EMPLOYMENT TRIBUNALS

Claimant: Mr G Airey

Respondent: Ronald Fletcher Baker LLP

Heard at: London Central **On:** 27,28,29,30 and 31 January and 3 February 2025

Before: Employment Judge Forde
Ms L Jones
Mr S Williams

REPRESENTATION:

Claimant: In person
Respondent: Mr T Kibling (Barrister)

JUDGMENT

The judgment of the Tribunal is as follows:

1. The complaint of constructive unfair dismissal is not well-founded and is dismissed.

2. The complaint of detriment due to health and safety pursuant to s.44(1)(d) Employment Rights Act 1996 is not well founded and is dismissed.

Reasons

Background

3. This claim and hearing represents the culmination of protracted and heavily contested litigation between the parties that has encompassed multiple claims, deposit orders, and includes some withdrawn claims among other things. As a result of a series of preliminary hearings and the matters that went before, the claim before the tribunal at the full merits hearing was firstly, a constructive dismissal claim founded on 12 factual assertions said to constitute both singularly and cumulatively a fundamental breach of contract sufficient to entitle the claimant to resign and claim that he had been constructively dismissed.

4. Secondly, the claimant pursues a health and safety claim where he says that he was subjected to a detriment following a negative COVID-19 test undertaken by the claimant when he received NHS test and trace alert, which did not require him to attend work. It is common ground between the parties that in order to succeed with this claim, the claimant is required to establish that in circumstances of danger which the claimant reasonably believed to be serious and imminent and which he could not be expected to avert, he refused to attend his place of work, having been requested to do so. It is common ground between the parties and not in dispute that the respondent did not request or require that the claimant attend work. It is the respondent's case that the facts that relate to the elements of the claimant's claims are far removed from those situations envisaged by the statutory protection contained within the Employment Rights Act and specifically section 44(1)(d) which is the section that the claimant relies upon.

The parties

5. The claimant is a solicitor specialising in employment law. He worked for the respondent between 22 July 2019 and his resignation effective 28 February 2023. He was a salaried partner and the respondent's head of employment although it is a matter of dispute between the parties whether or not the claimant was demoted from his position as head of employment. Therefore, one of the issues of fact findings that the tribunal will have to reach is whether or not the claimant was demoted or not. The claimant entered ACAS early conciliation between 11 January and 10 February 2023 and lodged his claim on 28 February 2023.

6. The respondent is a law firm specialising in providing legal services. The respondent is authorised and regulated by the Solicitors Regulation Authority ("SRA") and provides specialist advice from its offices situated in London, Manchester and Exeter. One of its specialisms offered by the respondent is employment law. Property law forms a significant part of the respondent's work.

7. This judgment will refer to the respondent's equity owners as "Equity Partners". It is the tribunal's understanding that this is the core leadership and management group within the respondent and some of its constituents gave evidence to the tribunal during the hearing.

Documents and statements

8. The parties had produced a bundle exceeding 4000 pages. And a witness statements bundle extending to 228 pages. On the first day of the hearing, the judge commented that he considered the size of the bundle to be excessive. He pointed out that it was his experience that, in a case such as this, the focus of the parties tended to be on a small number of documents, and so it proved to be the case. Although the parties had produced reading lists, in the tribunal's estimation, this list drew the tribunal's attention to no more than 100 pages of the 4000 pages.

9. The claimant produced a very long witness statement extending to 82 pages. It contained a lot of material which was either irrelevant to the issues to be determined by the tribunal or refer to material that a preliminary hearing had already determined should not form part of the issues to be determined by the tribunal. It was notably discursive in content but lacking in essential detail in relation to a number of the factual allegations that the claimant makes.

10. On behalf of the respondent, witness statements had been prepared by Ms Rahim, former managing partner, Mr Michael Michaeloudis, salaried partner in the respondent's Employment department, John O'Callaghan, Senior partner of the respondent, Mr. Deniz Oguzkanli, equity partner of the respondent, Ms Rebecca Roberts, equity partner of the respondent, Mr Konstantinos Samouilidis, employee within the respondents IT department (otherwise known as "Sam"), and Ms Afsheen Nasr, Managing Partner.

Procedure

11. The judge discussed with the parties the timetabling of witnesses to attend and give evidence and whether the listed 5 day duration was sufficient. As a consequence of this discussion the tribunal directed that the hearing would deal with liability only and that written submissions could be prepared without the need for oral submissions to be given. The claimant relied on his written submissions which were comprehensive. Mr Kibling spoke briefly to his written submissions.

Witness evidence

12. All witnesses gave sworn evidence to the tribunal.

13. The claimant gave evidence first. His evidence lasted approximately 1 day in duration. The tribunal found the claimant to be an inconsistent witness. It was the tribunal's view that the inconsistency in the claimant's accounts around certain material facts which the tribunal has found in due course to be central to the findings that it has reached in the case.

14. It is the tribunal's finding that the claimant was not aided by what the tribunal describes as his decision to engage in reverse engineering. What the tribunal found was that the claimant had placed great reliance on establishing a motive of the respondent, primarily on the part of Ms Rahim for certain steps, ulterior to the their open and obvious stated purpose, and he did so by reliance on what Ms Rahim would have thought were confidential emails that she sent to her fellow partners in the main that were critical of the claimant. Broadly speaking, he attempted to characterise Ms Rahim as a bully who treated him badly. As will be seen within this judgment, it is the tribunal's finding that she was anything of the sort.

15. The claimant was able to discover by way of a subject access request (otherwise known as DSAR) a series of emails from Ms Rahim to the Equity Partners of the firm. A number of those emails are referred to extensively in

the claimant's witness statement. The DSAR outcome forms part of the explanation as to why the tribunal was presented with a bundle exceeding 4000 pages. In the end, the tribunal was referred to a relatively small number of pages within the bundle. It is a matter of regret that the parties agreed and produced an unwieldy bundle which contained a substantial majority of documents that were not remotely probative of the issues that fell to the tribunal in this case.

16. Of course, it is correct that the tribunal must consider as part of a claim of constructive unfair dismissal what was in the claimant's mind at the time the dismissal occurred. What the claimant sought to achieve is to place within the tribunal's mind a number of private emails sent by Ms Rahim to her Equity Partners that were critical of the claimant. The proposition put forward by the claimant to the Tribunal should consider these emails as part of its wider consideration as to whether or not Ms Rahim was a bully, and of him specifically.

17. This presented the Tribunal with a number of difficulties. Having considered the matter carefully, the tribunal formed the view that it was not appropriate to place the additional weight that the claimant sought to place on the emails and did so for a number of reasons.

18. First, the emails were, as we have already said, private emails and form part of an ongoing communication between Ms Rahim and her Equity Partners in relation to a department which the tribunal has found to have been underperforming and of concern to the wider partnership, but Ms Rahim in particular.

