EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr Mikhail Winter	**v**	Lancaster Gate Assistance Limited

Heard at: CVP **On:** 3-6 February 2025

Before: Employment Judge R Wood; Mr R Allan; Ms S Williams

Appearances
For the Claimant: In Person
For the Respondent: Mrs L Mankau (Counsel)

JUDGMENT

The Claimant was not subjected to detriment as a result of making protected disclosures.

DECISION

Claims and Issues

1. Page numbering referred to in square brackets in these reasons are to pages in the bundle, unless otherwise stated.

2. This is a claim which involves allegations that the claimant, Mr Winter, suffered detriment as a result of making protected disclosures to his employer between 20 April 2023 and 20 October 2023. The Respondent provides claims management services in the Motor Insurance Industry, with a particular focus on two-wheeled vehicles. The Claimant commenced employment with the Respondent as a Recoveries Handler on 14 March 2023. He subsequently resigned on 20 October 2023 as he had found alternative employment.

3. During the course of his employment, the claimant alleges that he made numerous protected disclosures to the respondent which are set out at paragraph 1 of the list of issues (see below). In general terms, these disclosures are alleged to have bee related to certain allegedly unlawful

processes that had been adopted by the respondent, in particular concerning the use of false signatures on credit hire agreements; and the misdating of cheques. The respondent denies that such disclosures were made. Further, it denies that anything done by the respondent was the result of protected disclosures made by the claimant.

Procedure, Documents and Evidence Heard

4. The Hearing took place on 3-6 February 2025. The hearing was conducted by video. The Tribunal first of all heard testimony from the claimant, Mr Winter. We also heard from the respondent's witnesses: the Group Claims Director, Matthew Price; it's HR Manager, Natalie Marsh; Garry King, it's Operations and Development Director; and Mr B Cott, the respondent's On-Hire Recoveries Manager (who was also the Claimant's line manager). We also had a statement from Mr J Miller, the respondent's Chief Executive Officer, although he did not give live evidence. His name had been an the email at [306]. However, it was accepted that he had not drafted the email, which had been drafted by Mr Price.

5. Each of the aforesaid witnesses who provided oral testimony adopted their witness statements and confirmed that the contents were true. All of the witnesses answered questions in cross-examination. We also had an agreed bundle of documents which comprises 426 pages, and heard helpful submissions from the claimant (who also provided written submissions) and Mrs Mankau.

6. At the outset of the hearing, the claimant made two applications. First was an application to strike out the response pursuant to rule 38(1)(c) of the Employment Tribunal Procedure Rules 2024. The application was made on the grounds that the respondent had failed to comply with directions relating to disclosure. The claimant's primary concern related to what the claimant regarded as the late disclosure of the document in the bundle at [306]. It was common ground that this document had not been been provided by the respondent until 20 January 2025. The Tribunal acknowledge that this was late and outside of relevant directions.

7. The claimant's second application, made in circumstances where the first application should fail, was to include a paragraph 4(e) to the list of issues which in effect placed reliance on the document at [306]. The amendment was to add the following: "*The Respondent made knowingly false comments in an email to the FCA (at page 306 of the Bundle) on 16 May 2024 intending to cause harm to the Claimant's reputation*.". The respondent agreed that it was appropriate to amend the list of issues as suggested.

8. The Tribunal carried out an assessment of the relative prejudice caused to the parties by the issues raised. The striking out of a claim or a response is a draconian measure, perhaps even more so on the day of the final hearing when so much time and resources have been expended by way of preparation. To strike out the response would have been to deny the respondent the opportunity to put its case at all. The respondent appeared

to have been in breach of it's obligation to provide the email [306]. However, there did appear to have been some mitigation in the sense that there had been problems identifying it as a relevant document. The initial search had been for correspondence involving Mr Price, not Mr Miller, whose name appears at the bottom of the email.

9. The main prejudice to the claimant was that he had been unable to incorporate this letter into his case. In the Tribunal's view, the proposed amendment to the list off issues almost wholly neutralised this disadvantage. Neither party desired an adjournment of the final hearing which all agreed would have led to an inordinate delay in the proceedings. The Tribunal therefore dismissed the application to strike out the claim, but ordered that the list of issues be amended as requested by the claimant.

