Neutral Citation Number: [2025] EAT 96

Case Nos: EA-2022-000612-DXA

EA-2023-001291-DXA

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 9 July 2025

Before :

HIS HONOUR JUDGE AUERBACH

- -

Between :

ANTONY SAVVA

Appellant

- and –

LEATHER INSIDE OUT (in liquidation) (1)
MS V K JOHNS (2)
MS A MCKENZIE (3)
MS N M RIEDWEG (4)

Respondents

- -
- -

The **Appellant** in person
The **First Respondent** did not appear and was not represented
Joel Wallace (instructed by Forsters) for the **Second** and **Fourth Respondents**
The **Third Respondent** did not appear and was not represented

Hearing dates: 15 and 16 April 2025

- -

JUDGMENT

SUMMARY

PROTECTED DISCLOSURES

PRACTICE AND PROCEDURE – Time Points – Series of Similar Acts

The claimant in the employment tribunal worked for a charity for a number of months, until it terminated the relationship. In three subsequent claims he brought multiple complaints, principally of detrimental treatment on grounds of having made protected disclosures, such treatment being said to have occurred both during the course of the relationship and subsequent to its termination, and of unfair dismissal for the reason or principal reason of having made protected disclosures.

The tribunal did not err in its decision arising from a PH (as varied upon reconsideration) to dismiss a number of complaints as being out of time or to strike them out as having no reasonable prospect of success of being found to be in time. Guidance in **Arthur v London Eastern Railway Limited** [2006] EWCA Civ 1538; [2007] ICR 193 on the meaning of a "series of similar acts" in section 48(3)(a) **Employment Rights Act 1996** considered and applied.

The tribunal at the PH erred in making a deposit order in respect of one pair of complaints.

The tribunal at the subsequent full merits hearing erred in its determination of whether certain claimed protected disclosures were made out and whether certain claimed detrimental treatment on grounds of protected disclosures had occurred; and it omitted to determine one particular complaint. Determination of those matters was remitted to a different tribunal.

HIS HONOUR JUDGE AUERBACH:

Introduction

1. The claimant in the employment tribunal brought three successive claims in the London Central tribunal raising multiple complaints against four respondents. There are two appeals relating to decisions arising from a preliminary hearing and then the later full merits hearing. Both were also the subject of reconsideration decisions. The relevant litigation history is, in summary, as follows.

2. The first respondent is a charity which is now in liquidation. It provided education, skills in training and employment in the leather craft and fashion industries to people serving a custodial sentence, while in custody, or during a period of release on licence. The other respondents are Victoria Johns, who was the first respondent's founder and general manager; and Anat McKenzie and Nicole Riedweg, who were trustees. To avoid confusion I will refer in what follows to the claimant, the charity, and the individual respondents by name.

3. The claimant worked for the charity from 3 June 2019. He was at that time serving the remainder of a custodial sentence on licence under supervision of the probation services. The charity terminated the relationship by letter of 30 November with effect on 1 December 2019.

4. The claimant's first tribunal claim was presented on 17 November 2020 against the charity. It complained of unfair dismissal by reason of having made protected disclosures. Eve Solicitors were identified as his representatives. A response was entered by solicitors for the charity dated 11 January 2021. It asserted that the claim was out of time, that the claimant had not been an employee, and that he had not in any event made any protected disclosures or been dismissed for doing so.

5. In February 2021 Eve Solicitors ceased acting for the claimant. The second claim was presented by the claimant himself on 22 March 2021 against all four respondents. It added complaints of detrimental treatment on grounds of protected disclosures, discrimination on grounds of race and sex, and harassment related to race and sex. Particulars were given of the claimed disclosures and

alleged treatment of which complaint was made. The latter included the refusal, by a letter of 15 October 2020, to comply with a data subject access request (SAR) that had been made in September.

6. Grounds of resistance were entered by the same solicitors, now for all respondents, including assertions that the claim was misconceived, vexatious and/or an abuse of process, and out of time.

7. The third claim form was presented by the claimant on 5 October 2021 against all four respondents. Particulars of claim were emailed on 11 October. The bulk of this covered the same ground as the first two claims. But it added a protected-disclosure detriment complaint about a refusal, by a letter of 10 September 2021, to comply with a second SAR. This claim was also resisted.

8. A case-management preliminary hearing (PH) took place on 18 October 2021 before EJ James. The judge directed a further open PH, set an agenda for it, and gave directions.

9. That further PH took place before EJ Beyzade on 21 January 2022. The claimant was in person. The respondents were represented by counsel. A decision was sent on 19 April 2022. The tribunal dismissed all of the complaints as being out of time, save for complaints of detrimental treatment for making protected disclosures by the charity (a) attempting to mislead the claimant by falsely claiming, in the grounds of resistance to the first claim, that he had not been an employee, and (b) refusing to comply with the two SARs. Those complaints were held to be in time. However, they were also made the subject of deposit orders. All complaints against the individual respondents were dismissed. I will call that the Beyzade decision. The first appeal is against that decision.

10. The claimant also applied for a reconsideration of the Beyzade decision. That was considered at a further hearing before EJ Beyzade on 13 December 2022. That resulted in a further written decision sent on 10 March 2023, which I will refer to as the Beyzade reconsideration decision. Upon reconsideration the tribunal varied the Beyzade decision by holding that two further complaints against the charity were in time. The first was a complaint of race discrimination by denying, in the charity's annual return dated 19 February 2021, that the claimant had been an employee. The second

was a complaint of protected-disclosure detriment in relation to the same alleged conduct. The claimant was also permitted to add a further complaint of protected-disclosure detriment by the charity failing to respond at all to a third SAR that had been sent on 3 May 2022.

11. In June 2023 there was a full merits hearing of the complaints which, following the two Beyzade decisions, remained live, before EJ Gidney, Mr Brian Furlong and Mr Paul Secher. The claimant was in person. There was no attendance or appearance for the charity. The tribunal noted that an application had been made for it to be wound up. In a reserved decision sent on 6 October 2023 the tribunal dismissed all of the complaints. I will call that the Gidney decision.

12. The claimant appealed the Gidney decision. That is the second appeal before me. He also applied for a reconsideration. That led to a further decision of EJ Gidney, sent on 3 January 2024, in which he refused that application. I will call that the Gidney reconsideration decision.

13. The first appeal was considered by DHCJ Clive Sheldon KC (as he then was) not to be arguable. The claimant requested a rule 3(10) hearing and that came before Judge Keith. The claimant was represented by counsel under the ELAAS scheme. Judge Keith permitted all grounds to proceed save for a ground of alleged bias in paragraphs 41 – 45 of the grounds of appeal.

14. The claimant's appeal from the Gidney decision was considered on paper by DHCJ John Bowers KC. There were amended grounds of appeal dated 13 November 2013 in which the grounds were lettered (a) to (g). The judge considered grounds (a), (c) and (e) to be arguable and directed that they proceed to a full hearing. The claimant requested a rule 3(10) hearing in respect of the remaining grounds, which came before me. I permitted the following additional grounds to proceed to a full hearing: ground (b) and, in so far as it related to claimed protected disclosure 3, ground (f).

15. Liquidators of the charity were appointed on 30 August 2023. They notified the EAT that it would not be defending or participating in the appeals. As this is a creditors' voluntary liquidation, it is not, as such, a bar to litigation relating to the charity proceeding, and the claimant has indicated

that he maintains his appeals in all respects notwithstanding the liquidation. The first appeal relates to a decision affecting all four respondents. By a Registrar's order sealed on 16 September 2024 the individual respondents were debarred from taking part in it, because no Answers had been put in by them or on their behalf. However, by a further decision of 20 March 2025 Ms S Lindsay, on behalf of the Registrar, set aside that decision, in relation to Ms Johns and Ms Riedweg, and extended time in respect of an Answer which had been lodged late by new solicitors on their behalf, Forsters LLP.

16. At the hearing before me the claimant appeared in person. Ms Johns and Ms Riedweg were represented by Mr Wallace of counsel. I was provided with extensive bundles of documents and authorities, including the bundles that were before the tribunal at its hearings, and skeleton arguments on both sides; and I heard very full oral arguments over the course of a two-day hearing.

The Beyzade decision

17. The Beyzade decision included a self-direction as to the law, in relation to relevant statutory provisions and authorities, which I do not need to reproduce here. I will summarise the salient findings and conclusions of the tribunal at this point (although I do not necessarily set them out in the same order as the tribunal did). I will return to some aspects in more detail later in this decision.

18. The tribunal noted that the claimant claimed to have made a number of protected disclosures during the course of his engagement with the charity, and to the Charity Commission and Action Fraud following the termination of his engagement. He complained of various detrimental treatment on grounds of protected disclosures, during and following the end of, his engagement, the most recent instance of which was said to have occurred on 10 September 2021.

