EMPLOYMENT TRIBUNALS

Claimant:	**Mr T Nicol**		
Respondent:	(1) **World Travel and Tourism Council** (2) **Ms G Guevara** (3) **Mr E Gracia**		
HELD AT:	**London South, by CVP**	**ON:**	**10-14 and 17-18 October 2022**
BEFORE:	**Employment Judge Barker** **Ms H Bharadia** **Mr P Adkins**		

REPRESENTATION:

Claimant:	**Ms Greenley, counsel**
Respondent:	**Mr Martin, counsel**

RESERVED JUDGMENT

The unanimous decision of the Tribunal is as follows:

1. The claimant's claim of automatically unfair dismissal (s103A Employment Rights Act 1996) against the first respondent fails and is dismissed.

2. The claimant's claims of detriment on the grounds of having made protected disclosures (s47B Employment Rights Act 1996) against the first, second and third respondents fail and are dismissed.

3. The claimant's claim under s100(1)(c) Employment Rights Act 1996 is dismissed on withdrawal by the claimant.

REASONS

Preliminary Matters and Issues for the Tribunal to Decide

1. A number of procedural issues relating to the disclosure of documents were raised with the Tribunal at the outset of the hearing and subsequently during the following days of the hearing. The issues related to a number of matters, including the disclosure of documents said to be privileged and the partial redaction of those documents. Also, there were issues concerning the translation of WhatsApp messages from Spanish into English and the partial redaction of those. Finally, there had been a lengthy document disclosed by the claimant the working day before the first day of the hearing which was a transcript of a covertly recorded conversation between the claimant and the second respondent.

2. The Tribunal was grateful for the pragmatic approach taken by the parties' counsel and solicitors in relation to these issues. During the course of the hearing a number of disclosure issues were dealt with by the parties by agreement without the involvement of the Tribunal. For the panel's part, we were able to consider those messages and transcripts which were disclosed and found them to be helpful in our findings of fact and decision-making. We did not consider that the partial redactions were problematic in terms of assessing the overall evidence. We note that the proceedings were documentheavy and that there had been issues raised concerning disclosure by both parties. We were not required to make a determination on the issues as were raised during the hearing and, taking the evidence as a whole, did not consider that we needed to adjudicate on any such matters of our own volition.

3. The Tribunal had the benefit of a bundle of 1163 pages and witness statements from the claimant himself, Ms Wynne and Ms Roberts also for the claimant, and from the second and third respondents and Mr Chapman, who is one of the first respondent's members and the President of Group Services & dnata for the Emirates Group. The Tribunal heard sworn evidence from all six witnesses.

4. The claimant withdrew his claim under s100(1)(c) at the outset of the hearing. The following issues were agreed by the parties to be the issues for the Tribunal to decide:

5. The Claimant asserts that he made disclosures, both individually and when aggregated which, per Norbrook Laboratories (GB) Ltd v Shaw [2014] ICR 540, EAT, amount to protected disclosures pursuant to s.43B(1) ERA 1996.

6. It is accepted by the Respondents that the Claimant made the following two protected disclosures:
    a. PD1: 12 June 2019 to Gloria Guevara by Whatsapp message:
    "However, this issue raises some important questions about how these things are handled. I don't believe that WhatsApp is the right channel to communicate in this manner to team members – especially junior members of the team. It means more people will quit, leaves WTTC wide open to legal challenge and potential damage to the organisation's reputation."

    b. PD2: 14 June 2019 to Gloria Guevara by Whatsapp message:
    "we also need to be acutely aware of the potential risk of litigation by staff members, corporate governance, (we've already had one audit) and the potential impact on the reputation of WTTC if grievances become public – which they inevitably will following MeToo movement"

7. Do the following, individually and/or when aggregated, amount to protected disclosures within the meaning of s.43B(1) ERA 1996?

    a. PD 3: 14 August 2019 to Susy Roberts during a verbal conversation in which the Claimant conveyed the information that the reason for Ms Magoja's long term stress related absence was the Second Respondent's conduct, in particular her repeated weekend and evening messaging and calls.
        i. Did the Claimant reasonably believe that this disclosure was in the public interest and was that belief objectively reasonable?
        ii. The Respondent asserts that it was not, as the Claimant was trying to divert attention away from his own alleged misconduct (namely, allegations of sexual harassment made by Ms Magoja).

    b. PD4: 21 August 2019 to Gloria Guevara during a verbal conversation during which the Claimant repeated the disclosure of information in relation to his own experience of being bullied and harassed whilst employed by the First Respondent and that the Second Respondent's behaviour to his team members and others in the First Respondent had been unacceptable
        i. Was this a disclosure of information?
        ii. Did the Claimant reasonably believe that this disclosure was in the public interest and was that belief objectively reasonable?
        iii. The Respondent asserts that it was not, as the Claimant was trying to strengthen his hand in the negotiations.

    c. PD5: 27 August 2019 to Susy Roberts and Loraine Green by email within which he stated:

"I recognise that we do not have an exit process at WTTC; but it is neither acceptable nor compatible with UK employment law for a person who has

previously made allegations of bullying and harassment against the CEO (in her letter to Kate Underwood of 12 June 2019) and who has specifically cited the behaviour of the CEO in her exit interview to have to endure a further hour long meeting where her very allegations were used against her… This is yet further evidence of the culture of bullying and harassment which has developed at WTTC and why it is impossible for me to continue line managing people within the organisation."

i. Was this a disclosure of information?
ii. Did the Claimant reasonably believe that this disclosure was in the public interest and was that belief objectively reasonable?
iii. The Respondent asserts that it was not as the Claimant was trying to strengthen his hand in the ensuing negotiations.

d. PD6: 2 September 2019 to Gloria Guevara in an email disclosing bullying and harassment by the CEO and of a systemic culture of bullying and harassment at WTTC including the contents and handling of the Great Place to Work Survey and the circumstances surrounding the departures of Caroline, Chloe, Elizabeth and others:
   i. Was this a disclosure of information?
   ii. Did the Claimant reasonably believe that this disclosure was in the public interest and was that belief objectively reasonable?
   iii. The Respondent asserts that it was not, as the Claimant was trying to strengthen his hand in the ensuring negotiations.

8. Dismissal – s.103A ERA 1996 - Was the reason or the principal reason for the Claimant's dismissal that the Claimant made a protected disclosure(s) such that it was automatically unfair pursuant to s.103A ERA 1996?

9. Detriment – s.47B(1) ERA 1996. The Claimant relies upon the following detriments:
   a. His dismissal (against the First and Second Respondents)
   b. Unwarranted delay relating to his DSAR of the First Respondent dated 25 September 2019 (against the First and Third Respondents)
   c. Ignoring his DSAR of the Second Respondent dated 8 November 2019 (against the First and Second Respondents)

10. Was any detriment suffered on the grounds the Claimant had made a protected disclosure(s) contrary to section 47B(1) ERA 1996?

Findings of Fact

11. The first respondent is a not-for-profit organisation which represents the interests of the global private sector tourism industry. Its members are made up of international CEOs and leaders from the travel and tourism sector. The second respondent summarised its activities as being to provide research on the economic impact of travel and tourism, to advocate for favourable policy

making and to raise awareness of the economic and social impact of the travel and tourism sector.

12. The second respondent is the first respondent's president and CEO and the third respondent is the first respondent's director of HR. Ms Wynne was a member of the claimant's team at the first respondent and was assistant communications manager at the time to which these claims relate. Ms Roberts is an HR consultant and had been engaged by the second respondent to provide HR services to the first respondent.

13. The claimant commenced employment with the first respondent on 1 May 2019, having been engaged on a consultancy basis since 2011. The claimant's final consultancy agreement ended at the end of April 2019 and he continued his engagement thereafter as an employee. He was employed as Vice-President of Communications and PR. It is accepted by the respondents that the claimant was dismissed on 14 October 2019.

14. The second respondent was appointed president and CEO of the first respondent in August 2017. Ms Guevara's unchallenged evidence was that when she took over as CEO the first respondent was regarded by the board of members as "somewhat dysfunctional" and her priority was trying to stem and reverse the loss of members and she was given the task of transforming the organisation into a more efficient and "member-centric" body.

15. Mr Chapman's evidence, which we accept, was that the previous CEO had run the office in a "paternal" way, with the staff's interests being favoured over those of the business, such that the priority had been what worked best for the staff and not for the organisation. He also indicated that "personal agendas" were driving too much of the behaviour at a senior level and that this impacted on behaviour at a more junior level also. Both he and the second respondent gave evidence, which we accept, that the first respondent's finances and loss of members were matters of quite some concern at the time.

16. The claimant's evidence was that by October 2018, when discussions began between him and the first respondent over changing from a consultant to an employee, "the Second Respondent's poor treatment of employees was already well-known and I promised myself and others that I would not tolerate any poor behaviour towards me or any member of my team".

17. Mr Chapman's evidence concerning Ms Guevara's behaviour was that he was

> "aware there were challenges in [her] management style. She was very rarely in the office. She is a caring person but clumsy sometimes in the way she handles things and she didn't endear herself to some people. She didn't suffer fools and she has high expectations, but she was trying to bring about change."

