



EMPLOYMENT TRIBUNALS

Claimant: Ms Deborah Clocherty

Respondent: Triangular Care Services Ltd (1)
Maxine Lockley (2)
George William Spikesley (3)

Heard at: Cambridge Employment Tribunal

On: 5 and 6 February 2025

Before: Employment Judge Hutchings
Mr D. Hart
Mr A. Hayes

Representation

Claimant: Mr Harding, counsel
Respondent: Mr Cowley, counsel

JUDGMENT having been given to the parties orally at the hearing on 6 February 2025, and written reasons having been requested at that hearing by the respondent in accordance with Rule 60(4) of the Employment Tribunal Procedure Rules 2024 the following reasons are provided:

REASONS

Introduction

1. The claimant was employed by the first respondent, a company providing care at home to elderly people and those who need professional care as a Liaison Director from 1 April 2005 to 18 April 2022. The second and third respondents are directors of the first respondent; the third respondent is also the majority shareholder of the first respondent. ACAS consultation started on 20 February 2024 and a certificate was issued on 20 February 2024 for the first respondent. ACAS consultation started on 11 January 2024 and a certificate was issued on 26 January 2024 for the second and third respondents.
2. By claim form dated 20 February 2024 the claimant made a complaint of victimisation pursuant to section 27 Equality Act 2010. The claimant alleges that the first respondent entered into a COT3 settlement agreement to settle discrimination claim number 3309588/2022 (the "First Claim") and then made a deliberate decision not pay the settlement amount to victimise her.

3. By Grounds of Resistance dated 29 May 2024 and undated amended Grounds of Resistance the respondents deny the allegations. The respondents submit that the non-payment was due to the adverse financial position of the first respondent and was not intentional. The respondents assert that the second and third respondents should not form part of this case, as they were not parties to the First Claim, to which the allegations in this case relate.

Evidence and procedure

4. The Tribunal had the benefit of a 233 page hearing file. At the start of the hearing Mr Harding noted that the ET1 claim form and particulars of claim for the First Claim were not in the hearing file despite the claimant requesting that they were included. Mr Harding sent a copy of these documents to the Tribunal and Mr Cowley. We admitted these documents as they are relevant to the issues we must determine because the claimant alleges failure to pay the settlement reached in the First Claim is a continuation of the discriminatory treatment alleged in that claim. In reaching this decision we are mindful that both parties had prior knowledge of these documents.
5. The claimant was represented by Mr Harding and gave sworn evidence. The respondents were represented by Mr Cowley, who called sworn evidence from:
 - 5.1. Mr George William Spikesley, director and majority shareholder of the first respondent; and
 - 5.2. Ms Maxine Lockley, director of the first respondent.
6. The Tribunal took regular breaks, starting at 10am and finishing no later than 4pm each day. On day 1 the witnesses all confirmed they did not require reasonable adjustments to enable them to participate in the hearing. The third respondent wears a hearing aid which he told the panel had stopped working. However, he confirmed that he could still hear everyone; we told the third respondent that if this should change he must tell me immediately. It is noted that when the third respondent was answering questions under oath he could hear the questions clearly and did not require any questions to be repeated, nor did he raise any concerns during the hearing that he could not hear what was being said.
7. There were no preliminary applications.

Agreed list of issues

8. At a case management hearing on 26 September 2024, the record of which was sent to the parties on 5 December 2024, the List of Issues this Tribunal will decide was agreed. At the hearing, Mr Cowley conceded that this claim was in time and the respondents would not be pursuing the time issue.
9. Therefore, the Tribunal must determine the following issues from the agreed list:

2. Victimisation (Equality Act 2010 section 27)

- 2.1 Did the claimant do a protected act as follows:

2.1.1 Bring legal proceedings in the Employment Tribunal for disability discrimination under case no: 3309588/2022.

2.2 Did the respondent do the following things:

2.2.1 Enter into a COT3 Agreement with no intention to pay the Settlement Monies due under it within the stipulated time frame or at all;

2.2.2 Ignore the claimant's requests for payment of the Settlement Monies resulting in enforcement action having to be taken.

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

2.5 If so, was it because the claimant did a protected act? The claimant says this course of conduct was taken in retaliation for bringing her disability discrimination claim. The respondents say the COT3 was entered into in good faith but the first respondent subsequently came into financial difficulty preventing payment within the stipulated time period. It did not deliberately ignore requests by the claimant for payment.

