Case No:2301063/2023

# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Aron Samu

**Respondent:** Saxon Weald

**Heard at:** Croydon by CVP

**On:** 2-6 & 9 September 2024

**Before:** Employment Judge Liz Ord
Tribunal Member Janet Jerram
Tribunal Member Christopher Tansley

**Representation:**

Claimant: In person on day 1; no attendance thereafter.
Respondent: Sarah Hornblower (Counsel)

# JUDGMENT

The unanimous decision of the panel is as follows:

1. The Claimant's complaint of automatic unfair dismissal for making protected disclosures is not well-founded and is dismissed.

2. The Claimant's complaint of ordinary unfair dismissal is not well-founded and is dismissed.

3. The Claimant's complaint of wrongful dismissal is not well-founded and is dismissed.

4. The Claimant's complaint of detriment for making protected disclosures is not well-founded and is dismissed.

5. The Claimant's complaint of direct religion or belief discrimination is not well-founded and is dismissed.

# REASONS

## The Complaints and Issues

1. The claimant complains of:

    1.1. Ordinary unfair dismissal;

    1.2. Wrongful dismissal;

    1.3. Detriment and automatic unfair dismissal for making protected disclosures;

    1.4. Direct religion or belief discrimination.

2. The issues for the tribunal, are set out in the Annex to this judgment, as provided for by the Case Management Order of 6 November 2023.

## Evidence

3. The Tribunal had before it a documents bundle of 781 pages, a chronology, a cast list and the Respondent's skeleton arguments.

4. On behalf of the respondent the Tribunal had witness statements from Richard Stevens (Non-executive Director and Audit and Risk Committee Chair), Mark Slater (Non-executive Audit and Risk Committee Vice-Chair), Alex Gunter Head of IT and Assistant Director - Transformation), Michael Chinn (Executive Director – Resources), Steven Dennis (Chief Executive), Simon Hardwick (Non-executive director and Board Chair).

5. The Tribunal heard evidence by affirmation from Richard Stevens, Michael Chinn, Steven Dennis, Simon Hardwick. Alex Gunter and Mark Slater did not give evidence.

6. The Claimant did not produce a witness statement and did not give evidence. The Claimant attended on the first day of the hearing and made an application to postpone on grounds of lack of readiness, which the Tribunal refused. On days 2 and 3, he made consecutive written applications to postpone on health grounds, both of which the Tribunal refused. Reasons for this are given in the Tribunal relevant orders.

7. References in brackets in these reasons are to the documents bundle and the witness statements.

## The Law

### Ordinary Unfair Dismissal

8. Section 98 of Employment Rights Act 1996 (ERA) provides, so far as is relevant:

(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show-

(2)

(a) the reason (or, if more than one, the principal reason) for the dismissal and

(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(3) A reason falls within this subsection if it-

a) …..

b) Relates to the conduct of the employee

98(4) whether the dismissal is fair or unfair

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

(b) shall be determined in accordance with equity and the substantial merits of the case.

9. The **ACAS Code of Practice 1** on Disciplinary and Grievance Procedures 2015 applies to the procedure followed.

10. The main **caselaw** that the tribunal considered is:

11. **Abernethy v Mott, Hay & Anderson** [1974] ICR 323 which provides that: "A reason for the dismissal of an employee is a set of facts known to the employer, or it may be beliefs held by him, which cause him to dismiss the employee."

12. **British Home Stores Ltd. Burchell** [1980] ICR 303 which provides that: "First of all, there must be established by the employer the fact of that belief; that the employer did believe it. Secondly, that the employer had in his mind reasonable grounds upon which to sustain that belief. And thirdly, that the employer, at the stage at which he formed that belief on those grounds, at any rate at the final stage at which he formed that belief on those grounds, had carried out as much investigation into the matter as was reasonable in in all the circumstances of the case."

13. **Iceland Frozen Foods Ltd v Jones** [1983] ICR 17, EAT which provides that: When determining reasonableness, the tribunal should not focus on whether it would have dismissed in the circumstances and substitute its view for that of the employer.

**Protected disclosures**

14. Section 43A ERA provides that a 'protected disclosure' means a qualifying disclosure (as defined by section 43B) which is made by a worker in

accordance with any of sections 43C to 43H. Section 43C deals with disclosures made to an employer.