19. Second, and for reasons given within the body of this judgment, the tribunal has not found that the emails to the Equity Partners sent by Ms Rahim to have been anything more than appropriate communication among the senior owner managers of a Limited Liability Partnership. To characterise them otherwise would be folly in the eyes of this tribunal.

20. Thirdly, the tribunal accepted what Ms Rahim had to say in relation to the context and reasons behind the emails that were referred to during the course of the full merits hearing. By doing so, the tribunal expressly the rejected the reasons put forward by the claimant as to the appropriateness or otherwise of the content of the emails, and specifically that they disclosed a malevolent or malicious intent on the part of Ms Rahim. We accepted the evidence from Ms Rahim that she wanted the employment department and the claimant to be successful. The tribunal found the Ms Rahim was simply performing her important and wide-ranging duties as the firm's managing partner and that her style of communication (which the claimant has found offensive) by email was best described as either “a stream of consciousness” (Mr O’Callaghan) or akin to a “blog” (Ms Roberts).

21. The tribunal offers 2 examples where the claimant was inconsistent both in his evidence and in the way in which he proposed his claim. First, on day 2, and in the course of his evidence, the claimant accepted that the respondent was utilising an appropriate standard to measure profit within its departments

including the Employment Department that the claimant managed. He accepted that the measure of three times salary was an appropriate and acceptable revenue target. However, by day five of the hearing and while cross examining Mr Ogunzkali, he put forward the case that the three times measure was wrong. Specifically, he asserted that an alternative measure, namely a form of profit, calculated by subtracting revenue from base costs was the appropriate measure. For reasons set out later in this judgment, the tribunal prefers the evidence of Mr Ogunzkali as to what was the correct measure of profit and financial performance.

22. The second example is the claimant's reliance on the conduct of Ms Rahim as amounting to bullying. For example, the claimant makes reference to Ms Rahim shouting and sending certain emails. Whilst doing so, the claimant's presentation before the tribunal was of someone who was, by his own admission, robust and confident. The tribunal does not accept that the conduct that the claimant complains of amounts to an issue of sufficient seriousness so as to warrant the claimant’s trenchant, observational criticism of Ms Rahim. The tribunal found that the claimant's focus while employed by the respondent was largely on his own development, as opposed from the department that he ran.

23. Ms Rahim gave evidence after the claimant for approximately a day and 2 hours. While this represents a long time for a witness to get evidence, the tribunal found that it was difficult to analyse some of what she had to say due to her tendency to answer her own question rather than the question that she had been asked.

24. On several occasions, Ms Rahim had to be reminded as to what the question she had been asked in cross-examination because she had answered a different question. Sometimes it required the direction by the Judge to take steps to ensure that she remained focussed on the question. In the course of her evidence, she raised concerns as to whether or not the claimant's criticisms of her were related to her race or sex, both allegations which were unsupported by evidence and which appeared to the tribunal to amount to nothing more than musing on her part or, mere conjecture.

25. However, the tribunal found. Ms Rahim to be an honest and candid witness who was direct and possibly too candid for the claimant’s liking during the course of his employment at the respondent.

26. Mr O'Callaghan was found to be an honest, common, straightforward witness who was prepared to accept where, for example, he had over exaggerated criticism of the claimant in his witness statement.

27. Ms Roberts was found to be a witness who was well-informed about the issues that she addressed in her witness statement. Again, she was found to be honest, straightforward and credible.

28. Ms Nasr spoke mostly to the aborted grievance investigation, but perhaps was not as well informed or prepared as Ms Roberts, who had a good grip on

the evidence and procedure that the respondents employed during the. Claimants grievance.

29. Mr Samouilidis's evidence addressed a very narrow point within the claim. The tribunal accepted his evidence.

30. The Tribunal considered that the evidence of Mr Ozgukanli was the best of the witnesses that appeared before it. The tribunal found him to be coherent, clear, honest and straightforward in his evidence. Crucially, he was able to provide the tribunal with clear guidance as to the financial performance of the Employment Department and his evidence was largely unchallenged by the claimant during his cross examination. The Tribunal accepted his evidence that the claimant reviewed and accepted the contents of the revenue and costs of the department presented to him during the course of a meeting on the that took place on 14 October 2022. Further, the Tribunal accepted his evidence that the claimant was aware of the time it would take to establish the gateway to equity partnership and that he was aware that three times salary was the respondent's barometer for the measurement of profit. Crucially, the tribunal accepted his evidence that the employment department managed by the claimant was not performing well financially for the reasons that he explained in evidence before the tribunal.

Issues to be determined

31. Within this judgment "EC4U" means "Employment Claims 4U" and refers to a company that referred to the respondent. It is agreed that EC4U would send 30 cases a month the respondent for a fee of £5400 per month.

Unfair dismissal - s95(c) Employment Rights Act 1996

32. The parties agree that the Claimant resigned giving notice on 27 November 2022 and terminating the contract on 28 February 2023.

33. Did the respondent, without reasonable and proper cause, by its conduct fundamentally breach the implied term of mutual confidence and trust? The conduct relied on is, separately or cumulatively:

    (a) In or about August 2021 the withdrawing of the funding for EC4U;

    (b) Sometime between September 2021 and November 2021, the removal of Ms Janebdar from the Respondent's Employment Department without any prior consultation with the Claimant;

    (c) In January 2022 stating to the Claimant that he was described as unapproachable in his mid-year appraisal, the claimant avers that this did not fact amount to an appraisal but was an attack upon him;

    (d) In or about March 2022 allegedly requiring the Claimant to hire someone he did not deem to be suitable;

    (e) Sometime between August 2021 and February 2022, Ms Rahim's alleged constant bullying treatment of staff and discriminatory treatment of staff;

(f) On 27 September 2022 Ms Rahim alleged demoting the Claimant so that he was not the Head of Department and was jointly running the Employment Department with Mr Michaeloudis. This decision was allegedly made without any consultation with the Claimant;

(g) On 22 September 2022 Ms Rahim increasing the salary of Mr Michaeloudis to parity with the Claimant without any consultation with the Claimant and thus allegedly increasing the targets of the Employment Department without consultation or review of the finances. The Claimant avers it is impossible to work with a Managing Partner who makes decisions on the finances of the Employment Department without consulting the individual running the Department and makes decisions on finance without having reviewed the numbers;

(h) On 14 October 2022 - Mr Oguzkanli's conduct in the meeting in which he attempted to suggest the Employment Department was not performing;

(i) Between October 2022 and November 2022 Mr Michaeloudis' alleged insubordinate and undermining behaviour in failing to adhere to the Claimant's reasonable management instructions on a sex discrimination case and to attend the office. Mr Michaeloudis allocating matters to the Claimant when he did not have authority and in a manner where the Claimant would be under more pressure when he had already told him he was at capacity and was close to walking;

(j) In or about October or November 2022 Ms Rahim allegedly further bullying treatment of staff, namely the issue of sending an email to all staff about an individual's complaint and her shouting at Mr Samouilidis ;

(k) During the period of 14 October 2022 to 27 November 2022 - Mr O'Callaghan's failure to resolve the issues with the Claimant's demoted status and his salary being the same level as Mr Michaeloudis for a period of 6 weeks;

(l) On 26 November 2022 at 09:35 - Ms Rahim's email to Mr Michaeloudis in respect to his salary level in which the Claimant alleges he was deliberately omitted. The Claimant avers that this was an email in which she was congratulating herself for having given a salary without having reviewed the figures. The Claimant alleges that it was also an email that Mr Michaeloudis conceded there seemed to be a hidden agenda behind.