3. Remedy for victimisation

3.1 What compensation and/or damages should the claimant be awarded if Judgment is made in her favour?

3.2 Should the Claimant be awarded for injury to feelings and if so, how much and should interest be awarded on this?

3.3 Should the Claimant be awarded any financial losses suffered as a result of the victimisation. If so, should those losses include the balance of the Settlement Monies due under the COT3 terms which have not been paid at the point of the Employment Tribunal's Judgment, interest and the costs of enforcement?

3.4 Should all three Respondents be held liable for any award on a joint and severally liable basis?

Findings of fact

10. In our findings of fact we refer to the first respondent as the Company, the second respondent as Ms Lockley and the third respondent as Mr Spikesley.

11. First we address the credibility of the witnesses. The claimant's evidence was clear and aligns with the documentary records before the Tribunal. We found the evidence of Ms Lockley and Mr Spikesley confused. At the hearing what they told us was either not supported by any documentary evidence, or did not align with the documents before us, On occasion their evidence about the same events did not align. For example, Ms Lockley and Mr Spikesley gave a different explanation of the reason the Mr Spikesley withdrew £17,000 from the Company's bank account.

12. The claimant brought the First Claim for constructive dismissal and disability discrimination against the Company. The claimant and the Company entered into a COT 3 settlement agreement on 21 November 2023 (the "Settlement Agreement"). We have seen a copy of this Agreement; it stipulates that the Company must pay the claimant £30,000 within 28 days of the withdrawal of

the First Claim (the "Settlement Monies"). At the hearing Mr Spikesley agreed these were the terms of the Settlement Agreement and the Company entered into this agreement at his direction as the majority shareholder and a director. Ms Lockley accepted she was responsible for the day to day running of the business and had oversight of the bank accounts and so was responsible for making the payment.

13. The claimant withdrew the First Claim on 21 November 2023. Therefore, applying the terms of the Settlement Agreement, we find the final date for payment of the Settlement Monies was 19 December 2023. The Company did not make the payment by this deadline, thereby failing to comply with the Settlement Agreement.
14. The claimant commenced enforcement proceedings. As a result of bailiffs being involved, in April 2024 the Company agreed to a payment schedule; £13,000 was paid by the Company to the claimant in April 2024 and the remaining £17,000 would be paid at a rate of £100 per month until the debt is settled. This agreement is dated 19 April 2024. This was not an agreement to which the claimant agreed: it was an agreement enforced on her by the action of county court proceedings where a bailiff is instructed.
15. Between 19 December 2023 and 9 January 2024 the claimant's representative and ACAS sought, by email, to establish why the Settlement Monies had not been paid. There is no evidence before us that the respondents had provided an explanation as to why they had not complied with the terms of the Settlement Agreement and paid the Settlement Monies before the issue of this claim.
16. Ms Lockley told us she contacted her legal advisors during this period; she says that initially she did not get a reply and subsequently found out that the representative dealing with the matter had left the business. However, the respondents have not included any evidence in the hearing files to support this assertion that these communications took place. Even if they did, that does not explain why the respondents did not contact the claimant to explain why they were going to / had breached the terms of the Settlement Agreement by failing to pay the Settlement Monies, and the reasons for doing so. We find they did not; the claimant was not given any reason for the failure to pay the Settlement Monies until the grounds of resistance were filed in this claim.
17. In the grounds of resistance (paragraph 15) Ms Lockley and Mr Spikesley assert that they should not be party to these proceedings as they were not parties to the First Claim. This assertion is misconceived. This is a separate claim, the discrimination relied on being the non-payment of the Settlement Monies. While the party to the Settlement Agreement is the Company, a legal entity, in this situation it acts through its directors who manage the Company. Therefore it was for Ms Lockley and Mr Spikesley's, as the Company's two directors, to make the payment from the Company's bank account in accordance with the Settlement Agreement. Accordingly, it is correct that they are parties to these proceedings; they were responsible for the non-payment of the Settlement Monies.
18. The claimant alleges that non-payment of the Settlement Monies is a continuation of the less favourable treatment the claimant alleged in the First Claim and a punishment for bringing the First Claim. This period from 21 November 2023 to 19 December 2023 (the "Relevant Period") is key as it is the

4 week period from between the Company entering into the Settlement Agreement and failing to pay the Settlement Monies. It is for the respondents to explain what happening in this time which meant that on 19 December 2023 the Company did not honour the legal commitment it made on 21 November 2023.

