EMPLOYMENT TRIBUNALS

Claimant: **AB**

Respondents: **(1) R1**
(2) R2

Heard at: London Central (in person)

On: 6, 7, 8, 9, 10, 14, 15, 16, 17, 20, 21, 22, 23, 24, 28, 29, 30, 31 January 2025

13, 27 January, 3, 4, 5, 6, 7 February 2025 (in chambers)

Before: Employment Judge B Smith (sitting with members)
Tribunal Member Marshall
Tribunal Member Darmas

Representation
Claimant: Ms Laura Redman (Counsel)
Respondent: Ms Diya Sen Gupta (King's Counsel)
Ms Kate Balmer (Counsel)

RESERVED JUDGMENT

The unanimous judgment of the Tribunal is as follows:

1. The complaint of protected disclosure detriment contrary to section 47B(1) Employment Rights Act 1996 ('ERA') is not well-founded and is dismissed.

2. The complaint of automatic unfair dismissal contrary to section 103A ERA is not well-founded and is dismissed.

3. The complaint of ordinary unfair dismissal contrary to section 98 ERA is not well-founded and is dismissed.

4. The complaint of direct discrimination on grounds of disability contrary to section 13 Equality Act 2010 ('EQA') is not well-founded and is dismissed.

5. The complaint of discrimination arising in consequence of disability contrary to section 15 EQA is not well-founded and is dismissed.

REASONS

Introduction

1. Privacy orders (by EJ Nicole dated 5 March 2024) made under rule 50 Employment Tribunals Rules of Procedure 2013 apply to this Reserved Judgement and Reasons (final hearing bundle page 3726; hereafter only referred to as 'p' unless otherwise stated). Further privacy orders (by EJ B Smith dated 16 July 2025) were also made in order to give effect to EJ Nicolle's privacy orders.

2. The claimant was employed latterly with as a JOB2 at the first respondent between January 2013 and his summary dismissal on 14 September 2022. The second respondent was the President of the first respondent's group company. ACAS conciliation commenced against both respondents on 6 December 2022 and concluded on 17 January 2023. The claim was presented on 11 February 2023.

3. The claimant's health conditions at the time of the final hearing included psychosis, cyclic vomiting syndrome, severe depression disorder and insomnia, and stammering and speech disturbances.

4. The claimant brings claims of:

   (i) protected disclosure detriment contrary to section 47B(1) Employment Rights Act 1996 ('ERA');

   (ii) automatic unfair dismissal contrary to section 103A ERA;

   (iii) ordinary unfair dismissal contrary to section 98 ERA;

   (iv) direct discrimination on grounds of disability contrary to section 13 Equality Act 2010 ('EQA'); and

(v) discrimination arising in consequence of disability contrary to section 15 EQA.

5. The claim was for compensation in excess of £16.5m (claimant's Updated Schedule of Loss dated 20 December 2024).

6. The respondents did not agree that the claimant was disabled at the relevant times for the purposes of s.6 EQA. Knowledge and constructive knowledge of disability were also in issue. The claimant's representatives were aware of this during the hearing and the respondents' witnesses were cross-examined on those issues.

7. The claims made against eight other respondents (the original second, third, fourth, fifth, six, seventh, eight and tenth respondents) were dismissed upon withdrawal (by Judgment of EJ Dobbie dated 16 May 2023).

8. By way of a high level summary of the allegations, the claims are about a restructure undertaken by the first respondent in which the claimant was offered an alternative role with a trial or probationary period, said to be informed in part by performance concerns, and potentially involving redundancy of the old role. The new role would have the same job title but with, according to the respondents, a different focus on the work to be done, and a £5,000 a year pay rise. The claimant was upset and distressed by the proposal, particularly because of the prospect of redundancy and a probation period, and various complaints were made to the first respondent. These complaints were made over time and included increasingly lengthy documents being provided to the first respondent. The first respondent commissioned an internal investigation into the complaints because the entire HR department was one of the subjects of the claimant's complaints.

9. The first respondent's internal investigation included interviews with the claimant and a large number of individuals. The claimant says that some of the written complaints and his interview amounted to qualifying disclosures

for the purposes of the ERA (ie. whistleblowing). The complaints included allegations of bullying and harassment as part of the restructure process, which the respondent said amounted (at one stage) to allegations of criminality. The claimant escalated some of his concerns to Board level and there was an investigation into the internal investigation carried out by external lawyers. The claimant was provided with some outcomes, orally and in writing, within a couple of months of his original complaint(s), but he followed this by sending further documents to the investigators.

10. The respondents' case is that the claimant would not accept the majority of the outcomes of the investigations and had made entirely unjustified allegations of criminal harassment against his line managers. As a result, the continued employment of the claimant was untenable and he was fairly dismissed by the second respondent on notice on 14 September 2022 by a dismissal letter dated 13 September 2022. The respondents say that this dismissal was fair, on grounds of conduct and or some other substantial reason. The claimant says that he was dismissed on grounds that he had made qualifying disclosures, and was also excluded from work on grounds that he had made qualifying disclosures. The respondents say that any changes to the claimant's work were on other, good and proper, grounds. The claimant also says that he was disabled by reason of anxiety and depression (and other conditions which were manifestations of those conditions) and that the alleged exclusions from work, and his dismissal, amounted to disability discrimination. This was denied by the respondents.

11. The alleged protected disclosures were as follows:

    (i) 6 January 2022 interview of the claimant by the first respondent's investigators ('**Alleged PD1**');

    (ii) 27 January 2022 first draft expanded grievance ('**Alleged PD2**');

    (iii) 9 February 2022 letter to the Audit and Risk Committee of the Board of Directors ('**Alleged PD3**');

(iv) 18 March 2022 letter to the Audit and Risk Committee of the Board of Directors ('**Alleged PD4**');

(v) 12 April 2022 final draft expanded grievance ('**Alleged PD5**'); and

(vi) The additional information document sent on 4 July 2022 ('**Alleged PD6**').

12. These followed the claimant's original written complaint dated 22 December 2021 ('*Bullying Complaint, Grievance and PIDA').*

Procedure, documents, and evidence heard

13. The final hearing was heard entirely in private pursuant to the privacy orders made by EJ Nicholle dated 5 March 2024.

14. The claimant was represented by solicitors throughout. At the final hearing he was represented by Ms Redman (Counsel). Ms Redman's instructing solicitor was in attendance throughout the hearing.

15. The respondents were represented by solicitors throughout. At the final hearing they were represented by Ms Sen Gupta (King's Counsel) and Ms Balmer (Counsel). Their instructing solicitors were in attendance throughout the hearing.

16. The tribunal took regular breaks as required. These were roughly for 10-15 minutes every hour. The tribunal ensured that Mr LM (respondents' witness) was given timed and regular breaks for health reasons. The tribunal also took breaks at the request of the parties in order for instructions to be taken and also at the request of the claimant (in particular) when required for health reasons or when he was distressed. The tribunal, in general, confirmed with the parties that they were content to carry on after the breaks. On some occasions the breaks were extended at the request of a

party. It was not suggested at any stage that the tribunal was taking insufficient breaks for the effective participation of any party.

17. The full adjustments adopted by the tribunal for the claimant are set out in **Appendix A**.

18. The claimant, second respondent, and all witnesses (save for Mr AN) gave evidence in person under oath or affirmation. Mr AN gave evidence under affirmation by CVP from the USA with the prior permission of the tribunal. Mr SM gave evidence under a witness order.

19. The list of issues were considered at earlier hearings. There was an agreed list of issues by the time of the final hearing. This was amended at the request of the tribunal to include additional issues relating to remedy that were to be determined during the liability hearing. This can be found at **Appendix B**. One date in the list was corrected by consent during the hearing. The tribunal took into account that a list of issues is a case management tool and is not a formal pleading. No applications to amend the claims or list of issues were made by the parties.

20. The agreed documents included:

    (i) Hearing bundle volumes 1-10. The principal bundles containing the pleadings, orders, correspondence and evidence were paginated to 4687 (volumes 1-5); and

    (ii) Witness statement bundle paginated to 485.

21. A fuller list of documents is at **Appendix C**.

22. The tribunal only took into account those documents which the parties referred to during the course of the hearing in accordance with the normal practice of the Employment Tribunals. The parties were aware of this from the outset and both parties indicated specific pages for the tribunal to read.

23. Both parties made oral submissions at the close of the evidence. Both parties also made written submissions. It was made clear to the parties during the hearing that if they relied on any specific findings of fact other than those inherent in the list of issues then this must be clearly drawn to the tribunal's attention. We have only resolved the issues of fact necessary to make our decisions. The claims involved a high level of factual detail but we have only referred to the detail to the extent necessary to fairly resolve the claims and explain our reasons. We have sought wherever possible to keep these reasons proportionate. The fact that a detail is not expressly referred to in these Reasons does not mean that it was not taken into account by the tribunal.

24. The tribunal kept the timetable under review throughout the hearing. The witness' oral evidence was subject to time limits. The time limits were not subject to any material dispute. Neither party submitted that they could not have a fair trial as a result of the amount of time allowed for cross-examination of the witnesses. The representatives were given sufficient notice of the length of time permitted to cross-examine each witness, and, in general, the timetabling was by consent. The tribunal was satisfied in any event that the amount of oral evidence was as long as necessary for a fair and proportionate resolution of the claims.

25. The tribunal decided that the claimant's oral evidence should not last for more than four days in light of his additional needs. The tribunal accepted that this meant that certain areas were not included in cross-examination of the claimant and in those circumstances it would be wrong to hold that fact against the respondents (or claimant). In general, the tribunal took a generous approach to the extent to which the respondents were required to put their case to the extent required for a vulnerable witness. We did not consider that any unfairness arose as a result of this. It is consistent with the oral cross-examination of vulnerable witnesses in other jurisdictions. The claimant was also cross-examined on the most important issues of factual dispute. The main parts of the respondents' case were also put to the claimant. In deciding that the procedure adopted, overall, was fair, we

took into account all of the available medical evidence, the Equal Treatment Bench Book ('ETBB'), the materials available on the Advocate's Gateway, and the fact that the claimant had provided both a detailed (and revised) witness statement, a supplementary witness statement, and a second supplementary witness statement. The claimant therefore was given a full opportunity to give his evidence and respond to the respondents' case and witness evidence before his oral cross-examination. The claimant was also re-examined by his counsel and it was not submitted that lengthy re-examination was necessary for a fair hearing.

26. At times, the tribunal asked neutral questions to clarify the witness' answers or rephrase the questions in order to ensure a fair hearing, as appropriate and necessary. In order to achieve a fair hearing it was necessary to rephrase a certain amount of the cross-examination of the respondents' witnesses in order to ensure that the question asked was clear and ensure that, where witnesses were asked about a particular topic, document, or evidence, that it was phrased accurately.

27. We were satisfied in all the circumstances that the claimant did have sufficient time to give instructions on the late evidence (p1040A), as is clear from the transcript around the timings of that document and no unfairness arose as a result.

Relevant Law

28. We took into account and applied the relevant law as outlined in the parties' skeleton arguments. It is neither necessary nor proportionate to repeat every authority mentioned by the parties in these Reasons.

(i) Protected disclosure detriments

29. Section 43A ERA says:

In this Act a 'protected disclosure' means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H.

30. Section 43B ERA says:

(1) In this Part a 'qualifying disclosure' means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one of more of the following: -

(a) that a criminal offence has been committed,

(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,

[…]

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

(2) For the purposes of subsection (1), it is immaterial whether the relevant failure occurred, occurs or would occur in the United Kingdom or elsewhere, and whether the law applying to it is that of the United Kingdom or of any other country or territory.

[…]

31. Section 43C ERA says:

(1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure –

(a) to his employer,

[…]

32. Section 47B ERA says:

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

[…]

33. The burden is on the claimant to prove each of the necessary elements: Western Union Payment Services UK Ltd v Anastasiou UKEAT/0135/13/LA at [44] (HHJ Eady QC):

The burden of proof in this regard is on the employee. As observed by HHJ McMullen QC in Boulding v Land Securities Trillium (Media Services) Ltd EAT/0023/06:

"24 . . . As to any of the alleged failures, the burden of the proof is upon the Claimant to establish upon the balance of probabilities any of the following:

(a) there was in fact and as a matter of law, a legal obligation (or other relevant obligation) on the employer (or other relevant person) in each of the circumstances relied on.

(b) the information disclosed tends to show that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject.

25 'Likely' is concisely summarised in the headnote to Kraus v Penna plc [2004] IRLR 260:

'In this respect 'likely' requires more than a possibility or risk that the employer (or other person) might fail to comply with a relevant obligation. The information disclosed should, in the reasonable

> *belief of the worker at the time it is disclosed, tend to show that it is probable, or more probable than not that the employer (or other person) will fail to comply with the relevant legal obligation. If the claimant's belief is limited to the possibility or risk of a breach of relevant legislation, this would not meet the statutory test of likely to fail to comply.'*

34. The Claimant must establish a disclosure of information that he reasonably believed tended to show a breach or likely breach of a legal obligation. It is not sufficient for the claimant to make allegations without conveying facts: Cavendish Munro Professional Risks Management Ltd v Geduld [2010] IRLR 38 per Slade J at [24]. A mere expression of opinion does not amount to a disclosure of information: Goode v Marks & Spencer plc UKEAT/044/09 per Wilkie J at [38].

35. For the purposes of this part, notions of information and mere allegations are not mutually exclusive. Allegations can amount to disclosures of information depending on the content and the surrounding context: Kilraine v London Borough of Wandsworth [2018] ICR 1850. There is no rigid dichotomy between information and allegations (Kilraine at [30]). The disclosure has to have '*sufficient factual content and specific such as is capable of tending to show'* one of the five wrongdoings: per Sales LJ in Kilraine at [35] (also Simpson v Cantor Fitzgerald Europe [2020] ICR at [43]).

36. Whether communications should be read together is a question of fact for the tribunal, and communications can be read with earlier communications: Norbrook Laboratories (GB) Ltd v Shaw [2014] ICR 540 EAT.

37. It is necessary for the discloser to have a genuine belief that the disclosure tends to show a relevant failure, and that belief must be a reasonable belief. Reasonableness involves the application of an objective standard to the personal circumstances of the discloser: Babula v Waltham Forest College [2007] ICR 1026 at [75]. It is relevant what the discloser believed at the time

of making the disclosure and not what they may have come to believe later on: Dodd v UK Direct Solutions Limited [2022] EAT 44 at [55]. The objective test is what a person in their position would reasonably believe: Korashi v Abertawe Bro Morgannwg University Local Health Board [2012] IRLR 4 at [62]. A belief may be a reasonable belief even if it is wrong: Babula.

38. The discloser must exercise their own judgment: Darnton v University of Surrey [2003] IRLR 133 at [31]: '*There must be more than unsubstantiated rumours in order for there to be a qualifying disclosure. The whistleblower must exercise some judgment on his own part consistent with the evidence and the resources available to him*.'

39. In Darton at [30] it was held that '…*Parliament has not sought to import into section 43B a requirement that the worker must hold the belief that the information and allegation disclosed are substantially true.*' Equally, at [32]: '*…for there to be qualifying disclosure, it must have been reasonable for the worker to believe that the factual basis of what was disclosed was true and that it tends to show a relevant failure, even if the worker was wrong, but reasonably mistaken.'*

40. For a potential breach of a legal obligation see Cantor Fitzgerald (EAT) at [45]:

'*…there can be no doubt that the language of section 43B means that information as to a potential future breach could amount to a qualifying disclosure … However, it is one thing to say that a breach is likely to occur some point in the future; it is quite another simply to say that 'we have not crossed the line yet'. The latter statement does not necessarily denote that a future breach is likely. Whether or not it does will depend on the other information provided'.*

41. In the context of the relevant failure, 'is likely to' means that the information disclosed should tend to show in the claimant's reasonable belief that the

relevant failure was 'probable or more probable than not': Kraus v Penna [2004] IRLR 260 EAT.

42. For breach of a legal obligation as the relevant failure, this includes breach of an employment contract: Parkins v Sodexo [2002] IRLR 109.