If so, did the claimant affirm the contract of employment before resigning? Was that conduct a reason for the claimant's resignation? If the claimant was dismissed: what was the principal reason for dismissal and was it a potentially fair one in accordance with sections 98(1) and (2) of the Employment Rights Act 1996 ("ERA");

If so, was the dismissal fair or unfair in accordance with ERA section 98(4), and, in particular, did the respondent in all respects act within the so-called 'band of reasonable responses'?

Detriment due to health and safety - S44 & s 48/49 Employment Rights Act 1996

On 4 August 2021 the Claimant awoke to a ping from the NHS application telling him to isolate for 7 days as he had come into contact with someone who was positive with Covid19. Was the Claimant in circumstances of danger which he: (a) reasonably believed to be serious and imminent? (b) and which he could not reasonably have been expected to avert?

If so, did he (while the danger persisted) refuse to return to his place of work? If yes, did the Respondent send email messages about the Claimant which: (a) Stated that the Claimant was finding an excuse to work from home (this is stated twice in the same email) – at 10:15 from Ms Rahim to Ms Frankson;

(b) Stated at 10:18 that some redacted text was agreed with and the Claimant just needed to get himself into the office from Ms Frankson to Ms Rahim;

(c) State at 10:21 that "you can see the difference in our workforce" to indicate that the Claimant is somehow not as good as the workforce who are able to attend as they were not pinged from Ms Rahim to the Respondent's equity partners?

34. Did these emails amount to detriments on the grounds of s 44(d) Employment Rights Act 1996?

Constructive Dismissal

35. The parties are agreed as to the applicable law in this case.

36. To succeed with his unfair dismissal claim, the claimant must prove that he was constructively dismissed, the burden being on him. The starting point is Section 95. ERA 1996 which states:

"Circumstances in which an employee is dismissed.

(1) For the purposes of this part, an employee is dismissed by his employer if....

(c) The employee terminates the contract under which he is employed with or without notice, in circumstances in which he is entitled to terminate it without notice or by reason of the employer's conduct."

37. The claimant relies on a breach of the implied term of trust and confidence. This implied obligation requires the parties, without reasonable and proper cause, to act in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee (see **Malik v BCCI, (HL) 1998 AC 20**). The respondent's conduct within this context can be considered to be repudiatory if viewed objectively and it evinces an intention to no longer be bound by the contract of employment. The question whether there has been a breach of the implied term of trust and confidence is a question of fact for the tribunal to determine.

38. The Court of Appeal in **Core v Leeds Teaching Hospitals NHS Trust (CA) 2018. IRLR 833** determined that there are 4 sequential questions a tribunal should determine in constructive dismissal claims. Namely:

    a. what is the most recent act or omission by the employer that the employee claims caused or triggered his or her resignation?

    b. Has he or she affirmed the contract since that act? if not, was that act or omission by itself a repudiatory breach of contract?

    c. And if not, was it nevertheless part of a course of conduct comprising several acts or omissions which, viewed cumulatively, amounted to repudiatory breach of the implied term of trust and confidence?

    d. Lastly, Did the employee resign in response to that breach?

39. In order to succeed in his claim for detriment arising out of health and safety breach. The claimant must demonstrate that he has established a clear set of facts that met the statutory test set out within s.44 ERA 1996. Specifically, the law provides protection against suffering a detriment in circumstances of danger which the worker concerned reasonably believed to be serious and imminent and which he or she could not reasonably have been expected to avert, he or she left or proposed to leave, or whilst the danger persisted from a refused to return to his place of work or any dangerous part of his place of work. In other words, the tribunal needs to be satisfied that the claimant had a reasonable belief of serious and imminent danger.

40. The claimant asserts that his case is on all fours with **Goldstein v Herve, 2024 EAT 18 35**. That case and another that reached the Court of Appeal make clear that in order for this claim to succeed, the claimant must have left, proposed to leave or refused to return to work when there were circumstances of danger which he reasonably believed to be serious and imminent and which he could not reasonably have been expected to avert, and, that he took steps to protect himself or others in circumstances of danger which he reasonably believed to be serious and imminent. The Tribunal reads this to mean that in the circumstances of this claim, the claimant has either not returned to work or left work because of a perceived danger rather than some other reason.

41. In terms of detriment, the claimant focuses on the sending of emails as identified in the issues above. The respondent cautions the Tribunal and says

that among its considerations, the issue of causation requires careful consideration. In terms of detriment, the claimant relies on emails not seen by him during the course of his employment. He relies on emails that came to light following his departure and occurring as a result of the DSAR that he made.

42. Findings of fact

43. On 22 July 2019, The Claimant commenced employment with the Respondent as a salaried employed partner and head of its employment department. The intention of the parties is this respect is reflected in the claimants job description which describes that his role was to develop and strengthen the respondent's employment department. It is not in dispute between the parties that the claimant understood that it was important for the Employment Department to be profitable within a reasonable period of time and that the measure of profitability was three times the salaries of its team members. The claimant was line managed by Ms Rahim, the firm's former managing partner.

44. The respondent adopted a number of the claimant's initiatives to expand the department. The claimant received support from Ms Rahim and from Mr Michaeloudis who was recruited from another law firm, and who had worked with the claimant previously. The respondent also agreed to utilise the services of a referral agency, Employment Claims 4U ("EC4U").

45. The claimant worked for the respondent for approximately 3 1/4 years. It was only in the last three months of the claimant's employment that the Employment Department started to demonstrate that it could achieve the level of financial performance which would satisfy the Equity Partners. By the end of the three and a quarter years, total profitability for the Department amounted to no more than £60,000 covering the entire period and was some way significantly short of the three-time salary target reasonably sought by the Equity Partners.

46. By April 2021, the department had three fee earners and their combined and renumeration package, including National Insurance, was £227,900. The team had been set a target of £350,000 for that financial year. And at the time, the claimant had requested that the respondent agreed to engage EC4U for a cost of £5400 per month. The revised target was subsequently communicated contemporaneously to the claimant.