19. The respondents' case is that after entering into the Settlement Agreement (21 November 2023) and before payment was due (19 December 2023) the first respondent experienced financial difficulties.
20. At paragraph 10 of the Ms Lockley's witness statement she sets out an explanation as to why the Settlement Monies were not paid; "a loss of council contracts and several service users". There is no documentary evidence before the Tribunal to support her contention that these contracts were lost. At case management the respondents were ordered to produce relevant documents in November 2024. There is no explanation before this Tribunal as to why they have not produced evidence to support the loss of contracts. Therefore, on balance, we must conclude the Company did not lose the contracts as suggested.
21. At paragraph 11 of the Ms Lockley's witness statement she sets out further explanation as to why the Settlement Monies were not paid. This explanation relates to the period after the final payment date. Loss of contracts after 19 December do not explain the alleged inability to pay the Settlement Monies, unless the respondents became aware of the loss of any contracts during the Relevant Period. There is no evidence before us that they did.
22. Based on the lack of evidence from the respondents, we find that the loss of contracts was not a reason for the breach of the Settlement Agreement.
23. Nor, we find, were the uncertainties of the business model. Mr Spikesley explained that income could be uncertain due to the nature of the business, telling us if patients die or are admitted to hospital the income stream stops. We accept this. Similarly payments for holiday cover are spread across several months but impact one month when holiday cover is taken. We accept this. Mr Spikesley also spoke of having over 25 years in the business. We find he is experienced and knowledgeable about the Company's business model, as is Ms Lockley who told us she managed everything day to day. Therefore, we find that at the time the Company entered into the Settlement Agreement Ms Lockley and Mr Spikesley had intricate knowledge of how the business operated over a period of time. Given their combined knowledge, expertise and experience, we find it is no excuse for them to subsequently say that they could not pay the Settlement Monies because of the uncertainties of their business. Had this been a real concern, it would have been apparent to them at the time of the settlement discussions. Had the concerns been genuine they should not have agreed to the settlement. We find they did so because the explanations given to the Tribunal about the uncertainties of the business were not real concerns at the time.
24. The only financial evidence the respondents have provided to the Tribunal are the Company's bank statements, including statements which cover Relevant Period. We have considered the bank statements for the Relevant Period. On the same day as the Settlement Agreement was entered into (21 November 2023) a sum of £17,000 was transferred from the Company's savings account

to the first respondent's current account. Then, the same day (21 November 2023) it was transferred from the Company's current account to Mr Spikesley's personal bank account.

25. At hearing the Mr Spikesley told us this was a director's loan to pay for a private hip replacement he required. There is no documentary evidence before the Tribunal that the first respondent (in accordance with company law procedure) approved this loan or that it was for the reason stated. Mr Spikesley told us that he could produce evidence from a private hospital that this was the cost of a hip replacement. We found this a curious proposal; had the money been transferred for Mr Spikesley's hip replacement, he would have received a personal invoice from the hospital or a private medical provider evidencing this. There is no invoice in the hearing file.
26. Indeed, it was unclear from the Ms Lockley and Mr Spikesley's evidence if the loaned money was used for this purpose at this time. In oral evidence Ms Lockley accepted that she wrote on a copy of the savings account from which the £17,000 was transferred out on 21 November:

As you can see on the agreed date, I attempted to move money from TCS account and then soon realised the wages + P32 were not taken into account"

27. There is no suggestion that the transfer was for the Mr Spikesley's hip replacement. In fact, this wording suggests a completely different reason, and that it was not transferred for a hip replacement. This wording is supported by an email dated 13 November 2024 which Ms Lockley sent to her advisor (in response to a request to explain the transfer of the £17,000). Ms Lockley told her advisor:

"Regarding the £17,000 if you look at the other bank account, you can see it was put back in. This was done at the time, as we were trying to work out ways of how we could afford to pay the settlement by money around. This was very transparent in the statements provided for both of accounts.

