EMPLOYMENT TRIBUNALS

Claimant: Ms L Cameron-Peck

Respondents: 1. Ethical Social Group Limited
2. Mr Graham Pullam
3. Ms Galina Ratcliffe
4. Mr Philip O'Doherty

Heard at: Manchester **On:** 14 December 2023 and 10 and 11 January 2024 (in chambers)

Before: Employment Judge Slater

Representation
Claimant: In person
Respondents: Fourth respondent in person for part of the hearing; Other respondents did not attend

RESERVED JUDGMENT

1. The following acts of detrimental treatment on the grounds of making protected disclosures (by reference to Appendix A to this judgment and reasons) succeed in whole or in part, to the extent explained in the conclusions, against the following respondents:

Act 1	First and second respondents
Act 3	First and second respondents
Act 8	First and second respondents
Act 13	First and second respondents
Act 15	First and second respondents
Act 16	First and third respondents
Act 17	First, second and third respondents
Act 18	First, second and third respondents
Act 21	First and second respondents
Act 23	First, second and third respondents
Act 25	First and second respondents

Act 27	First and second respondents
Act 33	All four respondents

2. The other acts of detrimental treatment are not well founded or duplicate the above complaints.

3. The second and third respondents are ordered to pay to the claimant, jointly and severally, compensation to the claimant of £77,889 for financial loss suffered as a result of the acts of detrimental treatment for which those respondents are liable. This liability is joint and several with the first respondent's liability to pay this amount of the compensatory award for unfair dismissal.

4. The second and third respondents are ordered to pay to the claimant, jointly and severally, compensation to the claimant of £10,000 for injury to feelings for the acts of detrimental treatment for which these respondents are liable.

5. The first, second, third and fourth respondents are ordered to pay to the claimant, jointly and severally, compensation to the claimant for the act of detriment identified as act 33 of £8,724.

6. The complaint of constructive unfair dismissal brought under section 103A Employment Rights Act 1996 (protected disclosures) is well founded. The first respondent is ordered to pay compensation to the claimant of £97,361 for unfair dismissal, including a 25% uplift for failure to comply with the ACAS Code of Practice on Discipline and Grievance.

7. The Employment Protection (Recoupment of Benefits) Regulations 1996 apply to the award of compensation for unfair dismissal. The grand total of the award is £97,361. The prescribed element is £92,861. The period of the prescribed element is 29 October 2021 to 29 November 2022. The excess of the grand total over the prescribed element is £4,500. The annex to this judgment explains the operation of the Recoupment Regulations.

8. The respondent was in breach of contract by constructively dismissing the claimant without the notice to which she was entitled. No damages are awarded for this breach since the claimant has been compensated for loss of earnings during what would have been the notice period as part of the compensatory award for unfair dismissal.

REASONS

Claims and issues

1. The claimant claimed "automatic" constructive unfair dismissal, relying on s.103A Employment Rights Act 1996 (protected disclosure), constructive wrongful dismissal (breach of contract for being constructively dismissed without notice) and detrimental treatment done on the grounds of making protected disclosures.

2. The alleged acts of detrimental treatment and protected disclosures and a list of complaints and issues were set out in appendices to the record of a private preliminary hearing for case management held on 23 June 2022. Prior to this final hearing, the claimant reduced substantially the number of protected disclosures and acts of detrimental treatment relied upon.

3. The reduced lists of detrimental treatment and protected disclosures and an updated list of complaints and issues to be considered at this hearing are set out in appendices to these reasons. The claimant identified for me which respondents she alleged were responsible for each act of detrimental treatment and this is set out in the list. In the list of detrimental treatment, I have retained the original numbers for the alleged acts for ease of reference, since the claimant's witness statement uses this numbering.

4. The claimant confirmed to me that she was relying on the detrimental treatment in the list which occurred prior to her resignation as being the matters which led her to resign and, together, she argues, constitute a fundamental breach of contract on the part of the first respondent.

Background to this hearing

5. All the respondents presented responses to the claims. All of the respondents were represented at that time by the same representative and the same grounds of resistance applied to all respondents. The respondents were represented by counsel at the private preliminary hearing on 23 June 2022. The respondents' representative came off the record by letter dated 17 August 2022 which gave email contact details for each respondent.

6. A further private preliminary hearing was held on 12 June 2023 to check whether case management orders had been complied with and to ensure that the case was ready for final hearing listed for December 2023. None of the respondents attended or were represented at that hearing.

7. On 14 July 2023, an unless order was issued, ordering that, unless by 14 July 2023 each respondent provided the claimant and the Tribunal with a list of all the documents it already had or could reasonably obtain relevant to the issues in the case, the ET3/Grounds of Resistance of the respondent(s) in breach should stand dismissed without further order. The unless order was sent to the email addresses which had been given for each respondent. Case management orders made at the

same time required explanations from the respondents for their non-attendance at the preliminary hearing on 12 June 2023 and that each respondent provide their current email and postal addresses.

8. The respondents did not comply with the unless order and the respondents were informed by letter dated 31 October 2023 that their responses were dismissed because of non-compliance with the unless order. None of the respondents applied to have the unless order set aside. They did not provide updated contact details.

9. The final hearing was reduced from 5 days to one day. The respondents were notified by letter dated 27 November 2023 that they were only entitled to participate in the hearing to the extent permitted by the employment judge.

Mr O'Doherty's participation in this hearing and application to postpone the hearing

10. The fourth respondent, Mr O'Doherty, attended at the start of the hearing. None of the other respondents attended. Mr O'Doherty confirmed that he was not representing any of the other respondents.

11. I heard an application from Mr O'Doherty to postpone the hearing to enable him to take advice. I also considered whether to set aside the unless order, in so far as it applied to Mr O'Doherty, which would also require a decision to extend time for such an application to be made.

12. I refused to postpone the hearing or to set aside the unless order in so far as it applied to Mr O'Doherty for reasons which I gave orally. Although no request was made for written reasons for this decision, I set out the reasons I gave, since this may assist the parties and readers of this decision. These were as follows:

12.1. I find it more likely than not that Mr O'Doherty has known about the proceedings since they were served on the respondents in January 2022. Mr O'Doherty confirmed that the address on the service papers was correct. The same service papers were sent to all the respondents at the same time. At least some of these must have been received since the respondents presented responses to the claims. All four respondents had the same representative and filed the same grounds of resistance for them.

12.2. The respondents' representative at the time did not describe herself as a solicitor but as an employment lawyer with a law degree. Even if she was not bound by the same professional obligations as practising solicitors (if it is the case that she was not a practising solicitor), I expect her correspondence with the claimant to be truthful. She wrote to the claimant on 10 May 2022 to say that all respondents had reviewed and approved the contents of their ET3 and grounds of resistance prior to their submission to the Tribunal. I find on this basis that Mr O'Doherty approved the response to the claim at the time and so was aware of the details of the claim.

12.3. The respondents were represented at a case management preliminary hearing in June 2022 by counsel. The respondents' representative came off

the record in August 2022 and provided email addresses for each of the respondents. Mr O'Doherty has confirmed that his email address which was given is correct and says that he does not normally have difficulty receiving emails. He said initially that he did not think he had received various correspondence sent to him, including the Unless Order sent on 13 June 2023, but then, during this hearing, he accepted that he had, in fact, received it, accepting that it was an attachment to the email from the Tribunal to which he had responded on 3 July 2023. There had been a case management preliminary hearing on 12 June 2023 at which none of the respondents attended and the Unless Order which led to the dismissal of the responses was made at that time.

12.4. Mr O'Doherty's email of 3 July 2023 appears to be providing an explanation for his non attendance at the hearing in June 2023, writing of the death of his mother five weeks before and prior to that trips to Ireland to visit her in hospital.

12.5. Mr O'Doherty has never written to the Tribunal to say that he did not know anything about this case but said at this hearing that he needed information about the case so that he could take advice.

12.6. On 12 December 2023, Mr O'Doherty made an application to postpone the hearing saying he had just come across information about the case in his email spam folder and had not had time to seek legal advice. He said that he attended today because he thought this was the right thing to do, unlike the other individual respondents to whom he said he had not spoken for about two years.

12.7. I have decided that it would not be in the interests of justice to postpone the hearing. I have found that Mr O'Doherty knew about the case since service of the notice of claim. The Tribunal and the claimant have been contacting him at intervals about the case since then using correct contact details. I find that he has received this information. He confirmed himself at this hearing that he had received the Unless Order. He has had adequate time to take legal advice if he wished to do so.

12.8. I have had no medical evidence or other documentary evidence in support of the postponement application. Assuming in Mr O'Doherty's favour that he has been suffering from stress and that the death of his mother had a considerable impact on his ability to cope with other things around the time of June/July 2023, this does not explain satisfactorily why Mr O'Doherty has failed to take action before now. He did not take required steps before the period when his mother was ill and has not taken timely action after he could have been expected to recover and deal with this case. He was notified on 31 October 2023 that the response had been dismissed. He did not contact the Tribunal until 12 December. The Unless Order was made because Mr O'Doherty and the other respondents had not complied with the earlier Case Management Orders. There is a history of inaction on the part of Mr O'Doherty as well as the other respondents since they ceased to be represented. Indeed, the claimant has cast doubt even on explanations provided for delay on the

part of the respondents before they were represented but I do not need to make any findings of fact about that.

12.9. The first respondent has been under a proposal to strike off the register at Companies House which has been suspended because of an objection. The claimant has been waiting a considerable time to have her case heard. I do not consider that, in these circumstances, it would be in the interests of justice to postpone this hearing.

12.10. The fourth respondent has not made a formal application to set aside the Unless Order. However, since he is appearing in person, I have considered it appropriate to decide whether there would be circumstances which could lead me to set this aside. Any application would be out of time now, not having been made within 14 days of the notice of dismissal. I do not consider that there has been a satisfactory explanation for not applying for the order to be set aside at an earlier stage. Having regard to the history I took into account in deciding to refuse the postponement application, I do not consider it would be in the interests of justice to extend time for an application to be considered, and, even if I had decided to extend time, I would not have considered it in the interests of justice to set aside the Unless Order as far as it applies to Mr O'Doherty.

13. Mr O'Doherty informed me, before I adjourned for further reading, that he would not attend the hearing in the afternoon, when I would hear evidence from the claimant.

Evidence

14. I heard evidence for the claimant from Jane Griffin and from the claimant. Both had prepared written witness statements. Ms Griffin confirmed the truth of her statement. I had no questions for her, accepting the evidence given in her statement. I asked the claimant a number of questions.

15. I had an electronic bundle of documents prepared by the claimant of 390 pages. This did not include the full responses which had been presented by the respondents, since their responses had been dismissed. However, the claimant had included some extracts where she considered that admissions made assisted her case. I considered it in the interests of justice to take into account these parts of the responses. Since the respondents had failed to comply with case management orders about disclosure and providing witness statements, the claimant had only the respondents' information in the responses she could rely on, other than her own evidence and documents she had in her own possession.

16. The bundle of documents included an email dated 26 October 2021, photographed by Jane Griffin, from Hannah Haywood of Bhayani HR and Employment Law to the third respondent (pp. 262), giving advice. The organization is SRA regulated and includes employment solicitors, although, from their website, I note that Ms Haywood is training to be, but is not yet a qualified solicitor. I have

concluded that the letter is subject to legal privilege and I cannot, therefore, take it into account.

17. As noted previously, the time estimate for the case was reduced to one day after the responses were struck out and the claimant reduced the number of protected disclosures and detriments relied upon. Dealing with Mr O'Doherty's postponement application took most of the morning. Reading witness statements, relevant documents and hearing evidence and the claimant's submissions took the remaining part of the day. I heard evidence on both liability and remedy at the same time, so that I could make a decision on all relevant matters at the same time and avoid delay in concluding the case. I had to reserve my decision. I informed the claimant that I would not be able to have time in chambers to make a decision until 19 January 2024. In the event, I was able to move it forward, but I needed two days in chambers, 10 and 11 January 2024, to reach my decision.

Facts

18. I deal first with the facts relevant to whether or not the complaints succeed (liability). I will deal separately with the further facts relevant to remedy.

19. The first respondent was an early-stage company formed as a start-up in 2019. It had raised some investment funding in 2020. The first respondent had two subsidiary companies: Fluttr Ltd and Wndr Social Ltd with two others in planning at the time the claimant joined the first respondent. The second respondent told the claimant that each subsidiary was to have its own app product which could potentially be managed as a stand-alone business that could be divested later. The second third and fourth respondents and their co-directors claimed publicly and to the claimant that they were on "a mission to rebuild social platforms for good" by delivering "a suite of next-generation social applications that place member privacy, security, fun and well-being at the heart of everything." Fluttr, for example, was intended to be a new dating app, using technology to boost security.

20. The second respondent, Graham Pullan, was the founder and group CEO. The third respondent, Galina Ratcliffe, was the first respondent's Chief People Officer. The fourth respondent, Philip Doherty, was the first respondent's Chief Financial Officer.

21. Rhonda Alexander was CEO of Fluttr Ltd. The claimant was told by the second respondent that he believed Rhonda Alexander to be quite wealthy with access to contacts with funds and the claimant understood that the second respondent thought Rhonda Alexander was likely to be a source of investment funds.

22. The claimant was employed by the first respondent as CEO of Wndr Social Ltd from 1 August 2021 until 28 October 2021 when her employment ended by resignation with immediate effect. The claimant was also a non-executive director of the first respondent. The claimant was entitled to three months' notice of termination under her contract (p.161).

23. The claimant had, prior to joining the first respondent, had a successful career for over 35 years in the IT and digital services industry, latterly at senior executive leadership and board level.

24. The claimant was introduced to the second respondent by a former client, Louise McCarthy, with a view to joining the first respondent, together with that client, to work on the launch of its products and growth journey. The claimant turned down the possibility of a board level role at another company to join the first respondent. The claimant now believes that she was enticed into accepting employment with the first respondent based on misrepresentations made to her, including about investment wrongly said to have been secured.

25. Jane Griffin, who had worked with the claimant in the past, was also approached to join the first respondent by Louise McCarthy. Jane Griffin joined the first respondent on 2 August 2021 as Executive Assistant and Project Office Manager, supporting senior executives.

26. The claimant had a good working relationship with the second respondent, Graham Pullan at first. There is an obvious warmth in the correspondence between them when the second respondent was discussing with the claimant her joining the first respondent. As later findings of fact note, this changed when the claimant started to raise various concerns.

Facts relating to the alleged protected disclosures

PD1 – Bullying and harassment of employees

27. The claimant received complaints of bullying from staff members, complaining about Rhonda Alexander. The claimant brought this to the attention of the second respondent. She sent him a WhatsApp message on 3 September 2021 (page 193). She wrote about people contacting her in tears, talking about the bullying and rudeness they experienced and the way they had been treated, “having eggs thrown at their efforts or suggestions and becoming silenced, deep professional experience being talked down by louder inexperienced and rude voices, confidence being eroded.” She wrote that poor choices were being made and people being damaged. The claimant expanded on the bullying and harassment being experienced by her and others in a telephone call with the second respondent on 4 September 2023. She sent an email to the second respondent on 6 September 2021 explaining further her concerns about Rhonda’s behaviour. The email was sent to the second respondent only and stated to be in strictest confidence. She wrote that she experienced much of Rhonda’s behaviour as passive aggressive and manipulative and at other times downright rude. She set out 19 numbered points which included calling out and trying to embarrass/humiliate colleagues in open settings, such as online meetings and adopting inappropriate and purposefully aggressive facial expressions and gestures on team/group video calls when someone she chose to be in confrontation with spoke, making it uncomfortable for others and for her target. She named a particular employee who the claimant said had been in tears on a call

with her on the Friday, although she said she did not, at that time, have the colleague's express permission to share the detail with him. She wrote that there was never an excuse to bully anyone, reduce them to tears, or leave them feeling terrible.