18. There is a considerable amount of contemporaneous evidence in the bundle. This includes numerous WhatsApp messages between most of the key individuals in the claimant's complaints. It also includes the claimant's "work diary" in which he recorded details of key events, significantly from 28 May 2019 onwards, less than one month after he commenced his tenure as an employee of the first respondent.

19. We find from the WhatsApp messages and the claimant's diary entries that the second respondent was extremely driven and hard-working and that she was not always satisfied with the level of the claimant's work output. We also find that the claimant put up resistance to working at her pace and level of intensity.

20. For example, the claimant was asked on 28 May 2019 why the first respondent was not communicating about events that it had done on Twitter and other social media channels. The second respondent asked the claimant in a series of WhatsApp messages on 28 May

> "where is the annual calendar? Where is the weekly comms? I want to see something weekly. Where is social media presence? Not even a photo with Sanchez and me during Seville?? We say that we influence governments and where is the proof…. You did a fantastic job in Seville. But that was one event… I need your help to be consistent and impact the entire year please. Every week I want to see something out".

21. The claimant's response to this instruction was to say that they had been working on a long-term plan of activity in the past few weeks, and had not been able to speak to her to discuss this and they would work hard to maximise the work coming out of Research "in the next few weeks".

22. We find that the claimant was not acknowledging the second respondent's request and his reply did not indicate that he would do anything about it. It also exemplifies, we find, the contrasting working styles of the two individuals, as subsequently acknowledged by the claimant. He, we find, preferred to work at a planned and long-term pace whereas the second respondent worked at a much more rapid pace and required quick responses from those she worked with. This led to clashes between them. For example on 28 May, she had given the claimant a set of direct instructions, and we find that his reply gave her the message that he intended to ignore them.

23. The following day Alberto Petrearse, a communications consultant to the first respondent, sent the claimant a long email which was copied in to four senior members of the first respondent's management team, setting out very specific instructions as to what the first respondent expected the claimant to do, expanding on the instructions in the second respondent's WhatsApp messages the previous day.

24. Mr Petrearse told the claimant when asked that the second respondent had asked him to send the message and to copy in their senior colleagues. We find that this is evidence that the second respondent had understood that the claimant intended to ignore her direct requests and took action to obtain his compliance.

25. The claimant did not respond to this email until the second respondent directly asked him to again on 14 June 2019, a delay of over two weeks. The claimant told the Tribunal that the second respondent had done this to humiliate and harass him. We do not accept that the second respondent had this intention. We find that it was the second respondent's way of emphasising her priorities to the claimant, which he had indicated that he intended to ignore.

26. We also find that this is evidence that the claimant did not wish to work at the pace or the level of intensity that the second respondent was requesting of him. He had been a consultant at the first respondent for a number of years in the past, sometimes working part-time which would, we find, have afforded him a much greater degree of flexibility and independence to work at his own pace.

27. On the balance of probabilities we find that the claimant, by the end of May and the start of June 2019, had already decided that he was not willing to work with the second respondent as a full-time employee. It may have been that the claimant believed that he may shortly be dismissed by the first respondent and the second respondent, as his diary entry for 21 August 2019 records

> "…my impression was that she'd been trying to get rid of me for months".

Events at the New York Summit, June 2019 and the first two disclosures

28. Of the claimant's six purported protected disclosures, the respondents accepted that the first two (PD1 and PD2) were disclosures qualifying for protection within the scope of s43B Employment Rights Act 1996. We make no findings of fact in relation to these two disclosures, but make the following findings of fact in relation to the events that occurred in New York before these disclosures were made as they are relevant to our findings of fact in relation to the claimant's subsequent complaints.

29. The first respondent was hosting its New York Summit on 11 June 2019, an important event in the first respondent's calendar. We find that Ms Guevara was frustrated and stressed on her arrival by plane in New York on 10 June 2019. The two employees of the first respondent sent to the airport to meet her, Eliza and Ms Wynne, were waiting in the wrong terminal. Ms Guevara also was told that day that a previously arranged appointment to appear on CNN's business programme would now take place as soon as she landed in New York. Having been on a transatlantic flight, she was not happy that she would have no time to shower and change before her television interview and

was further displeased that she was being delayed due to the mistakes of those sent to meet her. We accept that she chided Ms Wynne and Eliza and that her frustration would have been obvious to them. However, she did not leave them to make their own way back from the airport but requested that her driver go to where they were waiting, and pick them up, despite the fact that she believed herself to be already late for an important appointment. She told the Tribunal "I was not going to leave them stranded".

30. The forum event in New York took place the next day, 11 June, without further issues and it was the claimant's evidence that Ms Guevara understood that the first respondent's employees would be off-duty and travelling home the following day.

31. However, Ms Guevara had organised what she told the Tribunal was a press conference for the following day with the assistance of Mr Petrearse. The claimant told the Tribunal in answers to cross-examination that the event was definitely not a press conference. Ms Wynne had been asked by the second respondent to assist Mr Petrearse in setting up a conference call line (a "bridge") for journalists to join in order to speak with Ms Guevara. On the morning of the call, 12 June 2019, Ms Wynne was on annual leave and had left New York to travel to Boston. The claimant had also left New York and was flying back to the UK.

32. However, it transpired that Ms Wynne had made an error in booking the "bridge" and the line was already occupied by another employee of the first respondent, such that the journalists were instructed to leave the call. This aggrieved Ms Guevara and she sent Ms Wynne a short series of angry WhatsApp messages on 12 June asking what had happened.

33. Ms Wynne told the Tribunal that this was the first time the second respondent had contacted her on WhatsApp but that the effect of the messages was so significant and distressing that she took immediate action to write a long email of complaint to Ms Underwood, an HR consultant at the first respondent. Ms Wynne's evidence to the Tribunal was that she travelled to Boston "writing this [her complaint email of 14 June] on the bus myself crying". Having read the complaint email which was sent to Ms Underwood, we do not accept Ms Wynne's evidence that she wrote this email herself, or indeed that the contact with the second respondent significantly distressed her, for reasons we will set out, although we accept that she was concerned by it.

34. As to the author of the complaint email, there are other emails drafted by Ms Wynne in the bundle, and the Tribunal has read her witness statement and listened to her evidence during the hearing. We have also read a considerable number of documents written by the claimant contained in the bundle, as well as his witness statement and have heard his evidence during the hearing. We find that the differences in tone, style and language in the email of 14 June when compared with Ms Wynne's other evidence and conversely the

similarities in the email of 14 June with the claimant's evidence are striking. We find therefore that the email of 14 June was largely drafted by the claimant and not Ms Wynne.

35. Furthermore, given that Ms Wynne told the Tribunal in answers to crossexamination that the contact from the second respondent in New York was her first contact by WhatsApp from her, we find the tone of the complaint of 14 June very surprising. It states

"I would like this to be documented please as a series of targeted incidents towards the comms team whereby small occurrences receive disproportionate responses from the CEO, which I believe to be a form of overt scrutiny and bullying. This has also taken place prior to the New York Forum."

36. Also, what is clear from the exchange of WhatsApp messages between the second respondent and Ms Wynne was that the second respondent particularly objected to Ms Wynne's comment that she had been doing "a favour" for Mr Petrearse when the error occurred. The Tribunal accepts that, given that the second respondent is the CEO and Ms Wynne is a junior member of staff (who was aged 23 at the time), this was not an appropriate comment by Ms Wynne in the circumstances. It suggested that, far from accepting that she may have been responsible for the mistake (which Ms Wynne later admitted she was), that the second respondent should be grateful for Ms Wynne's involvement at all.

37. For Ms Wynne (with the assistance of the claimant) to submit a three-page letter of complaint to HR in response to the incident was, we find, surprising. We do not accept Ms Wynne's evidence or the claimant's evidence that Ms Wynne was terrified of the second respondent. Sending a detailed three-page letter of complaint to HR about the CEO following the first WhatsApp contact with her, having made two errors on a work trip that significantly impacted the CEO, is not, we find, the action of an individual who is fearful. Although the letter asks HR not to pass the information to the second respondent, it would be unrealistic to expect, in a small organisation, that word would not spread of the complaint letter and would reach the second respondent.

38. The claimant sent two WhatsApp messages to the second respondent on 12 and 14 June 2019 respectively (PD1 and PD2), warning her about the dangers of communicating to junior staff members by WhatsApp, which he considered would cause them to resign and leave the first respondent and the second respondent open to "legal challenge" and damage the first respondent's reputation.

39. On her return to the office after the New York trip, the second respondent spoke to Ms Wynne about her WhatsApp messages and apologised. Ms Wynne's evidence was that she accepted the apology. We accept the second respondent's evidence that the claimant's two WhatsApp messages of 12 and

14 June did not register with her as protected disclosures. We accept her evidence that she did not consider that her actions had been inappropriate and she did not agree with the claimant that the first respondent was at risk of litigation as a result. We accept her evidence that, having spoken to Ms Wynne, she considered the matter had been dealt with.

40. As well as managing Ms Wynne, the claimant also managed Ms Magoja, the social media manager for the first respondent. In June 2019, the second respondent became aware that Ms Magoja had asked for her reporting line to be changed away from the claimant to the marketing director, Ms Vallis. The claimant told the Tribunal that he had understood that this was a matter of classifying where the social media function should sit, whether in Communications or Marketing. However, we accept the second respondent's evidence that the claimant had not entirely respected the agreement that had been reached for Ms Magoja to be managed by Ms Vallis and not him and continued to engage with her on a regular basis.