19. The relationship between the claimant and the charity was terminated by a letter from Ms Johns of 30 November 2019, effective when the claimant received it the next day, 1 December. The letter stated that it was impossible to continue working with the claimant and that trust had broken down. The tribunal referred to the termination of the relationship as the "dismissal", while noting

that there was an issue as to whether the relationship had been one of employer and employee.

20. Following the dismissal, during December 2019 the charity communicated concerns about the claimant's conduct to the police and to the Community Rehabilitation Company (CRC). Subsequently the claimant's license was revoked, although he did not learn that this had happened until 17 January 2020. He thereafter "attempted to overturn this decision while he remained in the community" but was returned to prison on 18 March 2020. He was re-released on 18 May 2020. The tribunal found that his ability to bring a claim while in prison "was limited".

21. Upon his release, and notwithstanding some ongoing Covid-pandemic restrictions, the claimant sought legal advice from law firms. He instructed Eve Solicitors Limited on 31 July 2020. On 7 August they wrote to the charity raising a purported claim of defamation. On 16 September they wrote again raising a SAR. The charity's solicitors replied on 15 October stating that it declined to comply, for reasons given. ACAS Early Conciliation (EC) was begun in relation to the charity on 28 October and the EC certificate was issued on 29 October 2020.

22. The first claim, which identified Mr Ahmed of Eve Solicitors as the claimant's representative, was presented on 17 November 2020. It contained a complaint of unfair dismissal by reason of whistleblowing and included an application for an extension of time, providing information about the basis for that application. The response asserted that the claimant had not been an employee as the nature of his engagement had been on a causal and ad hoc basis with no mutuality of obligation.

23. That claim was lodged 262 days after the expiry of the primary time limit. The tribunal held that the claimant had not shown that it was not reasonably practicable to have presented it in time; nor, in any event, was it presented within a further reasonable period. Whilst taking into account the period that he had spent in prison, and the various other difficulties he had faced at points, the tribunal considered that, prior to that, he could have researched the position regarding time limits, engaged with ACAS EC and issued the claim within the primary time limit. In any event, given that solicitors

were instructed on 31 July 2020, and were in touch with the charity on 7 August, it was not clear why ACAS had not been contacted sooner than 28 October, nor why there was a further delay, following issue of the ACAS EC certificate, prior to presentation of the claim on 16 November 2020.

24. The second claim, presented on 22 March 2021, complained of incidents of detrimental treatment on grounds of protected disclosures, said to have occurred both before and after the (claimed) dismissal. The tribunal said that they included a complaint about the charity having asserted in in its response to the first claim, that the claimant had not been its employee. It was accepted, and found, that that particular complaint was presented in time. That claim also complained that the refusal, notified on 15 October 2020, to provide the documents requested in the claimant's first SAR, was an act of protected-disclosure detriment. Viewed alone, that complaint was out of time.

25. All of the other protected-disclosure detriment complaints in the second claim were found to be out of time. The tribunal concluded that it was not the case that it was not reasonably practicable to present them in time, and, in any event, they had not been presented within a reasonable further period. The tribunal referred to the fact that the claimant had brought a previous tribunal claim, and was aware that there were strict time limits, and aware of the ACAS EC requirements.

26. A further SAR was received on 8 August 2021. The charity's solicitors wrote on 10 September 2021 that their client would not be providing the information requested, setting out its reasons. These included that the request was an attempt to cause harassment, disruption and economic detriment, and reliance on an exemption relating to the prevention of crime and the apprehension and prosecution of offenders. The third claim was presented on 5 October 2021. The only new complaint was of the refusal to comply with that SAR. The tribunal held that that complaint was in time.

27. The tribunal considered that the stance taken in the response to the first claim, that the claimant was not an employee, was a "one-off incident" and not part of a "series of similar acts or failures" to act, within the meaning of section 48(3)(a) **Employment Rights Act 1996**. The complaint in the

third claim, of detrimental treatment on the grounds of protected disclosures by refusing to comply with the second SAR, was about conduct which was part of a series of similar acts consisting of it and the earlier refusal to comply with the first SAR. So the complaint about that first refusal, was, after all, by application of section 48(3)(a), in time. But the complaint about the refusal to comply with the second SAR was not otherwise part of a series of similar acts complained of by the claimant.

28. As for the claims of direct discrimination and/or harassment because of, or related to, race and/or sex, under the **Equality Act 2010**, the basis for these was that it was claimed that Ms Johns had a particular antipathy towards Greek males. The claimant became aware of the conduct complained of on 20 September 2019 and the claim raising the complaint was lodged out of time in March 2021. The tribunal did not consider it be just and equitable to extend time, having regard to the overall time line, including in relation to the steps that the claimant had previously taken in respect of the first claim, and the tribunal considering that this claim could have been raised in time.

29. The tribunal did not consider that the medical evidence that it had relating to the claimant's mental health during certain periods, showed that he had not been capable of starting ACAS EC or presenting a tribunal claim during the primary limitation period, nor any period of time thereafter.

30. The tribunal considered that the protected-disclosure detriment complaints that it had found were in time had little reasonable prospect of success. The charity was likely to show that the reason why it asserted that the claimant was not an employee was because that was what it genuinely believed, and so it formed part of its defence to the complaint of unfair dismissal, rather than that having been done because of the claimant's claimed whistleblowing. The tribunal had also noted earlier in the decision that there was a "justiciability" issue in relation to that complaint.

31. The tribunal considered that there was little reasonable prospect of the claimant establishing that the refusal to comply with the two SARs was for any reason other than those given in the refusal letters and/or that the claims fell within the jurisdiction of the tribunal. Citing **Tiplady v City of**

Bradford MDC [2019] EWCA Civ 2180; [2020] ICR 965, it said that the claimant needed to show that the detriment was "in the employment field"; but he had made his request "not as an ex-employee, but as a person in respect of whom the [charity] is data controller of his personal data." The tribunal could not determine whether the conduct was lawful under the data protection legislation. In any event if it was lawful there could not be any detriment "insofar as the employment field is concerned".

32. Having considered the evidence of the claimant's means the tribunal made deposit orders in the total amount of £300.

The Beyzade reconsideration decision

33. The claimant's reconsideration application was heard in December 2022, leading to a very lengthy written decision sent in March 2023. There is no appeal against the reconsideration decision itself; but it is relevant to my consideration of the Beyzade appeal for three reasons. Firstly , a number of the points raised by the claimant in the reconsideration application, and addressed by the tribunal in that decision, overlapped with the grounds of appeal. Secondly, as I have noted (at [10] above), the tribunal varied its original decision upon reconsideration in so far as it identified two further (related) complaints as being in time. Thirdly (again as already noted), the tribunal permitted the claimant to add a complaint that the failure to respond to a third SAR that had been raised on 3 May 2022 was conduct amounting to detrimental treatment on grounds of protected disclosures.

The Gidney Decision

34. In summary, the main findings and conclusions in the Gidney decision were as follows.

35. The claimant gave evidence at the hearing, as did a former trustee of the charity, Paul Vrahimis, and an individual who had worked for it, Connor Walsh. At the start the claimant withdrew some of the claimed protected disclosures. There were now six claimed disclosures during the period September to November 2019. One was said to have been made by the claimant to Ms Johns and all the others to Paul Vrahimis. There were claimed to have been further disclosures following the

"dismissal", to Paul Vrahimis, and by the claimant raising concerns about the charity's activities with the Charity Commission and with Action Fraud. The tribunal also identified the complaints of detrimental treatment as relating to attempting to mislead the claimant by falsely claiming that he was not an employee and by refusing to provide documents requested by him in two SARs.

36. After its findings of fact and self-direction as to the law, the tribunal worked through each of the claimed protected disclosures, and set out its conclusions as to whether each had been made out in fact and law. Three were found to have been made out. The first was a disclosure to Paul Vrahimis that his shares in an associated company had been transferred to the charity without his knowledge or approval. The second was a disclosure to Paul Vrahimis about alleged financial wrongdoing by inflating invoices. The third was a disclosure to Paul Vrahimis about another allegedly suspicious financial transaction. These were, using their original numbering, disclosures 6, 8 and 9. The other claimed disclosures were found not to amount to protected disclosures in fact and law, for reasons that were explained. It was found that Paul Vrahimis had only "escalated" two of the matters raised with him by the claimant to his colleagues, being claimed disclosure 3 and disclosure 6.

37. As to the detriments, the tribunal found that the charity took the point that it considered the claimant not to have been an employee, in its grounds of resistance to the first claim, because that was its genuine case. This stance was not connected to his protected disclosures. As to the refusals to comply with the two SARs, the reasons why those were refused were the reasons given in the letters, all of which, the tribunal said, were "allowable reasons to refuse a subject access request" pursuant to the data protection rules.