28. The claimant did not receive any response or follow-up to her discussion or email.

29. On 28 September 2021, the colleague who the claimant had named as being in tears, resigned.

30. On 28 September 2021, the claimant spoke to the third respondent about the ongoing bullying. The third respondent claimed to know nothing of the complaints or allegations.

31. In the grounds of resistance, the respondents accepted that the claimant raised concerns about a possible case of bullying and harassment on 3 September 2021 by email to the second respondent (p.57). They denied that raising a grievance regarding behaviour of others towards other members of staff amounted to a protected disclosure.

PD2 - Falsely stating an investment offering as HMRC EIS approved

32. The Enterprise Investment Scheme (EIS) is a venture capital scheme which offers tax relief to individual investors who buy new shares in an eligible company. It is one of a number of venture capital schemes which offer tax relief to individuals to encourage them to invest in companies and social enterprises that are not listed on any recognised stock exchange.

33. Potential investors were told that EIS tax relief was available on investments (e.g. page 190). This turned out to be untrue. In a decision dated 30 February 2023 on an application by Mark Sweeney for winding up of Fluttr Limited, Deputy District Judge Walthall held that a clear representation was made by or on behalf of Fluttr Limited that the company was HMRC EIS approved and that this representation was not true. The judge held that misrepresentations were made which induced Mr Sweeney to acquire shares in the company and that the representations were false.

34. On 25 August 2021, the claimant asked the second respondent for the HMRC EIS number to put on the investor decks. The second respondent said that they did not have a number yet but said that approval from HMRC had been obtained and that HMRC had told them that there was no need to show the EIS number. This conflicted with the claimant's understanding of the legislation which was that an HMRC EIS number was required to be displayed in promotional materials for schemes qualified for EIS tax relief. The claimant shared her understanding of the legislation with the second respondent who became angry.

35. The claimant looked at the list of HMRC EIS approved schemes and found that neither the first respondent nor Fluttr Ltd were on the list. She also checked the qualifying criteria and understood that Fluttr Ltd would not qualify for approval at all as it was over 50% owned by the first respondent.

36. Around 8 September 2021, the claimant spoke to the fourth respondent who said that HMRC had told them to say it was EIS approved whilst going through their approval process in advance of getting the decision. He said he had not submitted any "advanced assurance" application to HMRC. Later the same day the claimant explained to the second respondent that it was a legislative requirement to show the number if the scheme was approved or state that it had received advanced assurance from HMRC. The second respondent appeared irritated by the client asking about this.

37. Jane Griffin saw emails between the claimant and the second respondent about the EIS requirements. I accept Jane Griffin's evidence that, when the second respondent spoke to her, he was angry about the situation and suggested that the claimant was just trying to make trouble.

38. The respondents continued to mislead staff and investors about having obtained EIS approval, including in Whatsapp messages to investors on 23 September 2023 (p.205).

39. Sometime in early October 2021, before 12 October, the claimant reported the respondents' wrongful claims of EIS approval to HMRC. There is no evidence that the respondents were aware the claimant had made this report to HMRC.

<u>PD3 – Failure to inform HMRC and pay payroll deductions to HMRC</u>

40. The claimant did not receive payslips during her employment with the first respondent. The claimant and other employees confirmed, by accessing their government Gateway accounts, that payroll and tax not been accounted for to HMRC for at least the August and September 2021 payrolls. The claimant contacted HMRC on 14 October 2021 who confirmed that no payroll information had been passed to them relating to her and that HMRC had no record of her as an employee of first respondent.

41. The claimant spoke to the fourth respondent by phone on or shortly after 14 October 2021 to advise him that the actions of not informing HMRC of employees' employment status through payroll submissions and not paying any tax and national insurance deductions from salaries to HMRC were unlawful. The fourth respondent asserted that HMRC had been informed about the employees, the sums had been paid to HMRC, HMRC had made a mistake and that he would look into it.

42. The claimant spoke to the third respondent around mid October 2021 about this matter. She said that she did not deal with HMRC payments and claimed to be unaware of this.

43. On 12 October 2021, the claimant reported the respondents to the HMRC fraud reporting service, reporting the EIS fraud at the same time. The claimant was later told by HMRC that they were proposing a multiagency fraud investigation into the respondents. Sometime in early October 2021, before 12 October, the claimant reported the respondents' wrongful claims of EIS approval to HMRC. There is no evidence that the respondents were aware the claimant had made this report to HMRC.

44. In their grounds of resistance, the respondents accepted this disclosure (page 62).

PD4 – Failure to auto-enrol employees in a pension scheme

45. On her employee starter forms sent to the third respondent on 2 August 2021, the claimant elected to be enrolled into the company's pension scheme. During the first weeks of her employment, the claimant asked the third and fourth respondent several times where she could find the details of the pension scheme. The third respondent claimed not to know about the pension scheme and referred the claimant to the fourth respondent. The fourth respondent did not reply to any of her requests.

46. The claimant found out from other staff that the pension provider was Royal London. Jane Griffin told the claimant in early October 2021 that she had called Royal London who had told her that she had not been enrolled into the pension scheme and they had no record of her. The claimant was also told of other employees who had contacted the pension provider and been told that they had not been enrolled. The claimant called Royal London who confirmed that she had not been enrolled in the pension scheme and no contributions have been paid to them in respect of her pension.

47. The claimant spoke to the fourth respondent, at or around mid October 2021, telling him that she and other employees had not been enrolled into the pension scheme and pension contributions had been deducted from salaries but not paid into a pension scheme. The fourth respondent claimed that the Royal London had made an error.

48. In the grounds of resistance the respondents accepted these disclosures (page 62).

Facts relating to the alleged detrimental treatment

Act 1

49. This allegation is about the respondent failing to properly investigate serious grievances raised by the claimant or to exercise proper care towards her in the period 5 September to 20 September 2021.

50. The claimant had raised concerns about the behaviour of Rhonda Alexander towards the claimant and other staff (see paragraphs 27- 30). The claimant asserts that the second and third respondents failed to do anything about these concerns. From the transcript of the conversation with the second respondent on 15 October 2021 (p.226), it appears that the second respondent removed the claimant from certain meetings, so she did not come in contact with Rhonda Alexander. I find that the second and third respondents did not do anything to try to change the behaviour of Rhonda Alexander.

51. The claimant felt isolated and vulnerable when the second and third respondents failed to act appropriately in relation to the concerns the claimant raised. She felt compromised in her ability to fulfil her roles and responsibilities. The claimant had always looked forward to going to work, but started to feel scared of going to work. She no longer enjoyed going to work or felt fulfilled. She began to suffer from eczema which the GP said was probably stress related.

Act 3

52. This allegation is about the claimant being increasingly isolated from other members of staff and spoken to in a condescending manner on calls by the second respondent who also permitted Rhonda Alexander to continue her bullying and aggressive behaviour in the period 31 August to 12 October 2021.

53. I accept the claimant's evidence that she was frequently spoken to by the second respondent in group team video calls, especially after 6 September 2021, in a condescending and derogatory manner. I accept that Rhonda Alexander also did the same.

54. Around the first week of October 2021, the second respondent moved the claimant away from working on any Fluttr investment messaging and excluded her from involvement in meetings or discussion about Fluttr. The second respondent said in the telephone call on 15 October 2021 that he had removed the claimant from meetings so that she did not have to get involved in other meetings and pulled her off Fluttr. He said she was excluded because of the conversation they had had. They had made a decision that she should carry on with Wndr not with Fluttr (pp226-228). The comments were in response to the claimant saying that nothing had been done about the bullying.

55. The third respondent spoke to Jane Griffin on or around 11 October 2021, saying she was looking into bullying allegations and wanted to ask some questions. Jane Griffin did not recall the exact questions but felt as though she was being blamed for Rhonda Alexander and the second respondent's behaviour, rather than being listened to. The third respondent asked Jane Griffin if she wanted to raise a complaint about the claimant, which Jane Griffin found extraordinary.

56. The claimant was upset by the behaviour of Rhonda Alexander and the second respondent. An example is 13 October 2021. At lunch on that day, Jane Griffin

witnessed the second respondent raise his voice at the claimant and speak to her in a belittling manner and that he continued to berate her during a 10 minute walk back to the office. The claimant said nothing during the walk back but, on the return to the office, visited the ladies' toilet with Jane Griffin and was tearful about the situation.

Act 8

57. This is about behaviour of the second respondent on 7 October 2021.

58. There was a company video call via Teams on 7 October 2021. The second respondent was presenting a brokered investment proposal. The second respondent answered questions from people on the call. I accept the claimant's evidence that the second respondent was polite and answered questions fully, except when the claimant asked a question. He accused the claimant, in front of the other people on the call, of being "difficult", turned away from the screen and did not reply. About 10 minutes later, the claimant asked the question again and the second respondent gave a curt response. I accept the evidence of Jane Griffin, who was also on the call, that the claimant's question was sensible and that the second respondent reacted in a rude and belittling way, which he had not used when others asked questions.

Act 13

59. This is about an email sent by the second respondent to the claimant on 14 October 2021 about her "behaviour".

60. This email is at page 224 in the bundle. The second respondent wrote that, as a minimum standard, all employees are expected to:

- Work co-operatively with others in order to achieve our goals/objectives
- Consider other people's perspectives and opinions in order to help them understand and or reach a mutual understanding
- Establish good working relationships.

61. He wrote:

> "With the above points in mind, I and others experienced a tone and style that did not match those minimum standards during your wndr presentation yesterday.
>
> "Furthermore, on Wednesday 6th October during our Teams meeting you said to me "Don't fucking tell me how to run my business." After which you will recall that I brought the meeting to an immediate close and suggested that we reconvene the meeting later, which we duly did. Again, this outburst was both unwarranted and unprofessional."

62. He suggested allocating some time to talk, so they could avoid such behaviour in future.

63. The claimant, in a reply to the second respondent dated 14 October 2021 (p.222), copied to the third respondent, complained about the conduct of Rhonda Alexander at the meeting and denied saying "Don't fucking tell me how to run my business".

64. I accept the evidence of Jane Griffin that, on 13 October 2021, at lunch, she witnessed the second respondent raise his voice at the claimant and speak to her in a belittling manner and that he continued to berate her during a 10 minute walk back to the office. The claimant said nothing during the walk back but, on the return to the office, visited the ladies' toilet with Jane Griffin and was tearful about the situation.

65. Given the lack of specificity in the letter of 14 October 2021 about the ways in which the second respondent alleged the claimant's tone and style did not meet the first respondent's minimum standards, and the later lack of specific allegations about alleged misconduct by the claimant, I find that there were no genuine serious concerns about the way the claimant had conducted herself in the meeting on 13 October 2021. I accept the claimant's evidence, supported by what she is recorded as saying in the transcript of the telephone call on 15 October 2021, that she had not, on 6 October 2021, said to the second respondent: "Don't fucking tell me how to run my business." I find that this was a false allegation made by the second respondent. The evidence of Jane Griffin supports a finding that it was the behaviour of the second respondent on 13 October 2021 that was inappropriate, rather than there being genuine concerns about the conduct of the claimant.

Act 14

66. This was about the second respondent's actions on 15 October 2021.

67. On 15 October 2021, the claimant had a telephone conversation with the second respondent. The claimant recorded their conversation. A transcript of the conversation appears in the bundle (page 226). The claimant asked the second respondent why there had been no follow-up to the grievances. The second respondent said they discussed it and asked what further discussions the claimant wanted. The claimant said nothing was done and that the behaviour carried on. The second respondent asserted that he did address the bully and he asked other people who did not see or feel the same as the claimant felt. He said that other people did not feel or see the bullying.

Act 15

68. This allegation is that the respondents failed to give proper notice or invite the claimant to a board meeting of the first respondent which was said to have taken place on 18 October 2021.

69. A board meeting of the first respondent took place on 18 October 2021 (p.292). The claimant was not invited, although she was a non-executive director of the first respondent and entitled to be invited and attend.

Act 16

70. This is about a meeting held on 18 October 2021, attended by the claimant, the third respondent and Peter McNab, a close friend of the second respondent.

71. I note from the email correspondence that Peter McNab had a first respondent company email address. An email from him (p.273) describes him a "Chief Talent Development Officer".

72. In responding to the claimant's email of 14 October, the same day, the second respondent wrote that "due to the nature of your response, I feel it has now escalated somewhat, and this is why I have passed matters over to Galina and Peter in order ensure that this is handled in a appropriate and professional manner [sic]." He did not explain what role Peter McNab had in dealing with this type of matter.

73. On 15 October 2021, prior to the claimant's call with the second respondent, the third respondent requested that the claimant attend a video call with her and Peter McNab on 18 October 2021 as she said she was concerned for the claimant's welfare. The third respondent did not say why Peter McNab would be joining the call or explain in what capacity.

74. The claimant attended the video meeting with the third respondent and Peter McNab on 18 October 2021. I accept the claimant's evidence that they began to wrongly quote things the claimant was alleged to have done, as relayed to them by the second respondent. The claimant denied the allegations and told them she had recorded the conversation with the second respondent on 15 October 2021. The third respondent said that it was illegal to record a conversation with someone without their permission. The claimant said that she had started the recording part way through the meeting to make sure she had a record of the meeting and to protect herself and that she understood this was not illegal. The claimant said she had not shared the recording with anyone but said she had shared the content of the second respondent's email to her of 14 October 2021 with her professional advisors in seeking their guidance. The third respondent ended the meeting shortly after this exchange.

75. The claimant observed both the third respondent and Peter McNab taking notes during the meeting. She requested copies of the notes but they did not provide these. The notes were not provided later in response to a subject access request.

76. The claimant was not told that this meeting related to any possible disciplinary matter and was not given the opportunity to be accompanied.

Act 17

77. This is an allegation that the third respondent misrepresented the discussion of 18 October 2021 and that the second and third respondents collaborated with Peter McNab to fabricate falsely corroborated accusations against the claimant with the aim of securing the claimant's exit from the first respondent's employment.

78. This appears to be about the contents of an email from the third respondent dated 20 October 2021 (p.238). The third respondent wrote to the claimant that the claimant had told them, in the meeting on 18 October, that she had recorded most of the call with Graham Pullan on 15 October and had shared this with two people outside the organisation (an HR specialist and an employment lawyer) and had refused to delete the recording. The third respondent asserted that this was in direct violation of the claimant's employment contract. The third respondent also said that the claimant had told them that she had shared Graham Pullan's email to her with the same two people. The third respondent asserted that this was also in violation of the claimant's employment contract. The third respondent wrote that, whilst recording the telephone conversation without the other person's knowledge and sharing it outside the organisation may not be entirely illegal, they considered it an action that fundamentally undermined trust and this had clearly affected the claimant's relationships within the company.

79. The claimant replied to the third respondent on 20 October 2021 (page 237). She accused the third respondent of falsely accusing her of unlawful acts and misrepresenting what had been said. She reiterated that she had told the third respondent that she had used the recording for her personal use only and would be prepared to share it only with the second respondent, should he think it beneficial to hear it. She said that she had shared the contents of the second respondent's email with professional advisers and asserted that she was lawfully permitted to share necessary details with advisers in a confidential manner without breaching any aspects of her employment contract.

80. I find that the conversation on 18 October 2021 was more in accordance with the account given by the claimant than that given by the third respondent in this email exchange. I find that the third respondent misrepresented what the claimant had said at that meeting.