43. The leading authority on whether the discloser has a reasonable belief that the disclosure is made in the public interest is Chesterton Global Limited v Nurmohamed [2018] ICR 731. The tribunal must consider all the circumstances, including the numbers in the group whose interests the disclosure served, the nature and extent of the interests affected, the nature of the wrongdoing, and the identity of the wrongdoer. There may be features of the case that make it reasonable to regard disclosure as being in the public interest as well as in the personal interest of the worker: Chesterton at [37].

44. The claimant must prove that he had an actual belief at the time of making the disclosure it was in the public interest and that belief must also have been reasonable: Chesterton at [27-28]. The tribunal must not substitute its own view of whether the disclosure was in the public interest for that of the worker: at [28]. This is a two-stage test and it should not be rolled into one: Ibrahim v HCA International Ltd [2020] IRLR.

45. Tribunals should be cautious about finding that the public interest requirement is satisfied in the context of a private workplace dispute merely from the number of others who share the same interest Chesterton at [36].

46. The fact that a private purpose exists does not mean that there cannot also be a public interest: Dobbie v Paula Felton/Felton Solicitors [2021] IRLR 679 (referring to paragraph [17] of Chesterton): '*Provided that the worker making the disclosure reasonably believes that it is made in the public interest it does not matter that he might be making the disclosure for some other purpose; the protection can apply even where the disclosure is made*

in bad faith' [at 23]. In mixed interest cases it is for the tribunal to make a finding as to whether there was sufficient public interest to qualify: Okwu v Rise Community Action Ltd [2019] UKEAT/0082/19 at [20].

47. Dobbie contains a helpful summary of the main principles to be applied at [27] (HHJ Tayler):

(1) the necessary belief is that the disclosure is made in the public interest. The particular reasons why the worker believes that to be so are not of the essence

(2) while the worker must have a genuine (and reasonable) belief that the disclosure is in the public interest, that does not have to be his or her predominant motive in making it – Underhill LJ doubted whether it need be any part of the worker's motivation

(3) the exercise requires the tribunal to recognise, as in the case of any other reasonableness review, that there may be more than one reasonable view as to whether a particular disclosure was in the public interest

(4) a disclosure which was made in the reasonable belief that it was in the public interest might nevertheless be made in bad faith

(5) there is not much value in trying to provide any general gloss on the phrase 'in the public interest'. Parliament has chosen not to define it, and the intention must have been to leave it to employment tribunals to apply it as a matter of educated impression

(6) the statutory criterion of what is 'in the public interest' does not lend itself to absolute rules

(7) the essential distinction is between disclosures which serve the private or personal interest of the working making the disclosure and those that serve a wider interest

(8) the broad statutory intention of introducing the public interest requirement was that 'workers making disclosures in the context of private workplace disputes should not attract the statutory protection accorded to whistleblowers'

(9) Mr Laddie's fourfold classification of relevant factors may be a useful tool to assist in the analysis:

(i) the numbers in the group whose interests the disclosure served

(ii) the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed

(iii) the nature of the wrongdoing disclosed

(iv) the identity of the alleged wrongdoer

(10) where the disclosure relates to a breach of the worker's own contract of employment (or some other matter under section 45B(1) where the interest in question is personal in character), there may nevertheless be features of the case that make it reasonable to regard disclosure as being in the public interest

48. At [28] HHJ Tayler made further observations, summarised as follows: (1) that a matter that is of public interest is not necessarily the same as one that interests the public; (2) while the public will generally be interested in disclosures that are made in the 'public interest', that does not necessarily follow; (3) a disclosure could be made in the public interest although the public will never know that the disclosure was made; (4) a disclosure could be made in the public interest even if it is about a specific incident without any likelihood of repetition; (5) the fact that it is a matter of educated impression does not mean that it is not to be determined by a principled analysis, and Mr Laddie's factors in Chesterton are of assistance, and failure to take into account relevant factors, or ignoring relevant factors, may be an error of law; (6) Parliament must have considered that disclosures about the types of wrongdoing in s43B ERA will often be about matters of

public interest and the legislative history is important for understanding that the purpose was to '*exclude only those whose disclosures about 'wrong doing' in circumstances as where the making of the disclosure serves 'the private or personal interest of the worker making the disclosure' as opposed to those that 'serve a wider interest'; […]* 8) while motivation is not the issue…the person making the disclosure must hold the reasonable belief that the disclosure is 'made' in the public interest.

49. The employer does not need to know that the disclosure qualifies as a protected disclosure in law: Croydon Health Services NHS Trust v Beatt [2017] ICR 1240 at [80].

50. Applying authorities decided in respect of the EQA, a detriment is treatment of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to their detriment: Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337 at [35] per Lord Hope. An unjustified sense of grievance does not amount to a detriment (also Derbyshire v St Helen's MBC [2007] ICT 841).

51. In terms of the burden of proof. Section 48(2) ERA says:

On a complaint under subsection (1) …. It is for the employer to show the ground on which any act, or deliberate failure to act, was done.

52. International Petroleum Ltd and other v Osipov and others UKEAT/0058/17.0225 concerns the proper approach to drawing inferences in a detriment claim at [115]:

Mr Forshaw submits and I agree that the proper approach to inference drawing and the burden of proof in a s.47B ERA 1996 case can be summarised as follows:

(a) the burden of proof lies on a claimant to show that a ground or reason (that is more than trivial) for detrimental treatment to which he or she is subject is a protected disclosure he or she made.

(b) by virtue of s.48(2) ERA 1996, the employer (or other respondent) must be prepared to show why the detrimental treatment was done. If they do not do so inferences may be drawn against them …

(c) However, as with inferences drawn in any discrimination case, inferences drawn by tribunals in protected disclosure cases must be justified by the facts as found.

53. We similarly took into account Serco v Dahou [2017] IRLR 81 CA at [29-31].

54. The tribunal must consider what the reason was for the detriment. The employer must show that the protected disclosure played no part whatsoever in its acts of omissions: Fecitt v NHS Manchester [2012] ICT 372 CA. The tribunal must focus on the mental processes of the individual decision maker. When determining whether a detriment was done on the ground of a protected disclosure under s.47B the causation test is whether the employer's conduct is materially influenced by a protected disclosure: Fecitt at [45].

55. In light of section 47B(2) ERA, a claimant cannot bring a detriment claim against their employer for dismissal. However, such a claim can be brought against an individual co-worker for the detriment of dismissal where the co-worker was a party to the decision to dismiss: Timis and another v Osipov [2019] ICR 655 at [91].

56. Time limits are governed by section 40 ERA:

[…]

(3) An employment tribunal shall not consider a complaint under this section unless it is presented –

(a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(4) For the purposes of subsection (3) –

(a) where an act extends over a period, the 'date of the act' means the last day of that period, and

(b) a deliberate failure to act shall be treated as done when it was decided on;

And, in the absence of evidence establishing the contrary, an employer … shall be taken to decide on a failure to act when he does an act inconsistent with he doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.

57. Early conciliation applies: section 48(4A) ERA.

(ii) Automatic unfair dismissal on grounds of having made a protected disclosure

58. Section 103A says:

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

59. The tribunal must carry out an examination of the subjective mental processes of the relevant decision-makers which caused the employer to act as it did; it is not a 'but for' test: Arriva London South Ltd v Nicolaou [2012] ICR 510 at [28].

60. If the employee has more than two years' service then the burden is on the employer to show that the reason for the dismissal is a potentially fair one.

61. Applying Kuzel v Roche Products Limited [2008] ICR 799, a three-stage approach must be taken. First, the employee must prove that they made a protected disclosure and produce some evidence to suggest that they have been dismissed for the principal reason that they have made a protected disclosure rather than a potentially fair reason advanced by the employer. Second, the tribunal must make primary findings of fact. Thirdly, the tribunal must decide what the reason or principal reason for the dismissal was, on the basis that it was for the employer to show the reason.

62. It is not enough for the making of a protected disclosure to be in the employer's mind at the time of dismissal: Eiger Securities LLP v Korshunova [2017] IRLR 115 at [63].

63. There are features which may be separable in law from the disclosures themselves: Kong v Gulf International Bank (UK) Ltd [2022] ICR 1513 at [56-59]. In particular:

[56] 'I would endorse and gratefully adopt the passages I have cited as correct statements of law. They recognise that there may in principle be a distinction between the protected disclosure of information and conduct associated with or consequent on the making of the disclosure. For example, a decision-maker might legitimately distinguish between the protected disclosure itself, and the offensive or abusive manner in which it was made, or the fact that it involved irresponsible conduct such as hacking into the employers computer system to demonstrate its validity. In a case which depends on identifying, as a matter of fact, the real reason that operated in the mind of a relevant decision-maker in deciding to dismiss (or in relation to other detrimental treatment), common sense and fairness dictate that tribunals should be able to recognise such a distinction and separate out a feature (or features) of the conduct relied on by the decision-maker that is genuinely separate from the making of the protected

disclosure itself. In such cases, as Underhill LJ observed in Page [2021] ICR 912, the protected disclosure is the context for the impugned treatment, but it is not the reason itself.

[57] Thus the separability principle is not a rule of law or a basis for deeming an employer's reason to be anything other than the facts disclose it to be. It is simply a label that identifies what may in a particular case be a necessary step in the process of determining what as a matter of fact was the real reason for impugned treatment. Once the reasons for particular treatment have been identified by the fact-finding tribunal, it must evaluate whether the reasons so identified are separate from the protected disclosure, or whether they are so closely connected with it that a distinction cannot fairly and sensibly be drawn. Were this exercise not permissible, the effect would be that whistleblowers would have immunity for behaviour or conduct related to the making of a protected disclosure no matter how bad, and employers would be obliged to ensure that they are not adversely treated, again no matter how bad the associated behaviour or conduct.'

64. The test in relation to separable conduct was summarised in Hall v Paragon Finance Plc [2024] EAT 181 at [39]:

'As for whether a dismissal was by reason of the claimant having made a protected disclosure, it is for the ET to identify the real reasons for the dismissal and, having done so, to evaluate whether they were separate from the protected disclosure or were so closely connected with it that a distinction could not fairly and sensibly be drawn (sometimes described as the "separability principle"), see the guidance provided by the Court of Appeal in Kong v Gulf International Bank (UK) Ltd [2022] ICR 1513.'

65. The tribunal should also consider the cumulative impact of disclosures as well as individual disclosures when deciding whether the reason, or principal reason, for dismissal was whether the employee made a protected disclosure: El-Megrisi v Azad University (IR) in Oxford [2009] UKEAT 0448/08 at [19]:

'*Where the tribunal finds that they operated cumulatively, the question must be whether that cumulative impact was the principal reason for the dismissal.'*

66. The tribunal must be cautious before finding that an employee was dismissed because of the acts relating to a disclosure but not the disclosure itself. It must not amount to a 'get out of jail free card' to the employer. In the context of victimisation this has been held to be capable of abuse: *Martin v Devonshire Solicitors* [2011] ICR 352, although the fact that the '*distinction may be illegitimately made in some cases does not mean that it is wrong in principle'* (at [22]).

(iii) Unfair dismissal

67. A dismissal will be unfair unless it is for one of the admissible reasons specified in section 98 ERA. This says:

> *(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show-*
>
> *(a) the reason (or, if more than one, the principal reason) for the dismissal, and*
>
> *(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.*
>
> *(2) A reason falls within this subsection if it –*
>
> *[…]*
>
> *(b) relates to the conduct of the employee,*
>
> *[…]*
>
> *(c) is that the employee was redundant, or*

[…]

(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –

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

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

68. If the dismissal is proved to be for one of those reasons then the determination of the question of whether the dismissal is fair or unfair, having regard to the reasons shown by the employer, depends on whether in the circumstances, including the size and administrative resources of the employer's undertaking, the employer acted reasonably or unreasonably as in treating it as a sufficient reason for dismissing the employee, and shall be determined in accordance with the substantial merits of the case. The tribunal must not substitute its own opinion about whether or not an employee should have been dismissed and must recognise that there will be a band of reasonable responses on the part of the employer. A dismissal should not be held to be unfair unless it falls outside of that range.

69. Misconduct is a potentially fair reason under section 98(2)(b) ERA.

70. Following the guidance in British Homes Stores Ltd v Burchell 1978 IRLR 379 and Post Office v Foley 2000 IRLR 827 the tribunal must decide whether the employer had a genuine belief in the employee's guilt. Then the tribunal must decide whether the employer held such genuine belief on genuine grounds and after carrying out a reasonable investigation. In deciding whether the employer acted reasonably or unreasonably within

section 98(4) ERA 1996 the tribunal must decide whether the employer acted within the band of reasonable responses open to an employer in the circumstances in all aspects of the case, including the investigation, grounds for belief, penalty imposed, and procedure followed. It is immaterial how the tribunal would have handled the events or what decision it would have made and the tribunal must not substitute its view for that of the reasonable employer: Iceland Frozen Foods Limited v Jones 1982 IRLR 439.

71. In ascertaining the reason for a dismissal the tribunal will often need look no further than the reasons given by the appointed decision maker. However, if that is an invented reason, it is the tribunal's duty to penetrate through the invention rather than allow it to affect the tribunal's own determination: Royal Mail Group Ltd v Jhuti [2019] UKSC 55.

72. Whether or not a dismissal by reason of conduct is fair depends not on the label attached to or characterisation of the conduct as gross misconduct, but whether in the circumstances the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee: HOPE v BMA [2022] IRLR at [25].

73. Where there is more than one reason for a dismissal, the tribunal's task is to have regard to the whole of those reasons in assessing fairness. Where dismissal is for a number of events which have taken place separately, each of which is to the discredit of the employee in the eyes of the employer, then to ask if that dismissal would have occurred if only some of those incidents had been established to the employer's satisfaction, rather than all, involves close evaluation of the employer's reasoning. We must deal with the totality of the reason which the employer gives: Robinson v Combat Stress UKEAT/0310/14 at [20, 21] in that context. A failure to establish a particular ground or reason will not be fatal to the fairness of the dismissal in circumstances where the employer is alleging that he dismissed for a number of reasons each of which justified the dismissal independently of the other.

74. Some other substantial reason can include a breakdown in trust and confidence, such as if caused by the conduct of the employee: Huggins v Micrel Semiconductor (UK) Ltd [2004] All ER (D) 07 (Sep), EATS/0009/04 at [33-35] and Alexis v Westminster Drug Project [2024] EAT 188. In Alexis the claimant raised a grievance after an unsuccessful interview which was part of a restructuring exercise. She raised a grievance about the interview process and rejected the outcome of the grievance, appealing that decision. She also rejected the appeal, both the original grievance outcome and appeal outcomes being largely favourable to her. She was called to a meeting to discuss whether her continued employment was tenable and the decision maker at the employer concluded that she had no confidence in her employer and the relationship had irretrievably broken down. The EAT dismissed an appeal of the original decision that this was not an unfair dismissal for some other substantial reason. In that case, the respondent genuinely and reasonably believed in the irretrievable breakdown, a reasonable enquiry had been held and the claimant had been given an opportunity to put forward her arguments (at [13]). Alternatives had been considered by the employer (at [12]).

75. A dismissal may be held to be fair notwithstanding a lack of any formal process (including the absence of a right of appeal) in certain circumstances: Gallacher v Abellio Scotrail Ltd UKEAT/0027/19/SS and Matthews v CGI UK Ltd [2024] EAT 38.

76. In Gallacher (at [45]) the tribunal at first instance concluded not just that the omitted procedure would not serve any useful purpose, but also that '*if anything it would have worsened the situation'* (at [46]). Also, the tribunal had concluded that the claimant was not interested in retrieving the relationship at the time (at [47]). The dismissing officer also had a genuine belief that the relationship had broken down (at [37]). The EAT emphasised at [51] that '*Dismissals without following any procedures will always be subject to extra caution on the part of the Tribunal before being considered to fall within the band of reasonable responses. Despite* [counsel's] *careful and thorough submissions, I am satisfied that this Tribunal did exercise*

such caution and came to a conclusion that was open to it on the evidence that it heard. Ground 1 is therefore dismissed.'

