

1. The Claimant was employed by the First Respondent, a web services agency based in Brighton, as a Business Development Manager, from 9th November 2017 until his employment was terminated with effect from 16th March 2020.

2. The Claimant first notified ACAS under the early conciliation procedure on 16th March 2020 and a certificate was issued on 3rd April 2020. The claim form was presented on 4th April 2020 and sought compensation for protected disclosure detriment and for automatically unfair, alternatively ordinarily unfair, dismissal.

3. The First Respondent has taken no part in the proceedings. On 15th July 2020 the First Respondent went into administration before entering into a Creditors Voluntary Liquidation on 20th January 2021. The assets and remaining staff of the First Respondent were ultimately transferred to the Second Respondent under a pre-pack and TUPE transfer. On 2nd November 2023 the First Respondent was dissolved.

4. By a case management order dated 24th February 2021 [**47-52**] the Second Respondent was joined to the proceedings. Thereafter the Second Respondent filed and served and ET3 and the claim has effectively proceeded solely against the Second Respondent.

5. Although the Second Respondent took issue with having been joined to the proceedings [**75**], by the final hearing the Second Respondent accepted that it effectively stands in the shoes of the First Respondent and, should the Tribunal find the claim proved, it is liable to pay the Claimant notwithstanding that the First Respondent was his employer at the time of relevant events.

6. The Second Respondent resists the claims denying that the Claimant made any protected disclosure or that he was dismissed because of any disclosure. The Second Respondent asserts that the Claimant was made redundant due to the financial difficulties of the First Respondent which resulted in the need to cut costs and staff.

7. The claims were consolidated and listed for a 4-day final hearing to deal with liability and remedy which was heard between 14th and 17th November 2023.

8. Delays occurred in commencing the hearing due to one of the members becoming unavailable late on 13th November 2023 which resulted in a search for a replacement member on. The morning of the 14th November and the need to convert the in-person hearing to a hybrid hearing to accommodate that member. Time was also lost during the hearing at various times due to technical difficulties with the CVP system and because of difficulties reconciling the electronic and paper bundles and locating the documents referred to by the witnesses.

9. As a result, although the hearing was listed for merits and remedy, following discussion with the parties, the Tribunal agreed to deal with liability only. Accordingly, this judgment deals with merits only and does not touch upon remedy.

10. Nevertheless, at the conclusion of the 4 listed days, there was insufficient time remaining for the Tribunal to complete their deliberations. Judgment was reserved and the Tribunal sat in chambers on 11th December 2023 to conclude their deliberations. Prior to the conclusion of the hearing with the parties, separate case management directions were agreed with the parties to provide for a remedy hearing, if required, following the Tribunal's decision on the merits.

The Issues

11. At the commencement of the hearing, the list of issues contained in the case management order of 24th February 2022 were discussed and amended. The final list is appended to this judgment.

The Evidence

12. The Tribunal considered a paper bundle numbered to page 803. An electronic bundle was also available in 2 parts. The pagination of the electronic bundle and the paper bundle do not match. References hereafter in bold within square brackets are to the pages of the paper bundle. The Tribunal was also provided with a cast list and brief chronology. The Tribunal was also referred to, and considered, witness statements from each witness who gave oral evidence.

13. At the hearing, the Claimant appeared in person and gave sworn evidence.

14. The Respondent was represented by Mrs Moor, who called sworn evidence from Mr Tom Chute, Ms Laura Nelson and Ms Amy Slade.

The Submissions

15. The Tribunal heard oral submissions from both the Claimant and from Mrs Moor on behalf of the Second Respondent. Both the Claimant and Mrs Moor also provided their submissions in written form.

16. Mrs Moor's submissions followed her written notes. Additionally, she submitted that the timing of the grievance in relation to the redundancy process was entirely coincidental and separate. Also, that the steps proposed at the conclusion of the informal grievance meeting on 14th January 2020 were partially progressed notwithstanding the senior staff's knowledge of the likelihood that the Claimant might be made redundant as the information about potential redundancies could not be disclosed to staff at that time and it would not have been appropriate or fair to ignore the Claimant's concerns for a further 2-3 weeks on the assumption that he would be made redundant.

17. In addition to his written submissions, the Claimant's submissions were to the effect that the grievance e-mail illustrates his thought processes and the timeline, apparent special treatment of Amy Slade, and the existence of non-disclosure agreements ("NDA's) with departed staff led to his reasonable belief that the First Respondent was not complying with its legal obligations, that a miscarriage of justice had or was occurring, that information about these matters was being concealed and that it was in the public interest to make a disclosure given the previous size of the First Respondent (up to 60 employees) meant that a significant amount of people could have been affected. He further said that he relied upon the timeline, and in particular the failure to pay his commission in January 2020 and the reduction in potential redundancy numbers from 16 or 17 (in the internal e-mail) to 4 (n the circulated documents) with his post being the sole role made entirely redundant, was evidence that his dismissal related to his protected disclosures.

Law:

Standard of Proof

18. The party who bears the burden of proving the claim, or any element of the claim, must do so on the balance of probabilities.

Unfair Dismissal

19. Section 94 of the Employment Rights Act 1996 ("the 1996 Act") confers on employees the right not to be unfairly dismissed. Enforcement of that right is by way of complaint to the Tribunal under section 111.

20. The Claimant must show that he was dismissed by the Respondent under section 95. It is for the employer to show the reason, or principal reason, for dismissal.

21. The Claimant must show that he was dismissed by the Respondent under section 95 but in this case, there is no issue regarding the dismissal. Both the Claimant and Second Respondent accept that the Claimant was dismissed by the First Respondent on 16th March 2020.

22. Section 98 of the 1996 Act deals with the fairness of dismissals. There are 2 stages that the Tribunal must consider. Firstly, the Respondent employer must show that it had a potentially fair reason for the dismissal within section 98(2).

23. If the reason, or principal reason for the dismissal is that the employee made a protected disclosure, the dismissal will be automatically unfair under s103A of the 1996 Act. If the protected disclosure was merely a subsidiary reason, the dismissal will not be automatically unfair.

24. Where the Claimant has 2 years continuous service, the Claimant must produce some evidence to show that the principal reason for the dismissal was the making of a protected disclosure but does not have to prove that the dismissal was for an automatically unfair reason. It remains for the employer to show what the reason was but the Claimant will not succeed merely by default. The Tribunal need not find that the dismissal was for the reason asserted by the Claimant - ***Kuzel -v- Roche Products Ltd [2008] ICR 799, CA.***

25. A potentially fair reason for dismissal under s.98 of the 1996 Act is redundancy (unless the Claimant was selected for redundancy from a pool of similar candidates because he made a protected disclosure. - s.105(1) and 105(6A) of the 1996 Act).

26. Redundancy is defined by s139(1) of the 1996 Act and occurs where the business or workplace closes or where the employer's requirement for an employee to carry out a particular kind of work ceases or diminishes or is expected to cease or diminish.

27. The test for redundancy is set out in ***Safeway Stores plc -v- Burrell [1997] ICR 523, EAT***. And endorsed in ***Murray & Anor -v- Foyle Meats Ltd [1999] ICR 827, HL***. The Tribunal must consider:
    (i) Was the employee dismissed?
    (ii) If so, had the requirements of the employer's business for employees to carry out work of a particular kind diminished, or were they expected to cease or diminish?
    (iii) If so, was the dismissal of the employee caused wholly or mainly by the cessation or diminution?

28. The terms of the employee's contract (including whether the employee could be required to do other work) is relevant only at stage (iii) when determining, as a matter of causation, whether the redundancy situation was the operative reason for the employee's dismissal. This is a question of fact.

29. The s.139 test requires the Tribunal to take a holistic view of two linked variables: the employees and the work. There will be a redundancy situation either where the employer requires fewer employees to do the same amount of work or where the number of employees stays the same but the amount of available work of a particular type is reduced, but not where there is the same amount of work for the same number of employees - ***Packman t/a Packman Lucas Associates -v- Fauchon [2012] ICR 1362 EAT*** (a decision of the President of the EAT and preferred over the conflicting EAT decision in ***Aylward and ors -v- Glamorgan Holiday Home Ltd t/a Glamorgan Holiday Hotel EAT 0167/02).*** ***In Servisair***

UK Ltd v O'Hare and ors EAT 0118/13 the relevant question was summarised as being 'whether there has been a relevant reduction in FTE headcount'.

30. Whether a business reorganisation has resulted in a redundancy situation must be decided on its own facts.

31. There is no need for an employer to show an economic justification (or business case) for the decision to make redundancies if the facts clearly show that the role had disappeared– ***Polyfor Ltd -v- Old EAT 0482/02***.

32. Secondly, having established the reason for the dismissal, if it was a potentially fair reason, the Tribunal has to consider, without there being any burden of proof on either party, whether the Respondent acted fairly or unfairly in dismissing for that reason.

33. Section 98(4) of the 1996 Act deals with fairness generally and provides that the determination of the question of whether or not the dismissal was fair or unfair, having regard to the reason shown by the employer:
    (a) depends upon whether in the circumstances (including the size and administrative resources of the employers undertaking) the employer acted reasonably or unreasonably in treating it as sufficient reason for dismissing the employee; and
    (b) shall be determined in accordance with equity and the substantial merits of the case.

34. There is a neutral burden of proof in relation to the general test of fairness.

35. There is also well-established guidance for Tribunals on the fairness within s.98(4) of redundancy dismissals in ***Williams -v- Compare Maxam Limited [1982] IRLR 83***. In general terms, the Tribunal will consider:
    (i) whether the employer gave as much warning as possible to employees of impending redundancies;
    (ii) whether the employer consulted the employees about the decision;
    (iii) the processes and alternatives to redundancy (including the fairness of the selection criteria and whether they were objective or subjective); and
    (iv) whether the employer took reasonable steps to find alternatives to redundancy such as redeployment to a different job.