81. The claimant alleges that the second and third respondents collaborated with Peter McNab to fabricate falsely corroborated accusations against the claimant with the aim of securing the claimant's exit from the first respondent's employment. Given the respondents' failures to disclose documents in these proceedings, the claimant has had little access to correspondence between the respondents which may have assisted her case. However, Jane Griffin's evidence, which I accept, that, on 11 October 2021, the third respondent asked her if she wanted to make a complaint against the claimant, when supposedly investigating the claimant's complaints about Rhonda Alexander, suggests that the third respondent was seeking information to the claimant's disadvantage. I consider it unlikely that the third respondent would have been doing this without the knowledge and agreement of the second respondent. The lack of specificity about allegations

against the claimant when she was suspended on 19 October 2021 and the lack of any letter setting out the allegations when she was sent an invitation to the disciplinary hearing also suggest that the respondents were out to make a case against the claimant, rather than responding to genuine concerns that the claimant had done something wrong. This is supported also by the third respondent's request to the second respondent on 27 October, more than a week after the suspension, to raise allegations against the claimant of "upward bullying" in the disciplinary hearing.

Act 18

82. This is about the claimant's suspension on 19 October 2021.

83. On 19 October 2021, the third respondent informed the claimant by email that she was suspended from duties pending a disciplinary investigation (p.234). The letter of suspension (p.235) did not identify the allegation of misconduct. The third respondent wrote that, if they considered there to be grounds for disciplinary actions, they would inform the claimant in writing of these grounds and provide details of the allegation(s) against her.

84. I find that the suspension was made with the agreement of the second respondent. It is unlikely that such a step would be taken by the third respondent without consulting the second respondent.

85. Given the lack of specific allegations in the letter of suspension and subsequently put to the claimant, I find that the respondents did not have good cause to suspend the claimant.

86. The allegations contained in act 18 include an allegation that the way the suspension was communicated to the claimant's co-workers gave the false impression that the claimant had committed an act of serious or gross misconduct. The claimant's witness statement does not contain any evidence about how (or if) the suspension was communicated to co-workers.

87. I find that the claimant was removed from the WhatsApp group "Team ESG" on 19 October 2021. This was observed by Jane Griffin, who was also a member of that WhatsApp group.

Act 19

88. This is about an email sent by the third respondent on 19 October 2021 requiring her to attend a disciplinary hearing on unspecified allegations of "serious misconduct".

89. There is no further email of 19 October 2021 in the bundle of documents inviting the claimant to a disciplinary hearing, so it appears this allegation refers to the letter of suspension of 19 October 2021 referred to in allegation 18.

Act 20

90. This refers to the claimant's resignation on 20 October 2021, giving 3 months' notice. It is not an allegation of an act or failure to act by the respondents.

91. After receiving the letter of suspension, the claimant wrote to the third respondent and Peter McNab on 19 October 2021 (p.240) expressing astonishment and asking for information about the allegations.

92. The claimant wrote again to the third respondent and Peter McNab on 19 October, saying she had become very unwell and was seeking medical advice. She wrote that she had spoken briefly with her solicitor and set out what she had been informed about employer obligations and good practice in relation to suspension, including that she should have been informed of the allegations.

93. I dealt with the correspondence between the claimant and the third respondent on 20 October 2021 when dealing with the facts relating to Act 17.

94. Within an hour of receiving the third respondent's email of 20 October 2021, the claimant emailed her resignation letter of 20 October 2021 (page 242). The letter gave three months' notice of termination to end on 19 January 2022. The claimant wrote:

> "As you know, I have been unhappy with the way the company has allowed mistreatment of staff members to occur and continue, despite concerns being raised directly to you and elsewhere by several people, and I feel that you have not dealt adequately with misconduct occurring over several months which has resulted in damage. I am one of those who has suffered, has been treated with inequity, and has been the shoulder of hope that others have chosen to cry on. My physical and mental health has deteriorated consequently and my anxiety has become debilitating, interfering with my ability to function. I'm also very uncomfortable with some of the unethical and unlawful business practices employed that I have been exposed to. It is no longer a situation I can be involved with in the long term."

<u>Act 21</u>

95. This is an allegation that, on 20 October 2021, after communication of the claimant's resignation, the second respondent accused the claimant of being "libellous" in the content of her resignation.

96. The second respondent replied to the claimant's resignation letter, accepting her resignation and writing that there was one point in her resignation letter that he found extremely concerning and in fact libellous, being the allegation that she was very uncomfortable with some of the unethical and unlawful business practices employed that she had been exposed to. He asked to clarify exactly what she was referring to.

<u>Act 22</u>

97. This is an allegation about the third respondent's contact with her by email during her suspension, when the claimant says she was ill and about the second respondent telling colleagues at work that he did not believe the claimant was ill.

98. I had no evidence in the claimant's witness statement or the bundle of contact by the third respondent by email during this period. I had evidence of contact by the second respondent, which I set out below, to put events which follow in context, but the allegation is not about the second respondent's email contact in this period.

99. By a letter dated 25 October 2021, the claimant sent the second respondent a table of various unethical and unlawful actions she said she had encountered, writing that all these matters had been brought to the attention of the relevant people internally. The allegations in the table included: that the respondent had stated participation in the HMRC EIS scheme without first having been approved by HMRC; failure to provide employee salary payslips; failure to exercise proper duty of care to employees including but not limited to concerns and complaints raised by employees and consequential failure to reasonably support employees' health safety and well-being; and failure to notify employees of automatic workplace pension enrolment and details.

100. The second respondent replied on 25 October (p.251), asking the claimant to provide real proof of who the claimant specifically drew attention to these matters and in what form. He wrote:

> "Can I be very clear, nothing that you have listed comes even remotely close to being unlawful, what is unlawful is your accusations without any real or justifiable proof. I have sent your email to our legal representatives and they have told me that should this onslaught continue, they will proceed on our behalf with legal action for defamation libel and slander."

101. The second respondent reproduced the table with a column with his responses. In relation to the allegation about telling investors the scheme was EIS approved, he wrote that they had been informed by HMRC that Fluttr has EIS status and that they are able to communicate this back to any potential investors. In relation to failure to provide payslips, he wrote that the fourth respondent was aware of this and would have it corrected by the end of October. In relation to the allegation about failure to exercise proper duty of care to employees, he asked the claimant to provide real evidence as to when they had failed to exercise a duty of care.

102. The claimant replied on 25 October (p.250), writing that his response was unnecessarily aggressive and contained threats. She wrote that she would not be replying to his responses on the table or his questions or entering into an argument about matters.

103. The second respondent wrote again on 25 October (page 249). He denied that his responses were aggressive. He said they were not threats; he was simply

pointing out the course of action that their legal team would pursue should it be required. He repeated his request for proof.

104. The second respondent wrote again on 26 October (page 264). He referred to one of the allegations about extracting shareholder funds for personal use and former directors' loan and failing to repay such loans. He wrote that the statement was factually incorrect but said their major concern was one of serious data breach. He wrote that the claimant said in her email that she had information on the subject. He asked that she divulge the information she was referring to and how she obtained the information. He wrote "as we take such data breaches very seriously and failure to provide such information can be regarded as gross misconduct."

105. The claimant replied (page 264), writing that the second respondent had obviously forgotten a conversation when he had shared this information about the directors' loan with her. She said she was not aware of any data breach. The second respondent replied twice on 27 October, denying that he had said anything about directors' loans but asking, if it was the case, how she knew the directors' loans had not been repaid.

106. I have no evidence that the third respondent unreasonably demanded to see the claimant's medical reports. I have no evidence to support the claimant's belief that the second respondent told colleagues at work that he did not believe the claimant was ill.

Act 23

107. This is about the respondents accusing the claimant of serious misconduct for making a covert recording of the meeting with the second respondent on 15 October 2021 and beginning disciplinary proceedings.

108. The findings of fact in relation to Act 17 deal with the accusation of serious misconduct in relation to making a covert recording of the meeting on 15 October 2021.

109. The claimant was sent an invitation to a Teams meeting to be held on 5 November entitled "Disciplinary Hearing" by the third respondent (p.272). The document in the bundle does not show when this was sent. I accept the evidence of Jane Griffin, who was asked by the claimant to accompany her, that the meeting invitation was sent on 27 October 2021 and that the claimant was not told who would be attending the meeting from the first respondent and was not told what the hearing was about. I find there was no letter sent to the claimant setting out the allegations she was to face at the disciplinary hearing. There had been no investigation hearing with the claimant before the third respondent sent the Teams invitation.

Act 24

110. This is an allegation about the respondents demanding that the claimant attend a disciplinary hearing in person, rather than by video, at an office, requiring

the claimant to travel for an estimated 10 hour round trip to attend, and without first having an investigation.

111. There is no evidence in the claimant's witness statement or the bundle to support the allegation about being required to attend the hearing in person.

112. The claimant had not been asked to attend an investigatory meeting before the respondent decided to hold a disciplinary hearing.

Act 25

113. This is an allegation about a letter written to the claimant by the second respondent on 25 October 2021.

114. I have dealt with the fact of this letter and its contents in the facts relating to act 22.

Act 27

115. This is an allegation about emails sent to the claimant by the second respondent in the period 25 to 27 October 2021.

116. I have dealt with the facts of this correspondence in the facts relating to act 22.

Act 29

117. This is an allegation that, on 27 October 2021, the third respondent misrepresented that the claimant had requested an alteration to the date for their disciplinary meeting, rather than just a change to a video meeting.

118. There is no evidence in the claimant's witness statement or the bundle to support this allegation.

Act 32

119. This is the claimant's resignation with immediate effect on 28 October 2021. It is not an allegation of any act or omission by the respondents.

120. In the course of her work, Jane Griffin had access to the second and third respondent's email accounts. She saw correspondence relating to the disciplinary hearing planned for 5 November 2021. This led her to believe that the claimant was being set up to be confronted with falsely created accusations on the day, for which the claimant would be unprepared. This correspondence included an email from the third respondent to the second respondent dated 27 October 2021 saying that she would like the second respondent to raise upward bullying during the hearing by the claimant towards him (p.274). The second respondent replied (p.274) that he was happy to raise upward bullying by the claimant towards him.

121. Jane Griffin had also been asked by the third respondent, around the last week of October, to urgently write a new HR policy so that making covert recordings would be an act of gross misconduct. There had been no such policy or inclusion of covert recording as an example of any kind of misconduct in the employee handbook. Jane Griffin was aware that the claimant had told the third respondent that she had made a recording of the conversation between her second respondent. Jane Griffin felt it likely, given the urgency with which the third respondent wanted her to create the policy, that she was intending to use it against the claimant.

122. On 27 October 2021, Jane Griffin told the claimant about her belief that she was being set up by the second and third respondents and Peter McNab to be presented with falsely created accusations at the disciplinary hearing for which she would be unprepared.

123. The claimant decided to resign with immediate effect. On 28 October 2021 the claimant emailed her resignation letter. Her letter (p.276) included the following:

> "This letter notifies you that I hold Ethical Social Group Ltd in repudiatory breach of its employment contract with me dated 29 July 2021 owing to its omissions and breaches of statutory duties and unlawful detriment under UK employment law.
>
> 1. Ethical Social Group Ltd has failed to observe its own contractually binding policies, stated expressly, implied, or by statute, including that it has failed to:
>   a. Pay my net salary in October 2021
>   b. Provide any payslips at all during my employment
>   c. Register me as an employee with HMRC
>   d. Pay the sums deducted from my pay in the name of tax and national insurance over to HMRC
>   e. Auto-enrol me in a pension scheme in accordance with current legislation
>   f. Pay sums deducted from my pay as pension contributions into a pension scheme
>   g. Pay my bona fide expenses claimed
>
> 2. I disclosed various areas of business wrongdoing during my employment. These were qualifying Protected Disclosures that included disclosures of unlawful practice, failures in duty of care, fraudulent misrepresentation, and financial impropriety. After these disclosures I have faced degrading and detrimental treatment from Graham Pullan and other company Directors.
>
> 3. As a direct result of those Protected Disclosures, I have been threatened by Graham Pullan with legal action to pursue claims of libel, defamation and slander against me, have received threats of pursuing claims of gross misconduct against me, have been unfairly suspended from work, faced fabricated and false accusations of wrongdoing, been misrepresented, and

have enjoyed a desperate and orchestrated campaign of detriment directed by Graham Pullan.

4. Ethical Social Group Ltd has failed in its obligation to provide a safe working environment and protect me from the anxiety it has caused me, including by:
   a. Failing to properly unfairly investigate serious grievances raised by me and others
   b. Placing me in unnecessarily stressful situations and creating such situations
   c. Repeatedly permitting public humiliation of me and other staff members, including by Graham Pullan
   d. Failing to take proper steps to prevent the bullying from happening
   e. Failing to treat employees fairly and exercising discrimination
   f. Misrepresenting statements made by others in order to degrade me
   g. Failing to follow ACAS guidelines

5. I have needlessly been subjected to a systematic and continuing campaign of harassment due to omissions by Ethical Social Group Ltd to undertake adequate preventative measures to ensure a working environment free from harassment. Further, these omissions have created an oppressive and intimidating working environment within which I and others have been expected to work. I can no longer ignore the palpable risk of harm this is having on my mental and physical health and the danger it poses to me and others in the working environment.

6. Ethical Social Group Ltd and its officers have acted in a manner to destroy the implied term of trust and confidence."

124. She wrote that, as a result of the chain of events, she considered her position at the first respondent was now utterly untenable and her working conditions intolerable and unsafe to serve the remainder of the notice period because of this repudiated breach. She wrote that she, therefore, resigned her position in response to the respondent's breach with immediate effect and would be pursuing a claim for damages.

Act 33

125. This is an allegation that the claimant's salary for October 2021, expenses, pension contributions and payment in lieu of untaken holiday were not paid.

126. Other employees were paid salary at the end of October 2021. I accept the claimant's evidence that she was not paid her salary due for October 2021. It was accepted by the respondents in their response (p.66) that the claimant was owed her monthly salary for October 2021.

127. I find that the claimant was not paid expenses due from August 2021 until the end of her employment. I accept the figure given in the claimant's schedule of loss, that £1,214 was due for unpaid expenses.

128. Employee pension contributions were deducted from the claimant's salary in August and September 2021 but not paid over to a pension scheme. No employer pension contributions were paid into the pension scheme for August to October 2021. The claimant's evidence and that of Jane Griffin, which I accept, is that other employees were similarly not enrolled in the pension scheme, yet deductions from salary were made, ostensibly for employee pension contributions. Jane Griffin was informed by Royal London on 18 November 2021 that no money had been paid by the first respondent into any of the employee funds since early in 2021. Jane Griffin had still not had her pension contributions paid into the scheme by the time she left at the end of January 2022.

129. The claimant was not paid in lieu of accrued but untaken holiday on termination of employment. I accept the claimant's evidence, referring to her schedule of loss, that 5.25 days holiday was accrued but untaken and that this equated to gross pay of £2,423.

Act 34

130. This is an allegation that the first and second respondent continued, after the end of her employment, to harass her by their communications.

131. The claimant's witness statement refers to an email from the fourth respondent on 14 November 2021. However, the page reference is incorrect and it does not appear that this email is in the bundle.

132. On 1 December 2021, the fourth respondent wrote to the claimant (page 301). He apologised for forgetting to enrol her with the Royal London pension scheme in a timely manner. He wrote that she had since been enrolled with that scheme. This was not a true statement the claimant had not been enrolled into the pension scheme.