Section 43B provides:

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

**Detriment**

15. Section 47B ERA provides:

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

**Automatic unfair dismissal**

16. Section 103A ERA provides:

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

**Direct religion or belief discrimination**

17. Section 4 Equality Act 2010 (EqA) sets out what characteristics are protected. It provides:

The following characteristics are protected characteristics:
…
Religion or belief
…

18. Section 13 EqA provides:

(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

19. Section 23 EqA - comparison by reference to circumstances - provides:

(1) On a comparison of cases for the purposes of section 13, 14 or 19, there must be no material difference between the circumstances relating to each case.

20. We have considered the caselaw cited by the Respondent in its skeleton argument.

## Findings of Fact

21. The Respondent is a housing association providing affordable rented and shared ownership homes for individuals and families. It is a charitable Community Benefits Society, with the money it makes from rents being reinvested in the management, maintenance and building of homes.

22. The Claimant was employed by the Respondent as its Data Protection Officer from December 2019 to 3 October 2022 when he was summarily dismissed for gross misconduct.

23. The Claimant began to raise issues in April 2022 when the Respondent engaged an external organisation, TIAA, to undertake an internal audit of the Respondent's data protection policies and procedures. It appears that he was concerned about his independence as a Data Protection Officer.

24. Prior to that, the Claimant appeared to be satisfied with the Respondent's handling of matters and, in fact, in an IT governance survey of 30 March 2022, the Claimant scored the Respondent 10 out of 10 in all aspects of IT Management.

25. However, on 22 April 2022 the Claimant sent an email to Michael Chinn inviting him to a Teams meeting to discuss certain data protection matters, including training and awareness of data protection provisions. He cut and pasted sections of the Data Protection Act 2018 into the email, but without any context or explanation (98-99). Mr Chinn asked the Claimant why it was sent, but was not given a clear response.

26. On 25 April the Claimant emailed Mr Chinn again (105) sending him extracts of the legislation in relation to a Data Protection Officer's independence, again without context or explanation. It said "I hope the internal auditors are wasting our time." Apart from the concern about TIAA carrying out the audit, other comments appeared incomprehensible.

27. In view of the Claimant's concern the Respondent pushed back the date for the TIAA audit (MC para 6).

28. Alex Gunter, the Claimant's line manager, was of the view that the Claimant believed that he was the only one qualified to undertake a GDPR audit (AG para 10). He had a Teams meeting with the Claimant on 4 May to discuss his concerns although Mr Gunter struggled to understand what the Claimant's problem was (AG para 14). Eventually he worked out that the Claimant was worried about his independence as a Data Protection Officer.

29. On 6 May the Claimant emailed Steven Dennis (Chief Executive) saying they needed to talk urgently about restoring internal order before he escalated it (113), although he did not explain what his problem was.

30. The Claimant and Mr Dennis met on 6 May via Teams although Mr Dennis found the Claimant's concerns to be indirect, convoluted and confusing and could not understand them. Mr Dennis explained that the audit was undertaken by external people to maintain independence (114).

31. On 6 May the Claimant sent an email to Richard Stevens and Mark Slater (227-229). The parties agree that this email is a **protected disclosure**.

32. The email alleged that the Respondent had acted illegally with respect to the Data Protection Act 2018 due to the Data Protection Officer's role being impacted. It said that the Data Protection Officer was being prevented from being involved properly and in a timely manner in all issues which relate to the protection of personal data. It further alleged that the Data Protection Officer had no involvement in any leadership team, or executive team of subgroups, in dealing with issues which related to the protection of personal data. It went on to say that this contravened the Information Commissioner's Office (ICO) detailed guidance. The Claimant also raised concerns about his line management and the scheduled TIAA audit.

33. Whilst the Claimant alleges that he made another protected disclosure to the ICO, no such disclosure has ever been seen by the Respondent or by the Tribunal.

34. The Claimant then went on to send emails to three external organisations, which were business partners of the Respondent.

35. The first was on 8 May to AJ Gallagher, an insurance agent of the Respondent (115). It included an allegation that certain key Saxon Weald employees had been involved in breaking significant UK Data Protection Act provisions and that at least one Saxon Weald employee was attempting to defraud AJ Gallagher. It set out the same extracts of the Data Protection Act that had been sent to Mr Chinn, and then Mr Stevens and Mr Slater, without context or explanation. It further alleged that the Saxon Weald IT systems were untrustworthy.