10. In coming to our decision, the panel had regard to all of the written and oral evidence submitted, even if a particular aspect of it is not mentioned expressly within the decision itself.

Legal Framework

11. The relevant legislation in respect of the allegations of detriment arising out the making of protected disclosures is to be found within the Employment Rights Act 1996 ("the Act"). Section 47B(1) requires that '*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*'.

12. As to what amounts to a protected disclosure, section 43B states:

> **'43B**
> **Disclosures qualifying for protection.**
>
> (1) In this Part a " qualifying disclosure " means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—
>
> (a) that a criminal offence has been committed, is being committed or is likely to be committed,
>
> (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
>
> (c) that a miscarriage of justice has occurred, is occurring or is likely to occur,
>
> (d) that the health or safety of any individual has been, is being or is likely to be endangered,

(e) that the environment has been, is being or is likely to be damaged, or

(f)that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.'

13. In *Kilraine v Wansworth London Borough Council [2018] EWCA Civ 1436*, it was stated that the concept of information in section 43B(1) of the Act was capable of covering statements which might also be characterised as allegations, although not every statement involving an allegation would constitute information and amount to a qualifying disclosure. In order for a statement to be a qualifying disclosure, it had to have a sufficient factual content and specificity capable of tending to show one of the matters listed in paragraphs (a)—(f) of 43B(1). The ordinary meaning of giving "information" was to convey facts, and, further, a disclosure had to be more than a communication. Whether any particular statement met that standard would be a matter for evaluative judgment by a tribunal in the light of all the facts and the particular context in which it was made.

14. In this type of claim it is further required that the claimant satisfy the subjective requirement of section 43B(1) that he believed at the time of the disclosure that the information in it tended to show that someone had failed, was failing or was likely to fail to comply with a legal obligation, and that such matters were in the public interest.

Findings

15. Based on the evidence that we heard and read, the Employment Tribunal made the following primary findings of fact relevant to the issues that we had to determine.

16. The claimant set out in his witness statement that he had had a problematic history from a medical perspective. The Tribunal noted and had regard to the fact that the claimant had medical conditions which might potentially impact upon his ability to particulate in the hearing. We took this into account when conducting the proceedings.

17. The Respondent provides claims management services in the Motor Insurance Industry, and currently employs 71 people. It is part of a group of companies that employs around 257 people.

18. On 13 March 2023, the claimant was employed by the respondent as a claims recovery handler focussing on the recovery of debts from insurers for the provision of credit hire and credit storage charges. He was employed on a probationary basis. We found that the claimant was a highly motivated and productive member of staff. Further, that he was well regarded by his colleagues. We also found that the claimant was ambitious and competitive in relation to other employees, and that he wanted to progress with the respondent.

19. It is helpful and illuminating to look first at what happened at the conclusion of the claimant's time with the respondent. On 20 October 2023, the claimant resigned his employment with the respondent. He stated that he would be leaving on 17 November 2023 [244]. It is important that this was because he had found alternative employment. Indeed, he had indicated to the respondent his intention to leave within the next nine months on or about 21 August 2023 [204]. Mr Price noted that it was unusual for a junior member of staff to to give such a lengthy notice period. We accept his evidence on this point. At the time when the claimant gave notice of his intention to leave, there was no outward or express indication that there were any significant problems between the parties.

20. On 27 October 2023, the respondent received a reference request in respect of the claimant, sent to the respondent on behalf of Hastings Direct, the claimant's prospective new employer [260].

21. In part as a response to the realisation that the claimant would potentially be moving to one it's competitors, on 29 October 2023, the Respondent's IT team carried out a search of the claimant's work email account. It was discovered that the claimant had sent confidential information relating to the Respondent's business to his personal email address [225-236]. The Respondent's Group Claims Director, Matthew Price, its HR Manager, Natalie Marsh, and Garry King, its Operations and Development Director, arranged a meeting with the Claimant on 30 October to discuss their concerns regarding his potential breach of the Respondent's rules regarding confidential data [316], and it's disciplinary procedure [321]. Mr Price drafted a letter to the claimed which is at [269], which placed the claimant on garden leave with immediate effect.