Act 37

133. This is an allegation that the third respondent, on behalf of all other respondents, failed to comply with regulations when responding to the claimant's data subject access requests, withholding information that was rightly requested.

134. I have no evidence in support of this allegation in the claimant's witness statement or the bundle, other than that the claimant said in evidence that she had made a request for notes of the meeting with the third respondent and Peter McNab and these notes were not provided.

Submissions

135. The claimant made very brief oral submissions. She said she did not want the respondents to do this to anyone else ever again. She understood that there is an ongoing investigation by the Insolvency Service and a police investigation. The respondents purposely did not pay the claimant her salary or expenses. The claimant said she simply wanted what was owed to her and to leave this behind

her. She wanted to leave a record so that no one else would be taken in by this duplicitous set of people.

Law

136. Section 47B(1) of the Employment Rights Act 1996 (ERA) provides:

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

137. Section 47B(1A) gives a worker the right not to be subjected to a detriment by any act, or any deliberate failure to act, done by another worker of the claimant's employer in the course of that other worker's employment, on the ground that the claimant made a protected disclosure.

138. Section 47B(1B) provides that any detrimental act done by a fellow worker is to be treated as also done by the employer i.e. the employer is vicariously liable for the acts of its workers.

139. The effect of these provisions is that a complaint of detrimental treatment can be brought against the claimant's employer and against an individual worker or employee of the same employer who subjected the claimant to a detriment on the ground of making a protected disclosure.

140. Section 47B(2) provides that s.47B does not apply where the worker is an employee and the detriment in question amounts to dismissal. This means that, as against the employer, a complaint about dismissal done on the grounds of the claimant having made a protected disclosure, can only be brought under s.103A ERA and not as a complaint of detrimental treatment under s.48 ERA. A complaint of detriment about dismissal can, however, be brought against an individual employee who decided on the dismissal or who committed detrimental acts resulting in the claimant's dismissal: **Timis and anor v Osipov (Protect intervening) 2019 ICR 655 CA.**

141. The Court of Appeal in **Osipov** also held that, in a claim based on a distinct prior detrimental act done by a co-worker which results in the claimant's dismissal, s.47B(2) does not preclude recovery in respect of losses flowing from the dismissal, though the usual rules about remoteness and the quantification of such losses will apply.

142. What constitutes a protected disclosure is defined by sections 43A to 43H ERA. Section 43A provides: "In this Act a "protected disclosure" means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H."

143. The relevant parts of section 43B for this case are as follows:

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

144. Qualifying disclosures are protected disclosures if made to the claimant's employer (s.43C) or to someone else in accordance with sections 43D to 43H ERA. Section 43F relates to disclosures made to prescribed persons. The Commissioners for Her Majesty's Revenue and Customs are prescribed under the Public Interest Disclosure (Prescribed Persons) Order 2014 in relation to disclosures of matters relating to the functions of HMRC including the administration of the UK's taxes and national insurance system.

145. Section 48(2) ERA provides that in relation to a complaint including a complaint that the worker had been subjected to a detriment in contravention of section 47B:

> "On such a complaint it is for the employer to show the ground on which any act, or deliberate failure to act, was done."

146. The employer must show that the protected disclosure did not materially (in the sense of more than trivially) influence the employer's treatment of the claimant: **Fecitt v NHS Manchester (Public Concern at Work Intervening)** 2012 ICR 372 CA.

147. In **Babula v Waltham Forest College** *[2007] ICR 1026,* the Court of Appeal held that an employee who informed the police and other enforcement agencies that he believed that an act of racial hatred had been committed could rely on the protection of the whistleblowing provisions to argue that his dismissal was automatically unfair, even though his belief was mistaken. The Court held that a belief may be reasonably held and yet be wrong.

148. Section 103A ERA provides:

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

149. "Dismissal" includes constructive dismissal: s.95(1)(c) ERA i.e. "the employee terminates the contract under which he is employed (with or without notice) in

circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct."

150. An employee will be entitled to terminate a contract of employment without notice if the respondent is in fundamental breach of that contract and the employee has not affirmed the contract by their conduct.

151. An implied term of an employment contract is the term of mutual trust and confidence. This is to the effect that an employer will not, without reasonable or proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the employer and employee. Browne-Wilkinson J in **Woods v WM Car Services (Peterborough) Limited** 1981 ICR 666, said that the tribunal must "look at the employer's conduct as a whole and determine whether it is such that its effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it."

152. Where an employee has not completed sufficient service to claim "ordinary" unfair dismissal (currently two years), the claimant has the burden of proving, on the balance of probabilities, that the reason for dismissal was an automatically unfair reason (which includes a s.103A unfair dismissal): **Smith v Hayle Town Council** 1978 ICR 996 CA.

153. An employee who is found to have been constructively dismissed, and has resigned without working their full notice period, will have been constructively dismissed in breach of contract because of not being given the notice to which they were entitled under their contract of employment.

Conclusions on liability

Protected disclosures

PD1 - Bullying and harassment of employees

154. The relevant facts appear at paragraphs 27 to 31. The claimant provided information to the second respondent in a message on 3 September 2021, a telephone call on 4 September and an email on 6 September that Rhonda Alexander was behaving in a bullying way to employees, giving specific examples of conduct in the email of 6 September. The claimant also gave information about alleged bullying by Rhonda Alexander to the third respondent in a telephone conversation on 28 September 2021. I conclude that the claimant reasonably believed the disclosures of information to be in the public interest; they affected a group of employees, not just the claimant. I conclude that she reasonably believed the disclosure tended to show that the health or safety of any individual had been, was being or was likely to be endangered. She gave information about how she and other employees were upset by the conduct. The disclosure was made to the claimant's employer. I conclude that the messages, emails and conversations were protected disclosures.

PD2 - Falsely stating an investment offering as HMRC EIS approved

155. The relevant facts appear at paragraphs 32 to 39. The claimant informed the second respondent on 25 August and 8 September 2021 that the EIS number needed to be included on promotional material for investors and they were not complying with this requirement. I conclude that the claimant disclosed information which she reasonably believed was in the public interest; potential investors would be misled if they were told EIS approval had been given and it had not. I conclude that the claimant reasonably believed this disclosure of information tended to show that there was a breach of a legal obligation. Whether or not the claimant was right that the EIS number had to be given, she understood this to be the case. Even if she was not right that the EIS number had to be given (and I have no evidence to suggest she was wrong), it would be a breach of a legal obligation to misrepresent the situation to say HMRC approval had been given when it had not. The disclosures were made to her employer, being made to the second respondent. I conclude that these were protected disclosures.

156. Sometime in early October 2021, before 12 October, the claimant reported the respondents' wrongful claims of EIS approval to HMRC. HMRC is a prescribed person. For the same reasons as in relation to the disclosures to the employer, I conclude that this was a qualifying disclosure and, since made to a prescribed person, it was a protected disclosure.

PD3 - Failure to inform HMRC and pay payroll deductions to HMRC

157. The relevant facts appear in paragraphs 40 to 44.

158. The claimant spoke to the fourth respondent by phone on or shortly after 14 October 2021 to advise him that the actions of not informing HMRC of employees' employment status through payroll submissions and not paying any tax and national insurance deductions from salaries to HMRC were unlawful.

159. The claimant spoke to the third respondent around mid October 2021 who said that she did not deal with HMRC payments and claimed to be unaware about this.

160. I conclude that the claimant, in these telephone conversations, disclosed information which she reasonably believed was in the public interest; the failures related to a group of employees, not just the claimant. It is also in the public interest that amounts deducted for tax and national insurance are paid over to HMRC since this affects public finances. I conclude that the claimant reasonably believed the disclosure tended to show that the first respondent had failed to comply with its legal obligations to declare employment and pay over tax and national insurance contributions to HMRC. These disclosures were made to the claimant's employer, by being made to the fourth and third respondents. I conclude that these were protected disclosures.

161. On 12 October 2021, the claimant reported the respondents to the HMRC fraud reporting service, reporting the EIS fraud at the same time. The claimant was later told by HMRC that they were proposing a multiagency fraud investigation into the respondents. For the same reasons as in relation to the disclosures to the

employer, I conclude that this was a qualifying disclosure and, since made to a prescribed person, it was a protected disclosure.

PD4 – Failure to auto-enrol employees in a pension scheme

162. The relevant facts appear in paragraphs 45 to 48.

163. The claimant spoke to the fourth respondent at around mid October 2021 telling him that she and other employees had not been enrolled into the pension scheme but pension contributions had been deducted from salaries but not paid into a pension scheme. I conclude that this was a disclosure of information which the claimant reasonably believed to be in the public interest; it affected a group of employees, not just the claimant. I conclude that she reasonably believed it tended to show the failure to comply with a legal obligation. The first respondent was required by statute and in accordance with the employees' contracts to enrol them into the pension scheme and pay over to the scheme employee contributions deducted. The disclosure was made to the claimant's employer by being made to the fourth respondent. I conclude that this was a protected disclosure.

Detrimental treatment on the grounds of making protected disclosures

164. In relation to each act where I reach a conclusion that the complaint of detrimental treatment on the ground of making protected disclosures is well founded, I conclude that the treatment was on the ground of some or all of the protected disclosures made to the claimant's employer which preceded in time the detrimental treatment. I do not conclude that any detrimental treatment was on the ground of the claimant having made protected disclosures to HMRC. There is no evidence that the respondent was aware, at the time of the detrimental treatment, that the claimant had made protected disclosures to HMRC.

Act 1

165. This allegation is about the respondent failing to properly investigate serious grievances raised by the claimant or to exercise proper care towards her in the period 5 September to 20 September 2021. The allegation is made against the first, second and third respondents.

166. I found that the second and third respondents did not do anything to try to change the behaviour of Rhonda Alexander. I conclude that the facts are made out as alleged.

167. I conclude that the claimant reasonably saw the failures to properly investigate serious grievances raised by her about Rhonda Alexander as subjecting her to a detriment. She felt isolated and vulnerable, lost enjoyment in her work and started feeling scared to go to work.

168. It is for the respondents to show the grounds for the detrimental treatment. The respondents, whose responses were struck out, have not shown that their failures were not due to the claimant having made protected disclosures. I conclude that this complaint of detrimental treatment is well founded.

169. The protected disclosures were made to the first respondent in early September 2021. The protected disclosure to the third respondent was not made until 28 September 2021, after the period that this allegation relates to. The third respondent's failures to act cannot, therefore, be on the ground that protected disclosures were made to her. I have no evidence that the second respondent told the third respondent about the disclosures and asked her to do anything about it. I, therefore, conclude that the third respondent is not liable for this act of detrimental treatment. The first respondent is vicariously liable for the acts of the second respondent. I conclude that the first and second respondents are liable for this detrimental act.

Act 3

170. This allegation is about the claimant being increasingly isolated from other members of staff and spoken to in a condescending manner on calls by the second respondent who also permitted Rhonda Alexander to continue her bullying and aggressive behaviour in the period 31 August to 12 October 2021. The complaint is brought against the first and second respondents.

171. The facts appear in paragraphs 53 to 55. I found that the second respondent and Rhonda Alexander treated the claimant in the way alleged. I found that the second respondent moved the claimant away from work on Fluttr. The second respondent told the claimant that this was because of the conversation they had had i.e. the claimant complaining about Rhonda Alexander's behaviour. The second respondent moved the claimant rather than tackling the source of the problem. I conclude that the claimant was subjected to detrimental treatment as alleged.

172. I conclude that the claimant reasonably saw this treatment as detrimental. She had been treated as the problem, rather than Rhonda Alexander. She was upset by the behaviour of both Rhonda Alexander and the second respondent.

173. The first respondent is vicariously liable for the actions of the second respondent. The first and second respondents have not shown the ground on which the treatment was done and that it was not on the ground of the claimant having made protected disclosures. I conclude that this complaint of detrimental treatment against the first and second respondents is well founded.

Act 8

174. This is about behaviour of the second respondent on 7 October 2021. The complaint is brought against the first, second and third respondents.

175. I found that the second respondent accused the claimant, in front of the other people on a video call, of being "difficult", turned away from the screen and did not reply. About 10 minutes later, the claimant asked the question again and the second respondent gave a curt response. I found the second respondent reacted in a rude and belittling way, which he had not used when others asked questions.

176. I conclude that the treatment occurred as alleged. I conclude that the claimant reasonably saw this as detrimental treatment.

177. The first respondent is vicariously liable for the actions of the second respondent. The first and second respondents have not shown the ground on which the treatment was done and that it was not on the ground of the claimant having made protected disclosures. I conclude that this complaint of detrimental treatment against the first and second respondents is well founded.

178. The complaint was also brought against the third respondent. I have no evidence of the involvement of the third respondent in this incident in a way which could make her liable for this detrimental treatment. I do not uphold this complaint against the third respondent.

Act 13

179. This is about an email sent by the second respondent to the claimant on 14 October 2021 about her "behaviour". The complaint is brought against the first, second and third respondents.

180. The facts appear at paragraphs 59 to 65.

181. I conclude that the treatment occurred as alleged. I conclude that the claimant reasonably saw this as detrimental treatment.

182. The first respondent is vicariously liable for the actions of the second respondent. The first and second respondents have not shown the ground on which the treatment was done and that it was not on the ground of the claimant having made protected disclosures. I conclude that this complaint of detrimental treatment against the first and second respondents is well founded.

183. The complaint was also brought against the third respondent. I have no evidence of the involvement of the third respondent in this incident in a way which could make her liable for this detrimental treatment. I do not uphold this complaint against the third respondent.

Act 14

184. This was about the second respondent's actions on 15 October 2021. The complaint is brought against the first and second respondents.

185. On 15 October 2021, the claimant had a telephone conversation with the second respondent. The claimant recorded their conversation. A transcript of the conversation appears in the bundle (page 226). The claimant asked the second respondent why there had been no follow-up to the grievances. The second respondent said they discussed it and asked what further discussions the claimant

wanted. The claimant said nothing was done and that the behaviour carried on. The second respondent asserted that he did address the bully and he asked other people who did not see or feel the same as the claimant felt. He said that other people did not feel or see the bullying.

186. I conclude that the evidence does not support the allegation as it is set out in the table of allegations. Whilst I accept this was an unpleasant conversation, I am not satisfied from the claimant's witness evidence and the transcript of the conversation, that the second respondent repeatedly accused her of saying things that she had not and twisted her words whilst also alleging that others had lied to the claimant about things the second respondent was alleged to have said about the claimant when they had not.

187. I conclude that this complaint is not well founded.

Act 15

188. This allegation is that the respondents failed to give proper notice or invite the claimant to a board meeting of the first respondent was said to have taken place on 18 October 2021. The complaint is made against all four respondents.

189. A board meeting of the first respondent took place on 18 October 2021 (p.292). The claimant was not invited, although she was a non-executive director of the first respondent and entitled to be invited and attend.

190. I conclude that the claimant reasonable saw the failure to invite her to the meeting as a detriment.

191. Notice should have been given to the claimant on behalf of the first respondent. I would expect the notice to be the responsibility of the company secretary of the first respondent. However, Companies House records give no name for a company secretary. In the absence of a company secretary, I conclude that it was the responsibility of the second respondent, the group CEO, to ensure that all directors were invited to the meeting. I do not consider I have any evidence to support a conclusion that the third and fourth respondents were also responsible for failing to invite the claimant to the meeting. I conclude that the complaint is not well founded as against the third and fourth respondents.

192. The first respondent is vicariously liable for the actions of the second respondent. The first and second respondents have not shown the ground on which the treatment was done and that it was not on the ground of the claimant having made protected disclosures. I conclude that this complaint of detrimental treatment against the first and second respondents is well founded.