77. In Matthews it was held to be reasonable for the respondent to dismiss without warning or appeal because the procedure was considered futile. In that case the claimant was advised that they were at risk of redundancy (at [9]), a grievance was partially upheld (at [11]), the claimant responded in a confrontational manner (at [12]), the claimant was given options of remaining in the team or going elsewhere (at [16]), the claimant did not agree with those options (at [19]), new grievances were prepared (at [21]), the working relationship had broken down (at [38]), and the tribunal had concluded that the parties had reached a stalemate (at [73]). The respondent decided that the breakdown was terminal and it would have been futile to have given a warning (at [73]). The respondent was also not to blame and the respondent was genuine in its efforts to rebuild trust and keep the claimant employed (at [80]-[97]). Also, when considering fairness this was not to be considered in isolation (at [74]). The tribunal must focus on the respondent's perspective at the time it made the decision to dismiss and the reasonableness of the decision and whether it was within the range of reasonable responses for the respondent not to provide a warning or an appeal (at [76]).

78. For a dismissal for some other substantial reason, including a breakdown in the working relationship, it was considered in Phoenix House Ltd v Stockman [2017] ICR 84 that the employer should fairly consider whether or not the relationship has deteriorated to such an extent that the employee holding the position that she does cannot be re-incorporated into the workforce without unacceptable disruption; that is likely to involve a careful exploration by the decision maker of the employee's state of mind and future intentions judged against the background of what happened (at [21]).

79. Whether the employer has taken steps to try and improve the relationship so that it can be said that the breakdown was irremediable is relevant: Turner v Vestric Ltd [1980] ICR 528 p530. However, in Matthews at [94]:

'*…Vestric was a case where there was no attempt at all to solve the problem before dismissal. The ratio of that case was that 'where a dismissal was due to a breakdown in a working relationship it was necessary, before deciding whether or not the dismissal was fair, to ascertain whether the employers had taken reasonable steps to try to improve the relationship; that to establish that the dismissal was not unfair, the employers had to show not only that there had been a breakdown but that the breakdown was irremediable'. Elsewhere in the judgment the EAT say that 'before somebody in that position is dismissed on this ground there must be some sensible, practical and genuine efforts to see whether an improvement can be effected..'*

At [95]: '*We agree …that this does not mean 'all' reasonable steps must be taken by the employer. We agree …. that where an employer is to blame for the breakdown, it may be reasonable to expect them to do more to repair the relationship. (McAdie).'*

80. The tribunal is not permitted to ask whether or not the appropriate procedural steps would have made any difference to the outcome: Polkey v AE Dayton Services Ltd [1988] AC 344 at p364:

'If an employer has failed to take the appropriate procedural steps in any particular case, the one question the industrial tribunal is not permitted to ask in applying the test of reasonableness posted by section 57(3) is the hypothetical question whether it would have made any difference to the outcome if the appropriate procedural steps had been taken….

81. The relevant passage continues:

'It is quite a different matter if the tribunal is able to conclude that the employer himself, at the time of dismissal, acted reasonably in taking the view that, in the exceptional circumstances of the particular case, the procedural steps normally appropriate would have been futile, could not have altered the decision to dismiss and therefore could be dispensed with'.

82. The above passage was expressly referred to in at paragraph [44] of Gallacher.

83. A redundancy dismissal is defined in s.139 ERA:

> *(1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to—*
>
> *(a) the fact that his employer has ceased or intends to cease –*
>
> *(i) to carry on the business for the purposes of which the employee was employed by him, or*
>
> *(ii) to carry on that business in the place where the employee was so employed, or*
>
> *(b) the fact that the requirements of that business—*
>
> *(i) for employees to carry out work of a particular kind, or*
>
> *(ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer,*
>
> *have ceased or diminished or are expected to cease or diminish.*

84. The tribunal must decide: (i) was the employee dismissed; (ii) if so, had the requirements of the employer's business for employees to carry out work of a particular kind ceased or diminished, or were they expected to cease or diminish? (iii) if so, was the dismissal of the employee caused wholly or mainly by the cessation or diminution: Safeway Stores plc v Burrell 1997 ICR 523 EAT.

(iv) Disability

85. Disability is defined in section 6 EQA:

(1) A person (P) has a disability if -

(a) P has a physical or mental impairment, and

(b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.

(2) A reference to a disabled person is a reference to a person who has a disability.

(3) In relation to the protected characteristic of disability -

(a) a reference to a person who has a particular protected characteristic is a reference to a person who has a particular disability;

(b) a reference to persons who share a protected characteristic is a reference to persons who have the same disability

[…]

86. Substantial means more than minor or trivial: s.212(1) EQA.

87. Long term is defined in schedule 1 paragraph 2 EQA:

(1) The effect of an impairment is long-term if-

(a) it has lasted for at least 12 months,

(b) it is likely to last for at least 12 months, or

(c) it is likely to last for the rest of the life of the person affected.

(2) If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur.

88. In determining whether at the relevant time an impairment producing a substantial adverse effect was 'likely' to last for 12 months, we were referred to SCA Packaging Ltd v Boyle [2009] IRLR 746. 'Likely' is to be given its ordinary meaning and does not mean 'probably'.

89. We applied and took into account the EHRC Code of Practice ('the Code') where relevant.

90. In order for a disability claim to be successful, the claimant must be disabled for the purposes of s.6 EQA at the time of the discriminatory act. The burden is on the claimant to establish disability.

91. Loose terms such as anxiety, stress, or depression, even if used by GPs, may not be sufficient: Morgan v Staffordshire University [2002] IRLR 190 at [20].

(v) Burden of proof in EQA cases

92. The burden of proof for the EQA claims is governed by s.136 EQA:

> *(1) This section applies to any proceedings relating to a contravention of this Act.*
>
> *(2) If there are facts from which the court could decide, in the absence of any explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.*
>
> *[…]*

93. It was held in Field v Steve Pie [2022] EAT 68 at [37]:

'*In some cases there may be no evidence to suggest the possibility of discrimination, in which case the burden of proof may have nothing to add. However, if there is evidence that discrimination may have occurred it*

cannot be ignored. The burden of proof can be an important tool in determining such claims. These propositions are clear from the following well established authorities.'

94. Further, at [41] that '*if there is evidence that could realistically suggest that there was discrimination it is not appropriate to just add that evidence into the balance and then conduct an overall assessment, on the balance of probabilities, and make a positive finding that there was a non-discriminatory reason for the treatment*.'

95. It is not sufficient for the employee to only prove a difference in protected characteristic and a difference in treatment in order to shift the burden of proof: Madarassy v Nomura International Plc [2007] EWCA Civ 33.

96. Once the burden has shifted, the employer must prove that less favourable treatment was in no sense whatsoever because of the protected characteristic: Wong v Igen Ltd [005] EWCA Civ 142.

(vi) Direct discrimination on grounds of disability

97. Direct discrimination is prohibited conduct under s.13 EQA:

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

98. The comparator's circumstances must be the same as the claimant's, or at least not materially different. This is because s.23 EQA says:

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

[…]

99. The protected characteristic need not be the only reason for the less favourable treatment, or the main reason: London Borough of Islington v Ladele [2009] IRLR 154 (EAT). The decision must be more than trivially influenced by the protected characteristic.

100. The question of less favourable treatment can be intertwined with the reason for that treatment: the principal question is why was the claimant treated as he was? If there were discriminatory grounds for that treatment then there will '*usually be no difficulty in deciding whether the treatment …was less favourable than was or would have been afforded to others. There is a single question: did the complainant, because of a protected characteristic, receive less favourable treatment than others'*: Shamoon v Chief Constable of the Royal Ulster Constabulary 2003 ICR 337 HL.

101. Also, in Stockton on Tees Borough Council v Aylott 2010 ICR 1278, CA, Lord Justice Mummery stated: *'I think that the decision whether the claimant was treated less favourably than a hypothetical employee of the council is intertwined with identifying the ground on which the claimant was dismissed. If it was on the ground of disability, then it is likely that he was treated less favourably than the hypothetical comparator not having the particular disability would have been treated in the same relevant circumstances. The finding of the reason for his dismissal supplies the answer to the question whether he received less favourable treatment..'*

102. Where the question is addressed in this order the tribunal need not necessarily identify the precise characteristics of the hypothetical comparator: Law Society and ors v Bahl 2003 IRLR 640 EAT.

103. Under section 39(2)(c) EQA an employer must not discriminate against a person by dismissing them.

(vii) Discrimination arising on consequence of disability

104. Section 15 EQA says:

> *(1) A person (A) discriminates against a disabled person (B) if—*
>
> *(a) A treats B unfavourably because of something arising in consequence of B's disability, and*
>
> *(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.*
>
> *(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.*

105. 'Unfavourably' is not defined in the EQA. The Code at [5.7] says that this means that the disabled person must have been put at a disadvantage.

106. Subsection (2) above provides for a knowledge defence. Paragraph 5.15 of the Code includes that '*The employer must, however, do all they can be reasonably expected to do to find out whether this is the case. This is an objective assessment. When making enquiries about disability, employers should consider issues of dignity and privacy and ensure that personal information is dealt with confidentially.'*

107. If a tribunal decides that an employer could reasonably have made enquiries then it must also consider what the result of those enquiries would have been: A Ltd v Z [2020] ICR 199. A tribunal is entitled to find that if a claimant would have continued to supress information about their mental health problems then their employer could not reasonably have been expected to know that they are disabled.

108. Knowledge of disability includes all of the elements of disability as defined in s.6 EQA, such as substantial disadvantage and longevity: Gallacher v

Abellio Scotrail Limited UKEATS/0027/19/SS at [43]; Seccombe v Reed in Partnership Ltd UKEAT/0213/20/OO at [40-41].

109. In Godfrey v Natwest Markets plc [2024] EAT 981 a relevant question on the issue of constructive knowledge is whether the employer might reasonably have been alerted to the need to make further enquiry about, generally, the possible effects of some mental impairment by a change in behaviour (at [59]).

110. The proper approach to determining s.15 EQA claims was summarised by Mrs Justice Simler in Pnaiser v NHS England and anor [2016] IRLR 170 EAT at [31]:

'(a) A Tribunal must first identify whether there was unfavourable treatment and by whom: in other words, it must ask whether A treated B unfavourably in the respects relied on by B. No question of comparison arises.

(b) The Tribunal must determine what caused the impugned treatment, or what was the reason for it. The focus at this stage is on the reason in the mind of A. An examination of the conscious or unconscious thought processes of A is likely to be required, just as it is in a direct discrimination case. Again, just as there may be more than one reason or cause for impugned treatment in a direct discrimination context, so too, there may be more than one reason in a section 15 case. The 'something' that causes the unfavourable treatment need not be the main or sole reason, but must have at least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it.

(c) Motives are irrelevant. The focus of this part of the enquiry is on the reason or cause of the impugned treatment and A's motive in acting as he or she did is simply irrelevant: … A discriminatory motive is emphatically not (and never has been) a core consideration before any prima facie case of discrimination arises…

(d) The Tribunal must determine whether the reason/cause (or, if more than one), a reason or cause, is 'something arising in consequence of B's disability'. That expression 'arising in consequence of' could describe a range of causal links. Having regard to the legislative history of section 15 of the Act … the statutory purpose which appears from the wording of section 15, namely to provide protection in cases where the consequence or effects of a disability lead to unfavourable treatment, and the availability of a justification defence, the causal link between the something that causes unfavourable treatment and the disability may include more than one link. In other words, more than one relevant consequence of the disability may require consideration, and it will be a question of fact assessed robustly in each case whether something can properly be said to arise in consequence of disability.

(e) …the more links in the chain there are between the disability and the reason for the impugned treatment, the harder it is likely to be to establish the requisite connection as a matter of fact.

(f) This stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator.

(g) […]

(h) Moreover, the statutory language of section 15(2) makes clear … that the knowledge required is of the disability only, and does not extend to a requirement of knowledge that the 'something' leading to the unfavourable treatment is a consequence of the disability. Had this been required the statute would have said so. … … it does not matter precisely in which order these questions are addressed. Depending on the facts, a Tribunal might ask why A treated the claimant in the unfavourable way alleged in order to answer the question whether it was because of "something arising in consequence of the claimant's disability". Alternatively, it might ask whether the disability has a particular consequence for a claimant that leads to 'something' that caused the unfavourable treatment.'

111. It follows that the something that causes the unfavourable treatment does not need to be the main or sole reason but must have at least a significant (or more than trivial) influence on the unfavourable treatment and so amount to an effective reason for or cause of it: Pnaiser v NHS England (above) at [31(b)].

112. A claimant bringing a complaint under s.15 EQA bears an initial burden of proof. They must prove facts from which the tribunal could decide that an unlawful act of discrimination has taken place. This means that the claimant has to show that they were disabled at the relevant times, they have been subjected to unfavourable treatment, a link between the disability and the 'something' that is said to be the ground for the unfavourable treatment, and evidence from which the tribunal could infer that the something was an effective reason or cause of the unfavourable treatment. If the claimant proves facts from which the tribunal could conclude that there was s.15 discrimination the burden shifts under s.136 EQA to the respondents to provide a non-discriminatory explanation or to justify the treatment under s.15(1)(b).

113. Direct evidence of discrimination is rare and the tribunal may have to infer discrimination from all of the available facts.

114. Whether or not unfavourable treatment is a proportionate means of achieving a legitimate aim involves a balancing exercise between the reasonable needs of the respondents and the discriminatory effect on the claimant: Hampson v Department of Education and Science [1989] ICR 179 CA. Factors to be considered include whether a lesser measure could have achieved the employer's legitimate aim.

Findings of fact

115. Findings of fact are made on the balance of probabilities. We expressly did not reach conclusions on the credibility of any disabled witness based on aspects of their demeanour caused by their disability. Although we accept as a matter of law it is open to the tribunal to draw inferences based on how the litigation has been conducted in some contexts (eg. M&M [2013] EWHC 2534) it was not necessary for us to do so in this case. We were able to confidently make our findings based on the written and oral evidence about what happened at the relevant times without needing to take into account the later conduct of the litigation. We also gave appropriate weight to the written and contemporaneous documentation and took into account the passage of time when it came to witness memories of matters unsupported by documentation. However, there is no requirement as a matter of law for witness evidence to be supported by documentary evidence, and it was open to us to accept unsupported witness evidence if appropriate in all the circumstances.

116. We have only made findings of fact as necessary for a fair determination of the claims. In doing so, we fully took into account the parties' submissions even if not expressly referenced here. This is particularly the case in a case such as this which involved a very extensive factual matrix but not every element or detail of the facts was necessarily relevant to the claims, or necessarily required resolution.

117. For brevity, any reference below to 'respondent' is to the first respondent. References to Grounds of Claim are to the Re-Amended Grounds of Claim unless otherwise specified.

118. ACAS conciliation commenced against both respondents on 6 December 2022 and concluded on 17 January 2023. The claim was presented on 11 February 2023.

119. The claimant was employed latterly as a JOB2 at the first respondent, which operates in the financial services industry, between January 2013 and his summary dismissal on around 14 September 2022 for which the second respondent was the decision maker. The first respondent is a subsidiary of a group of companies which provide active investment management services. The group company is publicly-listed. A number of the subsidiary companies including some of its employees and functions are regulated by the Financial Conduct Authority ('FCA') and other regulators, and are subject to the Senior Managers and Certification Regime ('SMCR'). The second respondent is the former President of the group company and was the President at the material time.

120. There is no dispute about the authenticity of the documents.

121. The first respondent has a number of policies including Whistleblowing, a Code of Conduct, and an inclusion statement. These actively encourage employees to raise whistleblowing concerns and there are various channels to do this, including a confidential external whistleblowing hotline and service. The respondents' witness evidence also demonstrated action taken in practice to encourage whistleblowing beyond the policies and there was, at least to a degree, a culture of encouraging employees to raise any issues or concerns. During the material times the claimant was encouraged by a Board member of the group company to raise any concerns he had to the FCA or any external regulator if he wanted (by email 18 March 2022 p1430). During the relevant times the respondent also paid around £45,000 for the claimant to have external legal advice on the completion of some his alleged whistleblowing documents. Evidence of the first respondent encouraging whistleblowing included alerting Mr SC, one of the claimant's witnesses, to the external service by email (p3605).

122. The first respondent's whistleblowing policy states that the first respondent will assess the concerns and may investigate them and provide feedback to the employee where practicable. There is no right of appeal. We accepted the respondents' evidence that if a concern is labelled as whistleblowing, it

falls within the scope of that policy, and is sent to compliance as opposed to HR, it will be dealt with under the whistleblowing policy as opposed to the first respondent's grievance procedure.