Gidney Reconsideration Decision

38. The reconsideration application in respect of the Gidney decision was refused on paper by the judge on the basis that there was no reasonable prospect of the original decision being revoked. The judge worked through a number of points raised by the claimant in relation to the Gidney tribunal's findings about the claimed protected disclosures that were not found to have been established, and its

conclusions about the reasons for the detrimental conduct complained of, but concluded that none of his points provided a basis varying the original decision upon reconsideration. Once again there is no appeal against that reconsideration decision, but it is relevant to my consideration of grounds of appeal which overlap with the grounds on which a reconsideration had been sought.

Appeal against the Beyzade decision

39. The grounds of appeal ran originally to 45 paragraphs and are somewhat discursive. As I have noted, paragraphs 41 to 45, which made allegations of bias, were not permitted to proceed to a full appeal hearing. I will consider the substantive lines of challenge raised by the live grounds of appeal, each in turn, starting with some procedural challenges.

40. First, the claimant contends that he did not get a fair hearing because the three individual respondents failed to submit written witness statements or give evidence, and so the claimant was not able to cross-examine them. This point was also raised in the reconsideration application. I consider that this ground is not well-founded, essentially for the reasons given in the reconsideration decision.

41. The position is that it is generally up to a party to decide who it wishes to call as its witnesses at a hearing which will decide a substantive issue. If they do not call a particular individual as a witness they may run the risk of failing to adduce evidence that would support their own case or undermine their opponent's case; but it is up to them. The tribunal also has the power to order a person to attend as a witness, but if such an order is made, they will usually be treated as the witness of the party who sought the order, who will not ordinarily be permitted to cross-examine them.

42. In this case, at the Beyzade hearing the claimant gave evidence. The respondents' only witness was a solicitor from the firm that was then representing them. There was no witness order requiring any of the individual respondents (or anyone else) to attend or give evidence. It was not unfair to the claimant that he did not thereby get the opportunity to cross-examine the individual respondents. It would have been open to him to make submissions, for example, that his evidence on

a disputed issue of fact should be accepted in the absence of any evidence from a witness for the respondent giving a different factual account, which had been tested under cross-examination.

43. The failure on the part of the individual respondents to give evidence was not a breach of any order. At the case-management hearing which directed this PH, the judge had made the usual order for the parties to prepare and exchange statements of all of the evidence that "they and their witnesses intend to give" and that no additional evidence would be allowed without permission. This referred to no such additional evidence being allowed at the "final hearing", but the paragraph as a whole plainly related to the PH, and this was plainly a drafting error. This order did not require any of the respondents to give evidence, nor was there any other such order. This ground therefore fails.

44. Secondly, the grounds of appeal contend that the claimant did not get a fair hearing because the respondents failed to include in the bundle his witness statement of 7 January 2022. This was also raised in his reconsideration application and the reconsideration decision confirmed, in terms, that the judge *had* seen and considered this statement. In the course of the hearing of this appeal the claimant told me that he accepted this, and that this particular ground was no longer maintained.

45. In the reconsideration decision the tribunal also considered the claimant's argument that it should have struck out the respondents' responses because the witness statement of their one witness was served late. The tribunal rejected that argument. It appears that this application was only made at the reconsideration stage; and this is not an appeal against the reconsideration decision. But in any event the tribunal was plainly entitled to take the view that the claimant had not suffered any material prejudice and that it would have been disproportionate to strike out the responses for this reason.

46. Turning to the substantive challenges to the Beyzade decision, the grounds of appeal contend that the tribunal erred in concluding that it was reasonably practicable to present the complaint of unfair dismissal by reason of protected disclosures in time. The claimant argues that he was reasonably ignorant of the fact (as he contends) that he was an employee, because he was not put on

PAYE or given a statement of written terms and conditions to which employees are entitled, and the respondents had consistently denied that he was an employee.

47. However, whether a given claimant was reasonably ignorant of something, such as to make it not reasonably practicable for him to have presented his claim within time, is a matter for the appreciation of the tribunal on the facts of the given case. This tribunal properly concluded that this claimant had the ability and the resource to find out his rights and to bring an unfair dismissal claim in time, and in any event, that he had not brought it within a further reasonable period. As to the latter, it was plainly entitled to find, in particular, that there was an unreasonable delay from when he instructed the solicitors who in due course were identified in the claim as his representatives, to the start of ACAS EC, and, after its conclusion, to the date when the claim was in fact presented.

48. The tribunal further considered the point in its reconsideration decision, including noting that, in the original claim (which included an application for an extension of time) it had not been suggested that the claim was late because the charity had deceived the claimant on the question of whether he was an employee; and that he could have presented a claim asserting employment status, even though that might be disputed or uncertain and require to be determined by the tribunal. I note in this regard that the case for an extension of time advanced in the claim form raised a number of matters, but did not claim that the claimant had been misled by the respondents about his status, or was otherwise ignorant of the possibility of an unfair dismissal claim. Rather, it was said that their actions in seeking to get him returned to prison resulted in him "prioritising safeguarding his freedom over an unfair dismissal claim at this time". The tribunal's conclusion on this aspect was proper and not perverse.

49. The grounds of appeal also contend that, in its approach to the "not-reasonably-practicable" test, the tribunal was inconsistent and biased in favour of the respondents, as it was lenient towards their solicitor for not producing a timely witness statement when she was said to have been unwell, without supporting evidence being produced, whereas it did not accept the claimant's medical evidence as sufficient to support his case for an extension of time. However, this criticism does not

compare like with like, as one matter concerns the specific statutory test relating to the time limits for instituting a tribunal claim (and the case-law which tribunals must follow in applying that test) and the other concerns a matter of case-management during the course of an ongoing tribunal claim.

50. The grounds also effectively challenge the tribunal's decision as perverse in view of the medical evidence relating to the claimant's mental health. EJ Beyzade considered this in the original and reconsideration decisions. In summary, there was evidence that the claimant had received counselling in 2018, had consulted his GP in November 2020 reporting stress and anxiety, and then evidence from two consultant psychiatrists, one dating from February 2021 and the other from November 2021. The former referred to there being a court case and expressed the opinion that the severity of the claimant's current depression and anxiety was likely to be causing and have caused impairment in his ability to pursue it. The latter assessed the claimant as having severe PTSD and agreed with his counsellor's assessment that this "would likely interfere with his ability to commit to or complete tasks, particularly those directly related to the trauma."

51. This is a perversity challenge to an evaluative decision. It was for the judge to assess the significance of the medical evidence, as part of the overall evidence, and in the context of the relevant timeline, when deciding whether it was reasonably practicable for a complaint to have been presented in time, and/or whether, if not, it was presented within a further reasonable time period. The respondents had submitted to the judge that there was no evidence of the claimant having sought assistance from his GP following his release from prison in May 2020 and prior to November 2020. I note also that the claimant had appeared and represented himself at a hearing in October 2021 and before EJ Beyzade at the hearing in January 2022 as well as in December of that year.

52. I do not consider that it was perverse of the judge to conclude that the medical evidence did not show that it was not reasonably practicable for the claimant to put in his unfair dismissal claim, or indeed the out-of-time protected-disclosure detriment claims, in time, nor that they had not been put in within a further reasonable period, nor, in relation to the out-of-time discrimination complaints,

that it was not just and equitable to extend time. This strand of the appeal therefore fails.

53. A substantial part of the grounds of appeal in relation to time points contends that the judge erred, in relation to the protected-disclosure complaints, with respect to the question of whether some, or all, of them, formed part of series of similar acts for the purposes of section 48(3)(a) of the **1996 Act**, such that, if one (or more) of them was complained of in time, then all the earlier conduct forming part of that same series is to be treated as also having been complained of in time.