41. Ms Magoja was signed off sick with stress for four weeks from 18 July 2019. The second respondent told the Tribunal that this was an unusual occurrence at the first respondent and she had been concerned to find out how Ms Magoja was. We accept her evidence in that regard.

42. The first respondent and the second respondent engaged two HR consultants, Ms Roberts and Lorraine Green, to try to improve the internal management of staff and the staff morale, in the wake of an unfavourable staff survey entitled "Great Place to Work". Ms Green and Ms Roberts were also to assist with general HR work and ran a series of workshops, firstly with senior members of staff on 8 August and subsequently with more junior members of staff on 29 August 2019.

43. It was Ms Roberts' evidence to this Tribunal that the morale of the first respondent's staff was very low and that lots of members of staff were concerned by the second respondent's approach to people management and her demanding work ethic. In particular, she gave evidence, which we accept, that the second respondent sent senior management multiple messages outside normal office hours and sent these to some junior members of staff also. The second respondent accepted that she did this, and she said that she was travelling a lot and in different time zones. We find that this would have caused stress to the first respondent's staff, including the claimant and that this prompted the claimant to make the two disclosures he did make on 12 June and 14 June 2019.

Conversations with Ms Magoja from 14 August 2019 onwards

44. On 14 August 2019, Ms Vallis called Ms Magoja, who was still absent due to sickness, as she had received a message from her. Ms Roberts told the Tribunal that Ms Magoja reported to Ms Vallis that she had concerns about

the claimant's behaviour, but Ms Roberts did not understand the nature of these concerns on 14 August. We accept Ms Roberts' evidence in this regard. She did not know that Ms Magoja was about to raise issues of sexual harassment by the claimant on that date, but she did know that Ms Magoja had concerns about the claimant's behaviour.

45. Ms Roberts told the Tribunal that the claimant contacted her on 14 August to ask after Ms Magoja. We find on the balance of probabilities that Ms Roberts told the claimant on 14 August what she knew, as set out above.

46. We find that it was not necessary for Ms Roberts to have communicated the details of the full concerns she had with the claimant for him to have been concerned that Ms Magoja may raise complaints of sexual harassment or other inappropriate behaviour on 14 August or afterwards.

47. The claimant accepted in cross-examination that Ms Wynne had previously made complaints about his inappropriate behaviour towards her, including behaviour and comments of a sexual nature, in 2018.

48. We find that by August 2019, the claimant was planning to change the terms of his engagement with the first respondent. He would go on to tell the second respondent in their meeting on 21 August 2019 that he did not want to work at the first respondent any more as it wasn't working out for him. He told her that he didn't want to be involved in managing staff and wanted to work more closely with the second respondent, as a consultant. He also indicated at that time that he had taken legal advice on his situation a "few weeks" ago.

49. On the balance of probabilities, we find that by 14 August 2019 the claimant had already consulted his solicitor with a view to establishing a good bargaining position in the contractual negotiations that he intended to engage in. The threat of a complaint from Ms Magoja would, we find, have concerned him and caused him to fear that his bargaining position would be significantly undermined. The claimant may also, we find, have suspected how much the second respondent would find allegations of sexual harassment against him to be objectionable, to the extent that the claimant may well have been concerned about the threat of dismissal for that reason. Indeed, in the claimant's disclosure of 14 June (PD2) he specifically referred to the "MeToo" movement which was attracting significant public and media attention at that time.

50. Indeed, WhatsApp messages between the claimant and Ms Wynne, which are in the bundle, we find show that the claimant had reported his concerns about Ms Magoja's allegations to Ms Wynne and sought her support. The exchange of messages is from 17.37-17.42 on 14 August:

    The claimant: "Thank you, I appreciate your support"
    Ms Wynne: "Anytime"

Ms Wynne: “I wouldn’t say it if it wasn’t true either”

51. Ms Roberts told the Tribunal that she told the claimant that she and Ms Vallis were going to speak to Ms Magoja the next day, 15 August 2019. The claimant’s contemporaneous diary also notes that Ms Roberts was going to call Ms Magoja on 15 August. We accept Ms Roberts’ evidence that she told him he should not join the call after he asked her if he could be involved. However the diary entry of 14 August, we find, indicates the claimant’s concerns:

    “Susy [Roberts] confirmed that she had not seen anything with regard to her [Ms Magoja’s] working relationship with me”.

The Claimant’s Third Disclosure (PD3)

52. The claimant’s third disclosure is said to be that he told Ms Roberts in a conversation on 14 August 2019 that the reason for Ms Magoja’s absence was that the second respondent repeatedly messaged her at evenings and weekends. We do not accept that the claimant communicated this information about Ms Magoja to Ms Roberts on 14 August, for the following reasons.

53. The claimant’s own witness statement does not state that he told Ms Roberts this. On the contrary, at paragraph 32 his statement states “I understand that [she] had cited to Susy “the weekend calls from Gloria” as an issue with her stress”, that is, that Ms Magoja told Ms Roberts this. Ms Roberts’ witness statement does not record this being said to her at all by the claimant on that date, or that she told him this. Ms Roberts’ evidence was that she had conversations with the first respondent’s staff generally about the second respondent’s messages out of hours but without reference to Ms Magoja individually. Indeed, for the majority of the time that Ms Roberts had been engaged by the first respondent, Ms Magoja had been absent.

54. In cross-examination, the claimant was unable to explain why this was not referred to in his witness statement. Ms Roberts’ answers to cross-examination revealed that she had made a record of this call in her diary entries but that the Tribunal did not have a copy of these and she had not consulted her diaries before writing her witness statement. Her oral evidence was that her call with the claimant covered the issue of the reporting line of Ms Magoja and that she needed to be “brought back sensitively into the workplace” regarding weekend calls from the second respondent. We do not accept her evidence that it was the weekend calls from the second respondent that necessitated Ms Magoja’s return to the workplace being sensitively handled, but if this was said at all it referred to Ms Magoja’s mental health.

55. On the balance of probabilities we do not accept that the alleged information was disclosed by the claimant to Ms Roberts in that conversation, given that all of the witness evidence fails to refer to it and the claimant was unable to

explain why this was the case. Ms Roberts made contemporaneous notes of this call but has not disclosed them and did not consult them before making her witness statement. Given the alleged importance of the information about the effect of the second respondent's behaviour on the first respondent's staff, it is not credible to assert that this disclosure was made in the wholesale absence of any reference to it in the claimant's Tribunal documentation. Therefore, we do not accept that there was a disclosure from the claimant to Ms Roberts that the cause of Ms Magoja's absence was due to weekend calls from the second respondent on 14 August 2019.

Ms Magoja's Complaints

56. Ms Roberts' evidence, which we accept, was that on 15 August 2019 she and Ms Vallis had a long conversation with Ms Magoja during which she disclosed that the claimant had behaved inappropriately towards her in the workplace on a number of occasions.

57. The second respondent told the Tribunal that shortly after the call, Ms Vallis told the second respondent "I really believe [her]".

58. Ms Roberts told the Tribunal that she had a brief conversation with the second respondent about Ms Magoja's allegations on 16 August having also sent her some WhatsApp messages. Ms Roberts' message to the second respondent on 15 August was that "there was a very serious allegation she [Ms Magoja] has made which we need to discuss". Ms Roberts' evidence to the Tribunal was that the second respondent was "concerned that someone would deal with a vulnerable woman like that" and that the second respondent "was not happy about the allegations at all". We accept Ms Roberts' evidence in this regard.

59. The second respondent's told the Tribunal that her personal opinion was that the claimant's sexual harassment of Ms Magoja had taken place as Ms Magoja reported it to have done. The second respondent told the Tribunal that she was very concerned for Ms Magoja as she was a "vulnerable young woman". We accept her evidence in this regard.

60. The second respondent also told the Tribunal that she had spent time in business in the USA and specifically New York, and had received training on sexual harassment in the workplace. It was therefore her understanding that sexual harassment litigation could have a significant damaging effect on the first respondent if Ms Magoja was to litigate. The second respondent's concerns were heightened further, we find, by her subsequently discovery that Ms Magoja's mother was a lawyer. The claimant himself had referred to the "MeToo" movement in a message to the second respondent on 14 June. The second respondent told the Tribunal that it was her view that a business needs to protect the complainant in a sexual harassment case and ensure that there is a fully documented investigation as well as appropriate training for the

harasser, if necessary. We accept her evidence in this regard and find that the she found the allegations against the claimant to be very concerning, for the variety of reasons set out above.

The Events of 21 August 2019 and the claimant's fourth disclosure

61. On 21 August the claimant and the second respondent had a meeting, the transcript of which is in the bundle. The second respondent did not know that the claimant was recording the meeting. It is the claimant's case that this meeting contained protected disclosures from the claimant to the second respondent about "being bullied and harassed whilst employed by the first respondent and that the second respondent's behaviour to his team members and others in the first respondent had been unacceptable".