123. The first respondent's whistleblowing policy included that making qualifying disclosures with the knowledge that the information contained was false shall be subject to disciplinary action, up to including dismissal, and similarly for those who retaliate against an individual for making a qualifying disclosure (p138). There was, to that extent, a degree of warning to those making disclosures about subsequent actions which may follow.

124. The claimant was originally employed with the job title 'JOB1' and the original job description includes the '*research, testing, implementation, deployment and benchmark of execution algorithms across Futures and FX'*. The claimant's responsibilities changed over time; we make this finding because the claimant said this during his internal interview on 5 January 2022. We accept the evidence of Mr LM, the claimant's line manager, that this included a focus on algorithm development prior to 2015. We reject the claimant's witness evidence that his role did not change at any stage and prefer Mr LM's evidence on this point because of our concerns set out elsewhere about the claimant's evidence, the lack of concerns we have about Mr LM's evidence, and also that the claimant's own evidence is undermined by his interview on 5 January 2022. We find that the claimant, to use his own words, loved and highly valued his job. This was how it was put in his grounds of claim and his own evidence, corroborated by similar wording used in his alleged protected disclosures. During the relevant times the claimant had worked with Mr LM for eight years, and as line manager between around 2018 and 2021. The claimant's own evidence, which we accept as the basis of the relationship, was that they were very good friends, at least before November/December 2021.

125. It was not in dispute that the claimant also was engaged in his own private investing and spent some of his time managing the block of flats he lived in. Although no clear evidence as to exactly how much of the claimant's time

was spent on these activities we accept the evidence of Mr LM, which was not meaningfully undermined in cross-examination on this point, that the claimant spent a certain proportion, and not a minimal proportion, of the working day on his own projects. We were not persuaded in the absence of clear documentary evidence that Mr LM's perception as to how much time the claimant was spending on non-work activities was necessarily evidenced. However, it was not in dispute that the claimant spent at least some of his time on non-working projects such as his own trading, and also the claimant reported to others during the relevant time that he was spending at least some of his working time preparing documents and emails for the internal investigation as outlined elsewhere in these findings. Given the length of the documents and amount of research the claimant had undertaken this was a substantial amount of time, although we recognise (and find) that, as according to the claimant, at least some of this was likely to be also outside of working hours.

Others' exits

126. Various other employees of the first respondent left the company at different times. The end of their employment relationship with the first respondent is relevant to the claimant's alleged protected disclosures.

127. ST left the respondent on or around December 2018. On 9 December 2018 he was sent a letter advising him that his role was at risk of redundancy as a result of a restructure, and on 12 December 2018 he entered into a settlement agreement with the respondent in consideration for an enhanced redundancy payment having received legal advice.

128. SM left the respondent on or around 31 December 2018. SM was sent a letter on 18 December 2018 inviting him to attend a disciplinary hearing with various allegations relating to conduct and performance, including business delivery, management style, failing to hire and retrain effectively leading to a failing to deliver on work and business goals, and failure to manage

operational risk. His employment was terminated on 31 December 2018 and on 25 January 2019 he entered into a settlement agreement in consideration for a severance payment having received legal advice.

129. JA resigned from the respondent on 21 August 2019.

130. SC resigned from the respondent on 11 October 2019.

131. SE left the respondent in October/November 2021. He was placed at risk of redundancy on 21 October 2021 and his employment was terminated by reason of redundancy on 21 November 2021. On 2 December 2021 he entered into a settlement agreement with the respondent following legal advice.

132. LD was dismissed in September 2013. Claims of unfair dismissal and discrimination were brought against the respondent which were resolved by way of a settlement agreement.

The restructure

133. Between September and November 2021 the second respondent, Mr LMM, and Mr LM discussed and agreed a proposed restructure of TEAM1. Mr LM was the claimant's line manager and Mr LMM was Mr LM's manager. Mr LMM's manager was the second respondent.

134. The background to the restructure was that the group company had various different business units. Some of these include an element of work known as WORKA of trading costs. Before 2015 there were around four people doing WORKA work specific to one unit ('R1A') until those roles were made redundant due to cost savings. In around 2017 there was a significant restructure, overseen by Mr LMM, bringing together three trading businesses into one centralised trading desk. Between 2016 and 2018 the claimant was focussing on WORKA in the R1A business unit and by around

2020 had a strong focus on R1A WORKA projects. We make this finding for the same reasons as set out elsewhere below given the dispute between the parties about the claimant's work. We accept that this work was not as challenging or stimulating as other work that could be performed, with the claimant in '*second gear'*, accepting the evidence of Mr LM on this point. This was consistent with comments by the claimant about which types of work were more exciting. For example, when the new role was proposed, '*if anything it's more fun'* was said by the claimant in a Slack message dated 6 December 2021 (at p384). Slack includes a messaging platform. Also, the claimant in his 22 December 2021 complaint stated (at p541) '*I was being encouraged to spend more time on algo work, which I viewed as a positive thing, and hand over some of the more mundane aspects of my responsibilities, which I was more than happy to do'.* This was consistent with the claimant having other interests in addition to his day-to-day work.

135. During September 2021 the first respondent advertised two roles with the title JOB2 however these were at JOB3 level, as distinct from JOB4. The claimant was not asked to interview for these roles (the panel being put together in September 2021, p1997) because he was not at the title level of the roles being hired and there was no particular need for him to be on the panel. We make these finding because we accept the evidence of Mr LMM, corroborated in part by Mr LM, on these points, that evidence not having been meaningfully undermined by anything. These decisions were made before any of the claimant's alleged protected disclosures.

136. The claimant alleges that his access to a wiki page relating to this recruitment was removed. We disagree and prefer the evidence of Ms I1, one of the internal investigators, on this point. This is because her clear evidence, not meaningfully undermined, was that everyone in the relevant team was given access by accident, and it should have been restricted to those involved in the recruitment process. Also, access was removed for all employees who were not acting as interviewers at the same time in February 2022. This explanation was clearly explained to the claimant by email dated 15 February 2022 (p1266) by Ms I1. She had no evidenced

reason to be untruthful in her investigations in this point. Access was then further restricted given data protection concerns about the use of such a Wiki page. The evidence, we consider, does not show that the claimant was in any way singled out on this point.

137. We accept that the restructure happened against a background of performance concerns about the claimant. These are relevant to understanding the decisions made by the first respondent in the restructure. It is important to find that these performance concerns were not proactively raised with the claimant by the first respondent and he was not subject to any formal performance management plan. In fact, during the restructure, when the claimant asked his line manager if it was about performance, he was told that it was not. However, the tribunal recognises that it is entirely possible for an employee to not be performing well, or particularly well, whilst still doing their job well-enough to not warrant formal performance measures. In any event, the claimant did not have any particular promotion during his near nine years of employment. Although the claimant's job title was elevated to Senior Quant in around 2018, the claimant's own explanation to the internal interviewers was that 'senior' was an automatic addition to his title. There was no pay rise during the claimant's employment. From around 2020, following the Covid-19 pandemic, the claimant preferred to work from home and had limited in-person interactions with his line manager. We accept Mr LM's evidence that the claimant was 'not firing on all cylinders' and performance notes for 2020 (not shared with the claimant) include reference him being distracted, having a disproportionate share of less stimulating work, and having burned bridges (eg. p669). We find that, taking the documentary evidence on performance as a whole, the view of the claimant's line manager was that the claimant was not a high performer, but any concerns fell short of what would justify taking formal action.

138. As of 2 December 2021, Mr LM's notes (also not shared with the claimant) stated '*[the claimant] has been a sluggish performer. He diligently fields the* [R1A] [WORKA] *work, but takes very little initiative beyond this'* and there is a reference to 'untapped potential'. In an internal email Mr LM's notes

include *'Due to the combination of historical clashes, his low profile, his working style and underwhelming performance,* [the claimant] *is short on supporters across the firm'.* Between 2016 and 2022 the claimant's formal performance ratings indicated satisfactory performance. For 2021 the claimant was rated 3-Good/Sat. By 2 December 2021 the respondent's box rating system had the claimant moved from 3d to 4b (M-L) ie 'on the bench'.

139. We reject the claimant's assertion that performance concerns were invented in order to justify later decisions in the restructure. This is because we prefer the evidence of Mr LM that they genuinely reflected his views at the time. There was no cogent evidence to support the claimant's assertions other than the lack of formal performance action having been taken, but this is insufficient for the reasons explained above. We consider that the notes referred to above, which are in the context of a number of other employees, are more likely to reflect a genuine assessment by Mr LM. We consider that the respondents' position that there was in fact a small adverse movement is more consistent with the documentary position and oral evidence which was not meaningfully undermined. This can be contrasted with, for example, a consistently high performing employee suddenly and without explanation dropping in rating, which might be suspicious. That was not the evidenced position here.

The roles and restructure

140. We accept the evidence of Mr LM, Mr LMM and the second respondent about the rationale behind the restructure. This is because there was nothing cogent or material which undermines their evidence, and their evidence is corroborative. Their written evidence is also consistent, generally, with the documents about the restructure generated at the time.

141. The rationale was to better reflect the organisation structure and centralise responsibilities which were previously dedicated to separate business units. The proposal was to focus more on distinct teams focussing on a purpose,

such as equities, rather than the previous business units. The structure is clearly set out in various organisational charts. The second respondent confirmed this as a natural next step for the central trading function. The claimant accepts in his evidence that the restructure generally was not a sham. However, we should record that the claimant did maintain in his evidence that his particular (alleged) redundancy was a sham.

142. We accept the evidence of the respondents' witnesses that there were some promotions resulting from the restructure but this was not for all employees. We accept Mr LM's evidence that the claimant's changed role did not result in a promotion because of the concerns about his performance and motivation. We do not consider that this evidence was meaningfully undermined and it is consistent with the documentary evidence on performance.

143. One effect of the restructure was to change reporting lines and create a standalone cross-business unit WORKA function, centralising WORKA work over the first respondent. We accept the evidence of Mr LM and Mr LMM, there being no effective undermining of this evidence, that there was only a business need for two people do to this work. Those chosen for it were chosen because they were already dedicated to WORKA work, they had the relevant knowledge and experience, and had already been working on centralising WORKA work. The claimant was not surprised about this type of move, and said it was understandable in his internal interview (p719, 690).

144. As a result of the above, the strong focus of the role that the claimant was performing would, in practice, be absorbed into another as part of the restructure.

145. As part of the restructure Mr LM wanted a new Head of XResearch role focussing on algorithms work across Futures, TX and Volatility. He wanted this role to report into him to reduce his own line management

responsibilities in the future, and strengthen expertise and have more senior capability in the team. Mr NLM was chosen for this role which demonstrably consistent with his professional background.

146. Given that the focus of the claimant's prior role was being absorbed by another team, there was a need to find an alternative role for the claimant. The nature of the new role was influenced by the performance concerns genuinely held by the claimant's line management about him. The new role that would be best for the claimant was decided by Mr LM to be conducting derivatives research and reporting to Mr NLM.

147. There is dispute between the parties about whether the new (alternative) role was in fact new. The claimant maintained in evidence that it was, in fact, the same as his own role and he was, in fact, being asked to do the same role. The respondent's position was more nuanced. The respondent accepted that there was a degree of overlap between the roles, but the claimant's role had previously been focussed on WORKA work.

148. The respondents' witnesses disagreed with the claimant. We find that the new role involved maintaining responsibility for existing algorithms and designing new execution algorithms, accepting Mr LM's evidence of this. We accept that this was materially different in practice, again accepting Mr LM's evidence of this. This finding is corroborated by Mr LMM's evidence during his internal investigation interview (eg. p770, 775). Having analysed all of the evidence carefully, we consider that the best way of understanding the differences between the respondents' position that this was a new role, and the claimant's position that it was the same role, is that the day-to-day focus would change significantly and that an element of the old role, that for the last 18-months had been the predominant focus of the claimant's work, was to be removed (ie. WORKA work). Those changes were in the context of the job title and theoretical tasks that could be assigned to the claimant not changing.

149. Our finding that the focus of the roles was not the same is corroborated by comments by the claimant at the time. We repeat the comments above about spending more time on algo work being viewed by the claimant as a positive thing, the 6 December 2021 Slack message as being more fun, and also in the 22 December 2021 complaint (at p546) the claimant stated '*one positive I do see in the proposed change is that if I can genuinely transfer the responsibility … then that it would free more of my time to focus on other Execution Research work, which would be wonderful'.* These comments are not indicative of the role being truly the same.

150. We find, contrary to the claimant's allegations, that this was not a demotion. The role included a £5,000 salary increase on acceptance, the claimant would keep the same title, and it was at the same level in terms of responsibility and status within the group company (accepting the account of Ms SA of HR on this point from her investigation interview p643). Although there was a change in length of reporting line, this was not unique to the claimant (p3306). We also accept that there was no intention to demote the claimant, accepting Mr LM and Mr LMM's evidence of this, and that it would be positive for him given its new focus (this was corroborated by the second respondent). However, it was not in dispute that the changes in reporting lines would be perceived by the claimant as a demotion, and we accept that this is how he perceived it.

November 2021 onwards

151. Mr LM and Mr LMM contacted Ms SA of HR for advice including a meeting on 8 November 2021. Her account (in an internal interview) of what Mr LMM and Mr LM said about the new role being different is consistent with their evidence (p642-3). Mr LM did have concerns about the claimant's performance and how this might play out in the new role. This is supported by an email he sent to Ms SA dated 7 December 2021 '*we believe he has the aptitude … but we need to ensure has the motivation and drive to apply those skills and deliver'* (p402). Ms SA's advice (accepting the evidence of Mr LMM on this point, consistent with Ms SA's internal interview account at

p643) was that the situation appeared to be a redundancy given the significant changes in the claimant's role. She suggested giving the claimant the option of going through a redundancy consultation process with the possibility of an enhanced redundancy payment, or alternatively accepting the new role. In light of the concerns about performance, she also advised that a trial period be put in place, which would allow both the claimant and the respondent to revert to a redundancy consultation if the new role didn't work out (this is broadly consistent with an email from Mr LM to Ms SA dated 10 November 2021). We accept that Mr LMM, as was clear in his oral evidence to the tribunal, in particular, had a genuine belief that in retaining the redundancy consultation as an option if the new role did not work, this was a benefit to the claimant. The clear benefit would be in the form of a route out of the company with an enhanced payment and also avoiding an exit with negative connotations. We agree with the respondents' submission that the email advice dated 22 November 2021 from Ms SA to Mr LM and Mr LMM (p404), which included there being a suitable alternative role, is indicative of there not being a plan to make the claimant himself redundant at that stage (or any later). There was then some discussion between them about notice and trial periods.

152. Mr LM and Mr LMM met with the claimant to discuss the restructure on 6 December 2021. They also met with all members of the team (on an individual basis) to explain the proposed restructure. The calendar invite for the meeting was '*Salary and Title Review* – [Claimant's name]*'*. During the meeting the claimant accepted that Mr LM was reading from a script which was a document called Talking Points which was in evidence. The claimant was given key messages about the restructure and was provided with the two options, namely to transition into the new role with a new line manager, different day-to-day tasks, and a six-month trial period and a £5,000 salary increase. Alternatively, the claimant could opt for a redundancy consultation and if there was no other suitable alternative role he would be eligible to receive an enhanced package. During the meeting (on HR advice) Mr LM did not tell the claimant that performance was relevant to the trial period.

The claimant was, in fact, assured, that the proposals had nothing to do with performance.

153. We do not find that anything about Mr LM or Mr LMM's conduct did or could reasonably be said to amount to bullying. Such an allegation is unsupported on any reasonable analysis of the evidence as to what was said or done. The claimant later reported these events as that he was '*victim of abuse'* (p510), was subjected to a psychological threat, was treated with '*no dignity´* and was lied to by dishonest individuals (p734). This characterisation of events is wholly unsupported by the evidence.

154. We also reject the claimant's assertion that this was a sham redundancy and a plan to remove him from the business. Such an assertion is undermined by several contemporaneous messages from Mr LM assuring the claimant that they wanted to keep him in the business (p465) and in his investigative interview the claimant acknowledged this (p705).

155. Although the claimant alleges that Mr LM told him that the situation was being 'forced on him from above' and that he couldn't tell the claimant what the real reason was, we reject this. It is not supported by contemporaneous evidence and is not accepted by Mr LM. The claimant's version is not corroborated and Mr LM's evidence, generally, is credible and (where appropriate) is consistent with the documentary position. There was also no credible reason why Mr LMM would have a plan to remove the claimant from the business. We consider it more likely than not that this allegation did not happen.