36. The second email was also on 8 May, this time to the Data Protection Officer at Legal and General Affordable Homes (p170). In it the Claimant alleged that Saxon Weald were breaking significant UK Data Protection Act provisions and that the IT systems were untrustworthy. It set out the same extracts of the Data Protection Act as previously, again without context or explanation.

37. The third email was on 9 May to the Data Protection Officer at TIAA, the external accountants engaged by the Respondent to perform its internal audit (117). It appears to be alleging that TIAA's involvement would compromise the Claimant's independence. It said that he hoped the TIAA internal auditors were wasting the Respondent's time. Again, it set out the same extracts of the Data Protection Act as previously, without context or explanation.

38. On 10 May Doug Pope, who was Head of Contract Management at Legal and General Affordable Homes, responded to the Claimant by email. He said that, in the interests of being open and transparent, senior representatives from Saxon Weald should be involved (169).

39. On 12 May Mr Chinn received a telephone call from Les Margoram, the Respondent's Assistant Director of Housing, informing him that Mr Margoram had been advised by Mr Pope that the Claimant had contacted him alleging certain unspecified data protection matters (MC para 10).

40. Mr Chinn spoke with Mr Pope that day about this and then contacted Steven Dennis to advise him of the matter (MC para 14). Mr Chinn and Mr Dennis agreed that the Claimant had breached paragraph 10.2 of the Respondent's Disciplinary Policy, by bringing the Respondent's name into disrepute, which was potentially gross misconduct (723). They decided to start a disciplinary investigation (MC para 15) and to suspend the Claimant in line with paragraph 4.2 of their Disciplinary Policy (721). Vanessa Williams, the Respondent's Assistant Director of People, approved the suspension (MC para 17). The Claimant was informed in writing (175-176).

41. Mr Chinn informed Mr Gunter, of the Claimant's email to Mr Pope (AG para 16). He also emailed Mr Gunter requesting that the Claimant's access to all IT systems be closed (173). Mr Gunter was appointed to investigate the Claimant's behaviour. An external provider, DPP, who had previously undertaken the Data Protection Officer's role, were re-appointed.

42. On 17 May Mr Gunter held an investigation meeting with the Claimant and Venessa Williams (Assistant Director – People) (182-184) to find out why he had sent the email to Doug Pope and to members of the leadership team. Mr Gunter was unable to understand what the Claimant's concerns were, as his explanations were confusing (AG paras 20-24). Mr Gunter sent an a letter to the Claimant on 18 May with actions arising from the meeting.

43. On 23 May Mr Gunter held a second investigation meeting (187-188). During this meeting he said that the Claimant remained unforthcoming with specific detail about his concerns despite the Respondent giving him ample opportunity to do so. The Respondent asked him to put his concerns in writing, and re-affirmed his suspension. He was told that his lack of transparency could potentially put the Respondent at risk, and was warned that his conduct could result in disciplinary action.

44. They agreed to another meeting on 19 May to give the Claimant another opportunity to explain his position. The meeting, however, never took place because the Claimant failed to attend. A further investigatory meeting was arranged for 23 May with Mr Chinn, Mr Gunter and Ms Williams.

45. On 18 May Mr Gunter took on the day to day management of data protection queries and, in order to undertake that role, he gained access to the Clariant's mailbox and files. When accessing the mailbox he discovered that the Claimant had sent a large number of work emails to his personal account on 10 May. He also discovered the emails that the Claimant had sent to the Data Protection Officers at AG Gallegher and TIAA (AG paras 25 & 26).

46. Mr Gunter discovered that the data protection files and folder had been randomised and obfuscated, making it difficult to find information (AG para 27). He asked the IT Technical Manager to restore them (189 -190). He suspected that the Claimant had destroyed the integrity of the work on his home drive (p190).

47. On 20 May Mr Gunter considered in more detail the emails that the Claimant had sent to his personal account and discovered that they had sensitive staff and customer personal data in them (120-167) including some special category data. This was a data breach (AG para 31). The Respondent was obliged to report it to the ICO, and did so (198) (AG 32).

48. On 23 May Mr Gunter and Ms Williams held the second investigatory meeting. The Claimant did not attend, despite being invited. It was noted that the Claimant, in his role of Data Protection Officer, would have known that personal information had to be sent through a secure channel and that his personal e-mail address was not secure. Hundreds of files had been sent in this way. They felt it was incumbent on Saxon Weald to take action to ensure the data transferred was deleted and therefore they decided to write to the Claimant to ask him to confirm he had disposed of the information (203).