47. In late 2022, when the claimant was inquiring about a pathway to equity partnership, it was the respondent's position as expressed by Ms Rahim that there was no business case for the claimant to be promoted to equity partner due to the Employment Department's lacklustre performance.

48. Further, the tribunal finds that the claimant's expectation that he be promoted to equity partner was unrealistic given the department's performance. It is also the tribunal's finding that given the Claimant's inharmonious and confrontational relationship with Ms Rahim, that it was highly unlikely that the claimant would be considered to be a suitable person to promote to Equity

partnership, in other words, someone who should be considered to be a joint owner of the business with Ms Rahim.

The 12 Factual Assertions

Around August 2021 – withdrawing the funding for EC4U

49. It is the respondent's position that it is the claimant's case that the tribunal is being asked to determine whether *the withdrawal* of the funding constituted a fundamental breach of the claimant's employment contract such that it was it likely or calculated to destroy the employment relationship. It is said that the claimant does not raise a failure to consult before removing the EC4U funding as constituting a breach on this issue and the tribunal finds this to be the case.

50. The background to this assertion is that on 22 October 2020 the claimant was approached by EC4U and was asked if he was interested in its services**.** The claimant followed up with EC4U and provided details of the potential earnings to Ms Rahim. He told Ms Rahim that from an investment of £5,400 the respondent could earn £54,000. Ms Rahim was sceptical of paying for referrals in general and therefore of the scheme being promoted to her by the claimant and communicated her scepticism to him but nonetheless agreed to the commitment. While this scepticism is relied upon by the claimant, the tribunal find that what Ms Rahim was communicating was a nothing more than her own views and experience and that by effectively commissioning the scheme at the claimant's behest she was supporting rather than undermining of him.

51. The contract was signed with EC4U in December 2020.

52. The first case from EC4U was received in January 2021. This corresponded with the email about poor fee income from July 2020 to January 2021 being just £59,789, and the claimant's salary being £90,000 and so nowhere near the 3 times salary target.

53. Mr Michaeloudis then joined the respondent in February 2021. At that time, he was the third member of the employment department, alongside the claimant and Ms Janebdar. By 18 June 2021, Ms Rahim was concerned about the £5,400 being paid to EC4U, and an email was sent to the claimant. Mr O'Callaghan shared the same view and expressed in evidence that he did not think the contract was value for money.

54. Ms Rahim raised her concerns to the claimant about what she saw as the commercial underperformance of EC4U, as seen in emails sent on 18 June 2021 and 30 June 2021. In an email sent on the 30 June 2021, Ms Rahim raised worries about the promised £300,000 income, and that the contract was a substantial and therefore unsustainable overhead. In evidence, Ms Rahim stated that she believed the return on the EC4U investment would have been immediate because she had been led to believe this by the claimant and the tribunal noted that this was not challenged by the claimant. Further, Ms Rahim

stated that otherwise she would never have agreed to spend the equivalent of another fee earning salary on this contract and the tribunal accepts this evidence.

55. On 3 July 2021 the claimant received an email from Ms Rahim stating that "*monthly income…should not drop below outgoings in your department as a minimum*.". At this time (8 months in to the contract with EC4U) instead of the 240 cases promised there were only 43 cases, in our finding a substantial level of underperformance and well below the claimant's expressed expectations. On 5 July 2021 because of the concerns as to value to the respondent of EC4U's referrals and promises not materialising, Ms Rahim cancelled further payments to EC4U.

56. The claimant was informed of the reason for this on 27 July 2021. There was a discussion on 2 August 2021 with Ms Rahim and Mr O'Callagan during which the claimant was told that EC4U services would not be continued. 5 days later the C sent on a WhatsApp message stating: *"Cutting EC4U was silly but I had to respect the decision".*

57. Shortly after this decision, EC4U was de-registered of its FCA license. It folded as a business 2 months later on 6 October 2021. This is relevant in the tribunal's mind because even if the claimant established that there was a breach of contract by the actions of Ms Rahim here, there is very little consequence of it in a commercial sense because after a very short period the contract with EC4U was inoperable in any event. The tribunal finds that the claimant was not upset by this decision at the time and certainly not to the extent that he complains of now and evidence of this can be seen from the exchange of WhatsApp messages between him and Mr Michaeloudis on 30 July 2021 (see p.457 of the bundle.), an exchange which is jocular in tone and optimistic about the future without EC4U. He discussed the issue of Ms Rahim's actions at the grievance hearing on 7 December 2022 when he accepted that the contract **"...may not have warranted being continued, but there was no discussion".** However, it is also clear that we would not have agreed that ending the agreement following a discussion would have been the right thing to have done in the face of the contract's substantial underperformance. As he says at the meeting: **"If the model had been allowed to continue, I suspect that we would have generated quite a lot of money..."**. The tribunal notes that no evidence was presented to it that could support the claimant's contention here.

58. The tribunal finds that this factual assertion concerns a contract between the respondent and EC4U and the decision to terminate it. The claimant accepted while giving evidence that as a contracting party, it was within the respondent's gift to terminate that contract, and that the EC4U service was a significant financial commitment by the respondent. We find that he was right to make this concession. In the email sent on 29 September 2022 the claimant recognised the EC4U service was a significant cost: ***"EC4U was stopped…I do appreciate that this was a large outgoing expense"***. When giving evidence, the claimant was asked by the Panel about whether it was his decision to

terminate the EC4U contract, and the C replied: ***"it was the equity partner's money, but I wasn't happy."*** The tribunal finds that claimant was not open to engaging with the financial reality that confronted the respondent which was that the contract was substantially underperforming and we find that Ms Rahim identified this. This does not indicate a fundamental breach going to the heart of the contract.

59. Ultimately, and in the circumstances of the tribunal's findings above, the decision about whether to retain the EC4U contract was a matter for the respondent, the Managing Director, and the equity partners. The decision to withdraw the EC4U funding did not, and could not, constitute a fundamental breach of the claimant's employment contract. It was a sensible, essential and urgent commercial decision for the respondent to cut their losses when the EC4U contract was not making the expected investment returns for the employment department (and in any event, EC4U was de-registered with the FCA in October 2021 and so could not have remained as part of the plain for the growth of the employment department).

Second - Around September 2021 to November 2021, the removal of Ms Janedbar from the department without prior consultation with the claimant

60. In his submissions, the claimant neatly summarises this allegation thus:

"I submit that removing Ms Janebdar without discussing it with me first is conduct likely to damage or destroy the contractual relationship. It was taking someone from my team and leaving me with 23 cases to pick up and distribute. This was something Mr Michaeloudis was also unhappy about at the time (Page 3434), but now seems to state in evidence it wasn't an issue. We had also both put a lot of time into training Hillay and that basically went up in smoke. This repudiatory breach was one of the facts I relied upon when I resigned as enough really was enough in my mind."