62. The Tribunal understands that this transcript was only disclosed to the respondents shortly before the start of this hearing. The respondents have raised issues about the lateness of the disclosure and the covert nature of the recording but do not object to its inclusion in the bundle. The transcript has been of considerable assistance to the Tribunal in our decision-making.

63. We have carefully read the transcript and do not accept that the claimant's conversation with the second respondent contains a disclosure of information (as opposed to allegations or opinion) about the claimant or others having been bullied and harassed by the first respondent or the second respondent. There is no such disclosure of information in any part of the transcript. We find that the conversation, as far as the claimant was concerned, was being done with the intention of starting negotiations with the first respondent and the second respondent over changing the terms of his working relationship with them. The conversation and the information provided by the claimant to the second respondent centred around the claimant's motivation for change.

64. It bears repeating that by this point, unknown to the claimant, the second respondent had been informed by Ms Vallis of the nature and gravity of Ms Magoja's allegations against the claimant, but the second respondent did not mention these in the conversation. We also find, from the second respondent's evidence, that she had interpreted Ms Roberts' references to "serious allegations" as an indication that Ms Roberts was suggesting that the claimant should be dismissed, although we also accept that this was not what Ms Roberts in fact intended to communicate.

65. We find that the general tone of the conversation was amicable and professional on both sides. The claimant's diary entry of the time notes that he took care during the conversation to raise points from the "script" provided to him by his lawyer. The claimant's intention during the conversation, we find, was to follow the script to strengthen his position in any forthcoming negotiations and to bring about a change in his work relationship with the first

respondent and the second respondent, as well as receiving a lump sum payment.

66. The claimant's diary entry of the time demonstrated his surprise when the second respondent indicated that she was happy with his work. He commented that he had understood that she had been trying to get rid of him "for months". We note the second respondent's evidence that she was happy with his work at the time and find that this is not reflected in the evidence of her conversations with him and others elsewhere in the bundle.

67. We find that the claimant's contributions to the conversation were not disclosures of information about bullying and harassment or unacceptable behaviour towards him or this team and others in the first respondent by the first respondent or the second respondent. For example, at the start of the conversation their exchange was as follows:

"R2: What about work? How, how are you? I know -

Claimant: Erm, not good

R2: We have two difficult situations

Claimant: Yes

R2: Another employee is leaving. I tried to talk to her.

Claimant: Yeah

R2: To understand why she was leaving and all of that and she told me that…I don't know if she shared the same with you, hopefully she did, it's the lack of…..[…] she basically said "I don't have any career development, I don't see what's next for me, right? What other things I can be doing." I ask her "Is that money, or…?"

Claimant: Mm-hmm

R2: No

Claimant: Yeah

R2: Was there something else? Has she shared the same with you or not?

Claimant: Yes, yes she has. We've spoken about it a great deal. Clearly, there's the [Ms Wynne] things, there's the [Ms Magoja] things, but I think sort of moving to a much, much higher level than that, I don't think the relationship between you and I is working particularly well…. I've always wanted to be a

close adviser to the chief executive….. in whatever company I work for. I think we're a really small organisation…and it's become apparent to me recently that that's not the case…"

68. We find that, although the second respondent expressly referred to Ms Wynne and the speculation over her reasons for her leaving, the claimant does not disclose anything about what he considers her reasons for leaving to be. He also appears to distance himself from Ms Wynne and Ms Magoja's issues, stating that his issues were at "a much, much higher level than that" and that his issues related more to the lack of closeness between him and the second respondent professionally. The second respondent's evidence to the Tribunal was that she understood from their conversation that the claimant was unhappy because they did not have a particularly close working relationship. We find that this is reflected in the transcript of the conversation, as set out above.

69. At a later point in the conversation, the claimant expressed his upset that he believed that the second respondent had told colleagues that Ms Wynne was leaving because of him, which the second respondent denied she had said. The closest that the claimant comes to making any kind of disclosure about bullying or harassment or unacceptable behaviour is to make general comments about the working environment:

"Read, read her exit interview, Gloria... Read her exit interview which was conducted with Peter here….. Because it's been mentioned to me on three or four occasions that you've said to people [Ms Wynne] is leaving because of Toby, and I can't work in an organisation where that's the case. It's just... It's not what I want to do, the environment around here is -…. really, really bad at the moment. I've always tried to keep well, well above that and away from everything and I think for the first 18 months or so I was here, that's all... it's never been, never been a problem... okay fine I'm not going to work in an organisation which is like this, and something has got to change, because I can't continue either to be a partner in a team which is like this, nor can I continue... I can't with confidence bring people into the team, Gloria." [emphasis added]

70. When the second respondent states, in relation to the former finance director, Jason, "…trust me, I try to help him as much as I could, right?", the claimant responds by saying "I'm sure, absolutely, I believe that…. I don't dispute that".

71. In relation to the situation with Ms Magoja, which is spoken about in very general terms, the claimant expressed his frustration with not having a permanent HR contact available to help him deal with her absence. He states:

"as a line manager I begin to get exposed on this, because this is then health, safety, employment, stress and all the rest of it, and if I'm called up before an employment tribunal and someone says "well, as her line manager, what did

you do?" "Well, nothing, I left it to HR" then I could never do that, so I begin to get ever more panicky"

72. We find that this is a reference to the claimant's own potential stress and exposure in very general terms and not that of any other members of staff.

73. The claimant also refers to the reasons for Ms Wynne leaving later in the interview, but again stops short of disclosing any information about unacceptable behaviour or bullying or harassment. He says:

"It was unequivocal. She had decided after New York that she was going….. She immediately... and I don't know if you ever saw the two and a half page letter which she wrote to Kate immediately after - after that? It was very dramatic for her that that situation happened that then, you know, there was a number of other things around that time... read the exit interview which she's done with Peter... because he, he conducted the interview and things, so it's pretty clear why she's leaving. I don't particularly want to bring people into an organisation who six months, nine months later, you know, get spat out of the business and, honestly I just feel that after... perhaps I should have left when I, you know, when we first talked about this back in October."

74. It is, we find, clear from their conversation that the second respondent had not read the exit interview or Ms Wynne's letter to Kate (HR) after the New York incidents and this would have also been clear to the claimant during the conversation. This cannot therefore be said to be a disclosure that, when taken with other information available at the time, amounts to a cumulative communication of specific information. Furthermore, the claimant did not take the opportunity to tell her what was in those documents. The conversation continued with the claimant indicating that he had taken legal advice and that he considered that there were two options available:

"Either we go down a route where lawyers get involved and I leave today, because I can't continue to work here... That's not my style. What I would like to do is to continue working for WTTC but in a different way, go back to two, three days a week, something like that, supporting ….. the business..."

75. We find that during this interview, the conversation was repeatedly brought back by the claimant to the personal relationship between him and the second respondent, and how difficult he was finding it. Even the references to Ms Wynne were, we find, from the perspective of the claimant trying to emphasise to the second respondent how difficult he was finding it to manage employees in the business, and that this was his reason for wanting to change his working relationship.

76. Furthermore, we note that because the claimant was intending to conduct a commercial negotiation with the first respondent and the second respondent, he was being careful during this interview not to engage in any kind of direct challenge to the second respondent which may have undermined his

prospects in a negotiation. We find that this was why he did not, in fact, disclose any information of unacceptable behaviour, or bullying or harassment, of the other members of staff, or even of him personally, by the second respondent.

77. Following this meeting, the claimant was telephoned by Ms Roberts to tell him of Ms Magoja's allegations of sexual harassment. The claimant's witness statement (at paragraph 41) stated that he was

> "outraged at the injustice of the accusations…. I was appalled that a team member of mine who had been signed off with work-related stress due to the intrusions and behaviour of the Second Respondent could, somehow, invent these accusations and these allegations would only come to light some five weeks after she had been signed off".

78. Ms Roberts' evidence was that the claimant was "very angry" about the allegations that had been made and his evidence to this Tribunal indicated that he is still angry about them now. We note that the informal investigation by Ms Green concluded with Ms Magoja not wishing to continue with the complaint, but with Ms Green finding that the four colleagues Ms Magoja asked her to approach to corroborate her claims against the claimant told her that he could be

> "laddish, lewd and inappropriate on occasions"

and that

> "Toby needs to be more careful in his choice of humour and language as it is not acceptable for his status or acceptable work behaviour".

Events of 22-27 August 2019 and PD5

79. On 27 August, the claimant had a meeting with Ms Roberts and Ms Green. Ms Roberts told him that the investigation with Ms Magoja was continuing. Ms Roberts told the Tribunal that she had "told off" the claimant for contacting two colleagues, Ms Wynne and Jamie, about the allegations from Ms Magoja in that meeting, but that the claimant defended his actions in that regard.

80. They also discussed the fact that he was considering leaving the first respondent via what the claimant described in his diary as "a combative route" involving allegations of bullying and harassment or that he was alternatively seeking a consultancy agreement. Ms Roberts' evidence was that she concluded after this conversation that the claimant may well choose to litigate, or, as she put it, "things might get legal".

81. Following that meeting, the claimant emailed Ms Roberts and Ms Green to complain that five days earlier, on 22 August, the second respondent had

called a meeting of the "entire comms team" (which consisted of him, Ms Wynne and a contractor) to discuss issues which the claimant said were brought up in Ms Wynne's exit interview, Ms Wynne having notified the first respondent that she was leaving. The claimant complained that this was entirely inappropriate and that, as Ms Wynne had made allegations of bullying and harassment against the second respondent, she should not have discussed the issues in this manner with Ms Wynne in front of others, as this was further bullying and harassment.