28. Had Ms Lockley's explanation been genuine, we find the money would not have been transferred out of the Company's bank account to Mr Spikesley's personal bank account. It was. We find the reason for doing so was to present a financial picture that was not accurate during the Relevant Period. This is supported by the fact Mr Spikesley repaid the money on the day the deadline for payment of the Settlement Monies expired. We find this too much of a coincidence to afford any credibility to the explanations provided by Ms Lockley and Mr Spikesley, which, in any event, are not credible as they do not align. The inconsistent explanations provided by Ms Lockley and Mr Spikesley's as to the reasons for the transfer inform our assessment of their credibility.
29. Indeed the use Mr Spikesley made of the £17,000 is irrelevant to these proceedings. In any event, we make the observation that, as a matter of company law, a director should not take a loan from the company for his own personal use (whatever the personal circumstances and the reasons for which the loan is needed) if, as a result of that loan, the company cannot satisfy its legal obligations, as here with the Settlement Agreement. Matters of conduct and company law issues may arise, which are not matters for this Tribunal.

30. Ms Lockley told us that she received advice from the Company's accountant that if the company was dissolved the claimant would get nothing and it was preferable not to pay the Settlement Monies in order to protect the employees and service users. Her recollection of the advice was confused; there is no documentary evidence from the accountant to support her recollection. There is no documentary evidence that this, or any, advice was received.
31. As a matter of insolvency law, had she received this advice, in the circumstances of the Company in the Relevant Period (as evidenced by the bank statements, the only financial evidence provided) this advice does not make sense. As at 25 December 2023 the Company had a cash balance at bank of £26,160.72. Ms Lockley confirmed to us that she had satisfied all payments due in the Relevant Period other than the Settlement Monies. Had there been a genuine insolvency situation (and there is no evidence before us, such as management accounts that there was), we agree with Mr Harding's submission that the claimant would have been the only creditor and it was likely she would recover a significant amount if not all of the Settlement Monies. Either the advice was inaccurate or has not been accurately recalled by the Ms Lockley or did not happen at all. Based on our assessment of Ms Lockley's credibility, we find she did not receive the advice she relayed to the Tribunal.
32. We find that, had the financial situation in November 2023 been as dire as the Ms Lockley and Mr Spikesley seek to suggest they would not have entered into the Settlement Agreement, given their expertise and experience of the Company's business. We find they did so as the financial situation suggested to the Tribunal was not the reality. As directors of the company they should have known that they should not commit the company to a legal obligation they could not satisfy. We find they could satisfy at least £17,000 of the Settlement Monies, the amount loaned to Mr Spikesley and this amount which should have been applied to the payment of the Settlement Monies rather than transferred to Mr Spikesley. Indeed, on 4 December 2023 the Company paid a settlement sum to another former colleague (Teresa Underwood).
33. We find that, had the financial situation in December 2023 been as dire as the Ms Lockley and Mr Spikesley seek to suggest, bearing in mind their duties as company directors, Ms Lockley and/or Mr Spikesley would have contacted the claimant to explain the predicament. In these circumstances a payment schedule could have been negotiated. They did not do so, we find as the Company was not experiencing the financial difficulties Ms Lockley and Mr Spikesley have sought to suggest to this Tribunal.
34. As we have found the financial reality of the Company in the Relevant Period was not as suggested to the Tribunal, mindful that this is a claim for victimisation, we must consider the mindset of the individuals with the responsibility for authorising the payment of the Settlement Monies (Ms Lockley and Mr Spikesley as the two directors of the Company).
35. When asked by the Tribunal why the Settlement Monies were not paid, Mr Spikesley told us:
- "It hurts that someone has gone to that length to pull one over on you."*
36. We find it is evident from this statement that the First Claim was in the mind of Mr Spikesley, someone with responsibility for deciding whether the Company

complied with the legal and contractual obligation to pay the Settlement Monies, when the decision was taken that the Company would not pay the Settlement Monies.

37. When the Tribunal asked the same question of the Ms Lockley, she referred us back to financial situation, which we have found not to be credible.

Relevant law

Victimisation: section 27 Equality Act 2010

38. Section 27 Equality Act 2010 provides:

(1) A person (A) victimises another person (B) if A subjects B to a detriment because—

(a) B does a protected act, or

(b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act—

(a) bringing proceedings under this Act;

(b) giving evidence or information in connection with proceedings under this Act;

(c) doing any other thing for the purposes of or in connection with this Act;

(d) making an allegation (whether or not express) that A or another person has contravened this Act.

(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

(4) This section applies only where the person subjected to a detriment is an individual.

(5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

39. A detrimental act will not constitute victimisation, if the reason for it was not the protected act itself, but some properly separable feature of it. There is no requirement that the circumstances be exceptional for such a case to arise: Page v Lord Chancellor and anor [2021] IRLR 377 (CA), per Underhill LJ at paragraphs 55-56.