49. On 24 May Ms Williams wrote to the Claimant with the outcome of the investigatory meeting, setting out the Respondent's concerns. She informed him that his suspension would continue and that they intended to hold a disciplinary hearing. He was asked to confirm that he had deleted the files he had sent to himself (206-7). They never received this confirmation.

50. With respect to the protected disclosure, on 8 June Mr Stevens emailed the Claimant confirming that his email was to be treated as a qualifying disclosure under the Respondent's whistleblowing policy and that it would be investigated (221). The Respondent encouraged feedback and openness. It continually looked for opportunities to improved its processes and welcomed constructive criticism.

51. On 15 June Mr Sevens produced a briefing paper about the Claimant's whistleblowing for the Audit and Risk Committee, which set out the Claimant's allegations as far as he understood them (231-232). The whistleblowing matters were kept separate from the disciplinary matters (235).

52. As regards the investigation, this continued. The Respondent had not heard from the Claimant for some time and he had not responded to their communications. On 17 June Ms Williams wrote to the Claimant, telling him that they were conducting further investigations (241).

53. On 19 July the Respondent sent the Claimant a letter confirming that the investigations had concluded. The disciplinary investigation documents were included and confirmed that the allegations constituted gross misconduct with a potential outcome of dismissal. He was informed that he could put forward anything that he wanted to raise to the Respondent. The disciplinary hearing was scheduled for 27 July (256-257). Mr Chinn was appointed as disciplinary chair.

54. On 22 July Mr Stevens wrote to the Claimant informing him that they were investigating the matters set out in his email of 6 May, which they accepted was a qualifying disclosure. They explained how the investigation would proceed and, in order to preserve the independence and accuracy of the investigation, requested that he not communicate any information about the qualifying disclosure or the investigation to anybody other than the investigation team. He put forward potential dates for the Claimant to choose from for an investigatory meeting (268-271).

55. On 27 July Mr Chinn received an email from the Claimant addressed to Mr Chinn and Ms Williams informing them that in the Claimant's opinion the meeting should not take place, as he believed he should not communicate any information to them (276-277).

56. On 27 July Ms Williams emailed the Claimant telling him that the disciplinary hearing would now take place on 1 August (278).

57. On 29 July the Claimant sought a postponement of the hearing, as he had not heard back from witnesses or his chosen companion (304) (MC para 29). Ms Williams re-arranged the meeting to 12 August (304).

58. The Claimant failed to confirm his attendance for any of the dates put forward for the whistleblowing meeting and so Mr Stevens emailed him again on 2 August telling him the Respondent was going to press ahead with the investigation into the qualifying disclosure. Mr Stevens said that it was important to discuss the issue with the Claimant and offered further dates to meet up (309).

59. On 11 August, the Claimant raised a grievance with Ms Williams and Mr Chinn. He said he believed it would be unreasonable for the disciplinary hearing to go ahead, and he had been told not to talk to them. He requested a grievance hearing before the disciplinary hearing went ahead (346-348).

60. Ms Williams replied, telling him that the two matters were separate and that the Respondent was proceeding on the 12 August (345 & 346).

61. On 12 August the Claimant emailed Ms Williams to say he was not feeling well and asked for the meeting to be postponed to the following week (354). Ms Williams rescheduled the disciplinary to 23 August (353).

62. On 17 August Mr Dennis wrote to the Claimant noting that the basis of his grievance was that he felt unable to defend himself, given a request from Mr Stevens in a letter of 22 July not to communicate any information on the whistleblowing investigation. Mr Dennis assured the Claimant that this request did not prevent him from saying anything he wanted to say at the disciplinary hearing or from defending himself (370).

63. On 23 August Mr Stevens wrote to Mr Chinn saying that the whistleblowing allegations had not been upheld (431) (MC 35).

64. The same day Ms Williams wrote to the Claimant postponing the disciplinary hearing for that day. She informed him that the grievance would be heard first and this was likely to be on 24 August (436) (366). The Claimant asked for the grievance hearing to be postponed (MC Para 36).

65. After some toing and froing, and to ensure that the grievance process had concluded before the disciplinary, the disciplinary hearing was finally heard on 14 September (minutes at 485).

66. The grievance allegations were unclear and confusing. At the grievance hearing, which eventually took place on 30 August, Mr Dennis explained to the Claimant that the purpose of the hearing was to find out in more detail what the grievance was about (minutes 459-467). The Claimant was given a full opportunity to explain his case.