36. However, a lack of consultation will not necessarily render the dismissal unfair – ***Hollister -v- National Farmers' Union [1979] ICR 542***.

37. In considering all aspects of the case, including those set out above, and in deciding whether or not the employer acted reasonably or unreasonably within section 98(4) of the 1996 Act, the Tribunal must decide objectively whether the employer acted within the band of reasonable responses open to an employer in the circumstances. This applies not only to the decision to dismiss but to the procedure adopted by the Respondent – ***Sainsbury's Supermarkets Limited – v- Hitt [2003] IRLR 23; [2003] ICR 111, CA***.

38. It is not the function of the Tribunal to decide how the employer's business should be managed. It is immaterial how the Tribunal would have handled events or what

decisions the Tribunal would have made. The Tribunal must not substitute its own view for that of the reasonable employer – ***Iceland Frozen Foods Limited –v- Jones [1982] IRLR 439***, ***Sainsbury's Supermarkets Limited –v- Hitt [2003] IRLR 23; [2003] ICR 111, CA***, and ***London Ambulance Service NHS Trust –v- Small [2009] IRLR 563***.

Protected Disclosure Detriment

39. Section 47B(1) of the 1996 Act confers on workers (including employees, see section 43K) 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. Enforcement of that right is by way of complaint to the Tribunal under section 48(1A).

40. The Claimant must show that he made a qualifying disclosure within the meaning of s43B of the 1996 Act.

41. In order to be a qualifying disclosure, the Tribunal must be satisfied of all of the following: - ***Williams v Michelle Brown AM, UKEAT/0044/19/OO***.

(1) It is a disclosure of information.

(2) The Claimant believes the disclosure is in the public interest.

(3) The Claimant's belief that the disclosure is in the public interest is reasonable.

(4) The Claimant believes that the disclosure tends to show one (or more) of the six specified categories in s 43B(1), namely:
   (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.
   (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.

(5) The Claimant's belief that the disclosure the disclosure tends to show one (or more) of the six specified categories in s 43B(1) is reasonable.

42. "Information" will only be disclosed if the disclosure conveys sufficient factual content. This is a matter for evaluative judgment by the Tribunal in light of all of the facts of the case - ***Kilraine v London Borough of Wandsworth [2018] ICR 1850***. It is for the Tribunal to decide whether a series of communications should be read together so that an amalgamation of their contents amounts to a disclosure of information - ***Norbrook Laboratories (GB) Ltd v Shaw [2014] ICR 540 (EAT)***.

43. The requirement of reasonable belief is both a subjective and objective test. There must be some objective basis for the belief but the focus is on whether it was

reasonable for the Claimant to believe it, not whether a hypothetical reasonable worker would have done so. It is a low threshold but rumours, unfounded suspicions and uncorroborated allegations will not be sufficient to found reasonable belief. If the threshold is met, the disclosure will be a qualifying disclosure even if the information disclosed turns out to be untrue or inaccurate - ***Babula v Waltham Forest College [2007] ICR 1026***.

44. An event should be construed as being "likely" if there is more than a possibility or a risk.

45. In considering whether the Claimant reasonably believed the disclosure was in the public interest, it is necessary to consider whether the Claimant considered the disclosure to be in the public interest, whether the Claimant believed the disclosure served that interest, and whether that belief was reasonably held. It is not for the Tribunal to determine whether a disclosure was in the public interest.

46. There should be features of the case which make it reasonable to regard it as being in the public interest. The Tribunal must take into account:
    (i) The numbers in the group whose interests are affected.
    (ii) The nature of the interests affected and the extent to which they are affected by the wrongdoing.
    (iii) The nature of the wrongdoing.
    (iv) The identity of the alleged wrongdoer.

    See ***Chesterton Global Limited (t/a Chestertons) and anor -v- Nurmohamed (Public Concern at Work Intervening) 2018 ICR 731 CA and Dobbie -v- Felton t/a Felton Solicitors EAT 0130/20***.

47. A disclosure could be in the public interest even if the motivation for the disclosure was to advance the worker's own interests as motive is irrelevant. What is required is that the worker reasonably believed disclosure was in the public interest in addition to their own personal interest - ***Chesterton Global Ltd v Nurmohamed.***

48. In relation to disclosures concerning breaches of legal obligations, unless the legal obligation is obvious, there must be some disclosure that actually identifies the legal obligation although strict legal language is not required, the identification need not be detailed or precise and a common-sense approach is to be adopted. A "legal obligation" can be a contractual obligation, statutory or secondary legislation or a breach of common law (eg negligence, nuisance, defamation). It does not cover guidance, best practice or moral obligations.

49. Miscarriages of justice will include perjury, deliberate omissions and a failure to disclose information.

50. A qualifying disclosure will be a protected disclosure if it was made to the employer or certain other relevant persons – s43A and s43C of the 1996 Act.

51. A "detriment" in the context of s47B(1) is a disadvantage. It covers most adverse treatment at work and need not involve economic detriment. It should be viewed from the perspective of the worker. The matters which may be considered to be detriments are wide ranging and can include deliberate failures to act, suspension, disciplinary action, moving the worker and subjecting the worker to performance

management – see ***Shamoon -v- Chief Constable of the RUC 2003 ICR 337 HL***, ***Merrigan -v- University of Gloucester ET 1401412/10***, ***Keresztes -v- Interserve FS (UK) Ltd ET 2200281/16*** and ***Chief Constable of West Yorkshire Police -v- B and anor EAT 0306/15.***

52. The detriment must have been caused by the protected act. In determining this the Tribunal should consider:
    (1) Was the Claimant subjected to a detriment by the employer?
    (2) Was the Claimant subjected to a detriment because they made a protected disclosure?

53. It is for the Claimant to prove that there was a protected disclosure, detriment and that the employer subjected the Claimant to that detriment. Once he has done so, the burden of proof passes to the employer to prove that the worker was not subjected to a detriment on the ground that they made a protected disclosure.

54. The Tribunal is entitled to draw inferences as to the real reason why the employer acted the way that they did in the absence of direct evidence and on the basis of its findings of fact.

55. The making of the protected disclosure must be the real reason, core reason or motive for the detriment the employer subjected the Claimant to, that is the disclosure must have materially (more than trivially) influenced the employer's treatment of the Claimant but the employer's motive need not be malicious – ***Chief Constable of West Yorkshire Police -v- Khan [2001] ICR 1065 HL, Fecitt & oths -v- NHS Manchester (Public Concern at Work intervening) [2012] ICR 372, CA*** and ***Croydon Health services NHS Trust -v- Beatt [2017] ICR 1240, CA***.

56. The person who subjects the Claimant to the detriment must know that the Claimant made the protected disclosure unless they have been influenced or manipulated to carry out the detriment by a different person who was aware of the protected disclosure.

Relevant Findings of Fact and Associated Conclusions

57. The Tribunal did not consider that any of the witnesses gave dishonest evidence. The Tribunal found a number a number of inconsistencies in the witnesses' oral evidence but noted that their evidence concerned events which took place in excess of 3 years earlier and that consequently their recollections may not be as complete or as reliable as the evidence from contemporaneous documentation.

58. The Tribunal also noted the absence of any documentary evidence regarding the financial affairs of the First Respondent during the relevant time or the details regarding staff member departures and redundancies before and after the Claimant's dismissal. In particular there was a lack of documentation as regards the redundancy exercises undertaken in about March 2019, November 2019 and after the Claimant's departure. Similarly, there was only very limited contemporaneous documents relating to the restructuring and redundancy

exercise conducted by the First Respondent in early 2020 and involving the Claimant. No records of the decision-making process were available, in part because of a deliberate decision by the First Respondent's senior staff to minimise the paper records regarding the same to avoid unintentional leakage of information to staff.

The Claims

59. The Claimant's employment with the First Respondent commenced on 9th November 2017 (his contract records the start date as 13th November 2017). He was employed as a business development manager. Although his contract of employment [**101-115**] refers to an attached job description, this was not provided to the Tribunal. The only job description available was a draft prepared in 2019 or 2020 [**645-646**] and reflected an updated role.

60. The Claimant's contract required him to perform any more general duties that are consistent with his skills and capabilities [**101**].

61. The Claimant's primary role was to sell by creating and following up leads for new business and converting them into sales, following which he would pass the business to account managers. This required him to engage with potential enterprise level clients, gain enquiries and manage a sales process through to success. He was part of a commercial team which also comprised the Marketing Manager, Laura Nelson, and a number of developers.

62. Ms Nelson's role was to promote the business generally through more traditional marketing: managing advertising and marketing activities that were not targeted at individual potential clients (such as the website, social media and general publicity). By contrast, the Claimant's role was to engage with companies who would not respond to a direct sales approach. He would manage this process from end to end: researching and profiling potential clients, identifying and instigating a strategy to engage with them, being a first point of contact and monitoring and recording progress. It was no part of the Claimant's role to manage existing business and he was not directly billable to clients.

63. The Claimant's remuneration package consisted of a basic salary (initially £35,000pa and increased to £35,350pa by the time of his dismissal) plus a commission, paid quarterly, that was linked to the amount of new business attributable to the Claimant, as set out in the contractual addendum [**113-115**]. This was expected to achieve on-target earnings (OTE) of £50,000pa [**102 & 114**].