40. A claimant seeking to establish victimisation must show two things:

40.1. That they have been subjected to a detriment; and

40.2. That he or she was subjected to that detriment because of a protected act.

41. There is no need for the claimant to show that the treatment was less favourable than that which would have been afforded to a comparator who had not done a protected act.

42. To succeed in a claim of victimisation the claimant must show that he or she was subjected to the detriment *because of* doing a protected act or because the employer believed the claimant had done or might do a protected act. Where there has been a detriment and a protected act, but the detrimental

treatment was due to another reason, a claim of victimisation will not succeed.

43. The essential question in determining the reason for the claimant's treatment is: what, consciously or subconsciously, motivated the employer to subject the claimant to the detriment? This will require an inquiry into the mental processes of the employer. If the necessary link between the detriment suffered and the protected act can be established, the claim of victimisation will succeed.

44. The case of Chief Constable of West Yorkshire Police v Khan 2001 ICR 1065, HL is relevant to our assessment. The House of Lords guides us that a tribunal must identify "*the real reason, the core reason, the causa causans, the motive*" for the treatment complained of. What is the real reason for the detriment?

45. The case of Chief Constable of Greater Manchester Police v Bailey 2017 EWCA Civ 425, CA. provides guidance on how a Tribunal should apply the reason why test and reiterates the well-established legal test for victimisation that an act will be done "because of" a protected characteristic, or "because" the claimant has done a protected act, as long as that had a significant influence on the outcome. The case cautions an Employment Tribunal from making an error of law, reminding (and perhaps cautioning us) that:

"It is trite law that the burden of proof is not shifted simply by showing that the claimant has suffered a detriment and that he has a protected characteristic or has done a protected act...."

46. The case is helpful to this Tribunal not least as Underhill LJ recites the key statutory provisions, noting that in section 27 of the Equality Act 2010 the question is whether a detriment was done 'because of a protected act. The decision directs us that 'because' is the key word. Crucially, this is not identical to a 'but for' test; Ahmed v Amnesty International [2009] ICR 1450. One is looking for the 'reason why' the treatment occurred. Where treatment is not inherently discriminatory, one must look into the 'mental processes' of the decision maker. We must be satisfied, and have sufficient evidence before us, that the decision-maker's 'mental processes' were discriminatory if we make a finding of victimisation.

47. It is important that a Tribunal has the burden of proof foremost in its mind when making a decision about a victimisation complaint. The victimisation claim is subject to the provisions of section 136 of the Equality Act 2010 relating to the burden of proof, which read (so far as material):

"(1) This section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision

48. In this case the Court of Appeal held that the correct test we must apply is that the detriment occurred “because of” the protected act. A tribunal must first decide whether a claimant has established a *prima facie* case of unlawful victimisation; if he has, the burden shifts to the respondent to prove a non-discriminatory explanation.

Analysis and conclusion

49. We set out below our conclusions by reference to the list of issues.

50. A claimant seeking to establish victimisation must show two things:

50.1. That they have been subjected to a detriment; and

50.2. That they were subjected to that detriment because of a protected act.

51. There is no need for the claimant to show that the treatment was less favourable than that which would have been afforded to a comparator who had not done a protected act. Where there has been a detriment and a protected act, but the detrimental treatment was due to another reason, and the protected act was not a factor, a claim of victimisation will not succeed. For this reason we must consider the mental processes of the decision makers. We have found that as directors of the Company, Ms Lochley and Mr Spikesley were responsible for the decision to enter into the COT 3 Settlement Agreement. Therefore, we must analyse their mental processes when the decision was taken not to comply with the terms of this Agreement and pay the Settlement Monies.

52. The respondents accept that the First Claim is a protected act. We agree.

53. The respondents do not accept that failure to pay the Settlement Monies by 19 December 2023, thereby breaching the terms of the COT3 Settlement Agreement amounts to a detriment. We disagree.

54. A detriment is anything which the claimant might reasonably consider changed their position for the worse or put them at a disadvantage. Shamoon v Chief Constable of the Royal Ulster Constabulary 2003 ICR 337, HL, established that a detriment exists if a “reasonable worker” would or might take the view that the treatment was in all the circumstances to his or her disadvantage. The House of Lords felt that an unjustified sense of grievance could not amount to a detriment but did emphasise that whether a claimant has been disadvantaged is to be viewed subjectively. Mr Harding referred us to the case of Warburton v Chief Constable of Northamptonshire Police 2022 EAT 42, where the EAT found that this is not a wholly objective test. It is sufficient that a reasonable worker “might” take the view that the conduct in question was detrimental.