54. Before the tribunal, and in this appeal, the claimant particularly relied on the decision in **Arthur v London Eastern Railway Limited** [2006] EWCA Civ 1686; [2007] ICR 193. Giving the principal speech in that case Mummery LJ said, of this provision, at [31]:

> **"The acts occurring in the 3 month period may not be isolated one-off acts, but connected to earlier acts or failures outside the period. It may not be possible to characterise it as a case of an act extending over a period within section 48(4) by reference, for example, to a connecting rule, practice, scheme or policy but there may be some link between them which makes it just and reasonable for them to be treated as in time and for the complainant to be able to rely on them. Section 48(3) is designed to cover such a case. There must be some relevant connection between the acts in the 3 month period and those outside it. The necessary connections were correctly identified by HHJ Reid as (a) being part of a "series" and (b) being acts which are "similar" to one another."**

55. At [35] Mummery LJ said:

> **"In order to determine whether the acts are part of a series some evidence is needed to determine what link, if any, there is between the acts in the 3 month period and the acts outside the 3 month period. We know that they are alleged to have been committed against Mr Arthur. That by itself would hardly make them part of a series or similar. It is necessary to look at all the circumstances surrounding the acts. Were they all committed by fellow employees? If not, what connection, if any, was there between the alleged perpetrators? Were their actions organised or concerted in some way? It would also be relevant to inquire why they did what is alleged. I do not find "motive" a helpful departure from the legislative language according to which the determining factor is whether the act was done "on the ground" that the employee had made a protected disclosure. Depending on the facts I would not rule out the possibility of a series of apparently disparate acts being shown to be part of a series or to be similar to one another in a relevant way by reason of them all being on the ground of a protected disclosure."**

56. Lloyd LJ (at [44]) disagreed with the last suggestion made by Mummery LJ in that paragraph, observing that if it were "sufficient similarity" to assert that all the acts had been done on a particular ground, the use of "similar" in the statute would be redundant. However, Sedley LJ (at [41]) said:

> **"I see the force of Lord Justice Lloyd's reasoning about the redundancy of the requirement of similarity if it extends to the grounds on which hostile acts were done as distinct from the acts themselves. But on this issue I agree with Lord Justice Mummery, because the alternative is a**

> **construction which demands uniformity in a situation which, as the legislature will have known, is typically multiform. In the second example I have given, which is a classic tale of harassment at work, the only link may be the inferred motive of the aggressors. The class of a case in which, as Ms Seymour accepted, disparate acts are to be treated as similar because they were all instigated by one person is evidentially a rare one. While I agree with Lord Justice Mummery that, on what is in substance a strike-out application, the search for a shared motive may be entirely unhelpful, when the evidence has been heard and considered it is possible that a series of apparently unconnected acts will all be found – using the statutory language – to have been done to the claimant on the ground that he had made a protected disclosure. The difference between such a finding and a finding of detrimental acts linked by a common motive may be no more than semantic. In either such case I would consider it within the statutory purpose to treat the history as constituting a series of similar acts."**

57. The claimant also relied on well-known authorities (such as **Ezias v North Glamorgan NHS Trust** [2007] EWCA Civ 330; [2007] ICR 1126) which highlight the fact-sensitive nature of protected-disclosure and discrimination complaints, and warn of the dangers of striking out such complaints at a PH before all of the evidence has been heard, and all the facts found. He also relied on section 48(2) **Employment Rights Act 1996**, which applies to such complaints, and provides that it is for the employer to show the ground on which any act, or deliberate failure to act, was done; he cited in this regard **Ibekwe v Sussex Partnership NHS Foundation Trust**, UKEAT/0072/14.

58. In summary, the heart of the claimant's factual case was that he made a number of disclosures, in particular of what he reasonably believed to be criminal financial malpractice in the running of the charity and/or its associated companies; that he was subjected to detriments (such as not promoting him to a role which would have given him visibility of financial matters) and dismissed because he had done so; that, in an effort to silence him, he was then the subject of a false report to probation services for his own alleged misconduct, which resulted in him being recalled to prison; and that his disclosures were also the true reason for the refusals to comply with his SARs and denial in the annual return that he had been an employee. His disclosures were the "common thread" running through all of the treatment of which he complained, such that it amounted to a series of similar acts. It was also his case that the principal perpetrator of all the alleged financial malpractice that he raised, and decision-maker in relation to all the alleged conduct of which he sought to complain, was Ms Johns.

59. It is fair to repeat that these very serious claims were disputed. But the claimant contends that

he certainly, at the time of this PH, had an arguable case that all of the conduct complained of was because of his (claimed) protected disclosures, which he says supported the arguable conclusion that it all formed part of a series of similar acts or failures to act. In support of that case he developed in considerable detail, his contention that he had a demonstrably arguable case that the evidence that he could present at a full hearing would show (for example) that he reasonably believed that serious financial malpractice had occurred, that the report made about him to probation services was materially false, and that the reasons given for not complying with the SARs did not hold water.

60. The claimant also argues that he had evidence to support his case that the charity (through Ms Johns) had persistently denied that he was an employee ever since October 2019; and that he had an arguable case that this stance was taken because of his whistleblowing, as another colleague who was introduced by the same organisation as him, and (he said) worked on essentially the same basis, was not also referred to in the same way in the annual return.

61. My conclusions about this part of the grounds of appeal against this decision are as follows.

62. As to the law, the claimant is right that the authorities generally warn tribunals that it may be an error to strike out a complaint of this sort at a PH as having no reasonable prosect of success, among other things having regard to the often highly fact-sensitive nature of such complaints. I do not need to recite again what are (to lawyers) familiar passages from familiar authorities. The claimant is also right that well-known authorities also indicate that, in cases involving multiple complaints of detriment on grounds of claimed protected disclosures, or discriminatory treatment, issues relating to the exercise of a power to extend time may often not be amenable to fair substantive determination at a PH and should be left to be considered at the full merits hearing.

63. However, it is not the law that it is *always* necessarily wrong for a time point of this type in a protected-disclosure or discrimination case to be determined substantively at a PH at which evidence is received. See, for example, the discussion in **Arthur** at [36] and [43]; and the overview of the

relevant principles given in **E v X, L and Z**, UKEAT/0079/20, 10 December 2020 at [50].

64. Turning to section 48(3)(a), as the speeches in **Arthur** discuss, what is required for it to apply is that the tribunal find that the (otherwise) out-of-time conduct complained of forms, together with conduct complained of in time, a *series* of *similar* acts (or failures to act). Further, only conduct which is found to have been done on the proscribed ground (in this case a protected disclosure) can be relied upon for this purpose (see **Royal Mail Group Ltd v Jhuti**, UKEAT/0020/16, 19 March 2018 at [43]). (The claimant relied upon what was said (citing an earlier authority) at [45] of **Jhuti**. But the point made in that paragraph is a different one, being that the fact that there was *other* conduct which, had it been successfully complained of, might also have formed part of the same series, does not necessarily mean that the conduct which *was* successfully complained of could not do so).

65. It is not, however, the law that the *mere* fact (if it be found) that a number of acts (or failures) are all found to be on grounds of a protected disclosure must *necessarily* mean in every case that they are all bound to be regarded as part of a series of similar acts. For the reasons explained by Lloyd LJ in **Arthur**, that would be a problematic reading of the statute. However, in my view, the answer is that Mummery LJ in the last sentence of [35] in **Arthur** did *not* in fact so hold. He merely (*obiter*) did not rule out that being a *possibility* in a given case. That said, what his observations, and those of Sedley LJ, show, is that where there is found to be what Sedley LJ called a "shared motive" for the various conduct of complained of, then that is a potentially relevant consideration.

66. In the present case item one of the agenda for the PH that in due course came before EJ Beyzade identified that it was to determine whether the claims were submitted in time. But the agenda allowed as an alternative, should the PH judge decide it was not appropriate to determine a time-limit issue substantively, consideration of whether a claim should be struck out on the basis that the claimant had no reasonable prospect of succeeding in showing that it was submitted in time.

67. In the original decision and the reconsideration decision, as we have seen, the tribunal

concluded that the protected-disclosure complaints in the second claim form about (as it appeared) the defence to the first claim, and about the content of the 2021 annual return and the response to the second SAR, were all in time; and the complaint about the response to the first SAR was also in time because it was part of a series of similar acts together with the response to the second SAR (having regard to the **Jhuti** point, which the tribunal itself noted in it is summary of the law, it must be inferred that, strictly, it concluded that, should both the SAR complaints be found meritorious at trial, *then* they would both be in time). However, in the original decision the tribunal said no more on the series-of-similar acts issue than that the response to the second SAR did not otherwise form part of a series.

68. All of that being so, and in light of the guidance in **Arthur**, I consider that it was wrong in the first decision, by way of a substantive determination, to dismiss the other protected-act detriment complaints as out of time. As I have discussed, the tribunal *was*, at that PH, in a position fairly to determine, in respect of those complaints (and the unfair dismissal complaint) whether they were brought within the primary time limit, and, where they were not, whether it was not reasonably practicable for them to have been presented in time, and/or whether they were presented within a further reasonable period; and it did not err in reaching its substantive conclusions on those issues. However, while there were some clear and undisputed factual features or circumstances that could be regarded as strongly pointing away from any of the in-time conduct forming part of a series of similar acts with any of the out-of-time conduct (save in relation to the pair of SAR responses), the tribunal did not make definitive substantive findings, in this initial decision, about all of the facts and circumstances that the claimant contended supported his case on this point.