64. At the time the Claimant started his employment, the First Respondent employed around 49 staff. That number fluctuated throughout the Claimant's employment nevertheless at all times the First Respondent was a fairly small business with no internal HR department. It was managed by a Senior Management Team comprising David Lockie (CEO and founder), Tom Chute (People Operations Director), Amy Slade (Managing Director) and (until her departure in February 2020), Andrea Crooke (Finance Director). During 2017 and 2018 the First Respondent was on a growth trajectory, business was good and, with the benefit

of a large loan, it secured and refurbished new office space and increased staff levels to somewhere in the region of 60 people.

65. By late 2018 the First Respondent began to be concerned about the financial health of the business and the amount of new business being generated. This included the Claimant's performance. A meeting on 3rd December 2018 took place between the Claimant, his line manager, Simon Cooke, and Tom Chute (People Operations Director), to identify areas of improvement [**153-154**]. During this meeting the Claimant flagged that he needed something to offer people, objectives were set and some training needs identified.

66. By early 2019 the First Respondent was starting to struggle. Business had dropped off or not grown as expected and it was burdened by the costs of the 2018 expansion. The First Respondent identified that it needed to restructure and potentially reduce staff numbers. At this time staff numbers were in the region of 50.

67. On 5th March 2019 the Claimant was notified by letter [**175-176**] that his role was at risk of redundancy. The Client Services Director role was similarly put at risk.

68. During a consultation with the Claimant on 13th March 2019, some proposed adjustments to the Claimant's role were discussed, including the Claimant taking responsibility for events delivery in the PACE events programme established by Ms Laura Nelson [**179-180**]. This he did.

69. Ultimately the market appeared to pick up and both the Claimant's role, and that of the Client Services Director, were retained, with adjustments, at that time.

70. The Claimant was not entirely happy with the new elements of his role, which he considered took time away from his core business development activities and reduced his opportunities to earn commission and therefore his remuneration. He therefore sought to adjust his remuneration to his redefined role and increase his basic salary to reflect the loss of commission opportunity.

71. Following the meeting on 13th March 2019 no further issues as to the Claimant's performance were raised and indeed, all the feedback he received was very positive (for example: [**183 & 185**]). Nevertheless, he continued to feel unsupported in that he felt that he did not have structured and compelling offerings to put to potential clients.

72. The First Respondent's financial difficulties continued and during the Autumn of 2019 the Directors were forced to acknowledge that there had been a significant downturn in business and the business was making a serious loss. By this time staff numbers had dwindled to around 40 following a number of departures, for various reasons, which included the departure of the Claimant's line manager, Simon Cooke in September 2019.

73. As a result of its financial issues, by late September/early October 2019 the First Respondent was considering how best to move forward and was considering reducing staff numbers. It prepared a document assessing staffing costs and

potential redundancy costs [**196**]. No other documents relating to the First Respondent's plans are available for this period.

74. The Respondent's witnesses, Tom Chute and Amy Slade, indicated that at this point there was a two-stage plan. The first stage involved a reduction in non-billable roles, particularly those where it was considered that essential tasks could be assimilated into other roles. The second stage would involve more drastic staff cuts to ensure that billable heads covered the overheads of non-billable roles. In addition, the contractor spend was reduced and parts of the office space were rented out to others to generate an additional income.

75. No written plan for the first stage was produced or circulated. Although non-billable, the Claimant's role was excluded from the first stage as the First Respondent continued to wish to focus on obtaining new business which it hoped would generate further revenue.

76. Throughout this period, the Claimant continued to perform well (eg [**197**] & [**213-218**]) and, on 15th November 2019, he provided a 21-page Marketing Strategy Document [**207 & 273 – 293**] which was extremely well received. On 18th November 2019 David Lockie sent an e-mail saying "*This is fantastic stuff Jamie ….. the best thing I've seen in terms of a commercial strategy so far. Well done.*" [**202**]. The Claimant had also taken over and successfully developed the PACE events.

77. As a result of the ongoing discussions with him regarding the redefining of his role and readjustment of his remuneration, on 21st November 2019 the First Respondent agreed to a basic salary increase to £46,000.00 to take effect in the next financial year and before July 2020 [**200**]. In fact, due to the way events developed, this increase was never implemented.

78. Shortly after this, on 28th November 2019 the Claimant became aware that Laura Nelson had been put at risk of redundancy. Her redundancy was subsequently confirmed on 14th December 2019 with effect from 14th January 2020 [**222**]. As the Claimant considered it crucial to the First Respondent's business and the Marketing Strategy, he had put forward that there be a marketing manager, the Claimant struggled to understand why she was being made redundant.

79. In fact, during the period from Summer 2019 to December 2019, a number of senior staff left the First Respondent either through resignation, by mutual agreement or redundancy and were not replaced. These included: Mark Heddley (Strategic Director), Rich Copping (Creative Director), Simon Cooke (Commercial Director), Laura Nelson (Marketing Manager), Tim Johns (Senior Product Owner, Susan Lersky (Project Director). Jin Lim, a marketing intern, also left.

80. These roles were all, or almost entirely, non-billable roles, meaning that they were not directly billable to clients.

81. There was a degree of secrecy over many, if not all, of these departures and the reasons for them. Indeed, in many cases there was a lack of explanation for them leaving and non-disclosure agreements which prevented information being circulated. The lack of transparency led to a degree of gossip and hearsay in the

office and this unsettled the Claimant and made him suspicious as to what was going on.

82. The Claimant was particularly concerned about the departures of his line manager Simon Cooke, in September 2019 (as he had given no indication of his intent to leave and it was not explained to his satisfaction), and Laura Nelson, the marketing manager, who was made redundant in December 2019. In relation to Laura Nelson, the Claimant was concerned that his own actions may have contributed to her redundancy and that her redundancy was not a genuine redundancy.

83. His concerns that there was another reason for her dismissal were amplified by his belief that that Laura Nelson had raised an informal grievance or issue against Amy Slade, the Managing Director at the time which had led to her being removed as Laura Nelson's line manager and replaced by Tom Chute.

84. In fact, this belief, though genuinely held, was misinformed, something he did not realise as he did not discuss matters with Laura Nelson herself.

85. Laura Nelson gave evidence to the Tribunal that she had raised an informal issue about some of her work colleagues with Tom Chute in April 2019 [**181**]. She had also informally raised concerns with Tom Chute in Autumn 2019 about difficulties she had experienced in communicating with the Claimant. Neither of these matters were expressed as, or considered by either party to be, a grievance and neither related to Amy Slade.

86. Laura Nelson's evidence, which the Tribunal accepted, was also that she considered it preposterous to suggest that her redundancy was not genuine or that it was in any way unfair, that she accepted that her redundancy was genuinely and solely as a result of a downturn in business, and that she considered her process to have been inclusive, well-handled and fair.

87. Nor was the Claimant correct that Amy Slade had been replaced by Tom Chute as Laura Nelson's line manager. In fact, Laura Nelson was managed by both of them for different purposes at this time. Amy Slade undertook day to day line management of her marketing role and Tom Chute managed her personal growth, career progression and development.

88. Also feeding into the Claimant's concerns was that, following Laura Nelson's redundancy, various aspects of her role would still be required by the First Respondent and these aspects would need to be transferred to others.

89. The Claimant considered that there was an expectation that he would take on various of the marketing aspects previously undertaken by Laura Nelson, though it was not discussed openly with him. This belief was driven in part by the reaction to his marketing strategy document and in part because, just 4 days before Laura Nelson's departure on 14th December 2019 he had been invited to be the administrator for the First Respondent's Drum profile – a role previously undertaken by Laura Nelson alone and which he was unaware was being expanded so that there were multiple administrators in case one was not available when required.

90. Although it had not been expressly discussed with him the Claimant was in fact correct that the First Respondent's senior staff envisaged him taking over elements of Laura Nelson's role as internal e-mails between David Lockie, Amy Slade and Tom Chute on 3rd, 4th and 5th December 2019 confirm [**219-220**]. They were concerned about Laura Nelson realising this before Laura Nelson's redundancy was finalised.

91. By January 2020 the Claimant's concerns had heightened. He thought that he was being expected to take on all marketing duties on top of new business and events, which he considered was unrealistic. His revised role remained undefined and he was suspicious that Laura Nelson had been mistreated, and unfairly dismissed for raising a grievance. On 8th January 2020 he sought clarity regarding his job role from Amy Slack [**228**].

92. Additionally, on 13th January 2020 he sent an e-mail to Tom Chute and Andrea Crooke (the Finance Director) raising an informal grievance regarding breaches of his employment contract (failure to support, making unreasonable demands, limiting or undermining his authority in key areas, failing to follow company procedures and failure to observe the duty of mutual trust and confidence) [**349-352**]. Much of the thrust of his grievance was that the First Respondent had failed to provide the support required to deliver successful outcomes in his role as Business Development Manager and required him to undertake non-new business-related roles which detracted from his ability to earn commission and led to his under-remuneration. Also, that promises of appropriate pay for his responsibilities had not materialised. He included a timeline of the events he considered relevant to these issues.

93. Also within the e-mail he stated:
"*Furthermore, in reviewing the timeline there has come to light information that I feel the business should be aware of, that may mean that Laura's situation was not appropriately handled in accordance with Pragmatics own processes and possibly with regards to employment law.*
One being that it would appear that the marketing function is obviously required and the role itself is not redundant.
And that Laura's redundancy appears that it could have been in response to my suggestion that I could lead the marketing function. A per my e-mail to David and his response.
Tho I had no intention to replace Laura but to lead the function and assist in making sure that we were doing the right things- as we had failed to do to date.
Also as I understand it Laura had raised a grievance within the preceding months, as such have concerns over whether this was handled appropriately in light of all of the above."