82. We accept that this email to Ms Roberts and Ms Green was a disclosure of information about a potential failure of a legal obligation.

83. It is notable that the claimant chose to send the email to Ms Roberts and Ms Green, and not the second respondent. Given that the claimant had a civil meeting with the second respondent less than a week earlier, we find that had he wanted to disclose this information to the first respondent in such a manner as to guarantee that it would be heard by the second respondent or acted upon by another individual at the first respondent, he would have made this complaint directly to the second respondent or another member of the first respondent's board. However, we find that his decision not to contact the second respondent directly was because he was attempting to avoid any direct confrontation with her at this point, to keep a good relationship with her for the contractual negotiations.

84. It was the second respondent's evidence that this email was never forwarded to her. Ms Roberts statement is entirely silent on this point and in oral evidence she said that she "believed" she forwarded the email to the second respondent, but there is no evidence of this in the bundle. We accept the second respondent's evidence that she was never up to date with her emails, in that she received several hundred a day and chose instead to communicate via WhatsApp. We accept that this email, even if it was forwarded to her, did not come to her attention until these legal proceedings.

85. We also note, from the second respondent's WhatsApp messages in the bundle, that she expressed surprise on learning, on 10 September, that Ms Wynne had indeed left the first respondent's employment. We find that the second respondent did not consider her conversation with the Comms team on 22 August to have had the effect on Ms Wynne that the claimant and Ms Wynne say it did. Indeed, Ms Wynne admitted in evidence that she did tell the second respondent that she left because of a lack of career development and not because of the second respondent's behaviour. Ms Wynne told the Tribunal that she "couldn't be bothered" to tell her otherwise.

86. Ms Wynne also acknowledged that the second respondent had tried to persuade her to stay, taking her to a high level meeting at Claridges Hotel and by offering her alternative jobs. This, we find, was in fact the second respondent's reaction to Ms Wynne's complaints, as evidenced by Ms Wynne

herself, and we do not accept the claimant's version of events that the second respondent attempted to bully and harass Ms Wynne further, either in the meeting of 22 August or at all.

87. Finally, we find that the reason why the claimant sent the email on 27 August disclosing allegations of bullying and harassment on 22 August was primarily to strengthen his hand in the event that he did choose the "combative" route with the first respondent and the second respondent. He sent it soon after the end of the conversation with Ms Roberts and Ms Green about Ms Magoja. Ms Roberts also told the Tribunal that she told the claimant to "be careful" in trying to renegotiate his contract with the second respondent, as she had discovered that he had not formally passed his probationary period and had informed the second respondent of this.

88. Ms Roberts had also understood by this stage that the second respondent was considering whether to terminate the claimant's employment in any event. On 28 August, she had messaged Ms Roberts telling her to Google "Toby Nicol and Easyjet", which brought up allegations of misuse of a free flights benefit by the claimant while a director at Easyjet in 2010. On 29 August, Ms Roberts' evidence, which we accept, was that the second respondent had a conversation with her about the Easyjet allegations and said they were previously unknown to her. The second respondent told Ms Roberts that they made her consider that the claimant "needed to be out of the organisation" and that the following day, she had told Ms Green to consider how to "exit" the claimant from the first respondent.

89. Ms Roberts and Ms Green conducted some workshops with the first respondent's junior staff on 29 August and reported the outcomes to the second respondent.

90. On 3 September Ms Roberts told the second respondent to be careful, and to take legal advice, as lots of complaints about her management style came out of the workshop, although there is no evidence that on that date Ms Roberts made any direct reference to the claimant's email of 27 August. Ms Roberts' evidence was that she told the second respondent that the particular concerns raised about the second respondent were her use of WhatsApp and the terms of Ms Wynne's departure. We note, as stated above, that Ms Wynne told the second respondent that she had left for a job with better career prospects. The second respondent was not, we note, receiving a consistent version of events from Ms Wynne and Ms Roberts about the circumstances of Ms Wynne's departure.

The Claimant's Letter of 2 September – the sixth disclosure

91. On 2 September 2019 the claimant sent a letter by email to the second respondent, copying in Ms Roberts and Ms Green. He referenced their conversation on 21 August and stated

"I have reluctantly come to the conclusion that, in order to protect my reputation and health, I now need to restructure my working relationship with you and WTTC despite the financial risk which this carries."

"… I have sought legal advice… to understand my options. He [the claimant's solicitor] advises that my employment rights have been infringed…. This would include a case for bullying, harassment, defamation, undermining and a whistleblower-style complaint into the leadership style of the CEO and culture at WTTC…"

92. We find that the letter does not provide any more information about how his employment rights have been infringed or what he believes has happened to cause the departure of other employees he refers to further on in the letter. It is also notable that the claimant's motivation for acting is "…to protect my reputation and health". There is no direct reference in the letter to concerns about the wellbeing of any other employees of the first respondent.

93. The letter proposes a consultancy arrangement for him, and also proposes that "the Communications function reports to Teresa or Virginia in her new Chief of Staff role in the short term… I do not believe that WTTC needs a replacement senior Communications Director as you are likely to confront again many of the issues which have made me come to this decision and [Ms Wynne] included in her exit interview".

94. Given that the claimant referred in the meeting with the second respondent of 21 August to a lack of career advancement and that this was also Ms Wynne's stated reason for leaving in conversation with the second respondent, the reference to "many of the issues which have made me come to this decision and [Ms Wynne] included in her exit interview" does not, we find, clearly identify the second respondent's behaviour as being the cause of either person's departure.

95. Taking the claimant's case at its highest, even if Ms Wynne's exit interview is accepted as a disclosure to the first respondent that should be cumulatively considered or aggregated with the claimant's email of 2 September, neither is sufficiently clear as to the reasons for either individual's departure. Ms Wynne's exit interview does not disclose bullying by the second respondent, although it does repeatedly criticise her style of management. Ms Wynne, when asked about workload said "overall I felt like it was fine for me personally". The most direct criticism she makes in relation to WhatsApp contact is "It's inappropriate for the CEO to have a direct line to staff and to use that line to tell them they have done something wrong…. It's invasive." Although this is a direct criticism, it is not, we find, tantamount to alleging harassment amounting to a breach of legal obligation. The claimant has not, we find, made disclosures of information in the email of 2 September, either

in the email itself or cumulatively by reference to the contents of Ms Wynne's exit interview.

96. The claimant's proposed financial terms were for an ex-gratia payment of £40,000 and for him to receive the same salary as he was currently receiving for working five days a week, for working three days a week for the rest of 2019 and thereafter two days per week. Ms Roberts commented that she was surprised by how much the claimant had proposed in his offer to the first respondent and the second respondent.

97. The second respondent told the Tribunal that she considered the tone and content of the letter as the claimant attempting to "blackmail" her with threats of litigation and that the financial terms of his proposal were unacceptable. We find that the claimant knew of the financial pressures the first respondent was under as a struggling not-for-profit organisation and knew that what he was requesting would be considered substantial.

The Alleged Redundancy and the Claimant's Dismissal

98. Between the claimant sending the email on 2 September and the respondents making him a without prejudice offer of settlement on 13 September, a number of events took place. The first was that the second respondent decided that she no longer wished to use Ms Roberts and Ms Green's services. There had been a workshop for the junior employees on 29 August that the second respondent considered had been handled unprofessionally by them. The second respondent also had concerns that they were disclosing confidential information to other members of staff, including the claimant. On 4 September, she told them that their services would no longer be required. We find that she was also unimpressed by the way Ms Roberts and Ms Green dealt with the claimant's complaints and requests for new terms and compensation, which she had asked them to discuss with him. The conclusion of their engagement was on 6 September.

99. She sought and hired the third respondent to be the first respondent's new People and Culture (HR) Director. He was under considerable pressure to take up his role but was not available until 9 September. However, the second respondent told him prior to joining that the first respondent had an issue with the claimant and could he recommend a good solicitor in the UK.

100. The third respondent met the claimant on his first day in the office. He also met with Ms Vallis and Ms Magoja and carried out some investigations into Ms Magoja's allegations against the claimant. The claimant objects to this action, which he says was one-sided. The respondents' WhatsApp messages in the bundle between Ms Messina and the second respondent show that the second respondent was angry with the claimant for not having done work for events that week and that if anything, the second respondent was now more angry with the claimant than she was before the letter of 2 September had

been sent. This is, we find, consistent with her perception that the letter of 2 September was an attempt by the claimant to blackmail her and the first respondent.

101. On 12 September, Ms Green sent to Ms Messina, the Chief of Staff at the first respondent, a handover with the conclusions of her investigation into Ms Magoja's allegations against the claimant. We find that the second respondent, the third respondent and Ms Messina were not impressed with the conclusions they reached.

102. In essence, Ms Green reported that four colleagues said that the claimant could be "laddish, lewd and inappropriate" at work and that "Toby needs to be more careful in his choice of humour and language as it is not appropriate either for his status or acceptable work behaviour", but as none of the four colleagues could substantiate the specific allegations that Ms Magoja had raised, "I don't think there is a case for him to answer at this time".