Act 16

193. This is about a meeting held on 18 October 2021, attended by the claimant, the third respondent and Peter McNab, a close friend of the second respondent. The complaint is brought against the first and third respondents.

194. The facts appear at paragraphs 70 to 76.

195. I infer from what followed, in terms of the claimant's suspension on unspecified allegations and subsequent invitation to a disciplinary hearing, that the meeting was not genuinely about the claimant's welfare, as the third respondent had asserted. I conclude that the meeting was, as the claimant alleges, an attempt to entrap the claimant and find some excuse to take disciplinary action. I conclude that the treatment occurred as alleged.

196. I conclude that the claimant reasonably saw this treatment as subjecting her to a detriment.

197. The first respondent is vicariously liable for the actions of the third respondent. The first and third respondents have not shown the ground on which the treatment was done and that it was not on the ground of the claimant having made protected disclosures. I conclude that this complaint of detrimental treatment against the first and third respondents is well founded.

Act 17

198. This is an allegation that the third respondent misrepresented the discussion of 18 October 2021 and that the second and third respondents collaborated with Peter McNab to fabricate falsely corroborated accusations against the claimant with the aim of securing the claimant's exit from the first respondent's employment. The complaint is brought against the first, second and third respondents.

199. The facts appear at paragraphs 77 to 81.

200. I found that the third respondent did misrepresent, in her email of 20 October 2021, what the claimant had said at the meeting on 18 October 2021. I found that the first and second respondents were out to make a case against the claimant, rather than responding to genuine concerns that the claimant had done something wrong. I conclude that the second and third respondents did collaborate with Peter McNab to fabricate falsely corroborated accusations against the claimant, with the likely aim of securing her exit from the first respondent's employment. I conclude that the detrimental treatment occurred as alleged.

201. I conclude that the claimant reasonably saw these actions as subjecting her to a detriment.

202. The first respondent is vicariously liable for the actions of the second and third respondents. The first, second and third respondents have not shown the ground on which the treatment was done and that it was not on the ground of the claimant having made protected disclosures. I conclude that this complaint of detrimental treatment against the first, second and third respondents is well founded.

Act 18

203. This is about the claimant's suspension on 19 October 2021. The complaint is made against the first, second and third respondents.

204. The facts appear at paragraphs 82 to 87.

205. The first respondent, acting through the third respondent, suspended the claimant without telling her the nature of the misconduct for which she was suspended. I found that the suspension was without good cause. To this extent the claimant has proved the treatment alleged.

206. I do not conclude that the treatment alleged is proved in so far as it relates to any other aspect of the manner of suspension or in so far as it relates to the way the suspension was communicated to co-workers.

207. I found that the suspension was made with the agreement of the second respondent.

208. I conclude that the claimant reasonably saw these actions as subjecting her to a detriment.

209. The first respondent is vicariously liable for the actions of the second and third respondent. The first, second and third respondents have not shown the ground on which the treatment was done and that it was not on the ground of the claimant having made protected disclosures. I conclude that this complaint of detrimental treatment against the first, second and third respondents is well founded, in so far as it relates to the suspension without telling her the nature of the misconduct and the suspension being without good cause.

Act 19

210. This is about an email sent by the third respondent on 19 October 2021 requiring her to attend a disciplinary hearing on unspecified allegations of "serious misconduct". The allegation is made against the first, second and third respondents.

211. This does not add anything to allegation 18.

Act 20

212. This refers to the claimant's resignation on 20 October 2021, giving 3 months' notice. It is not an allegation of an act or failure to act by the respondents.

213. Dismissal (including constructive dismissal) cannot be a detriment in a complaint brought by an employee against their employer. I will consider separately the complaint of constructive unfair dismissal relying on s.103A ERA.

214. In relation to a complaint against individual respondents, this is not a complaint about any act or failure to act by them. It is the claimant's response to

other acts or omissions which are dealt with as particular acts alleged to be detrimental treatment.

215. This complaint of detrimental treatment is not well founded.

Act 21

216. This is an allegation that, on 20 October 2021, after communication of the claimant's resignation, the second respondent accused the claimant of being "libellous" in the content of her resignation. The complaint is brought against the first, second and third respondents.

217. The second respondent made an accusation that an allegation made by the claimant was libellous and asked her to clarify exactly what she was referring to.

218. I conclude that the detrimental treatment occurred as alleged. I conclude that the claimant reasonably saw the accusation of libel as detrimental, fearing that legal action could be taken against her, albeit without good cause.

219. The first respondent is vicariously liable for the actions of the second respondent. The first and second respondents have not shown the ground on which the treatment was done and that it was not on the ground of the claimant having made protected disclosures. I conclude that this complaint of detrimental treatment against the first and second respondents is well founded.

Act 22

220. This is an allegation about the third respondent's contact with her by email during her suspension, when the claimant says she was ill and about the second respondent telling colleagues at work that he did not believe the claimant was ill. The complaint is brought against the first, second and third respondents.

221. The facts appear at paragraphs 97 to 106.

222. I did not have evidence to support the claimant's allegations. I conclude, therefore, that this complaint of detrimental treatment is not well founded.

Act 23

223. This is about the respondents unfairly accusing the claimant of serious misconduct for making a covert recording of the meeting with the second respondent on 15 October 2021 and beginning disciplinary proceedings. The complaint is made against the first, second and third respondents.

224. The claimant was accused by the third respondent in an email dated 20 October 2021 of serious misconduct in relation to making a covert recording of the meeting on 15 October 2021 (see paragraph 77).

225. The allegation in the table refers to an event on 22 October 2021 but I did not have evidence in the claimant's witness statement or bundle as to any accusation being made on that date or disciplinary proceedings being started on that date.

226. The claimant was suspended on 19 October but not informed of disciplinary proceedings until sent, on 27 October 2021, an invitation to a disciplinary hearing, without being told the allegations she was to face.

227. I take the date for the allegation to be an error which should have referred to the third respondent's email of 20 October 2021 and to the starting of disciplinary proceedings, of which the claimant was notified on 27 October 2021.

228. I conclude that the alleged treatment of unfairly accusing the claimant of serious misconduct in relation to the covert recording is proved. There was no prohibition in the claimant's contract on recording a conversation for private use. This was not illegal (contrary to what the third respondent asserted in the meeting on 18 October 2021). I conclude that the claimant reasonably saw this as detrimental treatment. The accusation was made by the third respondent, but I consider it unlikely it would have been made without the agreement of the second respondent.

229. I conclude that the alleged treatment of unfairly beginning disciplinary proceedings is also proved. The first respondent suspended the claimant without giving details of the allegations for which she was suspended. The respondents' subsequent actions in trying to create a disciplinary case against the claimant lead me to conclude that the respondents did not have genuine cause for beginning disciplinary action.

230. The first respondent is vicariously liable for the actions of the second and third respondent. The first, second and third respondents have not shown the ground on which the treatment was done and that it was not on the ground of the claimant having made protected disclosures. I conclude that this complaint of detrimental treatment against the first, second and third respondents is well founded.

Act 24

231. This is an allegation about the respondents demanding that the claimant attend a disciplinary hearing in person, rather than by video, at an office, requiring the claimant to travel for an estimated 10 hour round trip to attend, and without first having an investigation. The complaint is brought against the first, second and third respondents.

232. There is no evidence in the claimant's witness statement or the bundle to support the allegation about being required to attend the hearing in person. I conclude that the treatment alleged is not proved and this complaint is not well founded.

Act 25

233. This is an allegation about a letter written to the claimant by the second respondent on 25 October 2021. The complaint is made against the first, second and third respondents.

234. The second respondent's letter of 25th October 2021 included the following:

> "Can I be very clear, nothing that you have listed comes even remotely close to being unlawful, what is unlawful is your accusations without any real or justifiable proof. I have sent your email to our legal representatives and they have told me that should this onslaught continue, they will proceed on our behalf with legal action for defamation libel and slander."

235. The treatment alleged against the second respondent has been proved by the claimant.

236. I conclude that the claimant reasonably saw this statement as detrimental, finding it aggressive and threatening, fearing that legal action could be taken against her, albeit without good cause.

237. The first respondent is vicariously liable for the actions of the second respondent. The first and second respondents have not shown the ground on which the treatment was done and that it was not on the ground of the claimant having made protected disclosures. I conclude that this complaint of detrimental treatment against the first and second respondents is well founded.

238. The third respondent was copied into correspondence, but I do not consider this sufficient to conclude that the third respondent subjected the claimant to a detriment. I find the complaint is not well founded against the third respondent.

Act 27

239. This is an allegation about emails sent to the claimant by the second respondent in the period 25 to 27 October 2021. The complaint is made against the first, second and third respondents.

240. The facts appear in paragraphs 100 to 105.

241. The claimant has proved the treatment alleged against the second respondent. I conclude that the claimant reasonably saw this correspondence as subjecting her to a detriment; she found it aggressive and threatening.

242. The first respondent is vicariously liable for the actions of the second respondent. The first and second respondents have not shown the ground on which the treatment was done and that it was not on the ground of the claimant having made protected disclosures. I conclude that this complaint of detrimental treatment against the first and second respondents is well founded.

243. The third respondent was copied into correspondence, but I do not consider this sufficient to conclude that the third respondent subjected the claimant to a detriment. I find the complaint is not well founded against the third respondent.

Act 29

244. This is an allegation that, on 27 October 2021, the third respondent misrepresented that the claimant had requested an alteration to the date for their disciplinary meeting, rather than just a change to a video meeting. The complaint is made against the first, second and third respondents.

245. There was no evidence to support this allegation so I conclude that this complaint is not well founded.

Act 32

246. This is the claimant's resignation with immediate effect on 28 October 2021. It is not an allegation of any act or omission by the respondents. The complaint is made against the first, second and third respondents.

247. Dismissal (including constructive dismissal) cannot be a detriment in a complaint brought by an employee against their employer. I will consider separately the complaint of constructive unfair dismissal relying on s.103A ERA.

248. In relation to a complaint against individual respondents, this is not a complaint about any act or failure to act by them. It is the claimant's response to other acts or omissions which are dealt with as particular acts alleged to be detrimental treatment.

249. This complaint of detrimental treatment is not well founded.

Act 33

250. This is an allegation that the claimant's salary for October 2021, expenses, pension contributions and payment in lieu of untaken holiday were not paid. The complaint is made against all four respondents.

251. The claimant was not paid her salary for October 2021, outstanding expenses or payment in lieu of untaken holiday. She was not enrolled in the pension scheme, the first respondent having failed to comply with its obligations to do this, so no employer's contributions were made to the claimant's pension for October, or earlier months. The claimant has proved the relevant facts.

252. I conclude that the claimant reasonably saw these failures as detrimental treatment.

253. Other employees were paid their salary for October 2021. Other employees did not have pension contributions paid on their behalf for August to October 2021. Payment in lieu of holiday pay only arises on termination of employment. I have no evidence as to whether other departing employees were paid in lieu of holiday.

254. I infer that the non-payment of salary, expenses, pension contributions and holiday pay was as a result of a deliberate decision not to pay this. The payments and contributions should have been made by the first respondent but the first respondent could only act through individuals. I infer that, by virtue of their positions with the first respondent, it is more likely than not that the second, third and fourth respondents were involved in the decision not to make these payments and contributions. The first respondent is vicariously liable for the acts of the other respondents.

255. It is for the respondents to prove the grounds on which the acts were done, and that these grounds were in no material respect because of the protected acts. The respondents had their responses dismissed and played no active role in defending the claims, so put no evidence forward. However, I consider that I can take account of the evidence put forward by the claimant in deciding whether the respondents have proved that any of the acts were not, in any material way, done on the grounds of the protected disclosures. In relation to the pension contributions, the evidence before me is that the first respondent did not enrol any of the employees I heard evidence about in the pension scheme. I have no reason to believe all these employees had made protected disclosures. In relation to the pension contributions, therefore, I conclude that the failure to pay employee pension contributions was not done on the ground that the claimant had made protected disclosures. If she had not made protected disclosures, she would still not have been enrolled in the scheme and not had employer contributions made to the scheme for the period of her employment. The complaint of detrimental treatment on the grounds of making protected disclosures is not well founded in relation to pension contributions.

256. In relation to October 2021 salary, expenses and non-payment of holiday pay, I conclude that the respondents have not shown the grounds on which these payments were not made and I conclude that the complaints are well founded against all four respondents.

Act 34

257. This is an allegation that the first and second respondent continued, after the end of her employment, to harass her by their communications. The complaint is brought against the first and second respondents.

258. The claimant's witness statement referred to an email from the fourth respondent dated 14 November 2021. However, this email was not in the bundle so I do not find that a complaint in relation to this email is proved.

259. The only correspondence I saw in the bundle relating to the period after the end of the claimant's employment was an email dated 1 December 2021 from the fourth respondent in which he incorrectly asserted that the claimant had been enrolled in the pension scheme.

260. I have no evidence of correspondence from the second respondent in this period so find the complaint in relation to the second respondent to be not well founded.

261. I conclude that the claimant reasonably saw the email of 1 December 2021 as detrimental treatment.

262. For the reasons I gave in relation to employer pension contributions in relation to Act 33, I conclude that the respondents have shown that their conduct in relation to pension contributions was not done on the ground of the claimant having made protected disclosures. The first respondent had not enrolled other employees in the scheme and misrepresented to them that they were enrolled in the pension scheme. I conclude that this complaint against the first respondent, who would have been vicariously liable for the acts of the fourth respondent, is not well founded.

Act 37

263. This is an allegation that the third respondent, on behalf of all other respondents, failed to comply with regulations when responding to the claimant's data subject access requests, withholding information that was rightly requested. The complaint is made against the first, second and third respondents.

264. I had no evidence in support of this allegation in the claimant's witness statement or the bundle. I conclude that the complaint is not well founded.

s.103A ERA Unfair dismissal (protected disclosures)

265. This is a complaint of constructive unfair dismissal, relying on s.103A ERA. The claimant did not have sufficient service to claim "ordinary" unfair dismissal.

266. The issues in relation to this complaint are expressed succinctly in the list of complaints and issues as being: "If there were protected and qualifying disclosure(s), having regard to the burden of proof, was the claimant constructively dismissed because of the disclosures?

267. I have concluded that there were protected disclosures. Expanding on the remaining issues, I need to decide:

267.1. Was the claimant constructively dismissed?

267.2. If so, was the reason or principal reason for the constructive dismissal i.e. the conduct which I found together constituted a fundamental breach of contract, because the claimant made protected disclosures?

268. The issue of whether the claimant was constructively dismissed needs to be broken down into further issues.

269. Did the detrimental treatment I have found occurred, prior to the claimant's resignation, taken together breach the implied term of trust and confidence? I will need to decide:

269.1. whether the respondent had reasonable and proper cause for the detrimental treatment, and if not,

269.2. whether the respondent behaved in a way that when viewed objectively was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent.

270. If the detrimental conduct did constitute a breach of the implied term of trust and confidence, I need to decide:

270.1. Was the fundamental breach of contract a reason for the claimant's resignation?

270.2. Did the claimant affirm the contract before resigning by her conduct?

271. The claimant resigned twice: first, with notice on 20 October 2021 and secondly on 28 October 2021 without notice. I take into account the detrimental treatment which I found occurred prior to 28 October 2021.

272. I found detrimental treatment occurred prior to 28 October 2021 in whole or in part in relation to the following acts, as described in my conclusions on the detriment complaints: acts 1, 3, 8, 13, 15, 16, 17, 18, 21, 23, 25, 27, 33 (in so far as it relates to October salary, pension contributions and expenses, but not holiday pay, which did not become due until after the end of the claimant's employment).