22. The Tribunal is satisfied, having looked at the relevant emails and the confidential data attached to them, that this was, at the very least, a potential breach of the respondent's policy concerning confidential data which could amount to serious misconduct. In evidence, the claimant suggested that this policy was "not in force" at the time. He did not explain his reasons for this view, and the Tribunal could see no rationale for it.

23. We found that the claimant intended to disclose this material, or at least some of it, to a third party. We found that it was the claimant's intention to disclose the data to Hastings Direct. The timing of the email strongly supported this finding, coming as it did immediately following the claimant's resignation. Some of the documents related specifically to Hastings Direct i.e. a confidential list of claims in which the respondent was involved with that company [225]. We also found the claimant's explanation for sending this email to be unsatisfactory and confusing. He was unable to provide what the Tribunal regarded as a viable alternative explanation for his actions. He repeatedly told us that he was permitted to use his private email account for work purposes. There was very limited evidence of this. There were a small number of emails relating to practical arrangements. However, there appeared to be no precedent for the claimant sending confidential work

documents to his private email account. The respondent's witnesses were adamant that this was not permitted, and we accepted their evidence on this issue, not least because it accorded with our understanding of how such matters tended to be dealt with in the workplace. As we have stated, what the claimant had done appeared to breach the respondent's policy on such matters.

24. Further, the Tribunal found that any employer would inevitably have been very concerned about the discovery that a member of staff had been engaged in such activity, especially as the claimant intended to work for one of the respondent's competitors. The Tribunal was satisfied that at least some of the material acquired by the claimant were likely to be commercial sensitive, and potentially of value to Hastings Direct. There is no suggestion at all that Hastings Direct were ever aware of the claimant's actions. However, the potential for a competitor to obtain advantage no doubt existed.

25. There was a meeting between various representatives of the respondent, and the claimant, on 30 October 2023. It was held at the respondent's offices. Mr Price told us that the key points addressed at this meeting were set out in a letter to the claimant dated the same day [260]. There were no other notes of the meeting retained. The Tribunal takes the view that this was less than ideal practice. However, this was not an unfair dismissal claim where we were required to assess the reasonableness or fairness of the procedure undertaken. We do not find that there was anything sinister about the failure to retain a contemporaneous note of this meeting. Miss Marsh told us that she had made a note but had destroyed it when she read Mr Price's letter because her note did not add anything to it. We accepted her evidence on this point. She struck us as being an honest and straightforward witness.

26. As to the content of the meeting on 30 October 2023, in broad terms we accept the respondent's evidence. We found that during the meeting with the claimant, he confirmed that he had sent confidential information to his personal email address. It was common ground between the parties that the claimant offered little by way of explanation for his actions. His case to us was that he had not specifically been asked to provide an explanation by Mr Price, and that there was something sinister about this i.e. that Mr Price and others present were already aware of protected disclosures, and that his motivation for acquiring the confidential data was related to his disclosures. We did not accept this submission. We found that the claimant was given the opportunity to provide an explanation. Indeed the circumstances cried out for an explanation. It is noteworthy in the context of the case as a whole that he did not mention protected disclosures or illegal activity as the reason for the sending of emails to himself.

27. It was clear throughout the hearing before us that the claimant tended to minimise the seriousness of his sending of confidential documents to his personal email address. The claimant repeatedly express surprise that the respondent had treated this as a serious matter. Again, it was the claimant's

case that there was something suspicious and contrived about this reaction. The Tribunal was puzzled by this aspect of the claimant case. Setting aside what might have happened before for a moment, any employer in the respondent's situation would have been bound to take robust action to protect it's sensitive commercial information. In sending emails to himself with this type of documentation attached, he must have appreciated that he was placing himself in a precarious position if discovered. It is the Tribunal's collective experience that this type of scenario would often result in the disciplining of an employee, and likely lead to his/her dismissal. The fact that the claimant appeared not to be able to appreciate this, seemed to the Tribunal to be either grossly naive, or disingenuous.

28. The Tribunal accepted that Mr Price gave the claimant the letter at [269] and offered to place the claimant on garden leave on full pay until his notice period expired on 17 November 2023 but only if he agreed to delete the email that he had send to his personal email account. We accepted that the focus of Mr Price was on the emails, and ensuring that they were not misused by the claimant. Further, that it was the logic of agreeing to place him on garden leave on full pay that this arrangement might be sufficiently attractive to persuade the claimant to cooperate.