69. This has a bearing on the conclusion, in the initial decision, that those complaints of detrimental treatment on the grounds of protected disclosures that were otherwise out of time, did not relate to conduct which was part of series of similar acts with any conduct of which the same type of complaint was made in time. But I should note that this does not apply to the complaint of unfair dismissal. That is because section 47B(2) provides that the right of a worker to complain of

detrimental treatment on the ground of a protected disclosure does not apply where the worker is also an employee and the detriment in question is dismissal; and there is no equivalent to section 48(3)(a) in section 111, which concerns the time limit, and possible extension of it, in respect of unfair dismissal complaints. Thus, the series-of-similar acts argument cannot be invoked to save an otherwise out-of-time unfair dismissal complaint from being out of time. So the position remains that the Beyzade tribunal did not err in its original decision in dismissing that complaint.

70. Returning to the complaints of detrimental treatment on the grounds of protected disclosures, EJ Beyzade's consideration of this aspect did not end with the original decision. It was revisited in the reconsideration decision. Importantly, in *that* decision the judge took the alternative approach available to him, of considering whether any of these complaints should be struck out as having no reasonable prospect of being found to be in time.

71. The judge reviewed the position in relation to what had been understood to be the complaint about the stance taken in the response the first claim, that the claimant had not been an employee of the charity. As I will describe, the claimant's position now, is that he never intended, and does not now seek, to pursue such a complaint. In any event EJ Beyzade, in my view properly, concluded that judicial proceedings immunity would have applied to it. As only conduct which is the subject of a well-founded complaint can potentially form part of a series of similar acts or failures to act for this purpose, the judge did not err by discounting that particular (apparent) complaint from consideration.

72. The judge also reviewed the position in relation to the complaint about the content of the 2021 annual return, which, by this same decision, he permitted to proceed, and in relation to the refusals to comply with the two SARs. In relation to all of these complaints he reviewed the position in relation to the substantive arguability, and in relation to whether there were any other new arguments or evidence that had been presented to support the contention that any of this conduct former part of a series of similar acts with any of the conduct which was the subject of out-of-time complaints. His conclusion was that, even if he had been wrong to decide that it was appropriate to resolve this issue

at the earlier PH, the complaints in question should be struck out because there was no reasonable prospect of the claimant succeeding in showing that they were in time.

73. I consider that this conclusion, on the strike-out alternative, was a permissible conclusion for the judge to reach. Reading the two decisions together, including the particularly thorough review in the second decision of the claimant's arguments and submissions (as well as those of his opponent) it is clear that the judge understood and considered all of the essential components of the claimant's arguments on this point, including as to what he contended were the "common threads". The judge plainly understood, for example, that it was the claimant's case that a common thread was the very fact that (on his case) all of the conduct was on grounds of his protected disclosures, and that it was the claimant's case that Ms Johns was the key actor and driver throughout.

74. (I note also, though the tribunal did not rely on it, that, while the claimant argued that it had long been the stance of the charity/Ms Johns, to deny that he was an employee, the detrimental conduct actually complained of in the particulars does not appear to have included any earlier specific conduct of that type; so it is not clear in respect of which actual (otherwise out-of-time) complaint the assertion of this particular kind of similarity with an in-time complaint would have assisted.)

75. But, even taking all of that into account, there were a number of features that were apparent and that plainly supported the conclusion, that the in-time matters did not form part of a *series* of *similar* acts with the alleged treatment in the course of the relationship and its immediate aftermath at the end of 2019. These included that, on the face of it, the conduct complained of was, in terms of what the conduct itself actually consisted of, conduct that was of a different nature; and each was, as such, also a discrete and self-contained piece of conduct (responding to an SAR, or, taking them as a pair, to two SARs, in response to a specific request or requests; writing an annual return). These features were plainly highly relevant to the question of whether there was a *series* of *similar* acts.

76. I pause to observe that section 23(3)(a) of the **1996 Act** provides that whether a complaint

about a deduction from wages that form parts of a "series" is in time is determined by reference to the date of the last deduction of the series. In **Bear Scotland v Fulton** [2015] ICR 221 at [79], it was said that the ordinary meaning of "series" in that provision is "a series through time" involving a "sufficient factual link and a sufficient temporal link". The Supreme Court, considering the same wording in **Chief Constable of PSNI v Agnew** [2023] UKSC 22; [2024] ICR 51 at [127], said that the ordinary meaning of "series" is that "broadly speaking, it means a number of things of a kind".

77. The statutory context there was deductions from wages, a different type of complaint. Wages complaints are always about "deductions" (or payments) whereas protected-disclosure detriment complaints are, in Sedley LJ's word, more "multiform"; though, perhaps correspondingly, whereas the wages provisions simply require a "series of deductions", section 48(3)(a) requires a *series* of *similar* acts or failures. While I do not see them as at odds with anything said in **Arthur**, and, given the different statutory context, I do not rely on them as such, the observations in these cases, on the concept of a "series", do seem to me to chime with my view of the ordinary meaning of the language of section 48(3)(a), and that a tribunal would be entitled to regard the features to which I have just referred as highly relevant, and possibly decisive, pointers away from that test being satisfied.

78. It is important also to note that, notwithstanding the difficulties which the judge considered these complaints faced, in relation to none of them did the judge conclude that there was no reasonable prospect of it being found that there was detrimental conduct on the grounds of protected disclosures – and that was *not* the basis on which the judge concluded that they should be struck out. They were struck out only on the basis of the prospects of their being held to be in time; and the judge plainly considered all of them, and understood that it was the claimant's case that they had the common feature of the proscribed ground. I note again that **Arthur** does not hold that success on the question of the ground of the conduct in question would necessarily be enough to succeed on the series point.

79. Standing back, I conclude that the judge ultimately did not err, in deciding, following his consideration of the arguments both in the original decision and then in the reconsideration decision,

that the out-of-time complaints should not be permitted to proceed, because it had not been shown that it was not reasonably practicable to present them in time or, if it had, that they were also presented within a further reasonable period; and because there was no reasonable prospect of their being held nevertheless to have been in time, by virtue of section 48(3)(a).

80. In relation to his **Equality Act** complaints about treatment during the relationship the claimant contends that he discovered information when the annual return was published in February 2021, which should be treated as restarting the limitation clock on the basis of concealment. I do not agree. The basis of those complaints was the contention that Ms Johns had an antipathy or prejudice towards Greek men (specifically himself, Paul Vrahimis, and his brother Anthony Vrahimis who also worked for the charity); and that this was something that the claimant himself became aware of arising from an incident in September 2019. The annual return could not be said to have added any information that had previously been concealed and was a significant ingredient of those earlier complaints.

81. The grounds of the first appeal at one point challenge the tribunal's conclusion that the complaints in question had little reasonable prospect of success. Although at one point in the appeal hearing the claimant indicated that he was not seeking to challenge the deposit orders, at a later point in the discussion he said that he was, and so I have treated this part of the grounds as still live.

82. I will consider the parties' respective cases in respect of the outcome of the complaints relating to the two responses to the SARs when I come to the second appeal. At present the focus is on EJ Beyzade's decision, at the PH before him, that they had little reasonable prospect of success.

83. As I have noted, he described, in summary, the reasons given by the charity (conveyed by its solicitors) for not complying with the requests. He also referred to a document in which the claimant had set out further details of his case. In that document the claimant contended that the "investigation of crime" reason was "false", as the police had confirmed that a report they had received from the charity did not name him and he was not personally under investigation. He also contended that the

requested data related to his former employment and dismissal, and it had been refused in order to undermine his ability to seek a remedy for detrimental treatment because of his protected disclosures; and he relied on **Woodward v Abbey National plc** [2006] EWCA Civ 822; [2006] ICR 1436.

84. I turn to the judge's reasons for his conclusion that there was little reasonable prospect of these complaints succeeding on their merits. I keep in mind that the authorities confirm that the threshold of *little* reasonable prospect of success is not as stringent as the threshold of *no* reasonable prospect, for striking out a complaint; and that there is more room for a tribunal to form an assessment of *little* prospect at a PH notwithstanding material disputes of fact. However, they also indicate that the tribunal does have to identify some feature or features that properly support its conclusion.

85. While this tribunal said that the claimant had little reasonable prospect of establishing that the reasons were anything other than those set out in the letters of refusal, it did not elaborate on why it so concluded. It also said that it could not determine whether the respondent's actions were lawful under the data protection legislation. But, while it would not have jurisdiction to entertain a complaint of breach of that legislation, *as such*, it needed to engage with the claimant's case that the exemptions being invoked could not apply, and that this was relevant because it supported his contention that they were relied upon as a pretext to refuse him on grounds of his protected disclosures. Though the tribunal was only considering whether to make a deposit order, I do not think it was sufficient to make it on this basis without giving *some* consideration to the claimant's argument on this point.