67. On 1 September Mr Dennis wrote to the Claimant with the outcome of the grievance, which was that none of the grievance allegations were upheld. He was informed of his right of appeal (472).

68. On 14 September the disciplinary hearing took place via Teams. The Claimant was present (485 – 489). The allegations against the Claimant were:

    1- The Claimant had sent approximately 700 emails from his corporate email account to his personal email account in plain text, which was an unsecured address. These files were transmitted on Tuesday 10 May between the hours of 2.20am and 21.14.
    2- Three of the emails sent contained details which constituted a GDPR breach, which resulted in Saxon Weald ("SW") having to declare a GDPR breach to the ICO.
    3- The Claimant had sent inflammatory emails to three external parties suggesting SW was in breach of Data Protection legislation.

69. The Claimant put forward his case, which Mr Chinn summarised (488), in his understanding, as being:

    1- In terms of the volume of emails the Claimant asserted he had forwarded, this was at the request of the ICO on the date the Claimant contacted Mr Stevens and Mr Slater;
    2- The Claimant contacted L&G, TIAA, and AJ Gallagher with a general message because he felt the arrangements surrounding the TIAA GDPR audit compromised his position as a Data Protection Officer.

70. The Claimant also said he believed that he was facing adverse consequences because he had blown the whistle (489).

71. On 3 October Mr Chinn sent the Claimant the disciplinary outcome letter (518-520) informing him that the Respondent had found that his actions constituted gross misconduct for which his employment was terminated with immediate effect. The reasons in essence were that:

    1) The Claimant had not upheld the Respondent's values;
    2) The content of the 700 emails sent from his unsecure personal email address included special category data, causing a Data Protection breach, which had to be reported to the ICO, damaging the Respondent's reputation and potentially exposing the Respondent to action by the ICO;
    3) Disclosure of unfounded claims using inflammatory language to third parties had the potential to detrimentally impact the Respondent. Furthermore, the lack of specifics caused additional professional concern for all parties and led to substantial effort carrying out a thorough investigation.

72. In reaching this conclusion, the Respondent took into account the Claimant's arguments in defence, which they summarised in the disciplinary outcome letter as follows:

1) That he copied emails across to his private email account to secure evidence for the whistleblowing investigation and he believed this act would have accorded with the ICO's expectations;
2) In his view the Appeal against the outcome of his grievance and the whistleblowing investigation should have been held before the disciplinary hearing took place because he thought they were linked;
3) That he felt the disciplinary investigation was in some way connected with the whistleblowing investigation; and
4) That he provided information during the hearing to clarify one of the points raised.

73. The outcome letter informed the Claimant of his right of appeal.

74. On 8 September the Claimant appealed the whistleblowing outcome (475-477). On 13 September he appealed the grievance outcome (479), and on 7 October he appealed the dismissal decision (529).

75. With respect to the whistleblowing, he emailed Mr Slater and Mr Stevens on 8 September with his appeal. Mr Stevens responded on 9 September saying that the Claimant's concerns were unparticularised. He reminded the Claimant that he had made several attempts to meet with him to discuss the whistleblowing investigation, but the Claimant had failed to engage with the Respondent. Notwithstanding this, four more dates in September were offered to the Claimant to discuss the matter further.

76. The whistleblowing appeal was heard on 22 September by Mr Slater and this time the Claimant attended (503-507). He was given an opportunity to present his case and each of his points was discussed in turn.

77. The whistleblowing outcome letter was sent to the Claimant on 26 September, which confirmed that the Respondent remained satisfied that its whistleblowing policy had been followed correctly (509-512).

78. With respect to the grievance appeal, the Claimant emailed Ms Williams, Mr Chinn and Mr Gunter on 13 September and an appeal meeting was arranged for 21 October at 14.00. Simon Hardwick was appointed to hear the appeal. The Claimant attended this meeting on 21 October. He was given an opportunity to put his case on all matters with which he was dissatisfied. The Claimant said that he believed he had been dismissed because of his whistleblowing (564-570).

79. With respect to the disciplinary, the Claimant appealed by email to Mr Dennis, Mr Chinn and Kath Hicks (Executive Director – Customer Experience). An appeal meeting was held on 21 October at 15.30, after the grievance appeal hearing. Mr Hardwick heard the appeal.