156. There followed a number of questions and concerns raised by the claimant, including in Slack messages. Mr LMM, Mr LM and Ms SA also discussed the restructure in Slack messages and in informal meetings.

157. A meeting was held on 7 December 2021 between Mr LM and the claimant to answer his questions about the restructure. The claimant was reassured that they wanted him to stay with the business.

158. On 13 December 2021 there was a telephone conversation between the claimant and Mr LM about the trial period and alternative role. They also exchanged messages on Slack about the trial period.

159. The claimant, Mr LM and SA (of HR) had a meeting to discuss the proposed restructure, on 14 December 2021.

160. On 15 December 2021 the claimant sent a Slack message to Mr LM (p464) about the proposed restructure and they met later that day. This accused Mr LM of lying and playing games, treating staff as enemies and legal and corporate chess games with lives and livelihoods. Also, the claimant implied that Mr LM should '*say the truth … admit fault'* (p470-1) and that '*But for then for me to be treated the way you ([name of group company]) have with the fundamental erosion of trust….'* (p470). These concerned Mr LM. The claimant had also mentioned his health (p460):

'I don't want to be shaking, clenching fists and grinding teeth, feeling this pain in my stomach, heart racing and sweating non stop. Having non stop nose bleeds. Not sleeping. Not eating, Throwing away one expired meal after the other. Missing all the deadlines for my Christmas orders and shopping, sitting in a half decorated house that feels sad (with this new Omicron 'lockdown') and having a ruined Christmas. Or having my GP call me […] enquiring about my mental health and prescribing me an anti depressant, because he genuinely thinks I need it…'

161. Mr LM telephoned the claimant to check on him.

162. The claimant later compared this situation with Mr LM to an army officer being given an illegal order (p558) which would make Mr LM complicit in the crime. This is indicative of the claimant's mindset about his situation.

163. Between 15 and 21 December 2021 the claimant and Mr LM met to discuss targets and tasks for the handover period followed by a series of emails and Slack messages about the same topics. Over the course of the meetings and emails the tasks for the claimant to complete were negotiated and the list of tasks was reduced at the claimant's request. We reject the claimant's assertion that he had been set up to fail in the tasks. This is because Mr LM had demonstrably reduced the workload at the claimant's request.

164. On 21 December 2021 there was a phone call between the claimant and Mr LMM about his role and the restructure. This included that the claimant could '*take all the time in the world'* to discuss his concerns (on the claimant's own account, at p581). This was a conversation during Mr LMM's vacation. The claimant left this having '*lost hope all hope of any informal resolution or any faith or trust in any of the subjects* [of his later complaint]' on his own account as reported in his complaint. The claimant also described this (p588) as there being a '*brutally cynical, cold hearted and cruel disregard to my feelings and physical and mental wellbeing. And a complete lack of real genuine empathy.'*

165. On 22 December 2020 Mr LM emailed the claimant '*I hope the chat with [Mr LMM] was useful. Can I ask whether you had have* (sic) *any further thoughts about whether to accept the offer of alternative employment? I realise you still have time to ponder further, but if you has decided* (sic) *then please let me know, so I can kick off next steps'* (p628) The claimant emailed with a link to an employment HR guide and stated '*I continue to work under protest'* (p627). The claimant was here actively communicating to his employer that he was working under protest.

Whether the claimant was told in December 2021 that he was undergoing formal redundancy and would be dismissed at the end of the year if he did not accept the alternative role, demotion, probation period and notice period

166. We find that there is insufficient evidence to support the claimant's stark contention that he was informed in December 2021 by Mr LM and Ms SA that he was undergoing formal redundancy and would be dismissed at the end of the year if he did not accept the alternative role, demotion, and probation and notice periods. However, we accept Mr LM's evidence that during the 6 December 2021 meeting '*I ran through what the new team would look like. I also told* [the claimant] *that the de facto role he had ended up doing, which focussed on* [R1A] [WORKA] *work, would cease to exist in the new structure*'. On that basis, the claimant would have reasonably understood that his previous role was redundant. Also Mr LM's notes for that meeting used a similar wording, a point relied on by the investigators in making their findings on this issue.

167. However, there is no sufficient clear evidence that the claimant was expressly told that dismissal would be the outcome if he did not accept the alternative role, demotion, probation, and notice period. Equally, there was clearly a high degree of confusion on the part of the claimant given the number of questions asked by him as evidenced by the Slack messages. This is consistent with the investigators' finding that communication around this period and issue was poor. In particular, there are numerous Slack messages which suggest a lack of clarity around the issues of notice period and probation/trial period.

168. We also consider that there is no cogent corroborative evidence that this specific allegation was made. The fact that the claimant repeated this allegation in his later communications does not readily assist the tribunal with whether it is an accurate record of what was said. Also, particular meetings in December where these things might have been said were not reliably documented.

169. It is right to record that the claimant was initially given until the end of 2021 to make a decision about his role (by email from Mr LMM at p650 on 17 December 2021) although this period was later extended and the claimant was never forced to make a decision by the respondent.

The 22 December 2021 complaint ('the December 2021 complaint')

170. On 22 December 2021 the claimant submitted a 101 page document named '*Bullying Complaint, Grievance and PIDA Disclosure'* (p.526). This was later named the 'Initial Escalation' by the respondent's investigators. This was sent to the Chief Operating Officer and General Counsel, the CEO, and I2 (Global Head of Compliance and Regulatory).

171. The document raised allegations against Mr LM, Ms SA, Mr LMM, and the entire HR department (p532).

172. The content of the document (as with the claimant's other similar complaint-type documents, later alleged protected disclosures) is as set out in the evidence bundle. Some of the relevant extracts are repeated or summarised in these findings.

173. We find that, given the circumstances as a whole, it was consistent for this to be treated by the respondent as a compliance matter (ie. whistleblowing) rather than following the grievance policy. The claimant expressly asked that it be dealt with by someone other than his line managers and the HR department given the subjects of his complaint (p535).

174. The document contains matters which are, in our judgment (as an issue of fact), unnecessarily put in dramatic terms and it includes hyperbole and exaggeration. The references include '*bullying conduct'*, '*unfair, unreasonable and unethical behaviour*' with '*profound and devastating effects on [the claimant' (and his loved ones) mental, emotional and physical wellbeing in breach of Health and Safety Regulation* (p524, in a

covering email). The document itself is extremely long and repetitive. It included an allegation of *'an intentional and calculated attempt to coerce [the claimant] through fear and intimidation to agree to an unfair and unreasonable variation of terms of [the claimant's] employment contract'* (p531); *and 'this very sad chapter will continue to haunt me for the rest of my life…'* (p626). It also includes a long list of symptoms the claimant says he was suffering including shaking, fear and anxiety, dizziness, pain in his stomach, not sleeping, not eating, severe headaches, stomach and digestion issues (p625). The claimant also expressly asserts his employment contract is being breached and '*My employer has behaved unreasonably and has fundamentally breached the implied term of 'term of trust and confidence'* (p619, similarly at p605).

175. The document states that it is a '*PIDA disclosure in accordance with …(c) whistleblowing policy (PIDA 1998)*'. Also, at p533 the claimant states *'PIDA/whistle blowing matters: (a) Failure to comply with legal obligations. (b) Miscarriage of justice. (c) Putting the health and safety of any individual at risk. (d) Unethical behaviour in breach of any other corporate policy….I am raising this in good faith.'* The claimant also repeats that he is working under protest. Further, at p534: '*I would hope that I would not be punished for making this complaint in any way, including being either, 1. Suspended, 2. Or removed from my day to day duties (even temporarily) …'.* He asserts that he is making the complaint and PIDA disclosure in order to '*(a) Bring this to the attention of the appropriate levels of senior management. (b) Have this matter independently examined. And if the alleged conduct is determined to be true, have this matter addressed in the appropriate manner. In order to protect myself from this inappropriate conduct. (e) and put a stop to the suffering, pain and the emotional, physical and mental distress that this is causing me and my loved ones. (f) And protect the best interests of the business.'*

176. The claimant asserted in this document that he had been subject to *'an intentional and calculated attempt to coerce me through fear and*

intimidation' and *'acts of calculated malicious offence, intimidation, threat'* and *'misuse of power'* (p531).

177. The claimant included in the document that he *'could not possibly see how this was not malicious, engineered and calculated behaviour'* (p617) which was *'deceitful and dishonest'* (p618) and *'I have completely lost faith in anything I was being told'* (p607).

178. It is not pleaded in the original, amended or re-amended Grounds of Claim that this document was a protected disclosure.

179. The document included a suggestion that Mr LMM and Ms SA had told the claimant during the December 2021 meetings '[LMM] *confirmed to me that 'the situation is not unique to you' and that 'we have done that before' and handled other situations in a similar manner. For me to hear at this point, was just infuriating, and I've completed lost hope this was what* [SA] *had told me that this was the routine and normal manner with which situations like mine were handed.'* (p585). The claimant refers to '*suspicions of systematic behaviour in [my] organisation'* and that he would expect someone senior to '*do the right thing and instruct on an internal investigation to look into this and establish if this was indeed systematic behaviour and how many other people have been affected by it?'* The claimant does not say that he was personally aware of any other employees having been treated in a similar way to him or name anyone in this document.

180. We reject the claimant's characterisation of what was said by Mr LMM in respect to what the respondent had done before. This is because we prefer his evidence that during a call on 21 December 2021 the claimant was told that *'…we have restructured other teams in this way and put people at risk, you know, and that's not what we've done with you. And so, we have restructured the other teams and done these exact same sorts of things in different structures within and in the central trading teams, so it's, yeah, this is not a this is not a unique change in things we do*.' This is extracted from

a transcript of the call (p519). We find that on any proper analysis of the accurate wording used by Mr LMM in its full context, this comment was innocuous and not, as a question of fact, suggestive of systematic behaviour as the claimant suggests.

181. On 31 December the claimant had his first episode of Cyclical Vomiting Syndrome ('CVS').

The internal investigation ('the investigation')

182. Following the submission of the Initial Escalation, the respondent appointed I2 and I1 (the Global Head of Compliance and Regulatory and the Head of Dispute Resolution, collectively 'the investigators') as investigators. This approach was taken because the Initial Escalation included allegations against the entire HR department and therefore the claimant had claimed that they were conflicted from investigating his complaint.

183. On 5 January 2022 the investigators held their first investigation meeting with the claimant. It lasted around two hours and fifteen minutes. This meeting continued into 6 January 2022 in which Alleged PD1 takes place (p. 714). The interviews with the claimant lasted over five hours overall and provided him with a full opportunity to explain his concerns. The claimant was also expressly invited to send the investigators anything else he wanted them to consider.

184. During the meeting on 5 January the claimant refused to accept the alternative role stating '*there's no way that I can agree to something like that…I'm essentially training my Line Manager, moving expertise … I will to an extent, be making myself redundant'* (p703). The claimant also said words to the effect that his relationship with his line managers was '*essentially … not there'* (p679). The claimant was asked if he could continue to work with Mr LM and Mr LMM and he stated that he could not because they had '*violated the trust to a point which is irrevocable'* and '*I*

don't see … there is any way under which I then can continue working under these two people…' (p749).

185. We find that the length of time spent interviewing the claimant was indicative of the respondent's investigators taking the claimant's concerns seriously and the first part of significant efforts to conduct a thorough investigation.

186. During the 6 January 2022 meeting the claimant raised verbal concerns about the dismissals of ST and SM. The claimant accepted that, in respect of their dismissals, '*I don't know the details …. I have absolutely no information about any of these things because I am not in the room'* (p746).

187. Mr ST was a former employee of the respondent who left in 2018. However, we accept the evidence of Mr CO, which was not meaningfully undermined by cross-examination or other evidence, that Mr ST's exit was labelled as a redundancy not as a means of forcing him into a settlement agreement but as a benefit to him, with an enhanced redundancy package and to provide a more favourable reason for termination from the perspective of future employers.

188. Mr SM was initially subject to disciplinary proceedings. His hearing was originally on 20 December 2018 but it was postponed to the new year at his request. Before the disciplinary hearing took place, Mr SM resigned and entered into a settlement agreement with the respondent. The agreement had a valid adviser's certificate confirming that Mr SM had received independent legal advice on the settlement terms and this was supported by the documentary evidence.

189. Although it was asserted by the claimant during the 6 January 2022 meeting that he was being bullied by Mr LM, Mr LMM, Ms SA and HR, we do not consider that this allegation was supported by evidence, taking into account everything we heard and read.

190. The investigators had the following investigation meetings: on 11 January 2022 with Mr LM, Mr LMM and Ms SA. They had an investigation meeting with an individual who was at that time a Talent Coach and Performance Consultant on 17 January 2022. This individual had discussed the restructure with Mr LM.

191. The interviews with those other than the claimant lasted over nine hours and were detailed. The investigators also considered a significant amount of documentation, transcripts of around 40 minutes of recorded telephone line discussions and also had correspondence with the claimant. The claimant was told by email dated 24 December 2021 that '*I want to assure you that there will be no change to your role until our investigation is complete'* (p664). Mr LM was also told by the investigators to not take further steps with regards to the claimant's role (p.860).

192. It was made clear to the claimant that the investigation was confidential and that he should not discuss it with others save the investigators (p.677). However, on 14 January 2022 the claimant wrote to Mr LM stating '*I know we probably shouldn't be talking about this in light of what's happening…but I just can't help it'* (p959). He continued to state that he had seen something on the intranet that he thought was part of a '*sophisticated plan'* which was '*absolutely shocking and unbelievable. I understand now why you thought you needed a sword to hang over me to force cooperation. Just flabbergasted, or how people can lose their sense of honesty and decency.'* These words were (as a matter of fact, and in our judgment reasonably) taken by Mr LM as threatening and intimidating (accepting his witness evidence on this point).

193. By 21 January 2022 the investigators had completed their investigation and set out their findings in a document entitled '*Talking Points for Further Meeting with* [the claimant]*'.* On 25 January 2022 the claimant and the investigators had a meeting to communicate the findings and outcomes of the investigation into the Initial Escalation. The findings were mixed: some points were in the claimant's favour and some were not. Specifically, the

investigation found that it was not appropriate for the claimant to have been subject to a probationary or trial period, the claimant had not formally been placed at risk of redundancy, and the way in which the claimant's options were communicated to him was confused. Equally, there were genuine business motivations for the restructure and there had not been bullying.

194. The claimant refused to accept the conclusions of the investigation as set out during that meeting. That meeting was not recorded nor are there formal notes of it. However, we accept the evidence of the investigators that the claimant did not accept their conclusions and sought to challenge them during the meeting because this is supported by their account of the meeting, provided later (p.3941). The claimant emailed after the meeting '*I can't possibly agree with the conclusions of this investigation'* (p.1143). In the same email the claimant, when looking at the option of accepting the alternative role, said that this was '*despite the situation they have imposed on me, that includes a. The broken relationship. b. With the fundamental confidence and trust erosion. c. That is the consequence of their own conduct and not mine'.* The claimant referred to the alternative role as putting him in '*an impossible position'* and that '*the 2 outcomes that I have been presented with are essentially taking me back to square 1, are unfair and are inappropriate'* (p1143). We consider that this email is indicative of the claimant only being prepared to accept his old role, but with his existing management line removed. This is on the basis of its content.

195. We are also satisfied that the claimant did not as a matter of fact accept the findings from the investigation he did not agree with. This is because they are set out at length in his later document at p.1495 (12 April 2022).

196. Although the claimant has sought to characterise these findings as interim, we reject any characterisation of these findings as being in any way temporary or liable to change, based on the evidence. Although it would have been, with hindsight, better to describe the findings as 'partial', we are satisfied from the interviews and emails that the claimant fully understood the outcomes and they were only expressed as 'interim' by the investigators

to the extent that other allegations about the wider issues were still being investigated. We do not consider, taking the evidence as a whole, that the claimant had any real basis (as a question of fact) on which to ignore the outcomes of the initial investigation purely because the word 'interim' had been used by the investigators.