86. As for **Tiplady** that case concerned someone who was both an employee of the Council concerned and in dispute with it in relation to property over which it was exercising its power as a local authority. The Court concluded at [42] to [45] that, for the tribunal to have jurisdiction in relation to a protected-disclosure detriment complaint, the alleged detriment had to arise in the "employment field", with the focus being on the hat worn by the employee.

87. In the present case, the claimant's case was that the SARs related to data to do with his former

working relationship with the charity, including its terms, the termination of it, and the report to the police about his alleged conduct in the course of it. In my view it was not to the point that the data protection legislation enables any data subject to raise an SAR with any controller of their personal data, as in this case it was not suggested by either party that the claimant had, or had had, dealings with the charity in any other capacity. So **Tiplady** did not support the conclusion that these complaints had little reasonable prospect of success because of a "capacity" issue. (I note for completeness that the tribunal did not hold that it had little reasonable prospect of success by reference to the "connection with former employment" test in **Woodward**.) I therefore conclude that the tribunal erred in ordering a deposit in relation to those complaints.

88. The deposit order also extended to what was understood to be the complaint that the charity had disputed in its response to the first claim that the claimant was an employee, *because* he had made protected disclosures. In the original grounds of appeal the claimant asserted (at paragraph 11) that the tribunal was wrong to take into account the argument that that complaint was not justiciable, because judicial proceedings immunity would apply. But they also (at paragraph 10) said that he had *not* complained about that document, but only about the February 2021 annual return.

89. In the course of the appeal hearing the claimant told me that he may have referred to this aspect of the first grounds of resistance, in his statement for the PH before EJ Beyzade and/or in discussion at that PH, but he had only intended this to be illustrative, not a distinct complaint of detriment in its own right. In any event, he told me that it was never his intention to complain of the contents of the grounds of resistance, as such – there is no express mention of it in paragraphs 5.15 to 5.17 – and so the point as to whether such a complaint would have been justiciable was not something he any longer pursued in this appeal. In any event I do not consider that the judge erred in concluding that any such complaint had little reasonable prospect of success. As I have already stated, I think it is clear that any such complaint would have been defeated by the application to it of judicial proceedings immunity, and that the contrary would not have been reasonably arguable.

90. I note for completeness that, although the tribunal expressed the view, in the reconsideration decision, that the annual-return complaint had little reasonable prospect of success, it did not also make a (further) deposit order in relation to it.

91. For all of these reasons the first appeal (a) fails in relation to time points; but (b) succeeds in relation to the deposit order relating to the in-time complaints relating to the SAR replies.

Appeal against the Gidney decision

92. I will consider, in turn, each of the grounds of appeal against the Gidney decision that were permitted to proceed to a full appeal hearing.

93. Ground (a) complains that the tribunal erred because it failed to determine the claimant's complaint that the failure to respond at all to the third SAR (raised in May 2022) amounted to detrimental treatment on grounds of protected disclosures. As I have recorded, the claimant was permitted to add that complaint, by amendment, in the Beyzade reconsideration decision. However, the Gidney tribunal did not address it in their decision. The claimant raised this omission in his reconsideration application, but the Gidney reconsideration decision also failed to address it. I conclude that the Gidney tribunal did err by failing to determine this complaint, an error which was not remedied upon reconsideration. I therefore uphold this ground.

94. Ground (b) contends that the tribunal misapplied schedule 2 part 1 paragraph 2 **Data Protection Act 2018** by accepting the charity's reliance, in declining to comply with the first two SARs, on an exemption "that did not legally apply".

95. The Gidney tribunal's relevant factual findings included the following:

> **"27. In January 2020 the Respondent discovered that its computers had been stolen [184]. The Respondent engaged the Police, suspecting the Claimant or one of his colleagues may have been behind the theft. In this suspicion they were correct, although the Claimant has a different perspective, somewhat euphemistically stating at paragraph 26 of his witness statement 'I also discovered documents on a hard drive that was used by the Respondents and 'confiscated' by a former trustee and director' (our emphasis added). In answering our questions on this he stated, 'Anthony Vrahimis Paul's brother, removed the hard drive. He**

> **wanted to understand more about what they were doing. I took it. I was given the hard drive. He's a director and he felt entitled to take it. I didn't ask him to.' The Police elected not to pursue the matter on the grounds that they considered it to be a civil matter.**
>
> **28. One of the documents that the Claimant found on the Respondent's confiscated hard drive appeared to be draft Board Minutes (they were unsigned and had spaces left blank for the insertion of dates) of a meeting to be held on a date in October 2018. The business of the meeting was to consider whether to execute a Joint Venture Termination Agreement between Nicole Riedweg and LWL and to instruct Just Cash Flow Ltd to transfer to Ms Riedweg a £820,000.00 termination fee [1097]. On the balance of probabilities we find that Anthony Vrahimis took the Respondent's hard drives without the Respondent's knowledge and consent and gave them to the Claimant for the purpose of advancing his various litigations and claims against the Respondent. Whilst the Police may have elected not to pursue the matter on account of Anthony Vrahimis being a director, it is clear to us that Anthony Vrahimis was not acting in the Respondent's interests when he did so, and in fact knew well that the Claimant would use it or attempt to use it against the Respondent."**

96. In the letter of 15 October 2020 the respondents' solicitors noted that the SAR had been received the day after the police had seized computer equipment belonging to the charity. The tribunal then set out the following extract from the letter:

> **'Given the continuing criminal investigations, we instructed that Leather Inside Out is not at this stage prepared or indeed able to disclose any of the data or information requested in your letter. We refer to the Data Protection Act 2018 Sch 2, Part 1, Paragraph 2, and the exemption relating to the prevention or detection of crime and the apprehension or prosecution of offenders. In addition, Leather Inside Out considers your client's request to be manifestly unfounded and excessive, pursuant to the Data Protection Act, Part 3, s53. Your letter seeks data and information relating to an extremely wide range of records. In view of all of the circumstances described above we are instructed that our client regards your client's request as manifestly unfounded excessive and malicious in intent, and a further attempt to harass the charity with no real purpose other than two cause disruption and additional economic detriment to the charity'.**

97. The tribunal said that the second SAR was in similar terms and refused on the same grounds.

98. The tribunal did not make any finding that it lacked jurisdiction to consider these complaints. It found that these two refusals amounted to detrimental treatment. But its conclusion about the reason why, and whether it was on grounds of the protected disclosures, was as follows:

> **"62. The reasons why the First Respondent refused to comply with the data requests were stated on the SAR refusals themselves. They were the prevention / detection of crime and the apprehension or prosecution of offenders, and/or that the requests were manifestly unfounded and excessive and or malicious and intended to harass with no legitimate purpose other than to disrupt the First Respondent, all of which were allowable reasons to refuse a subject access request, pursuant to the Data Protection rules. The factual basis for taking defence to the SAR was that the Claimant and his colleagues were accused of stealing the Respondent's hard drives. They were taken and then used by the Claimant in formulating his SAR. He accepted that fact in his evidence before us. On the balance of probabilities we find that the reasons for refusing to comply with the SAR were the reasons given by the First Respondent at the point of refusal. We therefore reject the Claimant's claim that the reason for the refusal was PID6, or indeed any of his qualifying disclosures.**

99. The claimant contends that the tribunal erred because the reasons given for refusing to comply with these requests did not hold water. The schedule 2 exemption relates to the processing of data for certain specific purposes, including "the prevention or detection of crime" or "the apprehension or prosecution of offenders". It also applies to someone who obtains data which has been processed for such purposes and then processes it for the purpose of discharging statutory functions. However, he says he produced evidence that the police had confirmed that he personally had not, at the time, been the subject of the report about the hard drive or any live police investigation. The earlier process in relation to the allegations that led to his license being revoked had also concluded when he had successfully challenged that and been re-released from prison. The charity was not itself a public authority engaged in any criminal investigation. So this exemption could not apply.

100. This line of argument was also raised in the reconsideration application. At paragraph [7] of the decision refusing a reconsideration EJ Gidney stated: "As a Tribunal we did not have to determine whether [the reason given by reference to this exemption] was a good reason for refusing the Data Access request, we only had to determine whether it was the reason, and we found that it was." At [13.3] he addressed specifically the claimant's argument that this basis for refusing the request was "erroneous" and repeated that "we did not have to determine whether it was a valid reason for refusal, simply whether it was the reason for the refusal, and we found that it was."

101. As to that, it was right to say, as such, that the issue for the tribunal was what were the reasons for the refusals, and whether the refusals were materially influenced by the protected disclosures. If the given reasons *were* the whole true reasons it would not matter if the charity was wrong to believe that it could properly rely upon them as exempting it from having to comply. However, as at the deposit-order stage, the claimant's case was that on examination the given reasons did not hold water, and that this in turn cast light on whether they *were* the (whole of the) genuine reasons; and hence whether this stance had been materially influenced by his having made protected disclosures.