103. Ms Messina forwarded the email to the second respondent and the third respondent with a one-word message in Spanish –"INCREIBLE…." – in English, "AMAZING….". The second respondent's WhatsApp messages on that day also show that Ms Messina was very angry that the claimant had been copied in to the email about Ms Magoja by Ms Green.

104. Subsequently, the claimant applied pressure on Ms Green to change the wordings of her findings to remove the word "lewd" from the handover note, which she did. This further angered the second respondent and Ms Messina and, we find, further confirmed to the second respondent that Ms Green and Ms Roberts were not impartial as far as the claimant was concerned.

105. The WhatsApp messages of 12 September show that the second respondent and Ms Messina discussed that Ms Magoja had told the third respondent that week that Ms Green persuaded her "not to make a case against
Toby". The second respondent said, of the claimant

"In order to fire him, we need her [Ms Magoja] to proceed" [i.e. with her complaint against him.]

106. The second respondent goes on to say "And after, she can change her mind". The claimant's case is that this demonstrates that the second respondent was angry with the claimant about his protected disclosures and was using Ms Magoja in order to dismiss him for that reason. However, we find that the messages show the second respondent was angry with the claimant and wanted to dismiss him because of Ms Magoja's allegations and also because she considered that the second respondent was blackmailing

her by this point. This was her evidence under cross-examination, which we accept.

107. On 13 September, the third respondent met with the claimant. The Tribunal is aware that this meeting contained without prejudice discussions which were unsuccessful. The third respondent's evidence was that the claimant was advised on that date that the respondents had listened to the suggestion in his email that his role was not required, and that he would be made redundant.

108. The respondents assert before this Tribunal that the claimant's redundancy was genuine. We find that it was not. Although the respondents reorganised their management structure after the claimant's departure, this was done as a consequence of it and was not the cause of it, as they assert. It was, instead, a cover for the breakdown in the relationship between the claimant and the respondents instead of admitting that they no longer required the claimant's services for the more genuine reasons, which by this stage was that the relationship and the negotiations were fraught. The label of a redundancy was partly an act of reputation management for the respondents, we find.

109. It was clear at this point, due to correspondence between the parties' lawyers, that the respondents understood that he was asserting that he was a whistle-blower.

110. The respondents purported to conduct a redundancy consultation. We do not find that the redundancy consultation was genuine on the part of the respondents, nor did the claimant participate in it in any significant way, in that he showed no interest in alternative roles at the first respondent. The respondents had decided that they could manage without him and, as the third respondent states in his witness statement, "We also felt that we shouldn't give into Toby's blackmail by giving him the consultancy agreement he wanted". We accept his evidence in this regard.

111. On 8 October, the second respondent emailed the board members of the first respondent informing them about the claimant's situation from her perspective. In the email, she stated that she believed that the sickness absence of one of his team (i.e. Ms Magoja) due to "stress and harassment" from the claimant was what had triggered the claimant's request to change his working conditions. She included the financial and other terms he was requesting. She notified them of the Easyjet situation and said that "I was not aware of this, as this was never disclosed". The second respondent also noted "we have a strong case [for redundancy] as the last couple of events… we did great without him which proved to be more successful in terms of coverage…".

112. We find that this summary accurately represents the respondents' reasons for terminating the claimant's employment. We note that at no point

does the second respondent refer to the whistleblowing allegations, either to anticipate that the claimant may mention them or to raise any pre-emptive defence. We find that the respondents never considered that the claimant was actually a whistleblower and that this played no part in their decision to dismiss him. We find that they considered his allegations of whistleblowing to be part of his negotiating tactics.

113. The claimant attended a final meeting on 10 October with the third respondent. By this point the claimant had made it clear he intended to issue proceedings against the respondents. The email of dismissal from the third respondent is dated 14 October, which was the date of the claimant's termination of employment.

114. The claimant was offered the right of appeal and he took it up. He was offered a choice of three of the first respondent's board members to appeal to, selected due to their availability to attend a face to face meeting in London. He chose Mr Chapman on the basis that he was known to him.

115. It is the claimant's case that Mr Chapman was in fact not an appropriate individual to hear the appeal, as he had been copied in to the second respondent's email of 8 October and had replied by stating "the sooner we kick Toby into touch, firmly and convincingly, without bowing to the pressure for more money, the better." He was also "briefed" in what the claimant asserts was a partisan way by the second respondent and the third respondent prior to
the appeal hearing, and only provided with a selection of the documents. We accept that this was the case.

116. However, when Mr Chapman conducted the claimant's appeal hearing, which he told the Tribunal lasted for at least two hours, he was presented with a pack of documents by the claimant which contained all the recent emails and information including about Ms Wynne and the circumstances concerning her resignation. Mr Chapman told the Tribunal that he discussed these with the claimant but was not persuaded to overturn the appeal. He told the Tribunal that he considered the claimant's complaints "looked like an orchestrated approach to extract more money from WTTC". We find that although he was briefed by the second respondent in a partisan manner, he separately reached this conclusion as a result of his lengthy conversation with the claimant during the appeal hearing.

117. He told the Tribunal that he had been surprised to receive from the respondents a three-page report about Ms Magoja and information about Ms Wynne's complaint of harassment against the claimant in 2018. He said "I decided I didn't want to complicate it with all this, and it seemed extremely messy and complicated". He did state though that while the claimant provided him with

> "lots of information about what was wrong with WTTC, I also heard lots of information that there were problems with his behaviour and style… Bridges had clearly been burned, and there was nothing from Mr Nicol that changed my view on that."

The Claimant's Data Subject Access Requests

118. The claimant made a Data Subject Access Request to the first respondent via his solicitors on 25 September. The respondents responded by asking for an extension of time to reply, from a month to three months. The claimant alleges that this is a detriment because of having made protected disclosures.

119. On 8 November, the claimant requested all of the second respondent's relevant WhatsApp messages, which had been requested via the first respondent but rejected on the basis that they were on her personal mobile phone and the first respondent was not the Data Controller of these.

120. The claimant's solicitor complained to the Information Commissioner's Office on 8 November about the respondents' lack of a reply to their request.

121. The first respondent responded to the claimant's request in December 2019. It is the claimant's case that the second respondent never responded to his request. The second respondent's evidence about this was that she had delegated the task to staff in the office, and believed that they had complied with the request.

122. We find that the reason for the respondents responding in the manner they did was not influenced in any way by any alleged protected disclosures. The WhatsApps between the second respondent and the third respondent discuss the need to ensure that they sent "everything" to the claimant in response to the request.

123. It is highly relevant that, given that the WhatsApps are informal and unguarded, they contain no reference to the whistleblowing allegations whatsoever, either directly or indirectly. We find these played no part whatsoever in decisions taken about the DSAR.

124. The third respondent notes that responding to the request would be "painful" which we accept would be the case, given the amount of data involved and the small size of the organisation. The first respondent obtained a quote from an external organisation to carry out the DSAR as they were not in a position, we accept, to fulfil it themselves.

125. We accept the third respondent's evidence that he received the DSAR not long after he had started at the first respondent and he had a large amount of introductory work to do. The WhatsApps in the bundle between the second

respondent, the third respondent and Ms Messina show that there was a considerable distance between the claimant's allegations that he was a whistleblower and the respondents' response to the DSARs and the former did not affect their response to the latter. We accept the second respondent's evidence that she had delegated the task of responding to the personal DSAR to her to staff in the office, and believed that they had complied with the request.

126. While there have clearly been delays by the respondents in relation to the DSARs, there is no evidence whatsoever that the allegations of whistleblowing contributed to, or influenced this, in more than a trivial manner.

The Law

127. For a whistleblowing disclosure to be considered as a protected disclosure three requirements need to be satisfied (Employment Rights Act 1996 s 43A, "ERA"):

a. a 'disclosure' within the meaning of the Act;
b. that disclosure must be a 'qualifying disclosure'; and
c. it must be made by the worker in a manner that accords with the scheme set out at ERA 1996 ss 43C–43H.

128. A "qualifying disclosure" is set out in s43B ERA 1996:

> 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;
> (c) …….
> (d) that the health and safety of any individual has been, is being, or is likely to be endangered
>
> ……"

129. For a disclosure to be found to be a qualifying disclosure (s43B ERA), all five of the following elements must be present (Williams v Michelle Brown AM UKEAT/0024/19):

a. A disclosure of "information";
b. The worker must believe that the disclosure is made in the public interest;
c. The belief in the disclosure being in the public interest must be reasonably held by the worker;

d. The worker must believe the disclosure tends to show one or more of the matters listed in s43B(1)(a)-(f) ERA; and
e. The belief in the disclosure tending to show matters in s43B(1)(a)-(f) ERA must be reasonably held by the worker.

130. A “disclosure of information” (s43B(1)) must involve more than a threat of disclosure. It is not sufficient that the claimant has merely made allegations about the wrongdoer. In Cavendish Munro Professional Risks Management Ltd v Geduld [2010] IRLR 38, EAT, Slade J noted:

"… the ordinary meaning of giving “information” is conveying facts. In the course of the hearing before us, a hypothetical was advanced regarding communicating information about the state of a hospital. Communicating “information” would be “The wards have not been cleaned for the past two weeks. Yesterday, sharps were left lying around.” Contrasted with that would be a statement that “You are not complying with Health and Safety requirements”. In our view this would be an allegation not information."