80. Mr Hardwick checked with the Claimant that he had understood his grounds of appeal properly. He dealt with matters methodically and gave the Claimant a full opportunity to put his case forward. The Claimant accepted that he had sent the e-mails although, with respect to those sent to his personal account, he believed he had to send them to the ICO and this was the only way to do it. With regards to the other three emails to outside business partners, he said it was a requirement of his duties as Data Protection Officer (571-582).

81. Mr Hardwick sent the grievance appeal outcome letter to the Claimant on 1 November. It set out the Respondent's understanding of the Claimant's grounds of appeal and provided a detailed, considered response. The outcome was that the appeal was not upheld (668-671).

82. Mr Hardwick also sent the disciplinary appeal outcome letter to the Claimant on 1 November. It also set out the Respondent's understanding of the Claimant's grounds of appeal, and provided a detailed, considered response. The outcome was that the appeal was not upheld (660-667).

**Discussion and Conclusions**

83. The protected disclosure, made on 6 May, and the sending of the emails which lead to dismissal, between 8 and10 May, were very close in time. The grievance followed thereafter. Inevitably, this lead to three lots of investigations being undertaken largely concurrently, namely, the whistleblowing, disciplinary and grievance investigations. Although certain matters overlapped, the Respondent dealt with these investigations separately and appointed different people to deal with them.

**Automatic unfair dismissal**

84. There is no evidence to suggest that the dismissal was because of whistleblowing. The Respondent had an open door policy and encouraged constructive criticism. It had a whistleblowing policy and its culture was to listen and learn.

85. The Respondent took the Claimant's concerns seriously and give him plenty of opportunity to meet with them and discuss his issues. The matter was properly investigated and, whilst the outcome was not to uphold the allegations, they were fully and reasonably considered.

86. The Claimant's allegation that the disciplinary was connected to the whistleblowing was considered as part of the processes. However, it was without foundation.

87. The dismissal was not because of the Claimant's protected disclosure. Therefore, his complaint of automatic unfair dismissal is not well-founded and is dismissed.

**Ordinary unfair dismissal**

88. The Respondent was faced with a set of circumstances that were serious and concerning. First, the Claimant sent emails to the Respondent's business partners, which made confusing and unfounded allegations that brought the Respondent into disrepute. Secondly, the Claimant sent hundreds of emails containing sensitive personal data, some of which contained special category data, to his personal account via unsecured means, which necessitated the Respondent self referring to the ICO.

89. This was the reason for the Claimant's dismissal. The Respondent had ample evidence to rely on and its belief in this misconduct was genuinely held.

90. The Claimant's misconduct was of a serious nature. The Respondent acted reasonably in treating it as gross misconduct. The Respondent undertook a fair procedure. There was a thorough investigation and the Claimant was given ample opportunity to present his case. Delays in the process were of the Claimant's own making.

91. For these reasons we find that the dismissal was within the range of reasonable responses. Therefore, the Claimant's complaint of ordinary unfair dismissal is not well-founded and is dismissed.

**Wrongful dismissal**

92. The Claimant's actions were of a serious nature that amounted to gross misconduct. Consequently, the Respondent was entitled to summarily dismiss the Claimant without notice or notice pay.

93. There was no breach of contract by the Respondent.

94. Therefore, the Claimant's claim for wrongful dismissal is not well-founded and is dismissed.

**Protected Disclosures**

95. There were two alleged protected disclosures. The first being that of 6 May 2022 to Mr Stevens and Mr Slater, and the second being to the ICO.

96. The Respondent admits that the first disclosure, being that of 6 May, was a protected disclosure. Having considered its contents, we find that it was a disclosure of information that, in the Claimant's reasonable belief, showed there was a failure to comply with data protection legislation. He made the disclosure to his employer in the reasonable belief it was in the public interest. Consequently, it was a protected disclosure.

97. With respect to the second alleged disclosure, being that to the ICO, the Tribunal has never seen such a disclosure and neither has the Respondent. Consequently, we cannot find that this is a protected disclosure, and do not do so.

**Detriment**

98. The Claimant alleges that the Respondent failed to give him a fair opportunity to explain his side of events and mitigating factors. However, the facts show that he was given an opportunity at every stage of the three separate procedures to explain himself and put forward his case. He was not put to any detriment in this respect.

99. The Claimant alleges that he was put through an unnecessarily protracted procedure. However, delays were of his own making. He was not put to any detriment in this respect.