61. Therefore, the parties are in agreement that this allegation is premised on a contractual obligation to consult with the claimant prior to Ms Janedbar moving out of the Employment Department to the Property Department. Therefore, if it was a breach, it must have been likely or calculated to destroy the employment relationship.

62. Ms Janebdar joined the Employment Department at the end of 2020 as the most junior member on a salary of £50,000.

63. It is said by the claimant in his email dated 29 September 2022 that *"Hillay was approached about moving from my department without speaking to me first. The lack of speaking to be first has been a theme"*. The respondent submits

that more than a theme needs to be established for there to be a fundamental contractual breach. The claimant says that he had felt for a long time that Ms Rahim was targeting him and that this is evidenced by the emails that she sent and were subsequently produced by virtue of the DSAR. However, the tribunal has already determined that the emails did not disclose an animus of any kind towards the claimant. What they tended to show was Ms Rahim's concerns and frustrations with the running of the employment department.

64. The respondent says that the insurmountable problem facing the claimant here is that the decision to move staff members to different departments is a matter for the respondent, being an employer's prerogative to run its business as it sees fit. There is no express contractual obligation to consult the claimant in the way that he asserts and so the claimant falls back on the implied term of trust and confidence and the alleged conduct which is designed to destroy the employment relationship. The tribunal declines to adopt the claimant's asserted case and agrees that the claimant has failed to establish that the implied duty was breached.

65. We find that this issue was not on the claimant's mind when he resigned to the extent that he now claims simply because his knowledge of the Rahim emails was non-existent at that time. This is evidenced by a number of factors including the grievance that he raised about Ms Janebdar's removal which is raised for the first time on 7 December 2022 some 15 months later and after his resignation.

66. The tribunal finds that the respondent's decision to move Ms Janebdar was for sound commercial reasons and that it was able to decide the issue as to where Ms Janebdar was placed without reference consulting the claimant in the way that he asserts here. She joined the respondent as an immigration solicitor with a background in property law. Later Nishil Patel came in as the partner in the Immigration team and he and Ms Janebdar did not get on.

67. Later on, there was a stamp duty holiday which substantially increased demand for the firm's property department where there was a significant demand placed on the Property Department, which was the respondent's most successful department financially. Ms Janedbar had worked during the stamp duty holiday for the Property Department.

68. On 20 May 2021 there was an exchange of emails asking Ms Janebdar to help in the property department because she had previous housing experience. Around September 2021 the claimant was informed by Ms Janedbar that she had been approached about joining the property department. The claimant accepted that he had not been "*privy to discussions between Ms Janedbar and Ms Rahim".* Further, Paul Cain a Property Partner had secured a lot of new panel work "*Hillay had previously assisted me in property matters, I knew that she could really help Paul and could hit the ground running".*

69. In November 2021 a lawyer was leaving the Property Department, and Mr Ogunzkali suggested that Ms Janebdar might want to join the property

department. By this time, Mr Michaeloudis, a senior employment lawyer, had joined the Employment Department and so Ms Janebdar moving across to Property would have limited the impact on the functioning of the Employment Department

70. On 3 November 2021 Ms Rahim and Ms Janebdar met. Ms Janebdar asked what the salary would be if she went to the Property Department, and she was told £60,000 with potential promotion to salaried partner. There followed a negotiation which resulted in Ms Janedbar agreeing to move on a salary of £60,000 to the Property Department. She did so on 4 November 2021, and the claimant was informed the same day. The claimant says that both he and Mr Michaeloudis were greatly affected by this but this is contrary to the claimant's message to him in which he said:

> "**we can shut a few of those 23 cases down, and I have had 100 before so it's like the good old days. You say we can save time on supervision and get costs in ourselves**."

71. The tribunal finds that in this message the claimant is accurately assessing the impact of Ms Janedbar's departure. Further, we note that the move to the Property Department happened 14 months prior to the claimant's resignation and no contemporaneous grievance was raised. Consequently, when we have considered all of the evidence we are unable to find that the respondent committed a breach of contract as alleged or at all and in any event, the conduct complained of does not amount to a significant contractual breach going to the heart of the employment relationship.

Third - January 2022- stating to the C that he was described as unapproachable in his mid-year appraisal. The claimantavers that this did not in fact amount to an appraisal but was an act on him

72. The claimant alleges that the observation and comment made at his appraisal meeting in January 2022 by Ms Rahim, where he was described as "unapproachable" because he would use AirPods in the office, amounted to a breach of his employment contract 'designed to destroy the employment relationship. The claimant's case is that it was not a genuine appraisal, but an opportunity for Ms Rahim to attack the claimant or, as he sets out in submissions:

> ***"If she was able to say who had said that or show examples, I would certainly have taken that on board, but I believe this to just be part of her playing "hardball" with the appraisals (Page 1830). At no point was I referred to as unapproachable in documentation."***

73. The respondent submits that this allegation is not sustainable because it was Ms Rahim's general position that she did not like the respondent's employees

and partners using headphones when working because she thought it made them appear unapproachable. The claimant was not the only one told not to wear headphones: Mr Ramdarshan and Mr Cain were also told this by Ms Rahim.

74. The tribunal finds this allegation to be unproven on the basis that Ms Rahim was consistent in her approach and did not target the claimant here as he alleges.

Fourth - Around March 2022- Requiring the Cclaimant to hire someone he did not deem to be suitable

75. The claimant describes this allegation as a 'forced hiring' founded on the premise that he was forced to take on a solicitor called Alex. The claimant says that despite explaining his rationale that opposed the proposed hire, Ms Rahim insisted that she be interviewed in any event. As a consequence, the claimant says that the recruitment process was designed to destroy the employment relationship.

76. The tribunal finds the allegation to be unproven in the light of the facts that we have found. Here, there is very little conflict between the parties as to the facts; the issue here is whether it was reasonable for the claimant to have viewed this issue as matter going to the heart of the employment relationship and whether it was an issue that he was considering when he resigned. In respect of both issues the tribunal finds Ms Rahim did nothing wrong and even if the claimant was right in that this did amount to a breach of contract that it would amount to trivial breach at best, particularly as Alex was not hired.

77. In reaching this finding we note that this allegation is not mentioned in the claimant's 29 September 2022 email**,** or in the resignation email of 27 November 2022 and it was not raised in the formal grievance hearing on 7 December 2022. The claimant did not raise any concerns contemporaneously, or grievances about Alex, until 8 months later once he had resigned.

Fifth - During the period August 2021 and February 2022, Ms Rahim's alleged constant bullying of staff

78. The claimant relies on three categories of behaviors that he attributes to Ms Rahim. first e-mail sent by Ms Rahim to staff of the Respondent in relation to responses that they provided in respect of accounting issues. The parties refer to these emails as the "Cashroom Emails". Specifically, these are emails sent by the third-party organisation to fee earners within the respondent seeking their assistance with regards to outstanding payments which required allocation to accounts held in client names under the responsibility of the respondents or related to credit card payments made by fee earners and which required identification.