What was communicated to the claimant by the investigators during the 25 January 2022 meeting

197. The claimant's evidence was that he was told on 25 January 2022 that his role was genuinely redundant (at his witness statement paragraph [119]). The claimant's memory that he was told that his role was genuinely redundant is supported by his email sent on the same day, shortly thereafter (at p1141), where he says that during the meeting '*You have found that my role … was genuinely made redundant in the course of the restructuring'*. However, the suggestion that the claimant was told that his role was genuinely redundant is not supported by the Talking Points prepared for the meeting at (p1040A). We note that Ms I1 does not appear to directly question the claimant's understanding on this point when she responds to his email at (p1141). Ms I1 also says in her evidence (witness statement at [102]) that '[the restructure] *meant that* [the claimant's] *employment in his previous role would not continue – effectively he would either accept the offer of the Alternative Role or undergo a redundancy process'*. Ms I1's evidence under cross-examination focussed less on whether the claimant's old role had been redundant and more on the fact that during the meeting he was presented with the two options of a new role or redundancy process. Ms I1's evidence under cross-examination was also that they were not looking into whether the role was redundant or not, rather they were looking into the allegations about whether there had been a sham restructure, which they did not find to have been the case. There is no clear contemporaneous note of that meeting. Drawing all of the evidence together, in the absence of sufficiently reliable corroborative evidence, we find that the claimant was not specifically told that his previous role had been made redundant in this meeting, but we accept that it was the claimant's understanding given his

email sent on the same day of his understanding, and also it was a necessary and natural implication of the two options presented to him, given that neither of these involved him returning to his old role.

Bullying Complaint, Grievance & PIDA Disclosure: Additional Information First Draft' – Alleged PD2

198. On 27 January 2022 the claimant sent to the investigators, the CEO and COO/GC, a draft April 2022 complaint: '*Bullying Complaint, Grievance & PIDA Disclosure: Additional Information First Draft'.* This was 44 pages (at p1067) and is Alleged PD2.

199. Having considered the content of the document, we accept the respondents' analysis (and find accordingly) that the key substance of this document was materially the same as the December 2021 complaint. We also accept (and find) that it was provided because the claimant did not accept the initial outcomes as communicated to him by the investigators. This is because no such document would be necessary if the claimant had accepted the initial outcomes.

200. This document includes statements that there was (with his reporting line) a '*broken relationship'* and a '*fundamental erosion of trust and confidence'* (p1092) and '*I also note that the relationship between* [LM]*,* [LMM] *and me is effectively de facto now broken'* (p1098). The claimant described this document as having been drafted all night, without sleep for 48 hours (p1137). The claimant refers to the respondent having not upheld his previous concern about '*the wider systemic nature of the conduct that I have experienced….I also did not have all this information collated, in the manner I do now, at the time I submitted the initial complaint on the 22nd of December'.* The document left two sections blank as '*TBD'* in respect of SM and SE. It included an assertion that the implied term of trust and confidence in the claimant's employment contract had been substantially breached (p1084). It also has a heading '*The wider systemic nature of the bullying*

conduct used to bully employees out of a job' and has a section about ST's exit.

201. In response, Ms I1 by email on 27 January 2022 asked the claimant to send his completed document as soon as possible with the TBD sections populated (p1139). Consistent with our decision above about the status of the earlier findings, this email includes '*So that you are able to move on from this process – which we understand you have found difficult – it is important that we are able to reach a final outcome on this matter swiftly, once we have completed our investigation of your further points'.* This is more consistent with the only outstanding issues being the wider points, rather than the claimant's initial and more narrower complaints about his particular circumstances and process. Encouraging and supportive emails were sent by Ms I1 on 1 February 2022 (p1135) and 2 February 2022 (p1223) which suggested a genuine approach by the respondent's investigators, which we found to be the case. Consistent with a supportive environment, the respondent offered to provide the claimant with legal support to complete his document, offering to pay for an independent lawyer to assist the claimant on 11 March 2022 (p1458). The respondent agreed to pay for a lawyer even though the claimant chose one outside of the list prepared by the respondent. Accepting Ms I1's evidence on this point, the respondent paid over £45,000 on the claimant's legal fees on this project. This is not consistent behaviour with retaliation or a cover up of whistleblowing concerns.

202. We also accept the respondent's submission (and find as a matter of fact) that at the relevant time Mr LM was unaware of this particular alleged protected disclosure, there being no cogent evidence of this.

203. A second meeting between the claimant and the investigators took place on 3 February 2022 to discuss the findings of the initial investigation. A document called Talking Points was sent to the claimant on 4 February 2022 (p1216, 1154). These talking points included that they had found that there were genuine business motivations for the restructure and it was not itself

a sham, and it was not appropriate for the alternative role to have been subject to a probationary or trial period (p1155), and that the communication of options to the claimant could have been much clearer (p1156). It also proposed outcomes (p1159) including mediation, and that if the claimant wanted to pursue mediation that would take place before he was required to make a decision. The first option was that he would be placed into the alternative role as previously described with the new line manager, focussing on algo research with a £5,000 salary increase, no trial/probationary period, and no changes to his contractual notice period, but no ability to later on take an enhanced redundancy package. The second option was that the claimant would undergo redundancy consultation which would focus on whether there were any other suitable vacancies; it would be handled by another member of the team; and, if the claimant was ultimately made redundant, he would be eligible to receive an enhanced redundancy package. Also, if the claimant remained employed, there would be monitoring of promotion or remuneration decisions for at least two years to ensure that any decisions were not influenced by the fact that the claimant had raised concerns. We accept (and find) that these were the outcomes available to the claimant.

204. On 4 February 2022 one of the investigators informed the claimant of their concern about the claimant reporting a lack of sleep and other symptoms of stress and anxiety and strongly encouraged the claimant to see a doctor to seek an opinion on whether a period of temporary medical leave would help, including offering the respondent's occupational health provider.

205. The claimant did not take up the respondent's offer of occupational health.

206. On 7 February 2022 the claimant prepared a 34 page document called '*Interim Findings and Outcome – Meeting – Part 1 – and Language'* which was effectively his written rebuttal to the outcomes of the initial investigation and why he did not agree with them. The content clearly shows that the claimant did not accept the outcomes.

Alleged changes to the outcomes of the initial investigation

207. The claimant alleged that the investigators had changed the outcomes that were communicated to him between the meeting on 25 January 2022 and the 3 February 2022 meeting, and the 4 February 2022 talking points. However, we do not find that this is sufficiently supported by the evidence to find it proven. We do not find that there were any material changes between what was said to the claimant on 25 January 2022 and the outcome meeting on 3 February 2022 and the Talking Points emailed to the claimant on 4 February 2022.

208. The alleged changes are outlined in the claimant's document at p1707. However, the alleged changes are in fact either things that the claimant did not recall (as opposed to things that were definitely said) or things that he did not understand. Some of the points made by the claimant included the claimant accepting that the relevant statement was made but it was previously phrased differently. Although the claimant does rely on a particular (recalled) difference about the notice period, we consider that this has to be understood as being an area which was particularly prone to confusion given how easy it would have been to misspeak or misremember exactly what was said about notice periods (the issue of notice periods, in this case, referred variously to contractual notice periods, and notice periods for the trial/probation). Also, any difference between the 4 February and 25 January Talking Points are, on our analysis, more points of details than actual changes to the outcomes.

The restructure – January to March 2022

209. A further point of factual dispute which requires resolution includes whether or not the claimant was misled about the restructure having already taken place. The claimant relies on having been told by the investigators that the restructure had been paused (at p. 1158: '*As we communicated to you in our last meeting, while the restructure was paused pending our initial*

investigation into the concerns you raised, given our finding that there are genuine business motivations for this restructure, we have determined that the restructure can proceed and have informed [LMM] *and* [LM] *of this. We did confirm to you when we spoke on 25 January that the restructure will be going ahead, as you have noted in your draft additional information document').* The claimant also relies on the investigators suggesting in Talking Points for the investigators' outcome meeting with Mr LMM that '*the restructure had effectively already been implemented'* (p1040).

210. We find that on 24 December 2021 the claimant was told by I2 that by email '*I want to assure you that there will be no change to your role until our investigation is complete'* (p663, emphasis added). This is clear from the email itself. This is not the same as what was asserted in the claimant's witness statement at paragraph [193] that the restructure would be put on hold.

211. It is correct that the investigators appear to have told the claimant during the meeting of 25 January 2022 that the restructure was paused pending their initial investigation. This is confirmed by a reference to *'our last meeting'* in the Talking Points for the 3 February 2022 (p1158) meeting sent to the claimant on 4 February 2022.

212. It also appears that Mr LMM was told by the investigators during a meeting on 24 January 2022 (Talking Points p1040) that the restructure had effectively been implemented by that point.

213. We consider and find accordingly that the reality of the situation was that the communications to the claimant were not as specific as they should have been in distinguishing between the restructure of the overall team and the specific changes to his role. When the claimant was told that the restructure was paused, it was not made clear to him that this meant in respect of his role as opposed to a guarantee that no other changes were going to be made to anyone else. This is also consistent with Mr LM and Mr

LMM telling the claimant, on his own evidence, during the 19 April 2022 meeting that the restructure was able to proceed at the end of January.

214. Also, the evidence the claimant relies on in support of the restructure starting before 25 January 2022, when he thought it had been paused before then, was an email list being created on 1 February (p1710), however this is consistent with the restructure having been paused before 25 January given the date of creation. We also note that in this same document the claimant has confused what he was told by the investigators on 24 December 2021 (ie. no changes to his role) with 'no changes' (generally) (at p.1711). By the time of drafting the document at p1711 the claimant has wrongly characterised the more limited assurance he was given in December as amounting to a general assertion about all roles.

215. We also accept Ms I1's explanation under cross-examination that when the claimant was told that the restructure was paused pending the initial investigation, what was meant was: to the extent that it wasn't already implemented. She accepted having said to Mr LMM that the restructure had effectively already been implemented and she accepted in cross-examination that the restructure had already gone ahead before the 3 February meeting, apart from in relation to the claimant. Also, she included in 'implementation' that people had been told in early December about new roles. However, the evidence continued that it had been mostly implemented to others but paused in relation to the claimant. Ms I1 also accepted that she was unclear in what she had told the claimant on 3 February.

216. We consider that any problem here is not that the claimant was misled by the investigators. Rather, there was a slight miscommunication to the extent that when the investigators referred to the restructure being paused, they did not make it expressly clear that it was only paused in relation to the claimant's role. However, it was clear to the claimant on his own evidence that there were some changes happening around him at the time. The claimant accepted in his email dated 1 February to the investigators (p1227)

that the restructure was ‘de facto’ going ahead. The claimant was also aware of changes to others’ roles. This is because, on his own evidence (at paragraph [110]), he logged into a remote meeting by accident in January 2022 slightly early, and saw a document being shared between Mr LM and Mr NLM discussing tasks being done with the claimant.

217. In any event, any miscommunication only related to a short period of time, at most three weeks during January. The investigators were also clear in the December email and we do not find that this amounted to the claimant being misled, as an issue of fact, in all the circumstances.

218. The restructure continued after the end of January 2022 following the communication of the initial investigation to the claimant on 25 January 2022, accepting Ms I1’s evidence on this point that the investigators had agreed that in light of their findings that the restructure could proceed. However, it is important to note that a distinction must be drawn between the restructure generally, and the restructure of the claimant’s role. It is right that those in new roles worked them from around January 2022 onwards, and that the proposed new line manager of the claimant had started by January 2022. This must also to have been known to the claimant because the new proposed line manager, Mr NLM, had started working, and we make that finding of fact for that reason.

<u>The restructure from March 2022</u>

219. We accept the evidence of Mr LM (and find accordingly) that as of late March 2022 it had become increasing difficult for him and Mr LMM to occupy the claimant with work that did not fit into the structure of the new team, and so management required the claimant to handover his R1A WORKA work so that others could properly carry out their roles. This evidence was not meaningfully undermined by anything else. It was therefore agreed that the previous ‘holding pattern’ that was in place around maintaining the claimant’s role could be broken and he was instructed to handover that

work. However, the claimant was not asked to carry out tasks relating to the new role. We also find that, on the basis of the claimant's emails and documents, he continued to 'work under protest'.

220. The claimant also continued to spend a significant amount of time on his work for the ongoing investigation. This finding is supported by the claimant telling Mr LM by Slack in April 2022 that he had been working for 16-18 hours a day '*leaving not much room for anything and barely sleep'* (p.1857). Also, the Slack messages indicating that at times the claimant prioritised his complaints over day-to-day work (p.1119) and this was consistent with the witness evidence of Mr LM and Mr LMM that the claimant had less capacity for his day job. We find, however, that, given the way this was expressed in the email evidence, any additional work was not expressly at the request of the investigators, rather, they (generally) had provided the claimant with an opportunity to provide further information, which the claimant was taking up on an ongoing basis.

221. We accept Mr LM's evidence (and find accordingly) that this affected how much work was assigned to the claimant, namely that he should not become overworked (for example, by Slack on 18 March 2022 '*hi, I know you have a lot going on, so don't want to add to your stresses and workload. That said, I am hoping you could help [with a task] Please let me know if I have misunderstood, and/or if it's a too much work/complexity'* (p1446)). The claimant had also expressed concerns about his health around this time.

222. We therefore find that the claimant did have a reduced workload around this time, but we accept Mr LM's explanation (supported generally by the documents above) that the reduced workload was because the claimant had not accepted the alternative role, the claimant had reduced capacity due to his work for the investigation, and concerns about the claimant's health. This is not the same, however, as the claimant being actively 'excluded' from specific work, which was denied by Mr LMM and Mr LM.

223. The claimant alleged that he was excluded from a particular piece of work called PROJECTA ('the Project'). This was running from January 2022 in relation to a particular fund. The claimant was aware that it was outside his work remit because he stated in a Slack message to Mr LM that '*I know I'm not meant to be working on this but I'm ever so slightly getting sucked in…'* (p998). By this stage Mr LM was aware of the claimant's December 2021 complaint (accepting Ms I1's evidence that Mr LM was made aware of the complaint by telephone call on 23 December 2021) and Mr LM's investigatory meetings were on 11 and 12 January 2022. However, it was accepted by the parties that the claimant's initial work on the Project was with Mr LM's blessing. There came a time when the claimant was asked to stop working on the Project. However, we accept Mr LM's witness evidence that this was because he was having concerns about this taking up more of the claimant's time than anticipated than being in any way whatsoever due to the claimant's alleged protected disclosures. This is consistent with the chronology: if Mr LM wanted to exclude the claimant from this work, he would be more likely to have prevented it upon his knowledge of the alleged PDs, but he did not. This is also consistent with the evidence of Mr LMM, that we accept because it was not meaningfully undermined, that it was the respondent's practice for employees to change projects based on business and resource needs. It follows that stopping work on a project did not call out for an explanation and was not unusual. Mr LM's evidence is also supported by, and is consistent with, Slack messages around this time (pp1050 and 1067). Further messages consistent with normal task management suggested an invitation of a scaling back with Mr LM being flexible about handover on the task (p1053) as opposed to an abrupt halt and exclusion.

224. In response to this work allocation the claimant sent Slack messages to Mr LM, including on 26 January 2022, that refer to the working relationship being broken. Also the claimant assumed that decision making about the Project was by Mr LMM based on assumption rather than evidence (p.1055).

225. Although it was alleged by the claimant that he was excluded from various working groups set up at the time, we do not find these proven. This is because we accept the respondent witnesses' evidence, in particular from Mr LMM, that although some groups were set up, these were not relevant to the work that the claimant was performing. There was no good reason to doubt this evidence. In any event, the decision to form these groups was that of Mr SI and not Mr LM or Mr LMM. Also, we accept the evidence of Mr LM and Mr LMM that claimant did not at that time raise concerns about the working groups. This is more consistent with them being irrelevant to him than him being excluded from things he should have been part of.