94. The First Respondent acknowledged the Claimant's informal grievance and on 14th January 2020 a meeting was held between the Claimant and Tom Chute to discuss it [**230-231**].

95. In the morning before the meeting, and in response to a query from the Claimant regarding December invoices relevant to his commission the Claimant received a message from Andrea Crooke stating "*Hi, your commission will be £900 but due to us being in crunch and making losses i won't be able to pay this until we are*

back in profit (3 months consecutive). I have recorded it in your commission file" [**232**]. The Claimant's employment contract contained no provisions that enabled the First Respondent to withhold commission that was due to him on this basis and was unlawful. The £900 commission was not in fact paid in the January 2020 paycheck when due and was not paid until the March 2020 paycheck following the Claimant's complaint to Tom Chute regarding this.

96. Some 6 minutes prior to the meeting with the Claimant on 14th January 2020, Tom Chute e-mailed Louise Ford, the First Respondent's HR consultant stating "*Unfortunately we are having a slow period, and have had a number of months missing our target. This means we're having to look at quite a significant restructure. It looks like we're reducing staff numbers by 16 or 17 people, which is gutting, but essential if we are to stay afloat. I wondered if I could run the reasons for redundancy/selection past you, to make sure fair. And also request some advice regarding payments and notice periods. Do you have time over the coming days?*" [**233**]. By this point the First Respondent's financial position had not improved and it was beginning to consider moving to the second stage of the 2-stage plan outlined by Amy Slade and Tom Chute to ensure its survival.

97. During the course of the informal grievance meeting on 14th January 2020 the Claimant was asked by Tom Chute which process he did not think were followed in respect of Laura Nelson's dismissal and he responded "Heard *that Laura raised a grievance*". In response he was told "*Points raised were dealt with informally*". The meeting also discussed the Claimant's role and responsibilities and resulted in an action summary [**231**] whereby the Claimant was to complete accountabilities and headline responsibilities for a combined role to include business development and marketing value proposition/interpretation of strategy and the First Respondent (Tom Chute) would feed into a strategy meeting, follow up with the Claimant on matters the following week, share a job description and ultimately put the combined role to the Board for sign off.

98. In his written and oral evidence, the Claimant asserted that he believed the information he disclosed relating to Laura Nelson to be true, that it tended to disclose a failure to comply with a legal obligation (namely employment law and individual employment rights), to show that a miscarriage of justice had occurred and to show that these things were being concealed. He also asserted that he believed the disclosure to be in the public interest because of the potential for other similar cases across the First Respondent's workforce, particularly as other employees had left abruptly without explanation under suspicious circumstances.

99. The Tribunal finds that his belief in the truth of the information disclosed was genuine, albeit unfounded, save to the extent that Laura Nelson had been made redundant. His belief was based on gossip, rumours, hearsay and unfounded suspicions arising from conclusions that he jumped to based on his perception of the timeline, the lack of transparency and the existence of NDA's. There was no objective basis for his conclusions that a legal obligation had been breached, a miscarriage of justice had occurred or that information tending to show either of those matters had been concealed.

100. He had seen no documentation to support his claims and had not spoken to Laura Nelson so had no reliable basis for his assertion that Laura Nelson had raised a

grievance. She had not in fact done so at all and had not raised any concerns whatsoever about her management by Amy Slade, as the Claimant had thought she had.

101. No contemporaneous documentation supports the Claimant's assertion that he believed it to be in the public interest to disclose the information at the time. There is no reference in his disclosures to concerns about employees of the First Respondent other than Laura Nelson, and he does not contemporaneously raise any wider concern other than that private employment rights had been infringed.

102. The disclosure related solely to Laura Nelson's private employment rights and even if others had been affected, the number of departures, let alone dismissals via redundancy, at that point had been small. Even if the entire workforce of the First Respondent were affected it would have amounted to only around 40 individuals. The First Respondent was not a large nor public company and undertook no public role.

103. The day after the meeting between Tom Chute and the Claimant on 14th January 2020 the Claimant's line manager asks the Claimant on the chat area of the First Respondent's intranet (SLACK) about the PACE 2020 events. The Claimant responds indicating that the events have been "*backburnered*" to which David Lockie asks "*Backburnered by who?*" [**234**]. It appears to the Tribunal that at this time David Lockie was unaware about further impending redundancies including the Claimant.

104. The Claimant's impression that his role was central to the future of the company was bolstered by an e-mail from David Lockie on 20th January 2020 [**224**] which told the Claimant that he had re-read the strategy document the Claimant had produced, said "…*we're pretty aligned on most stuff*…", identified gaps and raised questions and requested the Claimant's further thoughts.

105. Also following the meeting between Tom Chute and the Claimant on 14th January 2020, some progress was made on the agreed action summaries, in that Mr Chute fed into the strategy meeting and began to update the Claimant's job description. The Tribunal finds however that these steps were merely going through the motions because by end of January 2020 the senior staff of the First Respondent had determined that further cuts were necessary for the business to survive and had decided to change strategy.

106. On 27th January 2020 the First Respondent circulated to staff, including the Claimant, their proposals for reducing costs in line with expected revenue and creating a viable ration of billable to non-billable team members. It set out the proposed changes to the team structure and identified the need to make 5.05 FTE redundancies [**237 – 242**]. This marked the start of their consultation process in respect of the redundancies they expected to make.

107. Rather than seek new business to grow revenues the First Respondent had reached the point where it decided that it had to prioritise servicing and delivering on the business that it already had rather than attempting to obtain new business. It simply couldn't afford the resources necessary to pursue new business.

108. The First Respondent identified the Claimant's role as one which was unnecessary under the new strategy but, being unable or unwilling to inform staff until their plans were more concrete, they continued to give the Claimant the impression that they were engaging with his concerns and driving forward his role.

109. The number of roles proposed to be made redundant in the 27th January 2020 proposal was reduced from the number initially anticipated by the e-mail from Tom Chute to Louise Ford of 14th January 2020 for a number of reasons. Firstly, because the number of roles identified in the e-mail was based on average salaries and the costs that had to be cut. It was not at that stage a clear or costed plan whereas the 27th January 2020 document was. Secondly, by 27th January 2020 it was known that the Finance Director, Andrea Crooke had given notice and would be leaving in February 2020. This was also announced in the document. She was a higher-than-average earner and her departure (with no proposal to replace her) represented a saving equivalent to the reduction of several "average" wages. Thirdly, the First Respondent had identified ways in which a number of non-billable individuals could be converted to partially billable by offering their services to their clients on a contractor basis. This included Tom Chute. Fourthly, Amy Slade had agreed to a reduction in salary and Tom Chute had agreed to reduce to part-time hours with a commensurate drop in salary.

110. Although only 5.05 FTE redundancies were proposed, the Claimant's role was the only unique role identified for elimination. As a unique role in the company, he was not placed into a pool for consideration alongside others.

111. On 27th January the Claimant was invited to a consultation meeting to discuss how the proposals affected the Claimant [**243**]. That meeting was held on 30th January 2020 between Tom Chute and the Claimant. There are no minutes for that meeting but both parties are agreed that there was some discussion regarding the proposed redundancies before the Claimant raised his informal grievance and stated that he wished to make the grievance formal.

112. The Claimant did that because, as a result of his previously stated concerns, particularly those regarding Laura Nelson, the Claimant believed that his proposed redundancy was directly linked to the fact that he had himself raised a grievance. In light of the positive affirmations he had received regarding his own proposals and strategy document, and his conviction that the way for the First Respondent to recover from its financial difficulties was to bring in new business, he was unable to comprehend that there might any other reason why he might be made redundant even though his own work had a relatively long tail and would not usually result in a very immediate or short term increase in business.

113. Following the meeting, on 30th January 2020 Tom Chute e-mailed the Claimant confirming that he wanted his grievance to be considered as a formal grievance and setting out what he understood the basis of the specific grievance to be and noting that he had removed the references to the marketing manager (Laura Nelson) as he believed these had been discussed and addressed informally [**246**].

114. The Claimant responded to Tom Chute's e-mail the same day providing a revised summary of his grievances regarding lack of support resulting in his inability to perform his role to the fullest and failure to achieve his contractual OTE and stating

"*Initially I wouldn't have considered references to the Marketing Manager to have formed part of my grievance itself, however feel that we should cover off the detail in the formal process*" [**266**].

115. As a result of the Claimant now raising an informal grievance, the First Respondent put the redundancy process for the Claimant on hold and focused on dealing with the grievance.

116. Tom Chute began to investigate the grievance, and a formal grievance meeting took place on 5th February 2020 between Tom Chute and the Claimant [**333-342**]. Also, on 5th February 2020 David Lockie e-mailed Tom Chute saying *"Jamie – how did today go? I feel like I either need to get him on board, motivated and useful or is he going away?"* [**332**].

117. After gathering information and interviewing a number of people, Tom Chute produced a grievance investigation report [**300 – 311**] which was forwarded to the Claimant for his comment. The Claimant provided his comments as annotations on the letter [**312-331**] but did not seek to raise his concerns regarding Laura Nelson in this document or ask that they be addressed.

118. A further meeting took place on 7th February 2020 between Tom Chute and the Claimant in relation to the grievance [**354**]. Neither the meeting on 5th February nor the meeting on 7th February 2020 were consultations in respect of the Claimant's proposed redundancy although the scope of the Claimant's role both past and future and the financial difficulties of the business were discussed and the Claimant expressed strongly that the redundancy of his role should not be considered until his role had been clearly defined.