79. The tribunal accepts the evidence of Ms Rahim that these emails required the urgent attention of fee earners because firstly, they had not been attended to with the urgency required and imposed upon the respondent by its regulatory responsibilities and secondly, because was in general a lethargy on the part of fee earners within the respondent in attending to a number of longstanding , outstanding financial inquiries.

80. The second category of emails relates to the use of the respondent's credit card for payments. In short, it was Ms Rahim's evidence that these inquiries were being made because previous emails had been ignored, that they bore her frustration in this regard and were intended to encourage the fee earners concerned to act. The tribunal accepts Ms Rahim's evidence.

81. The third allegation relates to an incident that the claimant says he witnessed. Mr. Samiloudis being shouted at by Ms Rahim. In short, there is a dispute between Mr. Samiloudis, Ms Rahim and the claimant as to whether or not this happened.

82. The Tribunal finds in respect of each of the three strands of this allegation, that they are not made out on the balance of probabilities. First, In respect to the emails, the tribunal finds that they were not directed at the claimant and we do not consider that they could fall to be considered as something that could remotely be described as a matter of such sufficient seriousness that they go to the root of the employment contract. They are the kind of emails that are seen every day in law firms up and down the country which relate to payments and which balance the need of a law firm to manage its accounts carefully so as to avoid regulatory sanction. This applies equally to the Cashroom Emails as they do to the credit card emails.

83. In respect of the allegation concerning Mr. Samiloudis, the tribunal finds on the balance of probabilities that it prefers the evidence of Mr. Samiloudis and Ms Rahim as opposed to that of the claimant's. In short, In order for the Tribunal to reach a finding in the opposite direction, it would have to accept a number of propositions put forward by the claimant in his submissions which are unsupported and the evidence others who have not provided evidence to the tribunal in any form.

84. The respondent drew the tribunal's attention to the comments of EJ Burns, who observed during a case management hearing on 25 September 2023 that the manner of Ms Rahim's treatment of other members of staff and not the claimant was something that that the claimant may well struggle to establish and that has proved to be the case.

Sixth - On 27 or around September 2022 Ms Rahim demoting the C so that he was not Head of Department and was jointly running the department. This was without consultation

85. We agree with the respondent's submission that for the claimant to succeed with this allegation that he must have been demoted. There is a dispute between the parties as to whether the claimant was demoted. Therefore, the first issue for determination is whether there was a demotion. If there was no demotion the consultation issue falls away.

86. The respondent asserts that the allegation is misconceived as it is built on the premises that the Claimant was unfamiliar with the respondent's salaried partnership model. The respondent says that the contemporaneous documents, namely WhatsApp discussion between the C and Mr Michaeloudis in 13 July 2022 demonstrate that two months prior to the promotion of Mr Michaeloudis there was a clear understanding between the C and Mr Michaeloudis as to how the department being run "jointly**"**:

> ***"Michael: I will make it clear you are the Head of Department & I dnt want that to change.....***
>
> ***Gerard: I'm not a massive power merchant mate. I tend to listen to all and decide ...It's similar to Rudi and David ...How they run it jointly".***

87. The promotion of Mr. Michaeloudis cannot constitute a breach of the terms of the C's employment contract following the C's case that he advocated for Mr. Michaeloudis to be made a salaried partner. The C's assertion that Mr Michaloudis being appointed as a salaried partner meant that 50% of the C's role had been taken away from him is absurd. As was made clear in evidence, it was a practice at the R to have a team run jointly but with one person being the Head of Department (such as Rudi Ramdarshan and David Burns, both equity partners in the R's civil litigation team . This was recognised by the C on day 2 of the trial:

> **"TK: it's not unusual in your firm for departments to have a number of equity partners where one person is ultimately responsible as the head and the other partners works alongside them.**
>
> **GA: I can't say who is ultimately in charge of each of the equity teams. The impression that is given is that Rudi is in charge of his team and David is underneath. that's my impression. I don't know if it's true."**
>
> **...**
>
> **TK: even in your own words there was a structure where there were two people of the same level and one would be the head and the other would work beside them.**
>
> **GA: I said to MM we are both partners but I will make the decisions."**

88. From the evidence presented to it, the tribunal finds that from February 2022 onwards the claimant had been raising with Ms Rahim and Mr O'Callaghan the need to promote Mr Michaeloudis to salary partner. The claimant's expectation

was that if Mr Michaeloudis was appointed to be a salaried partner he (Mr Michaeloudis) would get a salary increase and be on the pathway to equity.

89. On 13 July 2022, during a WhatsApp discussion with Mr Michaeloudis, the C explains that in the Litigation team Mr Ramdarshan and Mr Burns work alongside each other as equity partners but Mr Ramdarshan has the final say. This is how the respondent operates, and the exchange between the two discloses that the claimant was aware of this. However, it was the claimant's position that he would wish to remain as the outright head of department.

90. At a meeting that took place on the 28 September 2022, during which Mr Michaeloudis was elevated to salaried partner. We find that during this meeting and subsequently the claimant was informed that he remained the head of department. Ms Rahim did propose the two partner structure that worked through the rest of the firm with the claimant as Head of Department which Mr Michaeloudis expressed agreement with in the meeting and was confirmed by Ms Rahim.

91. After the meeting, the C sent an email on 28 September 2022 expressing his view that he had been demoted. Ms Rahim responded less than 30 minutes later confirming that:

"you are still head of the department (as was stated in the meeting) and I am happy to do a follow up email to you both to avoid any misunderstanding."

92. Importantly, Ms Rahim made it clear that this was not a demotion. This was accepted by Ms Roberts, equity partner, who confirmed after the meeting that it had been decided by the partners that the claimant remained as Head of Department. Further, in evidence, Mr O'Callaghan confirmed that Ms Rahim did not have the authority to unilaterally demote an employee without the authority of the partner and that he did not consider the claimant to have been demoted.

93. On these facts, the tribunal rejects the claimant's assertion that he was demoted because before the meeting he was 100% the Head of the Department and afterwards he was only 50%. C also states that he considers this to be a fundamental breach "*as I was no longer 100% in charge*". He was consistent about this issue in evidence despite informing the tribunal that he retained all of the duties that he had prior to the meeting. We find this allegation to be a misconception of the facts known to the parties at the time, including the claimant. It was plain to all concerned to the claimant had not been demoted. Therefore this allegation fails to be proven.

Seven - On 22 September 2022 Ms Rahim increasing the salary of Mr Michaeloudis to parity with the C again without any consultation and thus increasing the targets of the department without consultation or review of the finances. The C avers it is impossible to work with a managing partner

who will make decisions on the finances of the department without consultation

94. The claimant asserts that by giving Mr Michaeloudis a £30,000 pay rise without notice to the claimant, Ms Rahim: [1] increased the targets of the employment team [2] without consultation or reviewing the finances [3] that as a consequence it became impossible to work with Ms Rahim.