The claimant's letter to the Board and Arcom (Alleged PD 3)

226. On 9 February 2022 the claimant sent his '*Letter to the Board and ARCom in Relation to Bullying, Grievance in PIDA Disclosure'* to the Board and Audit and Risk Committee (ARCom). This included concerns about the way the investigators had handled the initial investigation (Alleged PD 3, p1235). This was sent to AN, Chairman of the Board of Directors, and the general Audit and Risk Committee email address, and cc'd the CEO. It alleged that the investigators '*have acted in a manner that in my view has not shown a genuine interest to thoroughly address the concerns I have raised in a fair, transparent and reasonable manner and are acting to frustrate my efforts to have these concerns addressed appropriately*' (p1240). It also stated '*At its essence the concerns I'm raising relate to systemic unlawful and unethical conduct relating to the threat of dismissal and actual dismissal of multiple employees through whatever means necessary including unfair dismissal, bullying and false harassment accusations, using tactics of providing false information, misleading, threat and intimidation and in a manner that puts business interests, profitability and reputation at risk'* (p1238).

227. On 10 February 2022 the claimant emailed Ms I1, coping in the other investigator, and the General Counsel and CEO, including an allegation that '*it prevents me from having full access to all the evidence I need for the purpose of expanding the PIDA disclosure. It essentially tempers with the*

evidence of the matter that I'm raising….As you've aware, being a solicitor, who is registered with and regulated by the SRA… you are obligated to .. not abuse your position…not mislead…or being complicit in the acts or omissions of others….do not misuse or tamer with evidence….and do not see to influence the substance of evidence…[in bold:] *I therefore ask you, yes or no, as an SRA registered and regulated solicitor, am I allowed to have access to the very evidence I have cited as part of my grievance and PIDA disclosure…'* The claimant maintained in his evidence including under cross-examination that this was not a threat or implied threat. We reject that analysis as being contrary to the plain words used. It was taken by Ms I1 as a threat, and we agree that it in fact was a threat.

228. The respondent commissioned an external law firm to carry out an investigation ('the Investigation into the investigation'). Mr AN, when challenged on the propriety of this in cross-examination, gave evidence it would have been inappropriate for him to directly investigate the matters raised himself because it would be inappropriate for him to directly go behind the firm's own investigators without evidence or a good basis to do so. We accept his evidence as to his belief and rationale because it was not meaningfully undermined in cross-examination or by other evidence.

229. The Investigation into the investigation was conducted including interviews being carried out by the external lawyers of the respondent's investigators and consideration of transcripts and video recordings. The outcome of the Investigation into the investigation was a legally privileged report (there was no successful challenge to the status of that report, and privilege was never waived). Mr AN was satisfied that the respondent's investigation had been conducted properly and the claimant's allegations about it were not upheld.

230. On 9 March 2022 the Chief Operating Officer/General Counsel ('COO/GC') wrote to the claimant to place him on medical leave/suspension (p1396).

231. On 10 March 2022 the claimant raised concerns by email about his medical leave and provided a fit note to the respondent (pp.1395 and 1398). The claimant returned to work after one day's medical leave/suspension, on 10 March 2022.

232. We do not find that the claimant was, as an issue of fact, pressured by the respondent not to work. This is because this allegation is not supported by the documentary evidence. Rather, the documentary evidence of the communications with the claimant – in particular, from the investigators, showed a repeated concern for his apparent decline in mental health. For example, by email dated 3 February 2022 the claimant had written *'I agree that it in the best interest* (sic) *of everyone to move forward, but that should not be at the expense of:.... my physical and mental wellbeing. 12. I am sitting here now at 3am at night, working on this document, and drafting this response and I'm simply collapsing. I took the weekend to recuperate after not sleeping 48 hours'* (p1221). The documentary evidence suggests that the investigators were seeking to engage with the claimant about his fitness to work, but he did not do so. Following legal advice, medical expert advice was sought on an anonymous basis. Asking whether the claimant should be on a medical suspension was sought as a supportive measure, accepting Ms I1's evidence as to the respondent's motivation and that it was out of a genuine concern for his wellbeing. This was a natural reaction to the content of the claimant's communications about his health. The anonymous medical advice included that a period of temporary medical leave pending confirmation of fitness to work was reasonable, and the respondent should reasonably be concerned about the claimant's fitness to work, but did not recommend further investigation beyond confirming fitness to work (p1381). The claimant's fit note to work was provided as above.

233. On 16 March 2022 Mr AN sent the claimant the outcome to his complaint to the Board (p.1430). The claimant was told that the investigation had been '*undertaken in a reasonable and proportionate manner by two experienced and senior members of staff, both of whom are subject to regulatory and professional obligations'* and there was '*no evidence to suggest that they*

acted in a way that was not consistent with those obligations…Further we believe the investigators took the matters you raised very seriously, giving these matters their swift attention notwithstanding they were raised shortly before the festive period, and that they have dedicated a significant amount of time to this matter.' (p1430). The claimant was also informed that, in accordance with the respondent's policies and handbook, he was able to contact the FCA or other authority with any concerns if he wished to.

234. The claimant responded to this with a ten-page letter dated 18 March 2022 (Alleged PD 4) which largely repeated his 9 February 2022 letter (p1432). It included '*I would also like to note the following in relation to the conduct itself. I have sought to consult the SRA in relation to the conduct of the investigators that I have experienced'* (p1441). We agree with the respondents that this letter demonstrates, as a question of fact, that the claimant was refusing to accept the outcome of the Investigation into the investigation and he restates his version of events. This is clear from the content of the document.

The 12 April 2022 complaint (Alleged PD 5)

235. On 12 April 2022 the claimant sent to ARCom the final draft of his expanded grievance '*Bullying Complaint, Grievance and PIDA Disclosure Additional Information'* (Alleged PD 5) which was 352 pages long (p.1480).

236. In the document the claimant accepted that, in respect of Mr LMM and Mr LM, '*I do not know what the eventual intention of the individuals was'.*

237. The claimant also stated that the respondent's conduct had '*caused alarm, fear and distress in relation to the trust and confidence I have in the firm*' (p1975).

238. There was a dispute between the parties as to whether, within this document, the claimant made allegations of criminal (as opposed to civil)

harassment under the Protection from Harassment Act 1997 (p1798 onwards). We firmly reject the claimant's evidence that he was not making allegations of criminality in this document. The claimant's interpretation is not grounded in any reasonable reading of the content of the document, and is directly contradictory to the clear meaning of the words the claimant used. We make this finding for the following reasons.

239. Firstly, the words crime and criminality are used frequently.

240. Secondly, the document includes '*Harassment is a crime prohibited by the Protection from Harassment Act 1997'.* The claimant then goes on to include a detailed exploration of the criminal offence under the relevant statute, including matters relating to mens rea. He continues to state that he reasonably believed that the harassing conduct he had experienced met the statutory definition of harassment.

241. The claimant named the following as individuals whose course of conduct he reasonably believed amounted to harassment: Mr LM, Mr LMM, Ms SA, both investigators, and the COO/GC, and that the first respondent jointly had committed harassment. He asserts that the relevant test for a course of conduct was met and then continues to state that '*The conduct must have an element of real seriousness. It must have a severity that would sustain criminal liability….Therefore to cross the boundary from the regrettable to the unacceptable the gravity of the misconduct must be of an order which would sustain criminal liability* (p1770, emphasis retained from original, and hereafter in this section). He continues to outline the criminal liability gravity test. He continues with an exhaustive amount of detail, including concluding that '*And yet it feels to me they were misusing their power and acting in a manner that appeared to be deceitful and dishonest to coerce and force me and put unreasonable pressure on me to impose diminishing changes to the terms of my employment….The Head of Compliance, Head of Dispute Resolution, Chief Operating Officer and General Council are the highest levels of authority in our firm in their respective areas. The evidence I have presented gives rise to a reasonable concern that they may have misused*

their power by not affording me a fair and transparent investigation that is free from predetermined outcomes, which may not comply with their roles and responsibilities and regulatory and professional obligations.' (p1794). He continues to assert a loss of trust (p1799) and refers to his asserted alarm, fear and distress which was oppressive and unacceptable.

242. Thirdly, the document states under a further heading 'THE GRAVITY TEST' that the gravity must be of a level which would sustain criminal liability (p1801), the test for criminality is outlined, and (at p1802): *'the gravity test of harassment is binary and the seriousness of the conduct must cross a boundary from the regrettable to the unacceptable to be of a level which would sustain criminal liability…I reasonably believe and as evidenced that….and this, the gravity of the conduct itself, the pattern and practice and the impacts it has on employee health and safety places the conduct on the continuum of seriousness at a level that is grave enough to cross the boundary and sustain criminal liability. I therefore reasonably believe that the conduct has crossed the boundary between unattractive, and even unreasonable, and conduct which is oppressive and unacceptable and the gravity of the conduct is of an order which would sustain criminal liability'.*

243. The claimant maintained in his witness statement and orally in cross-examination that he was not making allegations of criminal harassment despite the obvious words he had used to the contrary.

244. The claimant sought to argue that his caveat '*This section is not intended to threaten with any legal action, as I am genuinely trying to resolve this matter internally and in good faith'* was sufficient to make it clear that he was not alleging criminality. We consider that this is not a natural or reasonable reading of the allegations. Whether or not formal legal action is threatened is not relevant to the nature of the legal action that might follow from an allegation. Also, the document more has connotations of the claimant stating one thing whilst implying another: words to the effect of 'I'm not making a threat' before making a threat do not effectively make it clear that no threat is, in fact, made.

245. We also took into account that on the claimant's own evidence he used careful and measured language in relation to Mr SM (at [279]) and it could also be inferred that he was careful and deliberate in his choice of words elsewhere in his documents.

246. As a result of the claimant plainly making allegations of criminal harassment, the investigation continued and criminal law advice was provided to Mr LM and Mr LMM for their response to the allegations. Both of these individuals gave cogent evidence that the serious nature of these allegations caused them serious distress and upset. We accept that evidence and find accordingly.

247. Given the content of the 12 April 2022 complaint, it was clear that the claimant did not accept the alternative role. This is because the document stated that he should not, in effect, be forced to accept a demotion which extended his reporting line, and without a job title increase in line with his team. '*…the restructure has already gone ahead…These roles have already been given out…I therefore reasonably believe that the outcome of taking me through a redundancy consultation process can never afford me a fair redundancy consultation process, and in anyway there is no genuine 'redundancy situation' and it should therefore be removed from the list of possible outcomes of this investigation….I also reasonably believe that I should not be punished for raising the protected disclosure that I have by being removed from the role I so love and enjoy or lose my employment.'*

248. Also, he included: '*I therefore reasonably believe that I should not be forced to report to the same individuals who have used bullying and harassment tactics against me and have caused me an injury. At present, the outcome that forces me back into this situation is simply bullying and harassing in itself. At a bare minimum, in order to facilitate a real change the individuals should admit to the bullying and harassing conduct and offer a true heartfelt apology for causing me injury and that admits what they have done* (p1534). The claimant also, in this document, repeated that the respondent was being unfair in forcing him into an impossible position of being unfairly

dismissed or accepting an unfavourable variation of terms. This was consistent with the claimant's oral evidence about the reason why he would not accept the alternative role.

Whether the claimant accepted the new role in the meeting on 19 April 2022

249. The claimant sought to argue that, as a matter of fact, he had accepted the alternative role in a meeting with Mr LMM and Mr LM on 19 April 2022. This was raised in a supplementary statement. Mr LMM and Mr LM disagreed with this in their evidence. We prefer the evidence of those witnesses on this point because it is more consistent with the overall documentary evidence. There is no clear documentary evidence supporting the idea that the claimant, in fact, accepted the role. There is no express acceptance in writing. Nor is the documentary evidence subsequent to that meeting consistent with the claimant having accepted that role, such as either a new contract being in place or the claimant requesting the same. Mr LM's evidence was that the claimant had volunteered he may still be interested in the new role, but that is far from the same as an oral acceptance of it given the circumstances (particularly in light of the claimant's clear and unambiguous position outlined in his various complaint documents, including why he did not want to accept the new role in his 12 April 2022 document above, and other references to working under protest). The evidence did not suggest that the claimant was treating Mr NLM as his new line manager, as would have been the case if he had accepted and moved into the new role. Although Mr LM's notes about that meeting (p2230) refer to '*[the claimant] has reiterated that he is happy to hand over* [WORKA] *and focus on algo work. Need to determine what formalities are required for [the claimant] to accept the new role (but handover takes priority)*', we consider this to be more consistent with Mr LM's account than the claimants. It simply records what would have been necessary to look into if and when the claimant accepted the new role – something that would have been prompted by the claimant still appearing interested in the role, as Mr LM described.

250. At the time of the 12 April 2022 complaint, the claimant referred in the document to having no private life due to spending every moment on the document (p1538). By this stage, the claimant had entered a limbo period given that he had not accepted the new role, and we accepted Mr LM's oral evidence that '*anything that* [the claimant] *wanted, unless I could think of a very good reason, I was of a mind to go along with […] I wasn't of a mind to either stop* [the claimant] *doing things that he wanted to do, unless it was a good reason, or indeed ask him to do things that he didn't want to do.'*

251. On 21 April 2022 the investigators met with Mr LMM and the second respondent (in separate meetings) to inform them of Alleged PD 5.

252. In May 2022 the claimant had his own mental health assessment, started counselling and receiving cognitive behavioural therapy (CBT).

253. On 11 May 2022 an investigator informed Mr LM that the claimant had raised further allegations against him, including of criminal harassment.

254. The investigators had their third investigation meeting with Mr LM on 24 May 2024.

255. Mr LM was on sick leave between 26 May and 21 June 2022 on grounds of mental health. Mr LM gave evidence that as a result of his role in the investigation his mental health had suffered. For example, in June 2022 he spoke to the second respondent about the difficulties managing the claimant in the circumstances and that Mr LM no longer wanted to be a manager of anyone. The second respondent also gave corroborating evidence that the impact of the claimant's complaints on Mr LM had been to accelerate his plans to move away from a management role. The claimant's submissions on this point were that there was documentary evidence to suggest that Mr LM was a reluctant manager and it followed that he would have moved away from management anyway, and to suggest that it was because of the claimant was (in effect) an exaggeration. We accept, and find accordingly,

that Mr LM was in some ways a reluctant manager. He accepted, in effect, that he had been seeking a less hands-on role in any event. However, this is no answer to the clear evidence (we accept) from Mr LM (corroborated, to a degree, by the second respondent) that the impact of the claimant's complaints on him was such that he required time off for his mental health and this dramatically accelerated Mr LM's plans to move away from management. This is supported by him even being prepared to have a pay cut to reflect a reduction in duties. The claimant's point that he had reservations about management anyway is no answer to the clear effect of the claimant's conduct on his line management, and does not evidence exaggeration on the part of Mr LM.

256. The investigators had their third investigation meeting with Mr LMM on 7 June 2022.

257. The investigators had further investigation meetings with CO (14 June 2022) and three other relevant individuals: on 16 June 2022 and 4 July 2022 (a previous Head of Recruitment, a previous Head of TEAM2, and Global Head of Talent).

258. During a meeting in late June 2022 Mr LM had a meeting with the second respondent. This was following his return from medical leave and he explained the impact of managing the claimant, given the complaints, to the second respondent.

<u>May/June 2022 work</u>

259. We do not accept the claimant's evidence that when Mr LM was absent in May and June 2022 the claimant was left with no work despite there being plenty of work to do. This is because we accept the respondent's explanation that work the claimant had identified as possible fell into the domain of the alternative role that the claimant had not accepted. We accept that the fact that the claimant did not accept the new role is the explanation

for him not doing particular pieces of work at that time. Also, given the demonstrable amount of time the claimant was spending on his lengthy complaint documents (consistent with his Slack messages, above), this suggests that the claimant did not have the capacity for additional tasks.

260. Also, in June 2022 the claimant sent Mr LMM an email about a correct internal approvals process. It was not in dispute that this email was sent and Mr LMM gave clear and cogent evidence that he found this email threatening, stating that '*I was very concerned that if I didn't answer…in the right way, in a very formal way and accurate, it would be used against me'.* We accept Mr LMM's evidence on the effect of this email because it was not meaningfully undermined by the other evidence and was consistent with the wording used. Although the claimant sought to present this as innocent, given the wider context of the claimant making threats, or implied threats, to individuals about their regulatory obligations, we prefer Mr LMM's interpretation. Also, we consider that there was no evidenced basis for Mr LMM, a senior individual, to overact to this email. Also, Mr LMM's evidence is supported by the second respondent's evidence about his reaction to the email, and the second respondent's analysis of the email is consistent with the email being a threat, even if this is not obvious to a lay person from the wording used. The email was also sent by the claimant at a time of general distrust, given the circumstances as a whole.