119. On 11th February 2020 Tom Chute determined the Claimant's grievance and sent the grievance outcome letter to the Claimant [**375-379**]. He did not uphold any part of the grievance, noting that the First Respondent had not wholly changed his role but had amended it in line with business needs. Also, stating that although the Claimant's total earnings were lower than the OTE in his contractual example, only the calculation basis, not the total amount, was contractual, the business itself had not performed as well as expected and the Claimant had achieved a significant proportion of his OTE. He also noted the planned basic pay rise notified in the 21st November 2019 letter and set out the First Respondent's intentions to continue the review of the Business Development Manager job description, comply with the promised salary increase as per the 21st November 2019 letter and continue consultation regarding the business Development Manager Role being at risk. There was no reference to the Marketing Manager, Laura Nelson in the response.

120. This response, which set out future intentions regarding the Claimant's position, was not on its face consistent with the First Respondent's second stage redundancy strategy and the conclusions that the First Respondent had already reached regarding the likelihood and imminency of the need to eliminate the Claimant's role from the business to cut costs. It was in this regard, disingenuous.

121. The Claimant was unhappy with the grievance outcome and did not feel his grievance had been fully understood or addressed. On 17th February 2020 he submitted an appeal against it, annotating the outcome letter with his comments

[**383-393**]. This letter did not refer to Laura Nelson or raise the failure to "*cover off the detail*" in the formal process as per his e-mail of 30th January 2020.

122. On 20th February 2020 the Claimant and Tom Chute had a further meeting in respect of the grievance. This was categorised as a "pre-appeal" meeting to clarify the points of appeal. There was no provision in the First Respondent's grievance policy for such a meeting.

123. On 23rd February 2020 the Claimant e-mailed Tom Chute to say that he had put together the shape of the role he could see for him going forward and indicating that he would put together alternative options to redundancy as he saw them [**397**]. The Tribunal was not provided with any documents of this type generated by the Claimant or showing proposed alternatives to redundancy but understands that one proposal put forward by the Claimant was to move him to a consultancy role.

124. Both the redundancy and the grievance appeal were paused for a period between 24th February 2020 and 3rd March 2020 whilst settlement discussions took place between the Claimant and the First Respondent. These did not ultimately reach a resolution and on 3rd March 2020 Amy Slade was appointed as appeal manager.

125. During this period, Tom Chute was also discussing his own position with the First Respondent with David Lockie. On 26th February 2020 he wrote an e-mail regarding his future plans and outlining a reduction in his hours and a possible move to consultancy. Within the e-mail he made the following comment "*I think the weakest area is Commercial, and removing Josh (the new opener) and Jamie, with Bear [the Claimant's line manager] undoubtedly likely to be less than 100% with new baby, we risk not hitting numbers to sustain the team*".

126. Also on 26th February 2020, Tom Chute sent a message to the First Respondent's Board stating "*A concern for me is removing an additional commercial seat, with Jamie off and [redacted] on paternity*" [**400**].

127. Grievance appeal meetings were held on 5th March 2020 [**413-417**] and 10th March 2020 [**433-439**] during which Amy Slade explained that the appeal would be by way of review not rehearing and discussed the grievance process and the Claimant's concerns, including that his commission payment had been illegally withheld, the threat of redundancy and what the Claimant considered was undue delay in determining his grievance. However, during neither of these meeting were the Claimant's concerns about Laura Nelson's dismissal raised.

128. Amy Slade wrote to the Claimant on 12th March 2020 with the appeal outcome letter [**451-455**] which dismissed his appeal and upheld the grievance outcome. Although the Tribunal were directed to evidence [**535-557**] that Tom Slade had had some input into the appeal outcome letter. This was inappropriate. However, the Tribunal are satisfied that his input was purely in relation to the spelling, grammar or phrasing of parts of the letter. He did not influence the conclusions reached by Amy Slade or her decision so that in fact there was no material unfairness to the Claimant in respect of this contribution.

129. Alongside the grievance consideration, another issue arose regarding the Claimant's desire to work from home. He was told he was required to work from

the office and his request to work from home was declined due to concerns over the lack of visibility as what he was doing during this period other than dealing with his grievance. This was despite concerns already being raised regarding COVID19 and working from home at times being an accepted practice.

130. Throughout this period, although the First Respondent was purporting to have put the redundancy process for the Claimant on hold and to have an open mind regarding the redundancy, the First Respondent's financial position continued to be poor, the redundancy consultation process with other staff continued, and in all likelihood the decision that the Claimant would be made redundant had already been made before the grievance was finally concluded.

131. Following the determination of the grievance appeal, the First Respondent lost no time in progressing the redundancy process and scheduled the Claimant's final redundancy consultation meeting for 13th March 2020.

132. At that meeting [**463-471**] the rationale for redundancies was discussed and the steps taken to mitigate the redundancy requirements (which included reductions in working hours of a number of roles, redeployment, and other redundancies). The potential impact of COVID-19 on future business was also raised. There was limited discussion of an alternative offered by the Claimant regarding a transfer to consultancy rather than employment but Tom Chute explained that this was not an option. The meeting concluded with a discussion as to the fact that redundancy was the most likely option and how it would be effected. The Claimant understood at the end of this meeting that his role would be made redundant.

133. The Tribunal finds that by the time of this meeting, the consultation was a mere formality and the decision to terminate the Claimant had already been made. Tom Chute indicated in his oral evidence that the things which might have changed the outcome were limited: a significant client win resulting in unexpected increased revenue or the resignation of others. Although a reduction in hours was considered for those in "essential" roles, for roles not considered essential such as the Claimant's, the costs even with reduced hours would still have been too high for the First Respondent to bear. Without third party actions therefore, the First Respondent could see no other workable alternative and was reducing the business to its bare bones to try to secure its survival or prepare it for sale.

134. On 16th March 2020 at 07:37 the Claimant e-mailed Amy Slade [**469-471**] reiterating his concerns about the lack of support provided to him in his role, particularly as part of his remuneration was commission based, and stating that he stood by his grievance. He also expressed his unhappiness at the length of the grievance process and his view that it was self-evident his grievance should have been upheld. For the first time since his e-mail of 30th January 2020 he raised again the issue of Laura Nelson's redundancy stating "*This is particularly concerning as in bringing my grievance to the attention of the business, I also brought to light information relating to the Marketing Manager, who herself had been made redundant (Dec 2019) after raising a grievance which I understand to have related to leadership*". He went on to note things that had occurred subsequent to him raising his grievance which he considered to be detrimental to him. These included having his commission withheld, being invited to meetings, being informed that his role was at risk of redundancy, the lengthy grievance

process, being warned about his performance (this relates to the working from home communications) being denied impartiality through the grievance process and being told redundancy was the outcome after a 15-minute consultation meeting the day after his grievance was wrongly dismissed. He noted he considered that his employment contract had been breached and that he continued to work under protest.

135. On 16th March 2020 at 15:12 Tom Chute wrote to the Claimant [**481 & 476-477**] confirming that his role was redundant and terminating his employment with immediate effect with 4 weeks' notice to be paid in lieu together with his standard pay, holiday pay, outstanding commission and redundancy payment. A second letter of the same date [**478**] set out the payments he would receive.

136. Following the Claimant's dismissal, in response to the COVID-19 pandemic and the implementation of measures to reduce transmission, the UK government announced the Coronavirus Job Retention Scheme (the furlough scheme). This included measures to enable employers to furlough employees who had been on the payroll in February 2020.

137. The Claimant wrote to the First Respondent on 23rd March 2020, noting the terms of the scheme and in effect asking them to consider applying it to him [**484-485**]. This was not an appeal against his dismissal but rather a request that the Respondent consider new options that had arisen since the date of his dismissal.

138. As the scheme was not solely without cost to the First Respondent in respect of furloughed employees, the COVID 19 pandemic was not the cause of the First Respondent's financial difficulties (but merely reduced the chances of recovery), and the Claimant's termination was not a direct result of the pandemic , the First Respondent declined to rescind the Claimant's redundancy and wrote to the Claimant on 30th March 2020 to advise him of this [**484**].

139. Also subsequent to the Claimant's dismissal, the First Respondent continued to work through restructuring to resolve its financial difficulties and a number of further staff were made redundant or otherwise resigned and departed in the period from March 2020 to July 2020. Nevertheless, financial difficulties persisted and on 15th July 2020 the First Respondent's remaining staff were transferred by TUPE transfer to the Second Respondent. By this time staff numbers had dwindled to 24 employees who were transferred, and these staff were engineers (word press developers), account managers and some support roles.

140. The unchallenged evidence of the First Respondent's witness Amy Slade was that no part of the Claimant's role was transferred to, or undertaken by anyone else, after the Claimant's departure and that after 16th March 2020 the First Respondent concentrated only on securing its existing business and did not seek new business.

141. Subsequently, on 28th July 2020 the First Respondent went into administration and, following a creditors voluntary liquidation which commenced on 20th January 2021, on 3rd November 2023 it was finally dissolved.

Discussion and Conclusions

Public Interest Disclosure

142. Both the claims for automatic unfair dismissal pursuant to s.103A of the 1996 Act and the claim for detriment pursuant to s48 of the 1996 Act require the Claimant to have made a protected disclosure.

143. On 13th January 2020, in his e-mail to Tom Chute, the Claimant disclosed the following information:
   (i) Laura Nelson had been made redundant;
   (ii) The marketing role that she held was required and not redundant;
   (iii) The Claimant had put forward a marketing strategy;
   (iv) Laura Nelson's redundancy appeared to be in response to it;
   (v) Laura had raised a grievance in the months before her redundancy;
   (vi) The redundancy might not have been in accordance with employment law of the First Respondent's own processes.

144. During the course of the meeting with Tom Chute on 14th January 2020 the Claimant also disclosed, namely:
   (i) Laura Nelson had raised a grievance;
   (ii) Processes were not followed by the First Respondent.