102. What the tribunal said at [62], and the judge's comments in the reconsideration decision, suggest that the tribunal considered it sufficient answer that the reasons relied upon were "allowable" – that is, that the defences invoked were indeed found in the **2018 Act** – and that the claimant had admitted making use of the content of the hard drive(s) to formulate his SAR, without considering *at all*, whether that might provide a proper factual basis for that legal defence to apply. However, the claimant had again advanced a cogent argument that consideration of this issue cast light on what the true reasons for the refusal were, and hence was relevant to the determination of that complaint. It appears to me therefore that the tribunal erred in approaching the matter on the basis that the tenability of the defence relied upon by the charity was something that it did not need to consider.

103. Mr Wallace reminded me of what he called the wide margin of deference which the EAT is bound to accord to an evaluative decision by the employment tribunal. Nor, of course, does it have to refer to every feature of the evidence and arguments. I also bear in mind that, although the tribunal did not hear any positive witness evidence, tested under cross-examination – from Ms Johns or anyone else – for the charity, as to the reasons for this conduct, it did have the evidence of the two letters, and of some features of the context and circumstances relating to the hard drive, which were not, as such, disputed, to which it referred in its conclusions. The judge also properly indicated in the reconsideration decision that no adverse inference was drawn from the non-attendance of any witness for the charity, in particular, given that it was in the process of being wound up.

104. However, it was a central and substantial part of the claimant's case that other factual features, of which he had furnished evidence, together with his points about the lack of a sound legal basis to rely on this exemption, gave the lie to the purported reasons for this conduct, and supported the inference that it had been materially influenced by his protected disclosures. The tribunal needed to engage with that part of his case, and erred by failing to do so.

105. That is enough to lead to the conclusion that the challenge to the decision on the complaint

about the refusal to comply with the two SARs should succeed. However, in the body of this ground (although not the heading) the claimant also contends that section 53 of the **2018 Act**, which permits a controller to refuse to act on a request that is "manifestly unfounded or excessive", did not apply, and, again, that this cast light on the veracity of the given reasons for refusing to comply with these two requests; and, as the point was argued, I will also address it.

106. The claimant relies upon **Deer v University of Oxford** [2017] EWCA Civ 121, in which, despite a very high volume of documents having been initially disclosed by the University, further disclosure was ordered, leading to, in percentage terms, a very small number of additional documents being provided. In his case, he submits, by contrast, the charity had refused to disclose 100% of the documents he had requested, which could not on any view be justified. However, I do not think **Deer** assists him. That case concerned the provisions of the **Data Protection Act 1998**. Further, each case turns on its own facts, and whether a request is manifestly unfounded or excessive cannot turn merely on a numerical calculation of the number of documents, or additional documents, requested.

107. The claimant also contended that it was significant that the charity had, on both occasions, refused to comply with his entire request, without engaging with whether, within it, there were any particular sub-requests that should, considered separately, have been viewed as reasonable and proportionate. But I do not think it can be right that, if an overall request is indeed excessive in length or scope, it is nevertheless always incumbent on the recipient to work through it and identify, and reply, to any sub-elements, that, if tabled on their own, would have merited a response.

108. Ultimately, I do not think that this second aspect would necessarily on its own have been determinative of the answer to the question that the tribunal had to decide, being whether the protected disclosures had materially influenced the refusal. In any event, reading both the original and the reconsideration decision, it appears to me that the tribunal principally relied upon its conclusion in relation to the invocation of the prevention-of-crime exemption being genuine; but, for reasons I have explained, it made a principled error in that respect.

109. I therefore uphold the challenge to the tribunal's conclusion that the refusals to comply with these two SARs were not on grounds of the protected disclosures.

110. Ground (c) contends that the tribunal erred in applying **Kilraine v London Borough of Wandsworth** [2018] EWCA Civ 1436; [2018] ICR 850 regarding the "specificity of information" that the claimant presented in respect of claimed disclosures 10 and 11. Originally, a further ground (d), relating to the same disclosures, contended that the tribunal had failed to place them in the context of earlier disclosures, when considering whether they amounted to protected disclosures (relying on **Norbrook Laboratories (GB) Ltd v Shaw** [2014] ICR 540 (EAT)). But that ground had not been permitted to proceed to a full hearing, either on paper or at the rule 3(10) hearing.

111. Claimed protected disclosure 10 was said to be the claimant having, on 25 November 2019, disclosed to Paul Vrahimis that the charity's bank accounts were showing irregular and highly suspicious activity that appeared to be a money laundering scheme. He claimed to have reasonably believed that the information that he disclosed tended to show that a crime had been committed under the **Proceeds of Crime Act 2002**. The tribunal concluded at [57] that disclosure 10 did not disclose any information, as the claimant "shared his opinion on banking activity he thought was irregular and highly suspicious." It was "a clear example of an opinion, not information."

112. However, the claimant contends that he referred in his witness statement to having discovered from the charity's bank statements frequent large sums being received from its finance provider but that there was never any money being repaid; and that he was aware that the payments continued beyond the agreed 12-month terms of loan. He also pointed out what he considered to be a particular suspicious payment of a large sum to Ms Riedweg, also referenced in Paul Vrahimis' witness statement to the tribunal. The claimant contends that it was therefore simply wrong to say that this was no more than an expression of an opinion, with no information being provided.

113. Claimed protected disclosure 11 was said by the tribunal to be the claimant, following the

"dismissal", having disclosed to Paul Vrahimis that he had been present at a board meeting at which an agreement to transfer funds to a company owned by another trustee was made, when in fact Paul Vrahimis was not present at that meeting. He claimed that this related to a reasonable belief that a criminal offence had been committed under the **Fraud Act 2006**.

114. The tribunal concluded that "this was not a disclosure made by the Claimant. It was Mr Vrahimis who observed that he might not have been present. We consider that there is no reasonable belief on the Claimant's part that this tended to show that a criminal offence had been committed." The claimant contends that it failed to consider that he was aware that Paul Vrahimis had not participated in any formal meetings with the other trustees; and that the tribunal wrongly relied on this aspect to "disqualify" his honest belief in criminality even though his statement made clear that he was aware that the relationship between the companies in question did not justify the "exorbitant termination fee". The claimant also contends that his disclosure of a document that purportedly showed Mr Vrahimis as present at the meeting was "distinct from the transaction it relates to."

115. In support of this part of his appeal the claimant referred me in particular to passages in the witness statements of himself and Mr Vrahimis (who were both witnesses before the Gidney tribunal). I keep firmly in mind, here, that I did not try the matter, did not see and hear all the evidence that was received by the tribunal, and that the overall appreciation of that evidence was a matter for the tribunal. Mr Wallace also made the point that the issue with which the tribunal was concerned was whether the claimant had, as claimed, made disclosures of information to Mr Vrahimis, on the occasions of these claimed protected disclosures; not whether he had later presented hard evidence and information to the tribunal itself.

116. However, in their witness statements, the claimant, and Mr Vrahimis both gave accounts of how the claimant had reported to Mr Vrahimis, certain evidence of financial transactions that he had discovered; how Mr Vrahimis had become concerned about these reports (and reports from another colleague); how he had then enlisted the claimant to conduct an investigation, including of documents

on the hard drive; and how the claimant had then reported various matters to him.

117. Relevantly to disclosure 10 the claimant gave particulars in his statement of the types of transactions that he had seen on the charity's bank statements (the rough size of tranches received, source and rough frequency) and Mr Vrahimis' statement referred to the claimant having discovered these transactions (with similar particulars) on 25 November 2019. While it may be said that these factual particulars were not given in the pleading and/or that this evidence did not necessarily show that the claimant had communicated these details to Mr Vrahimis at the time, I consider that it was not sufficient to say that "[w]e do not feel" that this PID disclosed any information, and that the claimant only shared his opinion, without engaging with this evidence and making some clearer finding of fact about at least the gist of what the claimant had actually said to Mr Vrahimis.