95. In their submissions, both parties spend some time exploring the financial performance of the department and we have found that the we agreed with the view of Ms Rahim, Mr O'Callaghan and Mr Oguzkanli that the department's performance was such that it was reasonable for the Equity partners to consider it a department that was underperforming. This applies at all times material to this allegation.

96. It is the tribunal's finding that while the claimant's criticism of Ms Rahim's unanticipated announcement was well-placed given his position as head of department it is also our finding that it was reasonable for the respondent to have formed the view that it did as regards the claimant's appraisals of financial performance of the department that he ran. In reaching this view the tribunal declined the claimant's indication to consider the case of **Ms N Hanson v Interaction Recruitment Consultants Specialists Ltd,** a first instance decision heard before Employment Judge Davies (case number 1800864/2024), preferring instead to address our minds to facts in *this* case.

97. In submissions and in evidence from Ms Rahim, the respondent says that promises made by the claimant about the finances were materially wrong and/or misleading and were based on either aspirational beliefs, harboured by the claimant or, formed by his lack of experience in terms in finance and accounting for law firms. The respondent exemplifies this view of the claimant, the respondent points out in submissions that, for example, on the 26th August 2022, the claimant emailed to the Equity Partners that '*£100k which turn into cash soon'***.** However, for the first quarter (July to September 2022) the annual target was £500,000, the quarterly target £125,000 and the department received £39,689.50**.** The reality is that the department which the claimant ran was underperforming and it was reasonable for the respondent to have formed this view.

98. Based on these findings, we agree that the issue is contractual with due regard to the employer's prerogative to run its business as it sees fit, and not whether the manner in which Mr Michaeloudis salary was increased was reasonable. we find that despite our concerns as to the communication of the pay rise to the claimant, that not only was there no duty to consult with the claimant as he asserts. Further, we reject the assertion that by raising the salary and, by extension the department's financial target, the claimant was set up to fail as he alleges. The increase was £30,000 and while this would have a significant impact given the departments hitherto lacklustre performance, it was nonetheless a rise that the claimant should have anticipated given his entreaties to the Equity partners to promote Mr Michaelides.

99. Lastly, the tribunal does not find on the evidence that Ms Rahim was not engaged and reviewing the department's performance and that as a consequence of this alleged failure, that the claimant was entitled tom conclude that he could no longer work with her. The tribunal finds these allegations to be misplaced as it was clear from the evidence from the claimant that one discreet instance apart (which is germane to the allegation the claimant makes here), Ms Rahim was very engaged. Further, we accept Ms Rahim's evidence that she was open and available to the claimant and was supportive of the goal which was to improve the performance of the employment department. Part of that goal was to ensure that the claimant remained in his role.

100. In summary, we find this allegation in totality unproven and in any event, we do not consider that there is a contractual duty to consult In the way that the claimant alleges. This applies to the salary point raised in relation to Mr. Michaeloudis, Therefore, we find that the decisions we have been asked to consider here do not constitute a fundamental breach of the claimant's employment contract such that it was likely or calculated to destroy the employment relationship.

Eight - On 14 October 2o22 – Mr Oguzkanli's conduct in the meeting in which he attempted to suggest the Employment Department was not performing

101. The claimant asserts that Mr Oguzkali has either lied or miscommunicated that the employment department not performing.

102. The two met with Mr O'Callaghan on 14 October 2022 at the Old Street office.

103. The C wanted to have this meeting after the 28 September 2022 email for the purpose of finding a way forward. Mr Oguzkanli want to discuss the issue of the profitability of the department and showed the C the costs and generated income figures. Mr. O'Callaghan went to the meeting with some WIP reports business plan, WIP, and projection. The claimant was asked if the figures were accurate and he confirmed that they were. There was then a discussion about the meeting and that Mr Michaeloudis should not have been given the salary rise to equal that of the claimant.

104. At the end of the meeting the claimant requested a salary increase and a route to equity *"I want to see my future and my route to become an equity partner".* The claimant was informed that the route map to equity would have to be on hold as there was a review of the firm's equity being undertaken. The meeting was described as a positive meeting by Mr Oguzkanli.

105. As we have said, we found Mr Oguzkanli to be an honest and straightforward witness and we have no reason to doubt what he told us in

respect of the firm's figures and finances whereas we have considerable concerns as to the claimant's ability to understand his own department's financial performance at the times material to this allegation. Accordingly, we find on the balance of probabilities that this allegation is not proved.

Nineth - Mr Michaeloudis insubordinate and undermining behaviour in failing to adhere to the C's reasonable management instructions on the sex discrimination case and to attend the office . His allocating matters to the C when he did not have the authority and in a manner where the C would be under more pressure

106. These allegations are two-fold: first, that Mr Michaeloudis did not do as he was asked about his workload and is asked to provide a list of his cases for the claimant to review. What can be seen from the messages is the exchange of views on the matter. The exchanges are friendly and at times, jocular. At the end, the claimant replies "ok" to a suggestion from Mr Michaeloudis the review is put on hold until his heavy workload is reduced.

107. The claimant points to the fact that he never received the case list and that this fact points to insubordination. The tribunal finds that in fact, Mr Michaeloudis was swamped with work and no capacity to take on additional work and that the claimant was prepared to accept this as a valid reason to not explore the issue further at that time. This was not insubordination in the claimant's eyes.

108. Second, there was a sex discrimination case that demanded the attention of both men. They disagreed over a legal issue, namely as to the merits of the claim and the impact of a shifting burden. It is submitted by the respondent that there was nothing inappropriate about this. Again, we agree. Arguments among lawyers is nothing new and the discourse between the two men was consistent with two people expressing differing views and has nothing to do with purported insubordination in any way let alone as alleged.

109. Given our findings, the allegations fail to be proved on the balance of probabilities and in any event , we would have agreed with the respondent that the allegations fall well short of amounting to a fundamental breach of the claimant's contract of employment.

Tenth - In or around October or November 2022 – Ms Rahim further bullying treatment of staff, namely the issue of sending an email to all staff about an individual complaint and her shouting at Mr KX1"

110. This incident is said to have occurred on the second floor of the Old Street office.

111. The C states that in front of staff Ms Rahim loudly shouted at Mr Samouilidis. During the claimant's grievance he could not remember what was said or when it occurred. Critically Mr Samoulidis denies that this ever happened or that he was ever shouted at by Ms Rahim. In questioning Mr Samouilidis could not recall this incident. He stated that while Ms Rahim could be loud she did not shout in the office. Ms Rahim denied that this incident ever happened. For these reasons, the tribunal find this allegation to be not proven on the balance of probablities.