55. Applying these principles to the case before us, we conclude that a reasonable worker might (and indeed would) find the non-payment of monies agreed to settle a claim of discrimination a detriment. Subjectively, we conclude that in bringing this claim the claimant has demonstrated that the failure to pay the Settlement Monies changed her position for the worse.

56. Accordingly, we conclude that the Company's failure to pay the Settlement Monies was a detriment.
57. Next, we apply the two step approach, noting that, first, the claimant has the burden to show that there are facts from which the Tribunal conclude that the claimant has switched the burden of proof to the respondents. We must determine whether the claimant has proven facts from which we can conclude the respondents' failure to pay the Settlement Monies was because the claimant brought the First Claim.
58. We conclude the claimant has switched the burden of proof to the respondents for the following reasons:
- 58.1. We have found that the respondents did enter into the Settlement Agreement but breached that agreement by not paying the Settlement Monies. We consider this is sufficient to switch the burden.
- 58.2. We have found that respondent did not contact the claimant to explain why they had not paid the Settlement Monies and the first explanation they provided was in response to this claim.
- 58.3. We have found the respondents transferred £17,000 to Mr Spikeley's personal bank account on the day the Company entered into the Settlement Agreement.
59. For these reasons we conclude that the claimant has switched the burden of proof to the respondents.
60. Therefore, we must ask ourselves what, consciously or subconsciously, was the reason for the respondents failing to pay the Settlement Monies. Was it because of the fact the claimant brought the First Claim or was it wholly for other reason(s), that reason the respondents say being financial difficulties that the Company experienced during the Relevant Period, the period respondents were legally contract to pay the Settlement Monies (21 November 2023 to 19 December 2023). We must be satisfied that the First Claim played no part in the decision not to pay the Settlement Monies.
61. In assessing the mental processes of Ms Lockley and Mr Spikesley, as the individuals who, as directors of the Company, were responsible for effecting the decision not to pay, we must identify "*the real reason, the core reason, the causa causans, the motive*". Simply, what is the real reason the respondents did not comply with the terms of the Settlement Agreement. If we conclude that the bringing of the First Claim was a factor in this decision (even if it was not the only reason) the claim must succeed.
62. We have found that the company was not in financial difficulty during the Relevant Period. The bank statements do not evidence financial difficulty. We have found finding that the Mr Spikesley took a personal loan from the Company on the day the Settlement Agreement was entered into. The fact of the loan and the timing we consider are both relevant. If the Company had been in financial difficulty and the respondents' concerns about its financial health genuine, Mr Spikesley would not have taken this loan. We do not consider the fact he did so, removing money from the Company on the day the Company committed to pay the claimant £30,000 a coincidence. Not is the fact that he

returned the money to the Company on the final day for payment of the Settlement Monies. We conclude that Mr Spikesley borrowed the money from the Company at this time so that the Company had £17,000 less in its bank account that it should have done during the Relevant Period. Given the confused explanations for this loan, and the timings of the removal and repayment of the money from/to the Company, we find that the reason for this loan was to put the money beyond the reach of the Company to ensure the Company could not comply with the contractual obligation to pay the Settlement Monies.

63. Given the Mr Spikesley's admission, when asked why the Settlement Monies were not paid, that he felt *"It hurts that someone has gone to that length to pull one over on you"* we conclude that the First Claim was in the mind of the Mr Spikesley when the decision to move the £17,000 and the decision not to pay the Settlement Monies was made. The alleged financial difficulties were a sham, in part created by the withdrawal of the £17,000.
64. Therefore, we conclude that the First Claim was a reason the payment was not paid. Indeed, given our findings that the first respondent was not in financial difficulty and there is no evidence that the first respondent received the (somewhat muddled) insolvency advice, we conclude that the First Claim was the only factor influencing the decision not to pay the Settlement Monies.
65. For these reasons it is the unanimous judgment of this Employment Tribunal that the complaint of victimisation is well-founded and is succeeds.

APPROVED BY:

Employment Judge Hutchings

DATE 7 February 2025

JUDGMENT & REASONS SENT TO THE PARTIES ON

3/3/3035

N Gotecha
FOR THE TRIBUNAL OFFICE

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