118. In relation to disclosure 11, the tribunal's conclusion was as follows.

> **"PID[11]. after the Claimant was dismissed in December 2019, he disclosed to Paul Vrahimis that company documents suggested that he (Paul) had been present at a board meetings at which an agreement to transfer £820,000 to a company owned by another trustee was made, when in fact Paul Vrahimis was not at that board meeting. This was said to qualify for protection under S43B(1)(a) criminal offence has been committed (s2 Fraud Act 2006). This was not a disclosure made by the Claimant. It was Mr Vrahimis that who observed that he might not have been present. We consider that there is no reasonable belief on the Claimant's part that this tended to show that a criminal offence had been committed. This PID fails."**

119. While the statute indicates that there can be a qualifying disclosure by giving someone information which in fact they already know, the tribunal's finding (perhaps unsurprisingly) was that it was Mr Vrahimis who told the claimant whether he had been present, rather than the other way round. The claimant cannot go behind that finding. But, as the actual particulars of claim make clear, the specific thing that the claimant claimed to have disclosed to Mr Vrahimis was not merely that he had not been present at a meeting the (actual or purported) minutes of which showed otherwise, but that this document was evidence of (in the words of the pleading) a "questionable and potentially fraudulent" transaction, about which the particulars set out further factual information.

120. It was the factual nature of that apparent transaction, which the claimant plainly claimed he

had reasonably believed tended to show a crime had been committed under the **Fraud Act**; and the tribunal found that he communicated at least some hard information about that to Mr Vrahimis. The fact that the claimant may have done so, in part, or even wholly, because the document appeared to show that Mr Vrahimis was implicated does not affect that. The finding that it was Mr Vrahimis who told the claimant that he "might not have been present" does not provide a proper or sufficient basis for the tribunal's conclusion that the claimant did not hold the reasonable belief that he claimed, about the information that he was found to have disclosed on this occasion.

121. For these reasons I uphold ground (c) in relation to both disclosure 10 and disclosure 11.

122. Ground (e) relates to claimed protected disclosure 5. That was said to have been a disclosure to Ms Johns on 28 October 2019 that the Creative Director, Louise Graham, had "unlawfully trapped Connor Walsh in a room and refused to let him leave". The claimant contended that he reasonably believed that this tended to show that the offence of false imprisonment had been committed. The ground contends that the tribunal "failed to apply the law regarding false imprisonment" as set out in **Walker v Commissioner of Police of the Metropolis** [2014] EWCA Civ 897; [2015] 1 WLR 312.

123. The tribunal considered this at [14] – [15] and [53]. There had been an incident in which Ms Graham had admonished Mr Walsh in a private meeting room. The tribunal set out (from a transcript) the account that the claimant (who had been outside the room) had given Ms Johns at the time. That included him saying that Ms Graham "refused to move out of the way when he asked" which, the claimant had told Ms Johns, was an offence of false imprisonment. It also recorded that he "conceded to us that what happened was unlikely to be indictable as false imprisonment". The tribunal concluded that Mr Walsh "was never trapped". He had accepted that it would "be a stretch to say he had been falsely imprisoned." Contrary to the claimant's oral evidence, the tribunal found that he could only hear the incident and not also see it through a window. It concluded that "there was no reasonable belief, and indeed no real belief, that a criminal offence had been committed."

124. The claimant contends that he told the tribunal that he did not think it likely that the offence would be indicted, not that he did not believe that it constituted an offence. He relies on the fact that in **Walker**, a police officer confining someone within a doorway for only a few seconds (not, at that point, with a view to an arrest) was held to have amounted to the tort of false imprisonment.

125. The tribunal's task was to decide, in light of all the evidence, and its findings of fact about what the claimant heard or (if anything) saw of this incident, whether, at the time when he spoke to Ms Johns, he actually believed that a criminal offence had been committed, and whether, if so, that belief was reasonable. The matter does not in my view turn on the difference between whether the claimant acknowledged to the tribunal that the matter was "unlikely to be indictable" or "unlikely to be indicted". The tribunal was not bound to accept his evidence or assertions as to what he said that he believed at the time and why. It was not perverse of the tribunal to conclude that he did not at the time truly believe that an offence had been committed, and/or that, if he did, given what he had heard – but, as the tribunal found – not seen, and given its conclusion that in fact Mr Walsh was never trapped, he did not reasonably believe that. In light of its findings, the decision in **Walker** does not mean that its conclusions about what the claimant reasonably believed were perverse.

126. Ground (f) contends that the tribunal "failed to apply the relevant tests to determine the true nature of my employment status and instead focussed exclusively on the fact that I was paid gross of tax". Paragraph [52] of the grounds identifies that this relates to claimed protected disclosure 3.

127. Paragraph [52] of the tribunal's decision accurately captures in the first part, how this claimed disclosure was put, and also sets out the tribunal's conclusions in relation to it, as follows:

> **"PID [3]. Around September 2019 the Claimant disclosed to Paul Vrahimis that Leather Inside Out and its subsidiary companies S&K Camden Ltd ('S&K') and Leather Works London Ltd ('LWL') were not paying staff PAYE or National Insurance tax contributions. This was said to qualify for protection under S43B(1)(b) breach of the legal obligation to pay tax. We find that this disclosure does not qualify for the protection offered by the Act. The reason for this is that the Claimant accepted that the staff were paid gross, on the basis that the staff would be responsible for their own tax. We are supported in this by the fact that the Respondent sought to argue that the staff were not its employees, but self-employed contractors instead. The Claimant understood this and accepted in evidence that the staff had been paid gross. There was no illegality in this business set up and no breach of a legal obligation. This PID fails."**

128. This ground faces the potential difficulties that (a) the issue for the tribunal was not, as such, whether the claimant was in fact and law an employee, but whether he made a disclosure of information in the requisite reasonable belief; (b) the tribunal found as a fact that he was aware that payments were made gross on the basis that staff would be responsible for their own tax; and (c) there was a dispute as to whether the staff concerned were in law employees or self-employed contractors.

129. Nevertheless the tribunal's reasoning is unsatisfactory because its conclusion appears to imply that it considered that the charity's view of the status of those concerned was right, but without explaining why; and, more fundamentally, it failed to address what the claimant reasonably (even if wrongly) believed the information that he (and others) were not on PAYE tended to show. Although in the headline ground the claimant himself also focusses on the different issue of whether, applying the correct legal tests, he was in fact and law an employee, it was clearly his general case that he reasonably believed himself to be an employee; and [52] of the ground states that "we were only told that we were not employees after we raised issues about our taxes not being deducted and paid".

130. Standing back it seems to me that the tribunal erred because it failed to consider whether the claimant reasonably believed he was an employee, and hence reasonably believed (as he claimed) that there was a "breach of the legal obligation to pay tax", by the charity not deducting and remitting tax under the PAYE system (even if he and others were told they must be responsible for paying their own taxes); and that this criticism is within scope of the grounds overall.

131. For these reasons I uphold this ground of appeal.

Outcome

132. For all of the foregoing reasons I dismiss the first appeal, in so far as it relates to time points, but uphold it in relation to the deposit order concerning the protected-disclosure detriment complaints relating to the first two SARs. I will quash that deposit order. There is nothing that needs to be

remitted to the tribunal for further decision.

133. In relation to the second appeal, from the decision of the Gidney tribunal, I uphold grounds (a); (b); (c) and (f).

134. I will therefore quash the tribunal's decisions in relation to whether claimed protected disclosures 3, 10 and 11 were made out, and in relation to the complaints of protected-disclosure detriment in respect of the refusals to comply with the first two SARs. In respect of none of these matters can it be said that all of the necessary facts have been found and/or that there can be only one right answer. So the matter will have to be remitted to the tribunal to decide afresh whether claimed protected disclosures 3, 10 and 11 were made out, to add to the Gidney tribunal's conclusions that protected disclosures 6, 8 and 9 were made out.

135. Once the tribunal has decided afresh whether one or more of disclosures 3, 10 and 11 are also made out, it will then need to decide the complaints of detrimental treatment on grounds of any or all of the protected disclosures found, overall, to have been made out, in respect of the responses to the first and second SARs. The tribunal will also need to decide (for the first time) the similar complaint in relation to the failure to reply to the third SAR. While the claimant suggested to me that, as there was, in relation to that SAR, no letter giving reasons for not complying with it, the complaint would be bound to succeed, I do not think that must inevitably follow. He will certainly be able to make a submission to the tribunal as to the significance of the absence of any response; but it will be for the tribunal to decide whether the complaint succeeds, applying the law correctly to all the facts found.

136. Given the firmness of the conclusions reached by the Gidney tribunal, and the refusal by EJ Gidney of a reconsideration, and while I have no doubt that they would deal with these matters conscientiously were they to be remitted to them, I think it better to direct that remission be to a different tribunal, to be assigned by the REJ. However, I see no reason to exclude EJ Beyzade (though remission does not have to be to him). Although he made some errors initially, he put these right on

reconsideration and his decisions overall were immensely thorough and scrupulously careful.

137. Findings of fact and conclusions already reached, which have not been disturbed by the outcome of these appeals, will stand. I will leave it to the tribunal to decide any issues as to the scope or nature of the evidence that it will permit to be adduced or relied upon, for the purposes of determining the issues that it will have to decide, and all other matters of case management.