112. As for the client complaint email, on 19 October 2022 an email as sent by a client to the general email address asking for the respondent's complaint procedure. Ms Rahim then sent an email to all staff, including the claimant asking who this client was. It was not a client of the claimant's. Ms Rahim's view is that it was an appropriate email to send. We agree. While the claimant said that Ms Rahim could have used more sophisticated, covert and private methods to ascertain who the fee earner was it was not unreasonable for her to have done this. Accordingly, we find that there has been no breach of contract here and even if we had, we do not consider that this is an issue which could be said to have amounted a fundamental breach of contract a breach or that it was likely or calculated to destroy the employment relationship.

Eleventh - Over the period of 14 October 2022 to 27 November 2022 – Mr O'Callaghan's failure to resolve the issues with the C's demoted status and his salary being the same level as Mr Michaeloudis for a period of 6 weeks

113. This allegation arises from the alleged failure to resolve issues that the claimant has raised regarding the pathway to equity, a potential pay increase, and to explore the performance of the Department. A meeting took place 14 October 2022. There were some frank exchanges of views around these subjects. The tribunal finds that this time, the claimant was focused on the pathway. Mr O'Callaghan was to look into the issue and return to the claimant at a later date.

114. On 23 October 2023 Ms Rahim had emailed the partners about the claimant seeking clarity on his potential pathway to partnership. The partners had themselves been reviewing the position generally and that review was ongoing at all times material to this allegation. The claimant had not required an update by a particular deadline and did not chase Mr O'Callaghan for a decision or indication. The claimant then went holiday (17 to 28 November 2022) and prior to his return to work he resigned on 27 November 2022. The next day Mr O'Callaghan sent the claimant an email in which he made clear that there was no intention on the respondent's part to deal with the issue, that the review was ongoing and that the "..we remain willing to retrieve the situation

if you want to explore this". The claimant refused to take up this offer saying that matters had gone too far.

115. We find that this allegation is not proved on the balance of probabilities. We find that the respondent was doing what it could to achieve clarity on the issues raised by the claimant. We find that the claimant, far from being confronted by a set of circumstances that amounted a resignation issue, was set on a course that he had predetermined, as evidenced by his messages to Mt Michaeloudis on 15th October 2022 in which he stated that following his meeting on 14th October 2022 with Mr O'Callaghan ('Senior Partner') and Mr Oguzkanli ('Equity Partner') he **"told them to go away and come back with a sensible and reasonable proposal whilst I decide what I want to do. …I've said they need to come to me and I'll decide my future"**. We find that the claimant's stance as set in this message is inconsistent with a view that the respondent had not done enough as the claimant asserts.

Twelve - On 26 November 2022 at 9:35-Ms Rahim's email to Mr Michaeloudis in respect of his salary level in which the C was deliberately omitted This was an email in which she was congratulating herself for having given a salary without having reviewed the figures. It was also an email that Mr Michaeloudis conceded there seemed to be a hidden agenda behind

116. The allegation here is that by not copying in the claimant into an email sent only to the equity partners, this constituted a breach of contract designed to destroy the employment relationship. The email concerned is one sent by *Ms Rahim was to Mr Michaeloudis on 26 November 2022.* The claimant asserts that he was deliberately omitted from the email and that it was done in stark contrast to the treatment the claimant received from Ms Rahim when he performed well**.** The claimant says that this was conduct designed to breach the contract of employment. At the time it was sent the claimant was on annual leave and away from work and not returning to work until 28 November 2022.

117. Before the claimant returned to work from holiday he resigned on Sunday 27 November 2022. There was no mention by the claimant that he had been deliberately excluded in his resignation letter. However, in submissions, the claimant said that by this point he had simply had enough and that he would not put up with the type of treatment he was receiving for Ms Rahim.

118. It is the tribunal's finding that there has been no breach of contract By Ms Rahim sending the e-mail that she did to Mr. Michaeloudis.

THE AUGUST 2021 COVID PING

119. This is a claim founded on section 44(1)(d) ERA 1996nin which the claimant says that he has suffered a detriment .

120. There was an email sent to staff on 31 July 2020 titled *"Coronavirus and foreign trips".*

121. On 4 August 2021 the Claimant woke to a NHS ping telling him to isolate. He then took a test which confirmed that he was negative. The claimant says that he did not go into work because he was pinged. He believed that he could be a serious and imminent danger because of this. He goes on to say that had he breached the guidance and been reckless that he could have represented a danger to others, a view that is a consistent with the Government's message at the time and the guidance and advice issued the public during this period of the COVID-19 pandemic.

122. After the DSAR, the claimant discovered 3 emails which is said to evidence detrimental treatment, which he was unaware of at the time and were disclosed 2 years later. They are between Ms Rahim and the practice secretary. No doubt they were embarrassing to them both to learn that they from part of the evidence in this case.

123. The tribunal has reviewed the law and the case of *Herve* (see above). From the case of *Herve*, paragraph 42 is instructive for the purposes of this head of claim:

"The protection provided by section 44(1)(c) may thus be contrasted to the second relied on by the claimant, under subsections 44(1)(d) and 100(1)(d) ERA. In either case, the protection under subsection (1)(d) relates to the employee who, in circumstances of danger which they reasonably believed to be serious and imminent and which they could not reasonably have been expected to avert, left (or proposed to leave) or (whilst the danger persisted) refused to return to their place of work or any dangerous part of that place of work. As the Court of Appeal made clear in Rodgers v Leeds Laser Cutting Limited [2022] EWCA Civ 1659, [2023] ICR 356, the circumstances relevant under subsection (1)(d) must thus arise at the employee's workplace: "19. … the employee must believe that they are subject to the danger as a result of being at the workplace: if that were not the case, the question of them leaving the workplace would not arise…" albeit, as the EAT held in Harvest Press Ltd v McCaffrey [199] IRLR 778, the danger need not be limited to the physical state of the premises or plant"

124. The claimant's case is that he was the risk as opposed to a risk arising at his workplace. Further, the claimant was not asked to come in. While we accept that the claimant considers that the emails he discovered after the DSAR support his view that his stance was viewed negatively it is not the tribunal's finding that they indicate that he should have attended the office. In any event, and contrary to the claimant's case, we do not find that the case is on all fours with Herve because the authority makes clear that the law is activated in the employee's favour upon a reasonable assessment of serious and imminent danger that is difficult to avert at the place of work. It is the tribunal's finding that none of these conditions exist within the context of this allegation and therefore the claim fails on its facts.

125. In the event that we had reached a different view we would find that the claim is unable to evidence a detriment caused by a breach of s.44(1)(d) as alleged. While the emails are negative

126. For all of the above reasons, the claimant's claims fail.

Employment Judge Forde
28 April 2025

Judgment sent to the parties on:

2 May 2025
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For the Tribunal:

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