273. I conclude that this treatment, taken together, constituted a breach of the implied duty of mutual trust and confidence. I conclude that the respondent did not have reasonable and proper cause for the detrimental treatment. I conclude that the respondent behaved in a way that when viewed objectively was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent.

274. I conclude that the detrimental treatment constituting the breach was a reason for the claimant's resignation. The claimant's resignation letter (p.276) refers specifically to many of these matters. The claimant acted promptly to resign and had continued to raise issues prior to her resignation, so I conclude the claimant did not affirm the contract before resigning.

275. I conclude, for these reasons, that the claimant was constructively dismissed.

276. I next need to decide whether the reason or principal reason for the constructive dismissal i.e. the conduct which I found together constituted a fundamental breach of contract, was because the claimant made protected disclosures. Unlike with the detriment complaints, where it is for the respondent to prove the ground on which the treatment was done, the burden is here on the claimant to prove, on a balance of probabilities, that the reason or principal reason for her constructive dismissal was the making of protected disclosures.

277. I take into account that the claimant is disadvantaged in being able to provide evidence to the Tribunal because the respondents have failed to comply with their disclosure obligations. I consider it right to draw an adverse inference from the respondents' failures.

278. Even on the basis of the documentation and the witness evidence which the claimant has been able to provide to the Tribunal, there are aspects which point towards the respondents' detrimental treatment having a causal link with the claimant's protected disclosures.

279. I found that the second and third respondents did not do anything to try to change the behaviour of Rhonda Alexander when the claimant raised bullying complaints (see paragraph 50). Instead, the claimant was removed from certain meetings. When the third respondent interviewed Jane Griffin about complaints the claimant made, the third respondent asked Jane Griffin if she wanted to make a complaint about the claimant (see paragraph 55). The second respondent, in a call on 7 October 2021, behaved rudely to the claimant (see paragraph 58). Prior to the claimant making complaints about Rhonda Alexander, the claimant and Graham Pullan had enjoyed a good working relationship. The claimant's complaints appear to have provoked not only a lack of effective action but unpleasant behaviour from Graham Pullan.

280. I found that the second respondent did not have genuine concerns about the claimant's conduct when he wrote his email of 14 October 2021 (see paragraph 65).

281. I consider the most likely explanation for the change in behaviour of Graham Pullan towards the claimant to be that she had become an irritant in his side, with the matters she was raising threatening his way of carrying on business. The claimant's complaints about Rhonda Alexander, if they had been properly pursued, could have threatened what the second respondent regarded as a good source of investment. The claimant's repeated raising of the issue of whether HMRC approval had been obtained for EIS investment and the need to give the EIS number to show this approval, if acted on, would have meant that the first respondent and its subsidiary, Fluttr Limited, could not have continued to seek and obtain investments from investors in the way they had been. As the judgment in the District Court in the case brought by Mr Sweeny held (p.314), misrepresentations were made to potential investors that Fluttr was HMRC EIS approved. Potential investors were less likely to be interested in investing in the new companies if they were not sure they would get the tax relief which came with HMRC EIS approved investment. Less investment could lead to the respondents

no longer being able to conduct business according to their business model, which appears to have relied on new investments coming in to cover day to day expenses.

282. It appears to me most likely that the respondents formed the view that the best way to avoid the threat to their business model was to get the claimant out of the way. From as early as 11 October 2021, with the third respondent's invitation to Jane Griffin to make complaints about the claimant, the respondents appear to have set down this path. The second respondent was manufacturing concerns about the claimant in his email of 14 October 2021. The second and third respondents seized on the claimant's recording of her conversation with the second respondent as a potential disciplinary matter, in a way which was unjustified, when the claimant had made it clear the recording was for her own personal use. A meeting on 18 October 2021 which the third respondent had said was to be about the claimant's welfare, turned into some type of disciplinary meeting (see paragraphs 74 to 75). The third respondent then misrepresented what the claimant had said (see paragraph 80).

283. Following the claimant's first resignation letter, on 20 October 2021, the second respondent accused the claimant of being "libellous" in her resignation letter (see paragraph 96). I consider it likely that this threat was made with the aim of silencing the claimant, rather than being the expression of an honestly held view that what the claimant had said was libellous. The second respondent made more implicit and explicit threats of defamation proceedings against the claimant in correspondence following her resignation.

284. The claimant was suspended and sent an invitation to a disciplinary hearing without any allegations being set out. On 27 October 2021, the respondents appeared to be trying to create disciplinary allegations to put to the claimant at the hearing, with the third respondent's invitation to the second respondent to raise an issue of "upward bullying" (see paragraph 120).

285. It appears to me that protected disclosures PD1 (bullying and harassment of employees) and PD2 (falsely stating an investment offering as HMRC EIS approved) were the cause of the most aggravation to the second respondent and most significant in the motivation for the first respondent, through the second and third respondents, to start trying to create a case, without a sound basis, for the claimant's dismissal. PD3 (failure to inform HMRC and pay payroll deductions to HMRC) and PD4 (failure to auto-enrol employees in a pension scheme) came later and largely after the respondents had started to create their case.

286. I conclude that the claimant has proved, on a balance of probabilities, that the reason or principal reason for the detrimental treatment which I have found constituted a breach of the implied duty of mutual trust and confidence, was that the claimant had made protected disclosures. The complaint of s.103A ERA constructive unfair dismissal succeeds.

Constructive wrongful dismissal

287. I have found, when dealing with the s.103A complaint, that the claimant was constructively dismissed.

288. I conclude that the first respondent was in breach of contract by constructively dismissing the claimant without the notice to which she was entitled under her contract. The claimant was entitled to 3 months' notice under her contract (p.161). The claimant had resigned with notice on 20 October 2021. She had worked just over one week of that notice when she resigned with immediate effect on 28 October 2021. She was entitled to be paid for the balance of her notice period (3 months less one week).

Remedy

Further findings of fact relevant to remedy

289. Since her employment with the first respondent ended, the claimant has found it very difficult to obtain work at the senior and executive level she previously worked at, with comparable pay. She had made over 100 job applications and attended 22 interviews in the time up to the signing of her witness statement on 27 November 2023. She considers that her age is a likely factor in her not being successful at interview. She is approaching 63 and the jobs for which she has been interviewed have typically gone to a younger male candidate. The claimant has used Linked In, headhunters and other sources to look for work. She has applied for lots of roles below executive level but been told she was overqualified for those posts.

290. The claimant is concerned that her association with the first respondent business, which is now of ill-repute and not referenceable, is, and will continue to, adversely affect her ability to get other employment.

291. The claimant considers that she is likely to have a continuing loss of earnings for the rest of her working life.

292. The claimant understands that the first respondent ceased trading some point in late 2022. She accepts that, had she remained employed by the first respondent, she would have lost her job at that point.

293. The claimant made an application for state benefits in 2022 and received a small amount.

294. The claimant's date of birth is 27 April 1961. The age at the effective date of termination was 60. Her gross salary with the first respondent was £120,000 per annum. Employer pension contributions of £3600 per annum (3% of base salary) should have been made into her pension scheme.

295. The claimant gave oral evidence relevant to injury to feelings. I accept the evidence she gave.

296. The experience with the respondent knocked her confidence to a serious degree. Her trust in people has been badly affected.

297. The claimant is a single parent. Her son was in a private school. The claimant continued to pay his school fees so had little other money. The lack of disposable income has badly affected her ability to continue her social life. She has stepped out of her social circles because she could not afford to participate in these. She has stayed at home, focusing on her teenage son, rather than herself. She has concentrated on trying not to have her son's life affected.

298. The claimant suffered from anxiety and depression before starting her role with the first respondent. During her employment with the first respondent, the claimant began to suffer with eczema which she had not suffered from before. Her GP said this was probably stress-related. Her anxiety increased. Her son and her sister became very concerned about her.

299. The claimant's sleep was badly affected. She slept sporadically at night and was exhausted. She sat and cried, wondering why this was happening to her.

300. The claimant had previously always looked forward to going to work. Part of her identity was associated with the work she did. She no longer enjoyed going to work or felt fulfilled because of her experiences during her employment with the first respondent. She was scared to go to work.

301. The claimant believed, from information she was given, that Graham Pullan had a criminal record for stalking a woman and that he had broken into a woman's home. Knowing that he had been angered by things she had raised, she was frightened at vengeance he might take against her. She understood that he had previously claimed defamation against people who had made factual statements. She feared what he might do to her. The claimant bought door camera for her home because she did not feel safe there.

Law

Compensation for s.103A unfair dismissal

302. No basic award is payable where the claimant has been employed less than a year.

303. Section 123 ERA sets out that the compensatory award "shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer."

304. The limit on the compensatory award in s.124 ERA does not apply to awards for s.103A unfair dismissal: s.124(1A) ERA.

Compensation for detrimental treatment on the ground of making protected disclosures

305. Section 49 ERA provides that, where such a complaint is well founded, the tribunal shall make a declaration to that effect and may make an award of compensation in respect of the act or failure to act to which the complaint relates.

306. Section 49(2) ERA provides that the amount of the compensation awarded shall be such as the tribunal considers just and equitable in all the circumstances having regard to the infringement to which the complaint relates and any loss attributable to the act or failure to act which infringed the complainant's right.

307. Compensation may include compensation for injury to feelings: **Virgo Fidelis Senior School v Boyle 2004 ICR 1210 EAT.** The **Vento** guidelines used in discrimination cases provide guidance as to the appropriate bands of compensation for injury to feelings.

308. S.48(5) ERA provides that any reference in section 48 and 49 to the employer includes, in the case of proceedings against a worker under s.47B(1A), that worker. This means that the worker can be personally ordered to pay compensation to the claimant.

309. By analogy with compensation against multiple respondents in discrimination cases, any award of compensation for a particular act for which multiple respondents are responsible, should be made jointly and severally against those respondents. This means that the claimant can enforce the whole of the award against any of the responsible respondents, or part against one and the rest against the others. Any apportionment between the respondents is not a matter for the Tribunal.

310. In **Osipov**, the Court of Appeal rejected an appeal against an EAT decision that two non-executive directors of the employing company, who were workers within the meaning of s.230(3) and held liable for detrimental treatment which led to the claimant's dismissal, were jointly and severally liable for the loss that flowed from the claimant's dismissal, save for the unfair dismissal basic award for which the employer was solely liable.

311. Unlike in discrimination cases, there are no statutory provisions which allow a Tribunal to award interest on compensation for protected disclosure detriment awards.

Compensation for breach of contract

312. If an employee entitled to notice is dismissed without the notice to which they are entitled under their contract, they may be awarded damages consisting of the amount they would have received had they been given the notice to which they were entitled. This should be calculated on a net basis but, if subject to tax, as will

now generally be the case, account has to be taken of the tax that would be payable on this. With relatively short notice periods, a rough and ready way of doing this is to award the gross amount of pay that would have been received for the notice period (or balance of the notice period, if some notice had been given), in the expectation that this will be subject to tax, leaving the claimant with the correct net amount of damages.

Conclusions on remedy

Compensation for s.103A ERA unfair dismissal

313. I conclude that the claimant, had she not been constructively dismissed, would have been employed until the first respondent ceased to trade, which the claimant understands was some time in late 2022. In the absence of precise information as to when this was, I will take this as being towards the end of October 2022.

314. The claimant's employment ended on 28 October 2021.

315. I consider the claimant has taken reasonable steps to mitigate her loss. I consider it appropriate to award her a compensatory award consisting of one year's loss of earnings, taking her to my estimate of the time when the company ceased to trade and the claimant would have lost her employment.

316. Since the claimant did not receive payslips, I do not have any accurate figures as to her net pay when with the respondent. Her gross pay was £120,000 per annum. Using an online tax calculator, this calculates net pay of £74,289 for the year (using 2021/2022 tax rates).

317. Had the claimant not been dismissed, and the first respondent complied with their contractual obligations, the first respondent would have made employer pension contributions of 3% of base salary i.e. £3,600 per annum.

318. Adding these two figures together, I arrive at a compensatory award of £77,889.

319. Since the claimant made a claim for benefits, the Recoupment Regulations apply to the award of compensation for unfair dismissal.

Damages for breach of contract

320. Since the compensatory award for unfair dismissal includes loss of earnings for what would have been the claimant's notice period, I make no award of damages for breach of contract because, to do so, would result in the claimant being compensated twice for the same loss.

Compensation for detrimental treatment on the grounds of making protected disclosures

321. I must consider compensation for any financial loss attributable to the detrimental treatment and also compensation for injury to feelings.

322. The making of awards is complicated by the number of respondents and the fact that not all the successful complaints are against all the respondents.

323. The majority, but not all, of the successful complaints are against the first and second respondents. One successful complaint (act 16) is against the first and third respondents. Three successful complaints (acts 17, 18 and 23) are against the first, second and third respondents. One complaint (act 33) is against all four respondents.

324. I consider first the matter of financial loss. There is one successful act (act 33) where there is a loss distinct from losses flowing from the constructive dismissal. The successful part of this complaint was in respect of October 2021's unpaid wages, unpaid expenses and a payment in lieu of accrued but untaken holiday.

325. I accept the figures in the claimant's schedule of loss for October's wages as £10,000 gross, unpaid expenses from August 2021 of £1,214, and unpaid holiday pay of £2423 gross. The wages and holiday pay would be taxed. Using an online tax calculator, I estimate that the net wages and holiday pay would be £7,510 together. Adding the expenses of £1,214 gives a total of £8,724. I order that the first, second, third and fourth respondents pay this amount to the claimant on a joint and several basis in relation to act 33. In principle, there could also be compensation for injury to feelings for this act, but I had no evidence that allows me to evaluate the injury suffered because of this act, separated from the other acts of detrimental treatment. I, therefore, make no award for injury to feelings in respect of act 33.

326. I consider that the other acts of detrimental treatment, for reasons I explained when reaching my decision on constructive dismissal, led to the claimant's resignation and, therefore, to post-constructive dismissal losses. I have calculated this loss as being £77,889 when calculating the compensatory award for unfair dismissal. The first respondent, as the employer, cannot be ordered to pay this compensation as compensation for detrimental treatment under section 49 ERA since it has been ordered to pay it as compensation for s.103A unfair dismissal. However, the second and third respondents can be ordered to pay this as compensation for the detrimental acts leading to the claimant's constructive dismissal. Although the second and third respondents have not each been held to be liable for every act of detrimental treatment (although the second respondent has been held liable for all except act 16), I conclude that they are both responsible for acts which led to the claimant's resignation. I consider, therefore, it is just and equitable to order them both, on a joint and several basis, to pay compensation of £77,889 to the claimant for financial loss attributable to the acts of detrimental treatment for which they have been found liable. This is also on a joint and several basis with the compensatory award payable by the first respondent for unfair dismissal. I deal separately with injury to feelings for the acts of detrimental treatment.

327. The claimant has claimed £10,000 for injury to feelings in her schedule of loss. Having regard to her evidence which I accepted, about the way she was affected by the detrimental acts which led to her resignation, I consider this to be a modest claim. The relevant **Vento** bands applicable at the date the claimant's claim was presented (17 December 2021) were: lower band £900 to £9,100; middle band £9,100 to £27,400; upper band £27,400 to £45,600. £10,000 is towards the lower end of the middle band. I do consider this to be a serious case, having regard to the impact on the claimant. I consider the amount claimed of £10,000 to be an appropriate total amount.