29. The claimant was left alone for a short time during the meeting, with the letter, as well as the document at [270], which he was being invited to sign to confirm that he had deleted the email and attachments, and that he understood that the company reserved the right to take legal action against him if the data was used to the detriment of the respondent. When Mr Price and Mr King retuned to the room, the claimant signed the document and deleted the relevant material.

30. The Tribunal accepts that the Respondent decided to place the Claimant on garden leave for the remainder of his notice period rather than commencing formal disciplinary action because it recognised that it would not be able to complete this process before the Claimant's employment ended, and that their focus was on the recovery or deletion of the documents. The claimant was then escorted off the premises. The Claimant remained on garden leave from 30 October 2023 until 17 November 2023 when his employment terminated.

31. It is suggested by the claimant that Mr Price informed other employees that the claimant had been "fired". This information comes from a text/WhatsApp message from an anonymous sender to the claimant. The author of that message did not provided a witness statement, and had not made himself/herself available to be challenged in cross-examination. The claimant invited us to accept the message at face value. The claimant has no direct knowledge himself of these matters. We preferred the respondent's evidence on this point. Mr Price and other witnesses were consistent throughout on this issue. It seemed to us to be more likely that there was some confusion or misunderstanding amongst staff. We found that other employees were told that the claimant would not be returning to work, and that they were not provided with any further details regarding the

circumstances of the claimant's departure. The claimant had left earlier than previously communicated, and it is not difficult to see how some might have tried to fill in the gaps for themselves, albeit erroneously.

32. On 1 November 2023, Natalie Marsh responded to a reference request received from the claimant's prospective employer in which she provided details of the claimant's dates of employment and job title [273]. We find that the respondent did not have any other contact with the claimant's prospective employer. We accept that Mr Price did threaten to contact Hastings Direct if he did not sign the document and delete the emails and attachments on 30 October. We agreed with the claimant that this would have created a rather oppressive atmosphere from his perspective. The claimant was put under an enormous amount of pressure to sign that document, albeit in circumstances which Mr Price no doubt felt was justified. However, we are satisfied that no-one did actually contact Hastings Direct in the light of the claimant's acquiescence. We believed Mr Price about this, who we found to be a convincing and credible witness.

33. On 16 November 2023, the respondent received a letter from the claimant alleging that he had been victimised as a result of making protected disclosures. The letter appears at [276] and was attached to an email at [275]. In it he stated that "*Following an issue with the Credit Hire Agreements the company sought to obtain replacement documentation. When this could not be done, was inconvenient or too time consuming, fraudulent methods were used. This involved using the snipping tool to take a signature from an existing document and transfer it to the new usable document, printing out information required on a blank piece of paper before cutting and sticking the information onto a new document and scanning it several times to make it appear usable, copying client's signatures by hand and backdating documents and adding additional charges that were otherwise undisclosed to clients. The company found that on several files a Credit Storage Agreement was not in place at the start of the claim. The same methods described above were used to obtain useable Credit Storage Agreements and became so commonplace that they were no longer limited to the initial documents.*".

34. Mr Price sent a response to this letter on 17 November 2023 [283]. He held a fact finding meeting with Mr King and Mr Cott on the same day. It was Mr Price's evidence that he was told at this meeting that the company had engaged in the use of false signatures in credit hire agreements, primarily using a 'snipping tool'. Further, that it had been the practice within the respondent to share the answers to compulsory training courses for staff. Mr Price told us that it was the first time he had been aware of these matters, and that as a consequence, he appointed an external investigator to look into the issue of credit hire agreements. We accepted this part of Mr Price's testimony.

35. As a result of the outcome of this investigation, the respondent commenced disciplinary proceedings against Mr Cott [289] in relation to his use of false

signatures on credit hire agreements. He was issued with a final written warning [294].

36. At this stage, it is helpful to return to the commencement of the claimant's employment with the respondent, in order to shed some light on the circumstances in which the protected disclosures are said to have taken place.