131. Whatever is alleged to be a protected disclosure must in itself pass the sufficiency test (Williams v Michelle Brown AM UKEAT/0044/19). The Tribunal is not required to take into account extra factual evidence of wrongdoing that the claimant had not mentioned.

132. There must be sufficient information disclosed to satisfy s43B, which is a matter of fact for the Tribunal to decide. A disclosure by a claimant that 'Since the end of last term, there have been numerous incidents of inappropriate behaviour towards me, including repeated sidelining, and all of which I have documented.' was held not to be a qualifying disclosure as it was too vague and said nothing specific. (Kilraine v London Borough of Wandsworth [2018] EWCA Civ 1436).

133. An employee was not a whistleblower when disclosing his negative view of what his employer was proposing. The only 'information' that he had disclosed was that he was unhappy about it, which fell short of the legal requirement of a failure to fulfil a legal duty (Goode v Marks & Spencer plc UKEAT/0442/09).

134. Instances of mixed primary facts and opinion may qualify as “disclosures of information”. Western Union Payment Services UK Ltd v Anastasiou
UKEAT/0135/13

135. In Chesterton Global Ltd v Nurmohamed [2017] EWCA Civ 979, Underhill LJ noted:

“In a whistleblower case where the disclosure relates to a breach of the worker's own contract of employment (or some other matter under section 43B(1) where the interest in question is personal in character), there may

nevertheless be features of the case that make it reasonable to regard disclosure as being in the public interest as well as in the personal interest of the worker…. The question is one to be answered by the Tribunal on a consideration of all the circumstances of the particular case…."

136. In Chesterton, four factors which may assist the Tribunal in its assessment of the "public interest" element are as follows:

(a) the numbers in the group whose interests the disclosure served;
(b) the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed – a disclosure of wrongdoing directly affecting a very important interest is more likely to be in the public interest than a disclosure of trivial wrongdoing affecting the same number of people, and all the more so if the effect is marginal or indirect;
(c) the nature of the wrongdoing disclosed. Disclosure of deliberate wrongdoing is more likely to be in the public interest than the disclosure of inadvertent wrongdoing affecting the same number of people; and
(d) the identity of the alleged wrongdoer. "The larger or more prominent the wrongdoer (in terms of the size of its relevant community, i.e. staff, suppliers and clients), the more obviously should a disclosure about its activities engage the public interest".

137. In Chesterton it was noted also that the Tribunal must consider whether the clamant had a genuine belief at the time that the disclosure was in the public interest and if so, did he or she have reasonable grounds for so believing? In Ibrahim v HCA International [2019] EWCA Civ 207, it was held that the claimant's motivation for making the disclosure is not part of this test.

138. Where a claimant made a series of allegations that could have been protected disclosures but were made as part of a disciplinary dispute with the employer which led to her dismissal for other reasons, the tribunal was held entitled to rule that they were made only in her own self-interest and so her claim of whistleblowing dismissal was rejected (Parsons v Airplus International Ltd UKEAT/0111/17).

139. Determination of the phrase 'in the public interest' requires a consideration of what it is about the particular information disclosed that does, or does not, make the disclosing of it, in the reasonable belief of the worker so doing, 'in the public interest'. A disclosure that is made with no wish to serve the public can still be a qualifying disclosure, however the person making the disclosure must hold the reasonable belief that the disclosure is 'made' in the public interest. Generally, workers blow the whistle to draw attention to wrongdoing. That is often an important component of why in making the disclosure they are acting in the public interest. (Dobbie v Felton (t/a Feltons Solicitors) [2021] IRLR 679 EAT)

140. In relation to the failure of a legal obligation, in Boulding v Land Securities Trillium (Media Services) Ltd UKEAT/0023/06 Judge McMullen said:

"As to any of the alleged failures, the burden of the proof is upon the Claimant to establish upon the balance of probabilities any of the following:
(a) there was in fact and as a matter of law, a legal obligation (or other relevant obligation) on the employer (or other relevant person) in each of the circumstances relied on.
(b) the information disclosed tends to show that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject."

141. Those obligations relevant to these proceedings in s43B(1)(a)-(f) are those found in s43B(1)(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject, and s43B(1)(d), that the health or safety of any individual has been, is being or is likely to be endangered.

142. The worker making the disclosure must believe that the disclosure tends to show the matters s43B(1)(a)-(f) and this belief must be reasonably held by the worker. The claimant must hold a reasonable belief that the disclosure(s) demonstrate these breaches. This is a subjective test. It is the "reasonable belief" of the worker making the disclosure and therefore the individual characteristics of the worker need to be taken into account. The test is not that of a hypothetical reasonable worker.

143. Two or more communications taken together can amount to a qualifying disclosure even if, taken on their own, each communication would not. (Norbrook Laboratories (GB) Ltd v Shaw 2014 IRC 540 EAT). Whether two communications are to be read together is a question of fact for the Tribunal (Simpson v Cantor Fitzgerald Europe 2020 EWCA Civ 1601 CA).

144. What was the reason for the claimant's dismissal? Abernethy v Mott, Hay and Anderson [1974] ICR 323 CA refers to the reason as the "set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee". How did the disclosure operate on the minds of those who dismissed him (as per Co-Operative Group Ltd v Baddeley 2014 EWCA Civ 658 CA)?

145. In s103A Employment Rights Act 1996 the employee must establish on the balance of probabilities that the protected disclosure is the sole reason or principal reason for his or her dismissal. If this is established, the dismissal will be automatically unfair and the reasonableness of the decision to dismiss is irrelevant. Per Mummery LJ in ALM Medical

Services Ltd v Bladon 2002 ICR 1444, CA: “The critical issue is not substantive or procedural unfairness, but whether all the requirements of the protected disclosure provisions have been satisfied on the evidence.”

146. It is not a defence to a claim under s103A ERA that an employer did not believe that the employee’s disclosures were protected disclosures. If the Tribunal finds as a matter of evidence that the disclosures were protected under s43B ERA, the employer will be liable if the employee was dismissed for making disclosures even if the employer did not consider them to be protected disclosures. (Croydon Health Services NHS Trust v Beatt 2017 ICR 1240, CA.)

147. A detriment (s47B Employment Rights Act 1996) occurs where the employee has suffered an act, or a deliberate failure to act, on the ground that the employee made a protected disclosure. This requires an analysis of the mental processes (conscious or unconscious) which caused the employer so to act (Harrow London Borough v Knight [2003] IRLR 140, EAT). The test is whether the protected disclosure materially influenced the detrimental treatment of the employee. It is immaterial if the protected disclosure is one of many reasons for the detriment, provided that the disclosure has a material influence (meaning more than trivial) on the decision-maker (Fecitt v NHS Manchester [2011] EWCA Civ 1190).

148. A detriment will be established if a reasonable worker would or might take the view that the treatment accorded to them had in all the circumstances been to their detriment. (Jesudason v Alder Hay Children's NHS Foundation Trust [2020] EWCA Civ 73).

149. Where an employee purports to have made multiple protected disclosures, a Tribunal must consider whether, taken as a whole, these were the principal reason for the dismissal (El-Megrisi v Azad University (IR) in
Oxford EAT 0448/08)

Application of the Law to the Facts Found

150. The issues for the Tribunal to decide were clarified by the parties at the start of the hearing to be as follows:

a. The Claimant asserts that he made disclosures, both individually and when aggregated which, per Norbrook Laboratories (GB) Ltd v Shaw [2014] ICR 540, EAT, amount to protected disclosures pursuant to s.43B(1) ERA 1996.

b. It is accepted by the Respondents that the Claimant made the following protected disclosures PID 1 and PID2.
c. Do the following, individually and/or when aggregated, amount to protected disclosures within the meaning of s.43B(1) ERA 1996?
d. PD 3: 14 August 2019 to Susy Roberts
e. PD4: 21 August 2019 to Gloria Guevara
f. PD5: 27 August 2019 to Susy Roberts and Loraine Green by email
g. PD6: 2 September 2019 to Gloria Guevara in an email

h. Was the reason or the principal reason for the Claimant's dismissal that the Claimant made a protected disclosure(s) such that it was automatically unfair pursuant to s.103A ERA 1996?

i. Was any detriment suffered on the grounds the Claimant had made a protected disclosure(s) contrary to section 47B(1) ERA 1996? The Claimant relies upon the following detriments:
j. His dismissal (against the First and Second Respondents)
k. Unwarranted delay relating to his DSAR of the First Respondent dated 25 September 2019 (against the First and Third Respondents)
l. Ignoring his DSAR of the Second Respondent dated 8 November 2019 (against the First and Second Respondents)

151. The parties agreed that Disclosures 1 and 2 were protected disclosures and were made to the first respondent and the second respondent.

152. As indicated above, we do not find that PD3 actually took place on the balance of probabilities on the date alleged by the claimant. It is possible that similar information to that alleged to have been disclosed was disclosed in other ways and on other occasions by the claimant to Ms Roberts and did come to the attention of the second respondent, but the claimant has not established on the balance of probabilities that there was a clear chain of communication as alleged in PD3.