328. The Tribunal does not have power to apportion liability between respondents who are responsible for the same act. That would be a matter for the respondents to take to the civil courts, if they considered that appropriate. However, the Tribunal must consider what injury to feelings is attributable to the relevant detrimental acts. By analogy with discrimination awards, generally one award would be made for a number of acts, taking an holistic view of the injury suffered. As a practical matter, it is also difficult to identify the injury resulting from one particular act as opposed to another, when there are a number of acts. The situation is complicated here by all of the acts (leaving aside act 33 which I dealt with above) being done by the first and second respondent, except act 16 which was the first and third respondent only, with some, but not all, of the acts done by the first and second respondent also done by the third respondent. I have considered whether I can sensibly attribute injury to the acts done by the second respondent, but not the third respondent, and to the acts done by the third respondent but not the second respondent, and to the acts done by both the second and third respondents. I have come to the conclusion that I cannot do this. The injury to feelings has arisen as a consequence of all the acts (leaving aside act 33). I consider it appropriate, therefore, that the second and third respondents be ordered to pay the injury to feelings award of £10,000 on a joint and several basis.

329. I do not make the award of compensation for injury to feelings also against the first respondent since I consider the injury suffered by the constructive dismissal cannot be separated from the injury suffered because of the acts which together constituted the breach of contract which led to the claimant's resignation. Injury to feelings cannot be awarded for unfair dismissal so I do not consider I can order the first respondent to pay compensation for injury to feelings for these acts of detrimental treatment.

<u>Claim for ACAS uplift on compensation</u>

330. In her schedule of loss, the claimant seeks a 25% uplift on financial losses and injury to feelings for failure to comply with the ACAS Code of Practice on "Disciplinary, Grievance or Protected Disclosures". There is no ACAS Code of Practice on Protected Disclosures, so I take this reference to be to the ACAS Code of Practice on Disciplinary and Grievance Procedures. The claimant's argument, as expressed in the schedule of loss, is that the respondents applied and attempted to apply vindictive, spurious and unfair processes using falsified accusations to secure her summary dismissal.

331. The claimant does not specifically identify the relevant parts of the Code which she alleges were breached. However, I conclude, based on my findings of fact, that the first respondent breached the Code in the following way. The Code provides, at paragraph 9, that, if the employer decides there is a disciplinary case to answer, the employee should be notified of this in writing and the notification should contain sufficient information about the alleged misconduct to enable the employee to prepare to answer the case at a disciplinary meeting. The claimant was invited to a disciplinary meeting, but was not given the required information about the alleged misconduct. There was no letter setting out the allegations. I conclude that this was a serious breach and that a 25% increase to the compensatory award would be appropriate.

332. The obligations of the Code are placed on the employer. The ACAS uplift is, therefore, only on compensation ordered to be paid by the first respondent. The compensatory award to be paid by the first respondent is increased by 25% from £77,889 to £97,361. The increase does not apply to the amount the second and third respondents are to pay jointly and severally with the first respondent, since the Code places no direct obligation on the second and third respondents.

Employment Judge Slater
Date: 22 January 2024

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON
26 January 2024

FOR EMPLOYMENT TRIBUNALS

Appendix A
Alleged Acts

Phase 1 – 3 September to 12 October 2021

	Approx Date	**Detriment of less favourable treatment**
1	5 Sept to 20 Sept 2021	The Respondents failed to properly investigate serious grievances raised by the Claimant or exercise proper care towards her. R1. R2 and R3.
2	Not pursued	
3	31 Aug to 12 Oct 2021	The Claimant was increasingly isolated from other members of staff and spoken to in a condescending manner on calls by the Second Respondent, who also permitted Ms Rhonda Alexander to continue her bullying and aggressive behaviour. R1 and R2
4 - 7	Not pursued	
8	7 Oct 2021	On a company leadership call on …… when she was asked a reasoned and pertinent question, The Claimant was accused by the Second Respondent of "being difficult" and did not reply to her. The Claimant asked the question again, starting with "at risk of being accused of being difficult again, I'll repeat my question…" after which the Second Respondent provided a curt response. The Claimant felt belittled by the Second Respondent. R1, R2 and R3
9 - 10	Not pursued	

Phase 2 – 13 October 2021 to 18 October 2021

11 – 12	Not pursued	
13	14 Oct 2021	With no prior discussion or warning, the Second Respondent emailed the Claimant on the matter of her "behaviour" and the values of the company, implying that she had in some way contradicted those values. It came to the Claimant's attention that there had been a discussion the evening before, after the Claimant had left the meeting, attended by the Second Respondent.
14	15 Oct 2021	The Second Respondent called the Claimant and spoke to her in a reproachful and aggressive manner, gaslighting her during the conversation by repeatedly accusing her of saying things that she had not and twisting her words whilst also alleging that others had lied to the Claimant about things the Second Respondent was alleged to have said about the Claimant, when they had not. The Claimant recorded the conversation for her own protection and to aid her in taking professional advice. R1 and R2
15	18 Oct 2021	The Respondents failed to give proper notice or invite the Claimant to a Board Meeting of the First Respondent that was said to have taken place on 18 October 2021. The claimant was excluded from the Board Meeting. R1, R2, R3 and R4
16	18 Oct 2021	A video meeting took place, at the invitation of the Third Respondent, with the Claimant and where the Third Respondent was accompanied by Mr Peter McNab, a close friend and confidant of the Second Respondent. The Claimant had been told that this meeting was about her welfare, as she had been in distressed tears on the phone with the Third Respondent on both 14 and 15

		October 2021. She was not informed about why Mr Peter McNab was attending or in what capacity. As the meeting started, the Claimant noticed that the Third Respondent and Mr McNab were making notes and it turned out that the meeting was not primarily about the Claimant's welfare. The line of conversation appeared to be an attempt to entrap the Claimant and it transpired was treated by the Third Respondent as part of a disciplinary process that the Claimant was unaware of. The Claimant had been misled to attend the meting and had not been given the option to be accompanied. During the meeting the Claimant openly and honestly informed those present that she had recorded the conversation with Third Respondent on 15 October 2021. The Third Respondent informed the Claimant that "in [her] HR capacity. [she] must inform [the Claimant] that recording the conversation without permission was illegal". The Claimant contested the Third Respondent's understanding of the lawfulness or otherwise of the covert recording which had been done for her protection and mental health and followed up the point by email later than day to re-emphasise. The Claimant also recorded this conversation with the Third Respondent and Mr McNab for her own protection and to aid her in taking professional advice. R1 and R3

Phase 3 – 19 October 2021 to 28 October 2021

17	19 Oct 2021	The Third Respondent in conjunction with Mr Peter McNab misrepresented the truth of the discussions in the meeting of 18 October 2021 with the Claimant, they jointly fabricated a false recollection of the conversation and accused the Claimant of saying things that she had not. The Second Respondent and Third Respondent had collaborated with Peter McNab to fabricate falsely corroborated accusations against the Claimant with an aim, the Claimant believes, of securing the Claimant's exit from the First Respondent's employment and were misrepresenting the facts for convenience. R1, R2 and R3
18	19 Oct 2021	The Third Respondent suspended the Claimant from work by email communication, a decision understood to have been made in conjunction with the Second Respondent and Mr Peter McNab, without explanation as to why or what she had been accused of, in contrast to the company's obligations. The Respondents suspended the Claimant in a humiliating, aggressive and unnecessary manner, without speaking to her and without reasonable and proper cause to suspend her and communicated such to other employees and colleagues of the Claimant. The manner of the suspension and the way it was communicated to the Claimant's co-workers gave the false impression that the Claimant had committed an act of serious or gross misconduct. R1, R2 and R3
19	19 Oct 2021	Immediately following the suspension above, the Third Respondent emailed the Claimant instructing her to attend a Disciplinary Hearing on allegations of 'serious misconduct' without conducting an investigation or notifying the Claimant of the accusation. R1, R2 and R3
20	20 Oct 2021	After the weeks of detrimental treatment received, the Claimant resigned her contract of employment on 20 October 2021 providing her contractual three

		months' notice until 19 January 2022, citing the "unethical and unlawful business practices that [she] had been exposed to" as her reason and saying that "it is no longer a situation [she] can be involved with in the long term".
21	20 Oct 2021	Following the Claimant's resignation that was communicated internal with the organisation and to the Second Respondent copying the Third Respondent, the Second Respondent accused the Claimant of being "libellous" in the content of her resignation and at the same time asked for other to "clarify" the "unethical and unlawful practices" that she referred to. This the Claimant found to be aggressive and threatening harassment. R1, R2 and R3
22	20 Oct 2021 to 23 Oct 2021	The Claimant had fallen ill after receiving the aggressive and unexplained notification of suspension from the Third Respondent on 19 October 2021, requiring her to seek medical attention. She informed the Third Respondent. In the days that followed, whilst the Claimant remained suspended from work and was attending to doctor and hospital appointments, the Third Respondent continued to contact the Claimant by email in an unnecessary, unsympathetic, hounding and harassing manner. The Third Respondent further, and out of line with company policy, unreasonably demanded that she had the right to see copies of the Claimant's medical reports. The Claimant felt that she was being treated in an undignified manner. The Second Respondent is understood to have told colleagues at work that he didn't believe that the Claimant was ill, aimed at undermining the Claimant's integrity and violating her dignity, which effect it had. The Claimant became very anxious at this abhorrent treatment. The Claimant provided a self-certification sick note for the three days of illness in accordance with company policy, rejecting the Third Respondent's claim to her "right" to see the Claimant's medical report. R1, R2 and R3
23	22 Oct 2021	Although the Claimant's actions were firmly within the law and did not contradict any policy of the First Respondent, the Respondents unfairly accused the Claimant of serious misconduct for making a covert recording of the meeting with the Second Respondent on 15 October 2021 and began disciplinary proceedings. R1, R2 and R3
24	22 Oct 2021	In hurriedly pushing forward without an investigation, the Respondents demanded that the Claimant attend a disciplinary hearing, unreasonably denying the Claimant a remote video meeting and instead compulsorily insisting on an in-person meeting at an office requiring the Claimant to travel for an estimated 10 hour round trip to attend. R1, R2 and R3
25	25 Oct 2021	The Second Respondent wrote to the Claimant accusing her of an "onslaught" after doing as he requested by reminding him of the unethical and unlawful behaviours that she had experienced, and further threatening her with "legal action for defamation, libel and slander" as allegedly advised by him by his "legal representatives". R1m R2 and R3
26	Not pursued	
27	25 Oct to 27 Oct 2021	The Claimant received various aggressive and unwarranted emails from the Second Respondent following her resignation, including one accusing of a "serious data breach" where his Director's Loan had been uncovered. The Claimant informed the Second Respondent politely that his correspondence "was unnecessarily aggressive and contains threats". R1, R2 and E3

28	Not pursued	
29	27 Oct 2021	For reasons unclear to the Claimant, the Third Respondent misrepresented that the Claimant had requested an alteration to the date of their "disciplinary" meeting, rather than just a change to a video meeting. The Claimant was fully prepared to attend a video meeting as she had done nothing wrong. R1, R2 and R3
30	Not pursued	
31	Not pursued	
32	28 Oct 2021	After experiencing unrelenting bullying by the Second Respondent and Third Respondent, along with Mr Peter McNab, and them colluding in an attempt to create an appearance of just reason to remove the Claimant from the organisation, on 28 October 2021 the Claimant submitted a further resignation with immediate effect citing repudiatory breach of the First Respondent's employment contract with her and stating that her position within the First Respondent company had become utterly untenable. R1, R2 and R3

Phase 4 – Post termination of Contract

33	29 Oct to date	The Claimant's salary, expenses and pension contributions remain unpaid, and she remains unpaid for untaken holiday entitled. All Respondents
34	29 Oct to date	The communications from the Respondents took the form of continued harassment of the Claimant, having the effect of further heightening her anxiety and stress. R1 and R2
35	Not pursued	
36	Not pursued	
37	8 Nov to 26 Nov 2021 and ongoing	The Third Respondent, on behalf of all the other Respondents, failed to comply with regulations when responding to the Claimant's Data Subject Access Request (DSAR), providing only copies of exchanges between the Claimant and the First Respondent, and withholding information that was rightly requested, including copies of notes from meetings held with and about the Claimant. R1, R2 and R3

Protected Disclosures

PD1 ***Bullying and harassment of employees*** *(disclosure 9 August 2021 onwards)*

1. In the period from 9 August 2021 to 2 September 2021 the Claimant was in meetings where various members of staff had been treated in an undignified manner by Ms Rhonda Alexander. The Claimant also received comments from various employees in the meetings who had felt embarrassed at witnessing the undignified treatment of employees of Ms Rhonda Alexander. The Claimant believed that the treatment she witnessed constituted bullying and so raised this to the attention of the Second Respondent on several occasions.

2. On 3 September, the Claimant raised a complaint about the bullying and rudeness she had received from Ms Rhonda Alexander, the bullying that had been raised to her by some other employees, and the toxic working environment that she was experiencing and witnessing.

3. The Second Respondent requested to speak to the Claimant on Saturday 4 September 2021 where she went into more detail about the complaints received and the victims of the bullying behaviour from Ms Rhonda Alexander.

4. The Claimant followed up on 5 September with a written complaint that formed a grievance about Ms Rhonda Alexander and detailing complaints made by others. The Claimant did not receive a response to her email, verbally or in writing. The Claimant was informed by at least three other employees that they had complained directly to the Second Respondent about the bullying behaviour of Ms Rhonda Alexander and others.

5. There was no evidence that the Second Respondent or Third Respondent took appropriate steps in a reasonable time to prevent this ongoing bullying from taking place. The bullying of the Claimant and other employees continued unabated and additional accusations about the bullying behaviour of the Second Respondent arose, including accusations of mentally damaging ‘gaslighting’ behaviour and treating employees in an undignified manner.

6. On 28 September 2021 the Claimant raised the matter of the bullying culture, and specifically the bullying behaviour of Ms Rhonda Alexander and the Second Respondent, with the Third Respondent, the Chief People Officer responsible for HR matters, who claimed she had no knowledge of the complaints made or continuing. She contended that the Second Respondent would have “treated any communication as confidential”. The Claimant reminded the Third Respondent that there is a duty on Directors to act on such information received about bullying.

7. The Claimant understood from the Third Respondent that she then began

an "investigation" into the allegations after 29 September 2021, an investigation that she conducted herself, such investigation failing to be conducted in a fair, robust and timely manner or in line with ACAS guidelines.

8. The Third Respondent claimed that she spoke privately to Ms Rhonda Alexander on 13 October 2021 and provided her with a verbal caution about her bullying behaviour.

9. The disclosure of this information was a qualifying disclosure because it contained information tending to show that the Respondents were failing in their Duty of Care top employees and endangering the health and safety of employees. The disclosure was in the public interest as it affected several employees.

PD2 Falsely stating an investment offering as HMRC EIS approved *(disclosure 25 August 2021 onwards)*

10. The Claimant had had sight of investor pitch decks for Fluttr going back as far as April 2021 that all stated that the investigation was EIS approved but did not provide an HMRC EIS number. On 25 August 2021 the Claimant asked the Second Respondent to confirm that the investor pitch presentations should be stating that the sale of shares was within an HMRC EIS scheme for investor tax advantage. The Second Respondent confirmed that it was EIS approved and that should be stated in the pitch deck.

11. The Claimant raised a further concern with the Fourth Respondent on or around 8 September 2021 about the Fluttr investor pitch presentation decks that stated that it was HMRC "EIS approved" without providing an EIS number. The Claimant conveyed her understanding that the company would be required to quote the EIS scheme number to demonstrate that the investments qualified.