37. On about 17 April 2023, so a few weeks after the claimant had commenced his employment, the respondent encountered problems with its computer software. It is sufficient for us to have found that there was a problem with the system which, in part at least, generated credit hire agreements. The fault meant that a relatively small number were being generated without daily hire rates, without which the agreement was not enforceable. Some of the problems created by this error were resolved by contacting the client and inviting them to resign of copy of the agreement which had the hire rates included. It was common ground that the claimant played an important role in the monitoring of this process.

38. In a small number of agreements, it did not prove possible to rectify the issue in this way. Therefore, Mr Cott began to experiment with ways of replacing the signature without recourse to the customer. This involved one of three methods. First, using 'snipping tool' software to electronically remove a signature from another signed document. Second, physically cutting out and pasting a signature from another document. Third, by forging a handwritten version of the customer's signature. It was Mr Cott's evidence to us that he had consider and practised all three approaches. In the end, he had only adopted the first.

39. We found that the claimant was aware of the practice of using the 'snipping tool' by Mr Cott at the time. Indeed, the claimant accepted that he identified to Mr Cott those credit hire agreements which remained outstanding after lawful attempts at obtaining a fresh signature had failed. the claimant also agreed that he was aware at the time that Mr Cott was putting false signatures onto these documents.

40. We accepted that Mr King had been told about these activities but not until late June/early July 2023. We also accepted that Mr King had not mentioned these matters to Mr Price until 17 November 2023, prompted as he was by the claimant's letter. The Tribunal was at first quite sceptical about this part of the respondent's case. Our first impression was that it was unlikely that Mr King would not have escalated this matter; or that he did not apparently consider it a disciplinary issue. We did not find Mr King's or Mr Cott's evidence on these issues to be impressive at all. However, having listened very carefully to Mr Price, who in all regards appeared to be a honest and reliable witness, we accepted that Mr Price had been kept out of the loop until November. This is of course a significant finding in terms of causation, to which we will return below.

41. The respondent is part of a group of companies that shares a training platform called "Development Zone". We found that, pursuant to the claimant's allegation, that many of the respondent's were in the habit of forwarding the revision notes to one another. In other words, they were cheering the system. An example of this is to be found at [211-216]. This included the claimant who, we found had provided notes to a number of other employees. Again, we were satisfied that Mr Price was unaware of this practice until November 2023.

42. In terms of the processing of cheques, the Tribunal found that the respondent would date stamp a cheque with the date it had been received unless it arrived after 3pm, in which case it was stamped with the following day's date. It was suggested that this was common practice in the industry. It was difficult for us to make a finding about this in the absence of impartial evidence one way or the other. We had our doubts that it could be. We were at a loss to understand why it could not be stamped with a date and and a time so as to inform those who needed that information for accounting purposes. However, as we have stated, it was difficult to get to the bottom of this issue.

43. On 27 July 2023, the claimant requested a promotion to an operations role [198]. There was a meeting to discuss this on 15 August 2023 [201]. It was explained to the claimant that there were no appropriate vacancies at the time. However, it was agreed that the respondent would create a progression plan for him which would expose him to other areas of the business. There was a further meeting on the following day to discuss the things that the claimant would like to learn [203]. We accept that the claimant's attitude changed at this meeting, and that he felt that the respondent had not treated his request seriously. The Tribunal noted that the claimant's first indication that he was leaving the respondent came a few days after this meeting.

Reasons and Decision

44. The claimant's case as to the protected disclosures is definitively set out in the list of issues. In terms of the alleged disclosures of information upon which the claimant relies, he states the follows at paragraph 1:

> "*Did the Claimant make a disclosure of information? The Claimant contends that he made the following disclosures:*
>
> *a. At various points from 20th April 2023 to 20th October 2023 the Claimant had informal discussions with his line manager Bobby Cott in the office, in which the Claimant raised the following issues:*
>
> *i. That cheques were being late date stamped,*
> *ii. That some employees were using the "snipping tool" to take a signature from an*

unusable document and moving it onto a useable document,

iii. That information from unusable documents were being put onto useable documents by way of cutting it out and sticking it onto the unusable document, and scanning it multiple times to make it look as though it was originally there,

iv. That signatures were being directly hand-forged.

v. That it was unfair on new employees to be brought in to the company and not be made aware of what was going on."