153. PD4 did not contain any disclosures of "information". A "disclosure of information" (s43B(1)) must involve more than a threat of disclosure. It is not sufficient that the claimant has merely made allegations about the wrongdoer. (Cavendish Munro Professional Risks Management Ltd v Geduld [2010] IRLR 38, EAT). There must be sufficient information disclosed to satisfy s43B, which is a matter of fact for the Tribunal to decide. A disclosure by the claimant during that meeting that "the environment around here is -…. really, really bad at the moment" is, as per Kilraine v London Borough of Wandsworth [2018] EWCA Civ 1436 too vague and discloses nothing specific.

154. The claimant's allegations made during the meeting of 21 August with the second respondent were that the claimant was unhappy in his role and

with his relationship with the second respondent, and that his team and the staff more broadly were unhappy in turn. This falls short of the legal requirement of a failure to fulfil a legal duty (Goode v Marks & Spencer plc UKEAT/0442/09).

155. As we find that the second respondent had not read the exit interview of Ms Wynne at the time of the conversation on 21 August, the claimant's reference to it did not amount to a cumulative communication enabling the exit interview and the claimant's conversation to be taken together as a disclosure of information. (Norbrook Laboratories)

156. PD5 did disclose evidence of wrongdoing, in relation to a potential breach of a legal obligation relating to the meeting of the Comms team with the second respondent on 22 August. Was it reasonably thought by the claimant to be in the public interest? It related to his personal relationship with the first respondent and the second respondent and the difficulties he was experiencing, and introduced his desire to renegotiate the terms of that relationship. Determination of the phrase 'in the public interest' requires a consideration of what it is about the particular information disclosed that does, or does not, make the disclosing of it, in the reasonable belief of the worker so doing, 'in the public interest'. (Dobbie v Felton (t/a Feltons Solicitors) [2021] IRLR 679 EAT)

157. Considering the four factors in Chesterton Global Ltd v Nurmohamed [2017] EWCA Civ 979, which may assist the Tribunal in its assessment of the "public interest" we conclude as follows:

(a) the numbers in the group whose interests the disclosure served are relatively small, in that they relate primarily to the interests of Ms Wynne alone but could by inference also relate to the second respondent's treatment of junior staff more generally;

(b) in relation to the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed, the nature of the interests affected were those concerned with the mutual duty of trust and confidence, which is an important interest in the context of employment relations. However, the extent to which this was affected by the wrongdoing disclosed is questionable, as we find that the claimant did not accurately represent the content and the context of the meeting in the email, and exaggerated its impact on Ms Wynne;

(c) in relation to the nature of the wrongdoing disclosed, where disclosure of deliberate wrongdoing is more likely to be in the public interest, the second respondent, we found, did not consider her behaviour to be problematic. It could not be said that the second respondent therefore deliberately acted in the manner alleged; and

(d) in relation to the identity of the alleged wrongdoer, the second respondent is clearly a prominent figure in the global travel and tourism industry and therefore a disclosure about alleged wrongdoing by her more obviously engages the public interest.

158. In Chesterton it was noted also that the Tribunal must consider whether the clamant had a genuine belief at the time that the disclosure was in the public interest and if so, did he or she have reasonable grounds for so believing? In Ibrahim v HCA International [2019] EWCA Civ 207, it was held that the claimant's motivation for making the disclosure is not part of this test.

159. Taking all of these factors into account, we conclude that although the claimant's primary motivation for sending the email on 27 August was not a disclosure of information that he reasonably believed was in the public interest, but to strengthen his position in the forthcoming negotiations and to safeguard his position against possible disciplinary action, it cannot be said that the public interest formed no part of his consideration. We find that the claimant partly believed that he had taken steps to protect junior members of staff against the second respondent, although this was not the primary motivating factor for him.

160. Therefore the disclosure PD5 was a disclosure of information that the claimant reasonably believed was in the public interest, and which the claimant reasonably believed tended to show a breach of a legal obligation.

161. However, on the balance of probabilities we do not accept that this was communicated to the second respondent in sufficient detail so that she was aware of a protected disclosure having been made to Ms Roberts and Ms Green on this occasion. It is not sufficient that, as we have found, Ms Roberts told the second respondent of the claimant's concerns over the terms of Ms Wynne's departure and her use of WhatsApp. There is no evidence from which we could find that sufficient factual allegations (as opposed to opinion) were communicated by Ms Roberts to the second respondent in their conversation on 3 September or in the period from 27 August to 3 September for the second respondent to have been aware of a protected disclosure having been made on 27 August.

162. Regarding PD6, it is the respondents' case that the claimant's letter does not contain a disclosure of "information", but is a broad statement of the claimant's solicitor's opinion.

163. We agree. As with the claimant's conversation with the second respondent on 21 August, he does not specify what he believes the second respondent has done to breach the first respondent's legal obligations or endanger health and safety. He makes broad allegations without any detail. The second respondent's evidence, which we accept, was that she did not understand that the claimant was making any protected disclosures at that

stage. As we have found earlier, reference to Ms Wynne's exit interview was also no sufficient to import factual allegations of wrongdoing into the email of 2 September itself.

164. We also do not find that this letter of 2 September contained any attempt to disclose information which the claimant reasonably believed to be in the public interest. The content and tone of the letter refer to a threat of litigation and a request for financial terms to be agreed, due to his personal dislike of the second respondent's working methods and in order to protect his individual reputation and health. This is also not a situation in which there was a mixture of content in the letter of personal grievance and disclosure of information. It was clearly part of a carefully considered negotiating tactic relating to his request for more favourable terms and financial settlement from the first respondent

165. Although there is reference in the letter to whistleblowing, the wording of the letter suggests that the complaint has not yet been made. "He [the claimant's solicitor] advises that my employment rights have been infringed…. This would include a case for bullying, harassment, defamation, undermining and a whistleblower-style complaint into the leadership style of the CEO and culture at WTTC…" .This suggests that the whistleblowing complaint, like the case itself, was to happen at some point in the future. The letter does not, as one might expect, set out the occasions in the recent past on which the claimant says he has already made a number of whistleblowing complaints (which are pleaded before this Tribunal as PD 1-5).

166. We also do not find that the reference to whistleblowing in the claimant's letter of 2 September, or the subsequent assertion by claimant or his lawyer that the claimant was a whistleblower during the negotiations that took place subsequently in September, influenced the respondents' decision to dismiss the claimant for reasons set out below.

The claimant's dismissal

167. The second respondent took the decision to dismiss the claimant on behalf of the first respondent. We find that this decision was already in train at the end of August, before the letter of 2 September had been sent. We find that she had begun to consider dismissing him as early as 28 or 29 August, having been shocked and concerned to hear about allegations of sexual harassment of Ms Magoja, which she understood had been substantiated. Her decision to dismiss was strengthened by learning of the Easyjet issue on 28 August, and strengthened further by the claimant's email of 2 September threatening litigation and requesting favourable financial and other terms as an alternative, which she considered an act of blackmail.

168. In the second respondent's letter of 8 October to the first respondent's board, she makes no reference to the whistleblowing allegations whatsoever.

They are also not referred to in the contemporaneous WhatsApp messages. We find that the respondents never considered that the claimant was actually a whistleblower and that this played no part in their decision to dismiss him. We find that in their view, this was simply part of the claimant's negotiating strategy. We also do not find that the claimant was dismissed for making "disclosures", whether or not the respondents considered these to be protected disclosures (Croydon Health Services NHS Trust v Beatt 2017 ICR 1240, CA).

169. Although we do not find that the redundancy process was reasonable, including the terms of the claimant's appeal, as the claimant has not established that he was dismissed for the sole or principal reason that he was a whistleblower, he has no further right (without two years' service) to complain of unfair dismissal, and so the Tribunal has no jurisdiction to make any judgment in relation to the lack of a fair and rigorous redundancy process.

170. The claimant also alleges that he was subjected to detriments on the grounds of having made protected disclosures. The only protected disclosures that remain to be considered as having "more than trivially" influenced the dismissal, or the respondents' responses to the DSAR, are those in mid-June (PD1 and PD2) and PD5 from 27 August.

171. Did PD1, PD2 and PD5 more than trivially influence the respondents, such that he was subjected to a detriment (his dismissal) for having made them? We find that they did not. There was no suggestion that the second respondent gave any thought to the claimant's criticism of her management style and use of WhatsApp on those occasions.

172. We do not find that she paid any further attention to disclosures PD1 and PD2 after they were made and even when Ms Roberts reminded her at the end of August about the staff's complaints in a similar regard, she did not pay a great deal of attention to them. We find that she was more concerned with the potential risk to Ms Magoja of the harassment by the claimant, and the risk to the first respondent of Ms Magoja litigating and the financial and reputational cost of that. She was also concerned about the risk of keeping the claimant in the first respondent's employment after discovering about the Easyjet allegations.

173. We also do not find that the first, second and fifth disclosures more than trivially influenced the respondents' response to the DSARs, for the same reasons. They simply did not, we find, feature in the minds of the respondents at the time, for the reasons set out in our findings above.

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Employment Judge Barker

Date: 9 December 2022

JUDGMENT AMENDED 28 MARCH 2024