100. The Claimant in essence alleges conflict of interest, a protracted grievance procure and improper whistleblowing formalities. However, he was subjected to fair and proper procedures in all three processes (grievance, disciplinary and whistleblowing) and any delays were of his own making. There was no

conflict of interest with regard to any of the three processes and the Respondent was clear about the separation of each matter. He was not put to any detriment in this respect.

101. The Claimant alleges isolation and no work during suspension. However, there was good cause for his suspension, which was a neutral act whilst disciplinary investigations were ongoing. An inevitable consequence of suspension is removing work and the ability to connect with colleagues. It was not a detriment. Even if it were a detriment, we find that it was not because of his protected disclosure.

102. Consequently, the Claimant's complaint of whistleblowing detriment is not well founded and is dismissed.

**Direct religion or belief discrimination**

103. The Respondent concedes that the belief the Claimant purports to have is a protected belief. That is: "protecting the integrity and sanctity of British democracy, privacy, rule of law and the respect for the law from stain and corruption was paramount." The Respondent does not challenge the Claimant in holding such a belief. We accept that this is a protected belief that the Claimant held.

104. In considering whether the Claimant's dismissal was less favourable treatment, we have considered the comparators put forward. We do not accept that Richard Stevens and Mark Slater are appropriate comparators as they were not in materially similar circumstances.

105. Therefore, we have used a hypothetical comparator and we have adopted the following characteristics suggested by the Respondent:

1. The hypothetical comparator would be in a senior role for the Respondent, with data protection expertise and responsibilities;
2. The hypothetical comparator would have had allegations raised against them of sending many emails to their personal email account through an unprotected medium, some of which contained personal data and special category data belonging to other employees, and personal data belonging to residents of the Respondent;
3. The hypothetical comparator would have had allegations raised against them of sending inflammatory emails to important external business partners of the Respondent;
4. The hypothetical comparator would have been subject to a disciplinary investigation and process for the allegations at 2 and 3 above, the outcome of which is that the hypothetical comparator was found to be guilty of both allegations;
5. The hypothetical comparator would not share the Claimant's philosophical belief that protecting the integrity and sanctity of British democracy, privacy, rule of law and respect for the law from taint and corruption was paramount.

106. For a hypothetical comparator in such a situation, having considered the Respondent's procedures and work cultures, we take the view that such a comparator would also have been dismissed.

107. Consequently, the Claimant was not treated less favourably then the hypothetical comparator. His complaint of direct discrimination is not well-founded and is dismissed.

Employment Judge Liz Ord
Date 9 September 2024

Notes

**Public access to employment tribunal decisions**
Judgements and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

# ANNEX

1 **Unfair Dismissal**

1.1 What was the reason or principal reason for dismissal?

1.2 Was the reason or principal reason for dismissal that the claimant made a protected disclosure?

1.3 The respondent says the reason was conduct. The Tribunal will need to decide whether the respondent genuinely believed the claimant had committed misconduct.

1.4 If the reason was misconduct, did the respondent act reasonably or unreasonably in all the circumstances, including the respondent's size and administrative resources, in treating that as a sufficient reason to dismiss the claimant? The Tribunal's determination whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case. It will usually decide, in particular, whether:

1.4.1 there were reasonable grounds for that belief;

1.4.2 at the time the belief was formed the respondent had carried out a reasonable investigation;

1.4.3 the respondent otherwise acted in a procedurally fair manner;

1.4.4 dismissal was within the range of reasonable responses.

2 **Remedy for unfair dismissal**

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

2.1.1 What financial losses has the dismissal caused the claimant?

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

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

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

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

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

2.1.7 Did the respondent or the claimant unreasonably fail to comply with it by:

The Claimant relies on the following alleged breaches:

(a) lack of promptness/ delays on the Respondent's part throughout;

(b) inconsistency in the Respondent's approach and decision-making;

(c) lack of sufficient investigations;

(d) lack of opportunity given to put the Claimant's case forward;

(e) suspension was not brief, not kept under review;

(f) lack of adhering to own procedures/ policies;

(g) conflicts of interest between disciplinary and grievance proceedings;

(h) lack of action on one grievance altogether; and

(i) grievance appeal hearing with unreasonable delay, last minute tick the box exercise - only after termination.

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

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

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

2.1.11 Does the statutory cap of fifty-two weeks' pay or £93,878 apply?

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

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

3 **Wrongful dismissal / Notice pay**

3.1 What was the claimant's notice period?

3.2 Was the claimant paid for that notice period?

3.3 If not, was the claimant guilty of gross misconduct?

4 **Protected disclosure**

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

4.1.1 What did the claimant say or write? When? To whom? The claimant says they made disclosures on these occasions:

(a) In an email dated 6 May 2022 to Mr Stevens and Mr Slater;

(b) In an online form submitted to the Information Commissioner's Office ("**ICO**") on 6 May 2022.