45. A stated, the relevant law in relation to protected disclosures is set out at s.43B of the Employments Rights Act 1996. We have also been referred to the cases of *Cavendish Munro Professional Risks Management Ltd v Geduld* *UKEAT/195/09* and *Kilraine v Wandsworth London Borough Council [2018] EWCA Civ 1436.*

46. The first thing to say is that the allegations are absent of important detail. All of the matters set out above at paragraphs (i)-(v) are entirely lacking in dates, times, and location. If one examines the claimant's witness statement, there is very little further detail provided. On occasions during his testimony, the claimant was given opportunity to provide further particulars as to when these disclosures were made, but conceded, on more than one occasion, that he could not do so. On another occasion, in response to a question from Mr Allan, he said (referring to the credit hire agreement issue) "I made clear I did not agree with that happened, and I was not comfortable and that it should stop". He was able to provide no other information as to the alleged disclosures.

47. We also found that the claimant's allegations sometimes lacked basic consistency. We noted that the list of issues states that the claimant made disclosures until 20 October 2023, but in his witness statement at paragraph 22, he asserts it was until 21 August 2023. Further that paragraph 2(b) of the list of issue suggests that the claimant had a reasonable belief that the alleged disclosures tended to show that the Respondent had failed to comply with a legal obligation to provide appropriate training for its employees. Yet if one examines the content of the alleged disclosures at paragraph 1, none appear to mention the issue of training.

48. We also had regard to the fact that the letter of 16 November 2023, made at the time of these matters, is similarly devoid of detail. We think that the claimant ought to have been able to describe the alleged disclosure with greater particularity, and we draw adverse inferences from his failure to do so, namely that they did not occur.

49. In short, the evidence that there were disclosures information at all was too vague, and lacked consistency. In this type of claim, it is imperative that a

claimant does better than simply making very general assertions that disclosures have been made.

50. We are satisfied that the claimant may well had had a sense of discomfort about some of the things that were happening with the company. In particular, we accept his evidence that he was concerned to some extent about the 'doctoring' of credit hire agreements. The parties agreed that signatures were fabricated, and that this amounted to serious misconduct on the part of Mr Cott (at least). Mr Cott himself agreed with this assessment. He was disciplined for it by his employer in December 2023. But being concerned about an issue is not the same as making a protected disclosure about it.

51. The Tribunal was surprised to find that Mr Cott had not been dismissed. In our judgement, there appeared to be a remarkably relaxed attitude taken to the forging of signatures. We find it surprising that Mr King did next to nothing when he found out about Mr Cott's activities. His failure to discipline Mr Cott, or to escalate the matter up the management chain, appeared to us to be symptomatic of Mr King's tenancy to minimise the serious of such activity. We wonder whether this reflected a systematic a corporate attitude.

52. We were satisfied that there may have been a few very informal references to some of the issues set out in paragraph one of the list of issues. Both Mr Cott and the appellant were well aware of what was going on at the time. They were both involved. In the circumstances, it would be surprising if the two had not discussed matters between themselves. In particular, we have in mind the observation that the claimant made to Mr Cott as to whether new staff should be told about the fraud going on (see paragraph 19 of the Mr Cott's statement). However, this must be viewed in context. We accept that the claimant was in the habit of engaging in humorous exchanges/communications with his colleagues, including Mr Cott. We note the text exchange at [258-9] during which the claimant appeared to make humorous references to working for the Ombudsman.

53. It seemed to us that these sort of comments fell foul of the guidance set out in the case of *Cavenbdish* and *Kilraine*, in the sense that there must be a conveyance of facts to amount to a protected disclosure as defined, which must be more than a simple communication. Apart from anything else, it must convey facts which might bring it within the categories set out in section 43B(1) of the Act. In our judgment, these exchanges were likely to fall short of satisfying the definition of a disclosure, let alone one that was protected. They would have been nothing than general and informal discussions about work matters.

54. Furthermore, the Tribunal cannot understand why, if the claimant had chosen to make such disclosures, he would have opted to make them to Mr Cott. He was the person identified as being responsible for the illegal activity such as it was. We do not understand why he would have chosen to disclose information to the person who was fully aware of matters already. Further, when Mr Cott did nothing about it, we are at a loss to understand

why the claimant would not have escalated the matter to Mr King or someone else more senior in the organisation. On the claimant's own case, there can never have been much prospect of Mr Cott taking action on the disclosure, if that was the claimant's desired outcome.