12. The Claimant further queried to the Fourth Respondent whether Fluttr would even be able to qualify under the controlling ownership limitations, as it was over 50% controlled by the First Respondent.

13. The Fourth Respondent stated to the Claimant that "HMRC told us that it was ok to say it was EIS approved whilst it was going through their approval process and in advance of getting the decision". The Second Respondent responded in a similar manner when asked around the same time by the Claimant.

14. The Claimant questioned whether this was the 'Advance Assurance' for the scheme, which she was aware would then allow the First Respondent and its subsidiary, Fluttr, to tell potential investors that the proposed investment had received that assurance and that it *may* qualify for the scheme, not to

say it was approved.

15. The Respondents continued to state to investors that the investment was "EIS approved", even though it was not.

16. On 23 September 2021, when asked for confirmation of the EIS scheme and the EIS number by one investor to the Claimant's knowledge, the Fourth Respondent wrote "we are in the process of getting EIS at the moment […] so yes we will have it" and the Second Respondent wrote "All our investors will get the 30% tax relied" further adding "we are just waiting for the certificate, so we are eligible now" and the Fourth Respondent said that the EIS number was not needed until the investor completed a tax return.

17. On 25 October 2021 the Second Respondent wrote to the Claimant on this matter stating that "We have been informed by HMRC directly that Fluttr has EIS status and that we are able to communicate this fact to potential investors", although Fluttr still did not have an EIS approval or number at this point.

18. The Claimant reported this information to HMRC.

19. The disclosure of this information was a qualifying disclosure because it contained information tending to show that the Respondents were in breach of a legal obligation that they owed to their employees under the Payment of Wages Act 1991. The disclosure was in the public interest because it affected several employees of the Respondent.

PD3 Failure to inform HMRC and pay payroll deductions to HMRC *(disclosure 12 October 2021 onwards)*

20. Following disclosure #6 above, on 12 October 2021 the Claimant reasonably considered that estimated or calculated net salary payments were being transferred into bank accounts by the Fourth Respondent on behalf of the First Respondent and its subsidiary, (Fluttr, without proper payroll accounting or accounting to HMRC for the payments and deductions.

21. The Claimant was able to confirm that her own and other employees' HMRC Government Gateway accounts showed that payroll and tax had not been accounted for to HMRC for at least the August and September payrolls, and some before that.

22. The Claimant contacted HMRC on 14 October 2021 who confirmed that no payroll information had been passed to them relating to her and that HMRC had no record of her as an employee of the First Respondent.

23. The Claimant had been told on or around mid-August 2021 by the Second, Third and Fourth Respondents that the First Respondent and its subsidiary Fluttr were in desperate financial difficulty and had insufficient funds to meet

their employee and supplier contractual commitments.

24. The Claimant reasonably considered that the Fourth Respondent had knowingly withheld the payroll information and payslips, and concealed such from the employees, with the full knowledge of the Second and Third Respondents, to unlawfully evade making payments of deductions to HMRC.

25. The Claimant brought this to the attention of the Fourth Respondent on 14 October 2021 who asserted that there had been an error made by HMRC and that HMRC had been properly informed about all employees and all payments of deductions had been made properly and that he would "look into it".

26. The Claimant spoke to HMRC on 20 October 2021 who explained that still no notification of payroll had been made by the First Respondent company and that they were still not aware that the Claimant was employed there. The Claimant asked HMRC if there could have been a mistake as alleged by the Fourth Respondent, to which the answer was "no".

27. The same confirmed by other employees of the First Respondent and Fluttr whose salary payments were not showing on their HMRC Government Gateway accounts and who had contracted HMRC.

28. After the end of her employment, on 14 November 2021, the Fourth Respondent wrote to the Claimant asserting and confirming that on her start date she was "registered with HMRC" and that he "had to set up a 'Time to Pay' agreement with […] HMRC". The Claimant responded by discrediting his assertions as misrepresentations.

29. On 1 December 2021 the Fourth Respondent wrote to the Claimant again stating "I must admit that I made an error when I completely forgot to enrol you with both HMRC…in a timely manner. Please accept my sincere apologies for the mistake and any inconvenience that this may have caused". He went on to allege that he "spoke to HMRC to explain the situation and they informed me that the best course of action to rectify this, is that once we have money, we pay you the gross amount and that you be responsible for paying your own tax…We are not yet in a position to pay you but will rectify this situation as soon as we possibly can".

30. The Claimant understands that the Fourth Respondent had retrospectively rectified the failure to advise HMRC of some other employee payroll payments, although with errors remaining and some absent.

31. The Claimant spoke with HMRC on 3 December 2021 who confirmed that they would not have provided such advice to any employer to pay the amounts gross to an employee. They confirmed that in law every employer is required to deduct payroll taxes from the employee's gross salary and pay employers National Insurance contributions.

32. The Claimant contends that Respondents were in collaboration in this breach of their legal obligation owed to staff as well as their statutory obligation to inform HMRC of the deductions made and to pay those deductions to HMRC.

33. The disclosure of this information was a qualifying disclosure because it contained information tending to show that the Respondents were in breach of a legal obligation that they owed to their employees and to HMRC and that they had deliberately concealed that breach from the employees. The disclosure was in the public interest because it affected several employees of the First Respondent.

PD4 Failure to auto-enrol employees in a pension scheme *(disclosure mid-October 2021 onwards)*

34. It came to the attention of the Claimant in early September 20211 that she had not been provided with or received any information about the company pension scheme into which she had elected to be enrolled. Not having received a payslip providing the pension detail (see #6 above) was further frustrating the Claimant's ability to find the pension information.

35. It was also reported to the Claimant by other employees of the First Respondent and Fluttr that they too had not received any information about their pension enrolment; they too had not received payslips.

36. The Claimant asked the Third Respondent, being the Head of HR for the First Respondent and Fluttr, where she would find the pension information for employees. The Third Respondent referred the Claimant to the Fourth Respondent, who did not respond to the requests from the claimant, or she understands from other employees.

37. By mid-October it became apparent that the Respondents had failed to enrol several employees into the pension scheme as required by legislation, had deducted the pension contributions from salaries, and not paid the same into a scheme or any employer’s contribution.

38. Royal London, the First Respondent pension provider, was able to confirm to the Claimant, and separately she understands to other employees following their own enquiries, that enrolment had not taken place into the scheme and no contributions had been made.

39. The Claimant passed this information to the Fourth Respondent on or around mid-October, who claimed that an error had been made by the pension provider.

40. On 14 November 2021 the Fourth Respondent emailed the claimant saying, “I would like to confirm that you were indeed enrolled with Royal London […] shortly after you joined” and further explaining that he “[passed

instructions to enrol you myself […]. However, it seems that Royal London did not update your details on their system in a timely manner and only did so after you made me aware of the fact that you haven't received any correspondence from them, at which point I spoke with them to ascertain why you had not received any correspondence, which in turn jolted them into sending them out to you".

41. The Claimant responded on 18 November 2021 discrediting the Fourth Respondent's claims with facts and calling out his misrepresentations.

42. On 1 December 2021 the Fourth Respondent altered his position and wrote to the Claimant saying, "I must admit that I made an error when I completely forgot to enrol you with […] the Royal London pension scheme in a timely manner. Please accept my sincere apologies for the mistake and any inconvenience that this may have caused".

43. The Claimant contends that the Respondents knowingly deducted the pension contribution money from employee salaries although they had intentionally not set the employees up on the scheme and had concealed such from the employees, and despite requests from employees and the Claimant highlighting the legal requirement, the Respondents continued in their failure.

44. The disclosure of this information was a qualifying disclosure because it contained information tending to show that the Respondents were in beach of a legal obligation that they owed to their employees and that they had deliberately concealed that breach from the staff. The disclosure was a relevant failure and was in the public interest because it affected several employees of the First Respondent and its subsidiary, Fluttr.

Appendix B
Complaints and Issues

1. Protected Disclosures

1.1 Did the claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996? The Tribunal will decide:

1.1.1 What did the claimant say or write? When? To whom? The claimant says she made disclosures on the occasions set out above in the schedule of protected disclosures 1-13.

1.1.2 Did she disclose information?

1.1.3 Did she believe the disclosure of information was made in the public interest?

1.1.4 Was that belief reasonable?

1.1.5 Did she believe it tended to show that:

1.1.5.1 a criminal offence had been, was being or was likely to be committed;

1.1.5.2 a person had failed, was failing or was likely to fail to comply with any legal obligation;

1.1.5.3 a miscarriage of justice had occurred, was occurring or was likely to occur;

1.1.5.4 the health or safety of any individual had been, was being or was likely to be endangered;

1.1.5.5 the environment had been, was being or was likely to be damaged;

1.1.5.6 information tending to show any of these things had been, was being or was likely to be deliberately concealed.

The claimant has identified in her schedule of

allegations document which breach she relies upon in relation to each allegation.

1.1.6 Was that belief reasonable?

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

2. Unfair Dismissal

Dismissal

3. If there were protected and qualifying disclosure(s), having regard to the burden of proof, was the claimant constructively dismissed because of the disclosure(s)?

4. Detriment (Employment Rights Act 1996 section 48)

4.1 What are the facts in relation to the alleged acts of deliberate failures to act by the respondent?

4.2 Did the claimant reasonably see that act or deliberate failure to act as subjecting her to a detriment?

4.3 If so, was it done on the ground that she made a protected disclosure(s)?

5. Remedy for Detriment

5.1 What financial losses has the detrimental treatment caused the claimant?

5.2 Has the claimant taken reasonable steps to replace any lost earnings, for example by looking for another job?

5.3 If not, for what period of loss should the claimant be compensated?

5.4 What injury to feelings has the detrimental treatment caused the claimant and how much compensation should be awarded for this?

5.5 Has the detrimental treatment caused the claimant personal injury and how much compensation should be awarded for that?

5.6 Is it just and equitable to award the claimant other compensation?

5.7 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

5.8 Did the respondent or the claimant unreasonably fail to comply with it?

5.9 If so, is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?

5.10 Did the claimant cause or contribute to the detrimental; treatment by their own actions and if so, would it be just and equitable to reduce the claimant's compensation? By what proportion?

5.11 Was any protected disclosure made in good faith?

5.12 If not, it is just and equitable to reduce the claimant's compensation? By what proportion, up to 25%?

6. Remedy for Unfair Dismissal

6.1 What basic award is payable to the claimant, if any?

6.2 Would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal? If so, to what extent?

6.3 If there is a compensatory award, how much should it be? The Tribunal will decide:

6.3.1 What financial losses has the dismissal caused the claimant?

6.3.2 Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?

6.3.3 If not, for what period of loss should the claimant be compensated?

6.3.4 Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?

6.3.5 If so, should the claimant's compensation be reduced? By how much?

6.3.6 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

6.3.7 Did the respondent or the claimant unreasonably fail to comply with it by [specify alleged breach]?

6.3.8 If so, is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?

6.3.9 If the claimant was unfairly dismissed, did she cause or contribute to dismissal by blameworthy conduct?

6.3.10 If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?

6.3.11 Does the statutory cap of fifty-two weeks' pay apply?

7. Wrongful Dismissal / Notice Pay

7.1 What was the claimant's notice period?

7.2 Was the claimant paid for that notice period?

NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990 ARTICLE 12

Case number: **2415271/2021**

Name of case:	**Ms L Cameron-Peck**	v	**1. Ethical Social Group Limited** **2. Graham Pullam** **3. Galina Ratcliffe** **4. Philip O'Doherty**

Interest is payable when an Employment Tribunal makes an award or determination requiring one party to proceedings to pay a sum of money to another party, apart from sums representing costs or expenses.

No interest is payable if the sum is paid in full within 14 days after the date the Tribunal sent the written record of the decision to the parties. The date the Tribunal sent the written record of the decision to the parties is called **the relevant decision day**.

Interest starts to accrue from the day immediately after the relevant decision day. That is called **the calculation day**.

The rate of interest payable is the rate specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as **the stipulated rate of interest**.

The Secretary of the Tribunal is required to give you notice of **the relevant decision day**, **the calculation day**, and **the stipulated rate of interest** in your case. They are as follows:

the relevant decision day in this case is: 26 January 2024

the calculation day in this case is: 27 January 2024

the stipulated rate of interest is: **8% per annum**.

Mr S Artingstall
For the Employment Tribunal Office

GUIDANCE NOTE

1. There is more information about Tribunal judgments here, which you should read with this guidance note: www.gov.uk/government/publications/employment-tribunal-hearings-judgment-guide-t426

   If you do not have access to the internet, you can ask for a paper copy by telephoning the Tribunal office dealing with the claim.

2. The payment of interest on Employment Tribunal awards is governed by The Employment Tribunals (Interest) Order 1990. Interest is payable on Employment Tribunal awards if they remain wholly or partly unpaid more than 14 days after the **relevant decision day**. Sums in the award that represent costs or expenses are excluded. Interest starts to accrue from the day immediately after the **relevant decision day**, which is called **the calculation day**.

3. The date of the **relevant decision day** in your case is set out in the Notice. If the judgment is paid in full by that date, no interest will be payable. If the judgment is not paid in full by that date, interest will start to accrue from the next day.

4. Requesting written reasons after you have received a written judgment does **not** change the date of the **relevant decision day**.

5. Interest will be calculated as simple interest accruing from day to day on any part of the sum of money awarded by the Tribunal that remains unpaid.

6. If the person paying the Tribunal award is required to pay part of it to a public authority by way of tax or National Insurance, no interest is payable on that part.

7. If the Secretary of State has claimed any part of the sum awarded by the Tribunal in a recoupment notice, no interest is payable on that part.

8. If the sum awarded is varied, either because the Tribunal reconsiders its own judgment, or following an appeal to the Employment Appeal Tribunal or a higher court, interest will still be payable from **the calculation day** but it will be payable on the new sum not the sum originally awarded.

9. The online information explains how Employment Tribunal awards are enforced. The interest element of an award is enforced in the same way.

ANNEX TO THE JUDGMENT
(MONETARY AWARDS)

Recoupment of Benefits

The following particulars are given pursuant to the Employment Protection (Recoupment of Benefits) Regulations 1996, SI 1996 No 2349.

The Tribunal has awarded compensation to the claimant, but not all of it should be paid immediately. This is because the Secretary of State has the right to recover (recoup) any jobseeker's allowance, income-related employment and support allowance, universal credit or income support paid to the claimant after dismissal. This will be done by way of a Recoupment Notice, which will be sent to the respondent usually within 21 days after the Tribunal's judgment was sent to the parties.

The Tribunal's judgment states: (a) the total monetary award made to the claimant; (b) an amount called the prescribed element, if any; (c) the dates of the period to which the prescribed element is attributable; and (d) the amount, if any, by which the monetary award exceeds the prescribed element. Only the prescribed element is affected by the Recoupment Notice and that part of the Tribunal's award should not be paid until the Recoupment Notice has been received.

The difference between the monetary award and the prescribed element is payable by the respondent to the claimant immediately.

When the Secretary of State sends the Recoupment Notice, the respondent must pay the amount specified in the Recoupment Notice to the Secretary of State. This amount can never be more than the prescribed element of any monetary award. If the amount is less than the prescribed element, the respondent must pay the balance to the claimant. If the Secretary of State informs the respondent that it is not intended to issue a Recoupment Notice, the respondent must immediately pay the whole of the prescribed element to the claimant.

The claimant will receive a copy of the Recoupment Notice from the Secretary of State. If the claimant disputes the amount in the Recoupment Notice, the claimant must inform the Secretary of State in writing within 21 days. The Tribunal has no power to resolve such disputes, which must be resolved directly between the claimant and the Secretary of State.