4.1.2 Did they disclose information?

4.1.3 Did they believe the disclosure of information was made in the public interest?

4.1.4 Was that belief reasonable?

4.1.5 Did they believe it tended to show that:

(a) a person had failed, was failing or was likely to fail to comply with any legal obligation (the claimant will say breach of data protection legislation); and

(b) information tending to show any of these things had been, was being or was likely to be deliberately concealed (Claimant says that he disclosed that evidence of wrongdoing was being concealed).

4.1.6 Was that belief reasonable?

4.2 If the claimant made a qualifying disclosure, was it made:

4.2.1 to the claimant's employer?

4.2.2 To a relevant person, namely the ICO, under section 43F.

If so, it was a protected disclosure.

The Respondent concedes that the disclosure described at paragraph 4.1.1(a) above was a protected disclosure.

The Respondent does not admit that the disclosure described at paragraph 4.1.1(b) was a protected disclosure, as it has not had sight of this disclosure.

5 **Detriment (Employment Rights Act 1996 section 48)**

5.1 Did the respondent do the following things:

5.1.1 Fail to give the claimant a fair opportunity to explain his side of events and mitigating factors;

5.1.2 Put the claimant through an unnecessarily protracted disciplinary procedure;

5.1.3 Subject the claimant to protracted conflict of interest and put him through unnecessarily protracted grievance procedures and improper whistleblowing formalities (unaddressed by the Respondent) - which should have suspended other conflicting proceedings such as the disciplinary but didn't, which should have been properly investigated but weren't;

5.1.4 Isolate the Claimant, hours reduced to 0 of effective work and replaced with having to deal exclusively with the above, effectively demoted to a

'suspended Data Protection Officer', forbidden to maintain any professional work connections with colleagues.

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

5.3 If so, was it done on the ground that they made a protected disclosure?

6 **Remedy for Protected Disclosure Detriment**

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

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

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

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

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

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

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

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

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

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

6.11 Was the protected disclosure made in good faith?

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

7 **Direct religion or belief discrimination (Equality Act 2010 section 13)**

7.1 Did the claimant hold the belief that:

7.1.1 Protecting the integrity and sanctity of British democracy, privacy, rule of law and the respect for the law from stain and corruption was paramount?

7.2 Is the belief a philosophical belief genuinely held by the Claimant and protected under section 10 of the Equality Act having regard to the guidance in Grainger Plc and others v Nicholson EAT/0219/09.

The Respondent concedes that the belief described at paragraph 7.1.1 above is a protected belief for the purposes of the Equality Act 2010.

7.3 Did the respondent do the following things:

7.3.1 Dismiss the claimant

7.4 Was that less favourable treatment?

The Tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the claimant's.

If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether they were treated worse than someone else would have been treated.

The claimant says they were treated worse than Richard Stevens and Mark Slater or in the alternative a hypothetical comparator.

7.5 If so, was it because of the claimant's religion or belief?

8 **Remedy for discrimination**

8.1 Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?

8.2 What financial losses has the discrimination caused the claimant?

8.3 Has the claimant taken reasonable steps to replace lost earnings, for

8.4 example by looking for another job?

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

8.6 What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?

8.7 Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?

8.8 Is there a chance that the claimant's employment would have ended in any event? Should their compensation be reduced as a result?

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

8.10 Did the respondent or the claimant unreasonably fail to comply with it by:

The Claimant relies on the following alleged breaches:

8.10.1 lack of promptness/ delays on the Respondent's part throughout;

8.10.2 inconsistency in the Respondent's approach and decision-making;

8.10.3 lack of sufficient investigations;

8.10.4 lack of opportunity given to put my case forward;

8.10.5 suspension was not brief, not kept under review;

8.10.6 lack of adhering to own procedures/ policies;

8.10.7 conflicts of interest between disciplinary and grievance proceedings;

8.10.8 lack of action on one grievance altogether; and

8.10.9 grievance appeal hearing with unreasonable delay, last minute tick the box exercise - only after termination.

8.11 If so is it just and equitable to increase or decrease any award payable to the claimant?

8.12 By what proportion, up to 25%?

8.13 Should interest be awarded? How much?