55. We also question why the claimant never put anything in writing to senior management if, as he says, he genuinely wished to make a disclosure of information. Why leave it until he had left the company on 16 November 2023? It is also noteworthy that he had many opportunities in the final few months of his employment to speak to senior management, and to make disclosures. Not least of these was the meeting on 30 October when, as we have found, he made no mention of protected disclosures.

56. If the claimant did feel uncomfortable about illegal activity, he was not so uncomfortable that he was dissuaded from seeking promotion to an operations role within the company. Even when he was rejected (and on his evidence not taken seriously) the claimant still did not raise the issue of illegal activity within the company.

57. We also note that there were any number of opportunities for the respondent to have caused difficulties for the claimant if, as alleged, it was concerned about him making unwanted protected disclosures. The claimant's probation was reviewed in June 2023 when he was referred to in complimentary terms. We also heard testimony from the respondent's witnesses (which was not disputed) that the claimant was highly regarded and valued as an employee. When he sought promotion, perhaps rather prematurely, he was offered a career development plan. When he gave notice, the claimant agreed in evidence that the respondent went to some lengths to persuade him to stay. Why so, if he was, at the time, making protected disclosures which the respondent, or its management, resented?

58. In summary, and looking at the evidence as a whole, we did not accept the evidence of the claimant in relation to those matters alleged at paragraph one of the list of issues. We did not accept that he was making disclosures of information to Mr Cott during his employment. We found that the claimant's evidence was too vague and inconsistent, and was impossible to reconcile with the other evidence in the case. It was our judgement that the claimant was not a sufficiently credible witness in this regard, and that the protected disclosures alleged to have been made in paragraph one of the list of issues were simply not made. It was our view that the claimant has constructed a version of the facts, post termination of his contract of employment, which was not at all accurate or honest.

59. As we have stressed, we had grave concerns about what was happening at the Respondent during the relevant time. We were not at all impressed with certain facets of the testimony we heard from both Mr Cott and Mr King. In particular, we note that Mr Cott admitted to us that he had experimented with hand forging signatures on agreements but had failed to mention this during his disciplinary process.

60. However, we were satisfied that what happened on 30 October 2023 involving the claimant had nothing to do with illegal activity on the part of the respondent. It is convenient for the claimant to see it in those terms. However, we were certain that his evidence in this regard was not reliable. We were satisfied that those events were the result of the discovery of the email he had sent to himself. As we have found, any employer would been obliged to treat this discovery as a grave and urgent matter. It is not unusual for an employer, once it learns that a member of staff is going to a competitor, for it to take steps to protect itself and it's commercially sensitive information. This could include monitoring email accounts. The evidence demonstrated that the search was carried out because the claimant was going to Hastings Direct and not because he had made protected disclosures.

61. We found that Mr Price was unaware of the illegal activity as of 30 October. The claimant tried to find evidence which established that Mr Price had knowledge of these matters prior to 17 November 2023. However, the reality is that he was unsuccessful. The claimant attempted to prove through cross-examination that Mr Price had been told by either Mr Cott and/or Mr King that the claimant had made disclosures of information about false signature on credit hire agreements and/or that cheques were being wrongly date stamped and/or that there were abuses of the training system. In essence, the claimant attempted to show a broad conspiracy amongst the respondent's witnesses.

62. However, and with some caution, we accepted the evidence of Mr Cott, Mr King and Mr Price to the effect that Mr Price had not been informed of these issues until November. In part, we take this view because of Mr Price's reaction to the claimant's letter, which was to appoint an external manager to investigate the problems with the credit hire agreements. He also initiated a disciplinary process against Mr Cott. We were surprised that Mr Cott was not dismissed as result, but this does not detract from the general significance of this evidence in so far as it sheds light on Mr Price's state of knowledge about the relevant matters as of 30 October.