145. Both of these disclosures were made to the Claimant's employer, the First Respondent. Therefore, if the disclosures were qualifying disclosures, they were also protected disclosures.

146. The disclosure on 14th January 2020 followed almost immediately on from that on 13th January 2020 and was made in the course of a meeting to discuss the e-mail of 13th January 2020. They essentially formed part of the same conversation and could and should be read together. However, in the event, the disclosure on 14th January 2020 added nothing to the first but merely re-iterated information already provided in the e-mail of 13th January 2020.

147. However, the Tribunal does not find that the Claimant reasonably believed, either at the time he made the disclosures or subsequently, that it was in the public interest to make the disclosures or that the disclosures served the public interest.

148. Nothing in the language or context of the disclosures indicates that he did. For the reasons set out at paragraphs 101-102 above, there was no obvious public interest and the interests he was concerned about related to the private employment rights of one individual. The Claimant made no contemporaneous reference to any wider concerns and sought no action in relation to his concerns at the time he aired them. He did not assert positively that there had been breaches, or what they were, and only impliedly suggested that there might be a link between the grievance raised and Laura Nelson's dismissal. Although he stated that the redundancy dismissal might not have been lawful, his first expressed reason for this appears to be that it related to a misunderstanding of his strategy document and his own suggestion that he could lead the marketing function, not that she had raised a grievance.

149. In his correspondence of 30th January 2020 (after Tom Chute had dismissed his concerns regarding Laura Nelson having raised grievances and discounted them from his grievance process), whilst saying he felt they should be "covered off" in the formal process, the Claimant indicated that he had not initially considered them to be part of his grievance. No new disclosure took place at or after this time.

150. Further, he did not actively pursue his concerns at the appeal stage when they were not addressed in the disciplinary outcome letter. He only mentioned his concerns again when his appeal was unsuccessful in the context of a letter in which he asserted that he had been disadvantaged by raising a grievance.

151. In his oral evidence to the Tribunal the Claimant suggested that this his disclosures were in the public interest because he thought the First Respondent had dismissed Laura Nelson because she had raised a grievance. Further that his disclosures were in the public interest because of the number of employees potentially affected (either at the height of the First Respondent's expansion or because, if it subsequently expanded further others could be affected) if the First Respondent was failing to comply with employment rights.

152. The Tribunal cannot however accept that he reasonably believed that a large number of individuals were potentially affected. The First Respondent's workforce was relatively small, and shrinking at the time of the disclosures, and the number of that workforce who had also raised a grievance would have been smaller still. The Claimant did not raise any concerns about departures other than Laura Nelson's or suggest that there was an endemic problem with the First Respondent's approach. The Tribunal finds that the disclosures were made solely in his own interests either as a warning to the First Respondent not to penalise him for his own grievance and/or to assuage his own concerns that he may have contributed to the termination of her employment.

153. The Tribunal's findings that the Claimant did not reasonably believe that the disclosures were in the public interest prevents the disclosures from being qualifying disclosures. Nevertheless, the Tribunal also considered whether the Claimant reasonably believed that the disclosures tended to show any of the s43B(1) factors.

154. The disclosure on 13th January 2020 specifically mentioned potential breaches of employment law and the First Respondent's processes. Although it did not mention specific legislation, or specific processes of the Claimant, it was so obvious that it related to the fairness of Laura Nelson's dismissal that it sufficiently identified the obligation. Accordingly, on the face of the disclosures themselves, the disclosures tended to show that the First Respondent had failed to comply with a legal obligation to which it was subject, namely the obligation to comply with employment law, specifically the requirements of Laura Nelson's contract of employment, the First Respondent's processes and Laura Nelson's employment rights as set out in the 1996 Act not to be dismissed unfairly.

155. The disclosures did not reference any cover up or any non-disclosure agreement. Nevertheless, an implicit suggestion in the disclosure of 13th January 2020 is that the redundancy dismissal was a sham and that the real reason for Laura Nelson's

dismissal was her raising a grievance. On their face, they therefore also tended to show that a breach of legal obligations was being deliberately concealed.

156. The disclosures did not however tend to show that a miscarriage of justice was occurring or likely to occur. There was simply no information within the disclosures which would have led to such a conclusion, nor could there have been as no legal proceedings were underway and it was not reasonable for the Claimant to believe that they did.

157. Although the Claimant genuinely believed the matters he disclosed were true, in fact they were not. Whilst the lack of truth alone does not prevent the disclosures being qualifying disclosures, the Claimant's genuine belief that they were true was not reasonable.

158. By the time of the disclosures, and for some time before them, the Claimant was aware that the First Respondent had some financial difficulties and needed to increase revenue and/or cut costs. There was therefore some information available to the Claimant which potentially justified Laura Nelson's redundancy.

159. For the reasons set out in paragraphs 98 to 102 and 148 above, there was no objective basis for the belief and in all the circumstances it was not reasonable for the Claimant to have reached the conclusions that he did about either what had occurred or what it tended to show based on the limited material available to him.

160. The disclosures were not therefore qualifying disclosures and consequently were not protected disclosures.

Protected Disclosure Detriment

161. As the Tribunal concluded that no protected disclosures had been made, the claim for protected disclosure detriment cannot succeed.

162. However, had the Claimant made any protected disclosures, the Tribunal would nevertheless not have found that the alleged detriments at paragraph 4.1.1 and 4.1.3 of the List of Issues amounted to detriments.

163. The process from 13th January 2020, when the Claimant first raised an informal grievance to 12th March 2020 when the grievance appeal was concluded and the Claimant was informed that it was unsuccessful took a total 8.5 weeks. However, following the meeting on 14th January 2020 there was no suggestion that the grievance was ongoing until 30th January 2020 when the Claimant indicated that he wished to make his grievance form. The notes of the grievance meeting suggest actions to be taken in response to the informal grievance but do not suggest that the grievance was considered to be ongoing as opposed to be settled by the action points.

164. Once the Claimant formalised his grievance on 30th January 2020 the Tribunal considered that the 12 days until he received a grievance outcome letter was a reasonable period having regard to the steps taken in the intervening period, particularly in light of the other background as to what was happening at the time

and the First Respondent's size and administrative resources. Although a month elapsed between the Claimant seeking to appeal his grievance outcome and final determination of the appeal, again, the Tribunal does not consider, in context, that this was an unreasonable period. In any event the Tribunal is satisfied that the overall duration of the grievance process was reasonable and was wholly unrelated to the disclosures made by the Claimant but rather was due to the circumstances of the Respondent and a short period of absence of Amy Slade (she was away for 1 week when the Claimant instigated his appeal) and a period of settlement discussions which may have obviated the need for the appeal to be determined.

165. In relation to the withholding of commission (paragraph 4.1.2 of the List of issues) whilst the Tribunal finds that this was undoubtedly a detriment, the Tribunal did not find that it was done as a result of the protected disclosure but were not unanimous as to whether it related to the Claimant's lodging of a grievance.

166. The Tribunal Members majority view was that the timing of this decision to withhold commission, coming the day after the Claimant raised an informal grievance, and on the morning of the meeting between the Claimant, Tom Chute and Andrea Crooke to discuss the grievance, was more than co-incidental. As there was no lawful reason for the commission to be withheld, the Members concluded on the balance of probabilities that the decision to withhold commission was triggered by the fact that the Claimant had raised a grievance relating to his commission and pay. The Tribunal heard evidence that was unchallenged that after initial teething problems his commission had been paid regularly up to that date and was not given any evidence that any other person's commission was withheld.

167. The Tribunal Judge disagrees with the Tribunal Members. It is her finding that, on the balance of probabilities, the decision to withhold commission was the First Respondent's unlawful attempt to improve its cash flow and keep the business afloat as a result of the financial difficulties it faced. This was the tenor of the e-mail from Andrea Crooke, the Finance Director, on 14th January 2020 and was consistent with the evidence heard and accepted by the Tribunal about the magnitude of the First Respondent's financial difficulties at this time. The e-mail from Andrea Crooks was not unsolicited but a response to the Claimant having queried a published list of the invoices for December 2019 which would result in commission (asking if there had not been any invoices from 2 specific sources that would result in commission being due to him). There was no suggestion in the e-mail from Andrea Crooke that the First Respondent intended to permanently withhold the Claimant's commission and once the issue was raised with Tom Chute after the departure of Andrea Crooke it was promptly resolved and paid.

168. Nevertheless, the Tribunal is unanimous in is determination that the withholding of commission did not relate to the disclosures made by the Claimant as set out above. The First Respondent did not recognise the disclosures as being protected disclosures or as of having any merit and there was no reason for them to have sought to penalise the Claimant for raising them.

169. Accordingly, the claim for protected disclosure detriment is not proved and must fail.

Automatic Unfair Dismissal

170. For the reasons set out above, the Tribunal concluded that no protected disclosures had taken place. Accordingly, the Claimant was not dismissed for making a protected disclosure. The Tribunal considered the reason for the dismissal, having regard to the legal tests set out above and its discussions and conclusions in relation to this appear below.

171. The Tribunal was unanimous in finding that, even if the disclosures had been protected disclosures, they were not the reasons for the dismissal.

172. Accordingly, the claim for automatic unfair dismissal is not well founded and must fail.

Ordinary Unfair Dismissal

173. The burden of proving the reason for dismissal lies with the Second Respondent. The Second Respondent asserts that the reason for the dismissal was redundancy, the Claimant says the reason was either the disclosures he made or the fact that he raised a grievance.

174. If the principal reason for dismissal was redundancy, as the Second Respondent asserts, this was a potentially fair reason and the Tribunal would have to go on to consider whether the Respondent acted fairly or unfairly for dismissing for that reason.