63. As already stated, this finding of fact is significant. The detriment alleged is set out at paragraph 4 of the list of issues:

"Was the Claimant subjected to the following treatment?

a. Being placed on gardening leave on 30 October 2023 following his resignation on 20 October 2023. The Respondent admits that the Claimant was placed on gardening leave on 30 October 2023;

b. On 30 October 2023, Mr Price told the C that he had told the C's future employer Hastings Direct that he had been accused of gross misconduct. Mr Price also stated that he had the right to tell any other potential future employer and/or any GTA

partners of the same. The Claimant's position is that he was only accused of gross misconduct because he had sent confidential information to his own private email address as part of this whistle-blowing issue, and that this was now being used to tarnish his reputation and stop him obtaining future employment;

c. Informing current employees of the Respondent that the Claimant had been dismissed rather than finishing his notice period;

d. On 30 October 2023, being coerced by Matthew Price into signing an agreement indemnifying the Respondent in respect of any financial losses and threatening the Claimant with legal action;

e. The Respondent made knowingly false comments in an email to the FCA (at page 306 of the Bundle) on 16 May 2024 intending to cause harm to the Claimant's reputation."

64. The alleged detriment at paragraphs 4(a) to (d) are said to have occurred on or about 30 October 2023, and arose out of decisions/actions by Mr Price. If at the time Mr Price was unaware of the said issues, whether as a result of being told about disclosures by the claimant or otherwise, then the said acts of detriment cannot have been motivated by the making of protected disclosures. Of course, the detriment alleged at paragraph 4(e) is alleged to take place at the date when the letter at [306] is sent, which is 16 May 2024. It is acknowledged that Mr Price was aware of the relevant matters by this date.

65. Briefly, and for the sake of completeness, we would also add that we found no detriment in this case. Some of the matters alleged were capable of amounting to detriment. However, we could see no disadvantage accruing to the claimant. Paragraph 4(a) suggested that garden leave was a detriment in this circumstances of this case. We did not agree. The claimant had already given notice of his resignation, and was due to work until the expiry of his notice. As a result of the actions of Mr Price on 30 October, the claimant was not disciplined or dismissed when he might easily have been. Instead, he was allowed to come to the end of his employment with the respondent on full pay without actually working, and was provided with a reference. The claimant failed to show any disadvantage here, and appeared to have misunderstood what 'garden leave' was in this context.

66. Paragraph 4(b) alleged that Mr Price had threatened to contact Hastings Direct to inform them that the claimant had, amongst other things, been accused of gross misconduct. We were satisfied that no contact was made between the respondent and Hastings Direct, other than for the purpose of the provision of a reference. There was no evidence that Mr Price had

provided any prejudicial information about the claimant to Hastings Direct. We find that Mr Price warned that he might do so if the claimant did not cooperate with the request to delete the emails and attachments. We found that there was no detriment arising out of this discussion, and that there was no need for him to contact Hastings Direct given that the claimant had singed the document and deleted the email.

67. Further, we found that was no disadvantage to the claimant arsing out of the signing the agreement at [270]. In so doing, we are satisfied that the claimant averted legal action and disciplinary proceedings against himself. We accepted that the meeting on 30 October, and the discussion around the agreement which he eventually signed, must have been deeply uncomfortable for the claimant. However, in large part it was a predicament of his own making. He had clearly misjudged the seriousness with which his actions would be viewed by the respondent. But this does not constitute detriment in the circumstances of this case.

68. Turning then to paragraph 4(e) and the email at [306], we find that it was at least capable of amounting to detriment in the sense that it might do damage to the claimant's reputation as a potential employee within the sector. However, there is no evidence that the FCA took any steps as a result of the email. It was the Tribunal's view that there was a surprising amount of inertia on the FCA's part, given the relative seriousness of some of the issues surrounding the forging of credit hire agreements. However, and in any event, the email was worded in such a way that there is no indication that the FCA would have been able to identify the claimant. In the circumstances, the claimant did not satisfy us that he had suffered any actual detriment as a result of the email. The evidence we heard was that neither the respondent or claimant had heard anything as a result of the email being sent. The claimant remained employed at Hastings Direct, so there is no evidence that the email polluted his relationship with that organisation, or that it damaged his broader employment prospects.

69. In summary, the claimant brings the case, and he must prove on a balance of probabilities that protected disclosures as defined by the Employment Rights Act 1996 have been made. We found that the claimant had failed to prove his claim in the evidence.

Employment Judge R Wood

Date: 12 March 2025…………….

Sent to the parties on: 16 March 2025

For the Tribunal Office