175. If the principal reason for the dismissal was either the Claimant's disclosures or the fact that the Claimant raised a grievance, then the dismissal was not for a potentially fair reason and was unfair.

The Reason for the Dismissal

176. The majority of the Tribunal, comprising the 2 Tribunal Members, considered that the main or principal reason for the dismissal was that the Claimant raised a grievance. Their reasons were as follows:

177. The members found that the timing and occurrence of 2 significant events which occurred on 14th January 2020, the day after the Claimant first raised his grievance, and which were instigated by the 2 Board members to whom the Claimant had directed his e-mail of 13th January 2020 could not be attributed to co-incidence. These events were the withholding of commission and the e-mail sent by Tom Chute some 6 minutes before the Claimant's grievance meeting requesting advice about redundancies. The Members considered that there was no excuse for the withholding of commission and, for the reasons set out in paragraph 166 above, no evidence supporting any alternative reason for doing so other than that the Claimant had raised a grievance. His commission had been paid on time on all previous occasions, save for some initial teething problems at the commencement of his employment, and there was no evidence to suggest that any other employee's commission had been similarly withheld. The members

considered this unlawful withholding of payment due to the Claimant was so egregious, and the timing is so significant, that they could only conclude that it was directly related to the grievance and was retaliation for it. This was particularly the caser as the Finance Director would have known the financial position of the company and that a decision to defer payment until the First Respondent had posted 3 months of profit was in effect a decision not to pay at all.

178. The Members also found that Tom Chute's e-mail to the HR consultant on 14th January 2014 regarding 16 or 17 redundancies was disingenuous and that the use of the word "fair" in the context of this e-mail suggested that Tom Chute was seeking to justify the actions he had already resolved to take, namely, to make the Claimant redundant. This was because of the timing of the e-mail, the subsequent significant reduction in the number of roles at risk (as set out in the published document), and because no similar such e-mail had been sent seeking advice prior to the September to December 2019 round of redundancies.

179. Also, because there was no evidence that a Board meeting considering a further round of redundancies or prospective future redundancy numbers had taken place prior to the e-mail being sent and in his oral evidence Tom Chute had confirmed that the 16 or 17 people referred to in that e-mail had included the Claimant. The Members considered that the suggestion that there needed to be a change in strategy and redundancies at this level including the Claimant was contradicted by numerous contemporaneous documents up to 5th February 2019. In particular, the messages of David Lockie of 18th November 2019, 4th December 2019, 14th January 2020, 20th January 2020 and 5th February 2020 set out at paragraphs 76, 90, 103, 104 and 116 above respectively, suggested that the Claimant was considered a key strategic figure. They also appeared to affirm that the Claimant's marketing strategy continued to be considered with the implication that the company was still seeking to pursue and grow new business.

180. These messages also indicated that throughout this time David Lockie, the CEO and founder of the First Respondent, was not on board with a decision to make the Claimant redundant or to change the business strategy to concentrate solely on new business. The Tribunal Members found that there would have been no genuine redundancy of the Claimant until such time as David Lockie was reconciled to the same. As David Lockie did not give evidence to the Tribunal, there was no evidence before the Tribunal as to when that occurred.

181. The Members considered that the contemporaneous documentary evidence was extremely poor in relation to the need for the Claimant's redundancy and that some of the evidence provided to the Tribunal amounted to "backfilling" to seek to plug a gap which was inexplicable if there was a genuine redundancy situation in respect of the Claimant at that time.

182. The 27th January 2020 redundancy consultation document identified the Claimant's role as being the only one which was entirely eliminated, whereas other roles were adapted or reduced. The lack of any apparent consideration, or discussion with the Claimant of alternatives such as a reduction in his hours, taking on different responsibilities commensurate with his skills and experience or looking at ways to partly monetise his role though offering his services out to clients (as they had done with Tom Chute and others) was indicative that there had been no

serious attempt to avoid the Claimant's redundancy and spoke volumes as to the motive for it in the context of the First Respondent's other actions.

183. Tom Chute accepted in his oral evidence that it has been his decision to make the Claimant redundant. The Members concluded that, on the balance of probabilities, in light of the matters above, and in particular the absence of any contemporaneous documentary evidence indicating that such matters were discussed at a Board meeting, the redundancy process was a sham which sought to hide the real reason for the dismissal. The real reason was that the Claimant had raised a grievance, which included criticism of Tom Chute. The Members also found that the decision to terminate the Claimant's employment had been taken on receipt of his initial e-mail of 13th January 2020 and everything thereafter was simply going through the motions of a fair process to disguise that fact.

184. The Members accepted that the First Respondent faced financial difficulties and was having to restructure the business to try to ensure its continued viability. Also, that at the time of the Claimant's dismissal there had been a reduction in the amount of work of the kind undertaken by the Claimant due to the switching of focus to servicing existing business but did not, for the reasons set out above, accept that David Lockie had been entirely on board with that in light of the e-mails he had sent. The Members also accepted that there had also been a reduction in the number of employees needed to do the work undertaken by the Claimant. Although they found that a potentially genuine redundancy situation arose, the Members did not consider that such a situation would actually have materialised until David Lockie was on board with the new direction of the business and there was no evidence that that had occurred prior to the decision to terminate the Claimant's employment.

185. As a result, the Members concluded that notwithstanding that there was a potential redundancy situation, for the reasons set out above, the Claimant's grievance had had a significant influence in the mind of Tom Chute and weighed heavily in his decision to make the Claimant redundant. Accordingly, the reason for the dismissal at the point of the decision and the termination of the Claimant's employment was the grievance and not redundancy.

186. However, the Members found that the financial difficulties of the First Respondent and its ultimate trajectory into TUPE transfer, administration, voluntary liquidation, and dissolution was such that on the balance of probabilities there would inevitably have been a point shortly after the Claimant's actual termination where his continued employment was no longer viable and a termination for redundancy would have taken place. This would not have occurred until after a fair and reasonable consultation period, including proper exploration of the alternatives to dismissal having been carried out and after David Lockie was on board with the changed strategy.

187. Doing the best they can with the limited evidence available, the Tribunal Members considered that on the balance of probabilities, the First Respondent would have fairly dismissed the Claimant by 1st June 2020.

188. The minority of the Tribunal, the Tribunal Judge, disagreed with the Members reasoning. She concluded that the main or principal reason for the dismissal was redundancy. Her reasons were as follows:

189. The First Respondent had long term financial difficulties which dated back to late 2018. Unchallenged evidence indicated that at the start of 2019 there was a significant number of roles within the business which did not directly generate income as they were "non-billable" to clients. These included the Claimant's role.

190. The Claimant's role was to generate new business but it was a role where his actions, even if expertly performed, did not guarantee new business or lead to instantaneous results. The nature of his role inevitably led to a pipeline of possible prospects which may or may not ultimately be converted into revenue.

191. The First Respondent first considered making the Claimant redundant in early 2019 but was able to retain his role my making changes to it and requiring him to take on additional marketing responsibilities in the form of organising the PACE series of events.

192. Although there were no detailed financial documents produced to demonstrate the economic circumstances of the First Respondent, there was ample, mainly unchallenged, other evidence of the First Respondent's downward trajectory and financial difficulties from mid 2019 despite the Respondent's efforts to reduce costs. There were a large number of redundancies or unreplaced departures from mid 2019 until mid-March 2020 and beyond.

193. The Claimant's role was solely to generate new business, he played no part in the service or maintenance of existing business. By sometime in February 2020 the First Respondent's strategy had shifted from seeking new business to maintaining and servicing its existing business, which meant that it had no need for unbillable roles which simply sought to bring in new business.

194. The majority of those leaving before March 2020 were in a similar position to that of the Claimant in that they were unique roles which were not directly billable to clients.

195. The Claimant's role was the only non-essential, non-billable role left at the First Respondent by March 2020 and was not consistent with the business strategy at that time. After his departure, no part of his role was not transferred to anyone else and no-one undertook the type of work that he had been doing.

196. Where possible other steps had been taken to minimise the impact of the non-billable roles that were essential to servicing and maintaining the business, by reducing working hours, reducing salaries of some of the persons holding the roles and by finding ways to partially convert the roles into billable by contracting those persons out.

197. Steps had also been taken to increase revenue by letting out office space. However, despite all the steps taken, the deterioration of the business continued until only a matter of months after the Claimant's departure the business ceased to become viable, the remaining employees (only about half of those employed at

the beginning of 2019) were TUPE transferred to the Second Respondent and the First Respondent went into administration.

198. Taking all of these matters together, it is clear that from about late February 2020 when the First Respondent's business strategy changed and did not include searching for new business, the requirement for employees to carry out the type of work undertaken by the Claimant had diminished considerably, if not wholly ceased. There simply was no role left for him. The failure of anyone, including the Claimant, to identify any alternative (other than a move to consultancy – which would itself have resulted in the termination of his employment contract) to dismissal was indicative of the fact that there was none.

199. Although the Claimant could, pursuant to his contract, be required to undertaken more general duties that are consistent with his skills and capabilities, there was no other such duties for him to do. The business was shrinking and even roles which were necessary to maintain existing business were reducing. There was no evidence of recruitment during this period. The amount of work and the number of employees required to do the work, both generally but also particularly in relation to the work undertaken by the Claimant, was reduced.

200. There was therefore a genuine redundancy situation and there was insufficient evidence to suggest that, on the balance of probabilities, there was any other material reason for the Claimant's dismissal than the genuine redundancy situation. There was certainly none of greater significance.

201. As set out above, there was no protected disclosure. In any event, there was no evidence that the First Respondent recognised the information provided by the Claimant as a protected disclosure or was at all concerned by the matters relating to Laura Nelson which the Claimant raised. The First Respondent knew that the factual basis underpinning the allegations was untrue as no grievance had been raised by Laura Nelson and her departure had been necessitated by the financial position of the company and had in any event been amicable.

202. The Tribunal Judge also found no compelling evidence that the grievance raised by the Claimant had any material influence on the decision to terminate his employment.

203. The timing of the grievance was wholly within the Claimant's control and was entirely co-incidental to the genuine redundancy situation described above which had developed over a lengthy period of time. The redundancy considerations had first begun as far back as early 2019 and had progressed substantially between mid 2019 and January 2020 but had not been successful in resolving the First Respondent's financial difficulties so that further cuts were required by January 2020.

204. Notwithstanding its financial difficulties the First Respondent sought to be as fair as possible to the Claimant by putting his personal redundancy process on hold whilst his grievance was considered and taking steps to produce a re-defined job description in response to it.

205. There was an alternative entirely plausible explanation (set out at paragraph 167 above) for the decision to withhold commission in January 2020 given the First Respondent's difficult financial situation and the Tribunal Judge did not find that it was related to the Claimant having raised a grievance. Other than the co-incidence of timing (which is equally consistent with the deterioration of the First Respondent's financial position), there was simply no evidence surrounding the circumstances in which the commission was withheld to suggest that the withholding of the commission was linked to the grievance.

206. Similarly, other than the co-incidence of timing, no other evidence suggests that the e-mail from Tom Chute to the external HR consultant on 14th January 2020 some 6 minutes before the informal grievance meeting was in any way linked to the Claimant having raised a grievance.

207. Contrary to the Claimant's suggestion to the Tribunal, the Tribunal Judge found nothing significant in the language used by Tom Chute "*I wondered if I could run the reasons for redundancy/selection past you, to make sure fair"* to suggest that Tom Chute was seeking advice on how to fairly dismiss the Claimant for an unfair reason. The Tribunal Judge accepted that this was an initial enquiry based on rough and ready average calculations as to the number of redundancies which might be required and accepted that when detailed costings were undertaken and other factors including the departure of the Finance Director and salary reductions and hours were considered, the numbers initially proposed had proved to be unduly pessimistic and only 5.05 FTE redundancies were actually required at that time although further redundancies were also made after the Claimant's departure.

208. Further, although no such advice had been sought prior to the September 2019 to December 2019 redundancies, there were a number of potential entirely plausible explanations for this including that there were no "pool" redundancies contemplated before January 2020, that the First Respondent had previously received advice from solicitors in early 2019, and that the much larger number of possible redundancies in 2020 than had been contemplated in 2019 may have engaged different policies and procedural requirements. There was therefore no basis to infer solely from the timing of the e-mail that it had been triggered by the Claimant's grievance and was a reaction to it and an indicator that a decision had already been taken to dismiss the Claimant under the guise of redundancy. The timing was equally consistent with the First Respondent's deteriorating financial position and the need to make further cuts and is supported by the number of other redundancies and role adjustments made shortly afterwards.

209. There was no compelling evidence that the decision to make the Claimant redundant was finalised in mid- January 2020 immediately after receipt of the grievance. Indeed, the e-mails of David Lockie up to and including 5th February 2020, strongly suggest no such finalised decision on the Claimant's redundancy until after this time. However, the First Respondent's position was not static during this period and by late February 2020 Tom Chute's e-mails of 26th February 2020 suggest the decision to make the Claimant redundant had been taken notwithstanding that the formal process had been put on hold. Taken together, these e-mails indicate that although by mid-January 2020 the First Respondent knew that further cost cuts would be required and Stage 2 was beginning, it was not until shortly after 5th February 2020 that the decision was taken not to try to

grow the business but to focus solely on servicing the existing business and it became virtually inevitable that the Claimant would be made redundant.

210. The First Respondent effectively misled the Claimant during the grievance process as to his future prospects and likely role as a result of its action plan, the subsequent steps taken to pursue it as well as David Lockie's expressed support for the Claimant's work at a time when it was increasingly unlikely that there could be any future role for the Claimant as a result of the First Respondent's financial difficulties and changing strategy. However, having heard from the Respondents' witnesses, the Tribunal Judge was satisfied that this was an unfortunate consequence of the First Respondent's desire to pursue a process in relation to the both the grievance and the redundancy that was fair, to explore the Claimant's role and to address the issues raised by the Claimant.

211. Although the decision to dismiss the Claimant for redundancy was taken by Tom Chute, it was inconceivable that he reached that decision in isolation without the support of the Board or that David Lockie, who had supported the Claimant and his strategy, had not known of, and approved that decision.

212. There was no compelling evidence that the grievance itself gave rise to any particular concern on the part of Tom Chute, or anyone else at the First Respondent. Such concern was not evident either from the manner in which Tom Chute and Amy Slade gave evidence nor from the process adopted by the First Respondent, or the manner the grievance was considered and determined.

213. Although the Claimant was unhappy with the outcome of the grievance and considered that it had not fully addressed his concerns, the First Respondent had put a significant amount of time and effort into investigating and responding to the grievance despite having other pressing concerns. The Tribunal Judge was satisfied that the First Respondent had sought to address the Claimant's grievance and, whilst not upholding it, had put together an action plan to address the Claimant's concerns which it had started to implement and progress before the First Respondent concluded that the Claimant's role had ceased to be financially viable and redundancy was inevitable.

214. Overall, the Tribunal Judge was satisfied, on the balance of probabilities, that the dismissal was caused wholly by the reduction in the First Respondent's need for both work of the kind undertaken by the Claimant and the number of employees to do alternative work, and that the grievance played no material part in the decision to terminate. This was a genuine redundancy not an attempt to disguise a dismissal for an unfair reason as a genuine redundancy.

The Fairness of the Dismissal

215. The Tribunal considered whether, had the dismissal been for a fair reason, the Respondent acted fairly or unfairly in dismissing for that reason.

216. The First Respondent had sought advice from solicitors prior to considering redundancies in March 2019 and further sought advice from its external HR advisors in January 2020 in relation to the redundancies contemplated at that time.

217. The Claimant was first warned that his position was being considered for redundancy in March 2019 but subsequently was not made redundant at that time. He was warned again on 27th January 2020, some 7 weeks before his redundancy was confirmed on 16th March 2020.

218. The Claimant published its rationale and proposals for redundancy on 27th January 2020 and held a formal redundancy consultation meeting on 13th March 2020 before finalising its decision to make the Claimant redundant and communicating that decision on 16th March 2020.

219. The majority of the Tribunal, comprising the two Tribunal Members, considered, notwithstanding their conclusions as to the reasons for the dismissal, that the redundancy consultation was a sham and that no proper consultation or consideration of alternatives to redundancy had taken place.

220. However, for the reasons set out at paragraphs 184 to 187 above, the Members considered that a genuine redundancy situation was in play. Further, that although the reason for the decision to terminate was not redundancy at the time it was taken, the Claimant's position would inevitably have become redundant and could have been fairly terminated by no later than 1st June 2020 due to the First Respondent's deteriorating financial position.

221. The Tribunal Judge, having determined that the reason for the dismissal was redundancy, also disagreed with the Tribunal Members as to whether the First Respondent acted fairly in dismissing for that reason. The Tribunal considered that the process adopted was reasonably fair having regard to the size and very limited administrative resources of the First Respondent and that the First Respondent's decision was within the range of reasonable responses having regard to equity and the substantial merits of the case for the following reasons:

222. Although the decision to make the Claimant redundant had been effectively taken some time before his final consultation, throughout the grievance process, during at least 2 grievance meetings in February 2020, and in the First Respondent's attempts to draft a revised job description, there was discussion about the Claimant's future role and what that might look like.

223. Further, the Claimant had been invited to, and had ample opportunity, after 27th January 2020, to consider and propose alternatives to redundancy. No clearly viable alternatives were obvious or proposed. The Claimant's only evidenced suggestion, that he move to a consultancy role, would also have resulted in the termination of his employment. The First Respondent considered the alternatives to redundancy proposed by the Claimant but determined that they were not viable, as evidenced by the discussion during the consultation meeting on 13th March 2020.

224. The Claimant's role was unique and directed solely at gaining new business. It was a matter for the First Respondent, not the Tribunal, as to how the First Respondent conducted its business. For the reasons set out at 190-200 above, the First Respondent reasonably concluded that there was no longer a viable role for the Claimant after adopting a revised business strategy to focus on maintaining and servicing existing clients.

225. In view of the Claimant's dissatisfaction with his revised role and remuneration prior to January 2020 it was highly unlikely in any event that he would have accepted an adaptation to his role which included reduced remuneration. In any event, once the First Respondent's strategy no longer included seeking no business, his role entirely disappeared and there was no obvious alternative role for him. In these circumstances, the chances of consultation in March 2020 having resulted in any different decision other than that the Claimant was redundant were so vanishingly small as to be insignificant.

226. Notwithstanding that the decision to terminate had been taken before the final consultation meeting, in all the circumstances, the First Respondent acted fairly in dismissing the Claimant for redundancy.

CONCLUSION

227. For the reasons set out above, the claims for automatic unfair dismissal and protected disclosure detriment are not well-founded as no protected disclosure was made. These claims do not therefore succeed and are dismissed.

228. For the reasons set out above, it is the majority decision of the Tribunal, the Tribunal Judge dissenting, that the Claimant's claim to have been unfairly dismissed is well-founded and succeeds.

229. A further hearing will be required to determine remedy and a separate case management order makes directions for that hearing.

Employment Judge L Clarke
11 December 2023