261. The claimant's conduct had the effect of Mr LMM and Mr LM feeling that they had to walk on eggshells around him, this finding being supported by their witness evidence of this. This is a logical reaction to the nature and seriousness of the allegations the claimant was making, which were increasing in severity (ie. allegations of unlawful employment processes escalating to criminality). In a meeting on 9 June 2022 with the then Head of HR for the UK and EEA) Mr LM stated words to the effect that the claimant can't work for us, it was mutual, and there was a situation of mutual distrust (p3658). We accept that this meeting note accurately reflects the situation at the time, as a matter of fact. It is entirely consistent with the claimant's own documented breakdown of trust throughout the relevant time.

262. The claimant's medical notes record him stating to a clinician on 4 May 2022 comments including (p2551) '…*Patient stated there is now an ongoing battle of his employer cannot fire him but he cannot resign. Patient stated he feels he is at a stalemate with the situation…'* We find that this is evidence of the claimant's belief at the time that he was in a battle with his employer, he was at a stalemate, and his belief that the employer cannot fire him.

The 4 July 2022 complaint (Alleged PD 6)

263. Although the claimant has sought in his evidence to complain that he was given an unrealistic deadline to submit this document, without time for his solicitors to provide legal advice on it, we reject this allegation as a matter of fact. Although the claimant relies on an email dated 1 July 2022 from I2 with a deadline of 4 July 2022, this is not the complete picture. The email itself (p2196) in fact sets out that the investigation had been going for over six months, and it simply requests that any new information be sent over by close of business the following Monday '*if this is to be considered as part of our current investigation. As we have stated previously, if you do wish to provide material new information, please do so as succinctly as possible – bullet points in an email would be fine. Of course, if we receive any information after this date, it would still be considered and, if appropriate, form part of a separate investigation.'* We accept that this email genuinely reflected the respondent's position. It is also misleading of the claimant to suggest that this was an unreasonable email given that on 15 June 2022 the claimant had emailed the investigators stating that new information had been brought to his attention, the investigators replied on 21 June 2022 confirming that '*if the individual that you have spoken to wants to raise their concerns, we would encourage them to do so. In relation to the additional information regarding your own circumstances, to the extent that this is material new information that has not already been covered by your initial escalation or additional information document, please send this through to us in a brief document as soon as possible.'* The claimant confirmed on 27 June 2022 that he would do his best to submit it as soon as possible. It was

only after this that the investigators sent the 1 July 2022 email. In those circumstances the claimant had been given sufficient time to respond to what the investigators had suggested, namely to submit a bullet point email of any genuinely new and material information (which was not in fact done, given what happened next).

264. On 4 July 2022 the claimant submitted his document '*New Information and Present State'* (Alleged PD 6) which was 57 pages long (p.2117). This document raised further concerns about the exits of former employees of the respondent, made additional complaints about the claimant's position in the restructure, and allegations about being excluded from work.

265. On or around 23 August 2022 the second respondent spoke to Mr LM about the claimant and dismissal.

266. The overall investigation concluded with a detailed final investigation report dated 6 September 2022 (p2297). In light of the claimant's initial (later expanded) complaint being dealt with as a compliance escalation, there was no right of appeal under the respondent's policies. We do not find as a question of fact that the claimant had an effective right of appeal because of the Investigation into the investigation carried out by the board. However, it is right to find that the claimant's allegations about the investigation had been investigated (and dismissed) by external lawyers. It was therefore not a process that was subject to no possibility of scrutiny.

267. The final investigation report echoed the initial outcomes that were given to the claimant back in January 2022. It concluded that there was some doubt as to whether the claimant's original role was genuinely redundant, namely that on one hand the WORKA work envisaged a reduction of people doing that work from three to two, and the claimant's new role was materially different, but on the other hand the claimant would be carrying out work in the alternative role that he was already carrying out (albeit to a significantly lesser extent) or had performed previously. It was not a role that would

require retraining. The report concluded that it did not appear that sufficient consideration was given to whether or not the claimant's previous role was genuinely redundant within the new structure, and that the claimant could do the new role without retraining. Also, the investigation did not consider that it was appropriate for the alternative role to be made subject to a trial period in which the respondent had the ability to terminate the trial and revert to a redundancy. It also found that there was a lack of clarity in communications to the claimant that was likely to have contributed to his distress (around December 2021). Generally speaking, it did not uphold the claimant's other concerns. It found that there was no reasonable or justifiable basis to allege criminal harassment. It did not find that there was systemic unethical behaviour by HR. In relation to a detailed investigation into the other exits raised by the claimant, for Mr ST the investigation found that the true reason for his termination was likely to be his performance and perceived unsuitability for the role, his role was not genuinely redundant, but the termination was not motivated by personal disagreements or a power struggle.

268. The report concluded that the claimant appeared to have heard a version of events from one (or a small number) of individuals in respect of one aspect of others' exits, and extrapolated from that an allegation in respect of the exits or processes followed as a whole, with little (if any) basis in fact (p2337). It also stated that the claimant appeared to be trying to place obstacles between himself and the respondent by making unreasonable demands, namely a reluctance to report to Mr LMM and Mr LM and that he should not be forced to work in what he perceived as a demotion. It concluded that he had rendered the rebuilding of team relationships very difficult and had left the respondent with limited options on how to proceed (p2337). It also referred to the claimant as having negatively affected his colleagues, with his comments being interpreted as gloating (p2338) and that this had significantly impacted on Mr LM's health (p2340). We accept and find, because there was no cogent evidence to find otherwise, that the content of the report reflected the genuine beliefs and findings of the

investigators, and that these beliefs and findings were on the basis of all the documentary and interview evidence obtained.

269. There was a dispute between the parties as to whether the gloating incident happened, effectively that after an investigatory meeting with Mr LM on 24 May 2022, the claimant approached Mr LM in the office to imply that he had worked out from the Outlook diaries that there was an investigation meeting (based on Mr LM's statement), and that the words were to the effect that the claimant said '*I understand you were speaking to* [the investigators] *about my complaint today – I am sorry that you are having to go through what I am having to go through*' (p2340, from the final investigation report). We find that this incident did happen. We find that it happened as a result of the claimant cross-comparing several people's calendars and establishing that Mr LM had been in an investigatory interview. We reject the claimant's suggestion that he was only expressing sympathy to Mr LM and was not gloating. We make this finding because, as an explanation, it lacks credibility. The wordings used do not make sense (in terms of the claimant's characterisation) because the claimant was not going through the same as Mr LM: the claimant was a complainant and Mr LM was one of those complained about. Also, the claimant being in sympathy with Mr LM is entirely inconsistent with the recent and previous allegations he had made. The claimant's explanation lacking credibility, we prefer Mr LM's evidence on this event.

270. On 25 August 2022 the claimant wrote to Mr LM informing him that he had been in A&E the previous night following heart attack symptoms.

271. On 6 September 2022 the second respondent was provided with the final versions of the investigation report and outcome letter (p2350 and p2297).

272. On 7 September 2022 the second respondent spoke with Mr LMM about the claimant and his decision to dismiss. The second respondent then spoke with the CEO and updated them of the decision to dismiss.

273. The claimant was on sick leave on 8 September 2022.

The dismissal

274. The dismissal letter was signed on 12 September 2022 (p.2360). It outlined the fact of the investigation into the claimant's concerns, the second respondent had reviewed the relevant paperwork and spoken to relevant individuals. It continued:

'*Following my review, I have decided that, in my role as Senior Manager, and as a result of your conduct (as explained further below), the Company must … terminate your employment as of today's date'.* Further '*The Company….has spent a significant amount of time and resources pursuing a serious of extremely thorough and independent investigations to fully consider your complaints and run them to ground within the organization. The Company provided you with an outcome to your initial complaint in January 2022, and supported you with independent legal representation to ensure that you could adequately prepare your further complaint document. We have given you more than ample time to both communicate your concerns as well as to digest the Company's initial investigative findings. We have spared no effort or expense to listen to and investigate your complaints. Within the reasonable constraints that such a situation creates in a small, intimate working group, we have done our best to give you meaningful and constructive work with which to engage while also taking into consideration the matters about which you have complained.*

Out of all the accusations itemized in your various complaint letters, I have come to the conclusion that there were two, what I term "technical" issues that arose in relation to the initial interactions you had with HR and your direct managers regarding the redundancy and associated opportunities in and around late November 2021. One was in regards to misunderstandings and miscommunications around the redundancy situation and the terms of the alternative role that was offered to you…The other relates to the fact

that the Company should either have transferred you directly to the alternative role, or executed the redundancy process and, only thereafter, worked with you to explore other possible opportunities … and invoked a trial period if appropriate…The Company acted in good faith in making an important organizational change to the … team which created an employment opportunity for you, and in the event that you did not wish to accept such opportunity, offered you a fair enhanced redundancy package. Ultimately, I find that this was a standard and reasonable business decision to take.

However, your actions have been anything but standard or reasonable, and your behaviours following this business decision have become increasingly troubling.

I have significant concerns in relation to your conduct, specifically with regard to the manner in which you have raised serious and unfounded allegations and subsequently interacted with your colleagues….:

1. Your accusations go beyond the pale when they accuse senior, well-respected employees of criminal action, for which there is not a shred of evidence. You have escalated the seriousness of the offences without any substantive scaffolding to support any of the lesser, earlier accusations you previously made (and which were not upheld following rigorous investigation). Such criminal allegations are incredibly sensitive and damaging, particularly for regulated individuals whose careers may be detrimentally affected by such complaints. This is heighted by the fact that such colleagues had previously been cleared of wrongdoing in the investigation, and it has created an extremely stressful, untenable and appalling situation for your managers who do their best to manage you day-to-day while simultaneously dealing with unfounded criminal accusations being made against them….Ultimately, I find that your making of criminal allegations represents unjustified conduct by you, and I am conscious of the impact that your conduct may have on your colleagues' abilities to properly discharge their duties in circumstances where they may be liable to be

accused of unfounded civil and criminal wrongs it they, reasonably and lawfully, manage their teams and work in a way you do not agree with.

2. Your accusations of widespread mishandling of other employee exits are, I consider, based on innuendo, rumour, and hearsay, and the investigation has failed to surface any substantive fact-trail that would lead the Company to concur with your complaints…

3. Your accusations about the investigative team…are entirely unsubstantiated and false. I am therefore conscious that anyone asked to take responsibility for any subsequent investigation into allegations raised by you, however senior and independent they may be, is likely to find themselves the subject of further unfounded allegations by you, as has been the case with your previous complaints.

4. …. despite the thorough nature of the Company's investigation, you have been either unable or unwilling to accept the outcome. The Company finds itself in a position whereby your repetition of serious allegations and your refusal to accept their falsity demonstrates that you are likely to continue to display unacceptably disruptive conduct unless and until your unfounded complaints are upheld…

5. I am also conscious of the considerable and undue physical and mental health impacts on a variety of people in the organization due to the nature of your complaints and your associated conduct…

6. It has also been brought to my attention that you have been acting with your colleagues in a manner which I interpret as potentially manipulative and, in any event, troubling [by reference to the gloating incident with Mr LM, and the threatening email to Mr LMM] … *you have sought to ensure that your colleagues are, in effect, walking on eggshells around you. This is unacceptable and unsustainable.*

7. …. your inflexible and contradictory approach towards working effectively in a reporting line [having stated you should not be forced to report to the individuals complained about] *demonstrates an inability to work with others and I find that, regardless of what you say, your actions clearly suggest that you do not intend to try to properly recover your relationship with your colleagues.*

… I have come to the conclusion that the Company has done all that it reasonably can to address your complaints and it is no longer possible to maintain the employment relationship…Your persistence in pursuing repeated and serious unfounded allegations has created a dysfunctional situation that the Company cannot feasibly resolve with you remaining in employment. This is a clear case of misconduct….and given the irretrievable breakdown in trust and confidence in the employment relationship, your employment will be terminated effective today. I consider that this is the only way to avoid prolonging the ongoing, unsustainable situation that exists for you and your colleagues.

I have considered whether the Company should follow a formal disciplinary termination process. However, given the seriousness of your misconduct, the ample evidence of your inability to accept findings you do not agree with, and the evidence indicating the damage done by you during this process, I have come to the conclusion that this would be futile and risk antagonising matters further, potentially leading to additional serious, negative impact on both the productivity of the business and the wellbeing of numerous other of the Company's employees. For the same reasons, I have decided that the Company will not be granting you a right of appeal.'

275. The claimant was dismissed by letter on 14 September 2022. The claimant was in the office for a meeting/presentation that day and collapsed at work.

276. We find that the claimant did not inform the respondents that his condition was worsening or that he was likely to take a significant period of sick leave

around this time. This is because there is no clear documentary evidence in support and it was denied by all of the relevant respondent witnesses. The claimant says it was obvious given what the claimant was reporting to his employers at the time. However, we disagree. This is because there was nothing inherent about the claimant's reported symptoms that meant it was obvious he would need to be off sick for a prolonged period.

277. The claimant's private health insurance was extended for the period after his dismissal. However, we do not consider this to be clear or cogent evidence of the respondents having knowledge of any likelihood of the claimant taking long-term sick leave. Rather, we find that this is simply evidence of a supportive employer.

Extent of the claimant's conversations with others about their exits from the respondent

278. This was an area of factual dispute between the parties. As with all areas of dispute, we have only resolved this in so far as is necessary in order to make a fair determination of the claims. In particular, we did not hear evidence from Mr ST about what he may have told the claimant, and when. However, the claimant's evidence included that he was told by Mr ST that his (Mr ST's) departure was not on good terms. The claimant's evidence was that he was told this at the time of Mr ST's departure. We have no reason to doubt this evidence and accept it – to that extent – as a matter of fact. The issue of conversations with the claimant about their exits was raised to a degree in the oral evidence. In particular, Mr SC gave oral evidence that he had a conversation with the claimant about his difficulties with the first respondent sometime between him having left the company and the claimant's health deteriorating (and whilst the claimant was still employed). Mr SC left the respondent in 2019.

279. This issue is (to a degree) relevant because one of the reasons that the claimant says he had a reasonable belief in the information he was providing

in his written complaints was that some of it, on his account, was told to him directly by the individuals involved. We accept and find that the claimant did have some conversations with others about what happened to them. This is because we did have some direct evidence about this, such as from Mr SC and Mr SM that they did have conversations with the claimant about certain events.

280. However, we are not in a position to safely make positive findings of fact that these individuals gave the claimant the information that he had then provided to the investigators such that his disclosures were in fact based on direct reporting to him. This is because there is a high degree of ambiguity about exactly which conversations the claimant had, with whom, when, and exactly what information was given to him in those conversations. In terms of the claimant's witnesses, although some of them told us about having had a conversation with the claimant about their or others' experiences, they did not give us clear and detailed evidence about the specific information they gave claimant at any particular time. Those witnesses, under cross-examination, accepted in respect of many pieces of information they had either no direct knowledge, or they had seen no relevant documentation. We also cannot take the claimant's assertions in his documents that he was relaying information directly given to him from those closer to the original events at face value. This is because of concerns about the reliability of the claimant's evidence we have more generally.

281. Also, even if the claimant did have a conversation with those directly involved, we don't know which details were in fact provided from that source, and which are the claimant's own conjecture. We also consider that individuals' memories are likely to be tainted by the passage of time and the fact that when an individual leaves employment this will often be on poor terms. Also, for those who the claimant says he spoke to about alleged unlawful exits, but were not witnesses in these proceedings, there was no clear corroborating evidence, particularly about the detail of what information these individuals may or may not have actually provided to the claimant. In circumstances where we had doubts about what the claimant

says and writes generally, we do not make the positive findings the claimant invites us to about him having relied on direct information said to him when making his disclosures, at least to the extent he says. We accept and find that he did have some conversations (generally), but we do not make findings about the details of what was said and when.

Whether the claimant's allegations were substantiated by the investigation findings

282. There was an issue between the parties as whether the claimant's allegations about the first respondent, generally, were unsubstantiated by the facts as found by the investigation. This is because it was part of the second respondent's evidence that this was the case (ie. the allegations were unsubstantiated). We find that, generally speaking, the claimant's challenge to this part of the second respondent's evidence fails. It is correct that the investigators made findings about the process adopted for ST's exit, in so far as they found that the true reason for Mr ST's termination was likely to be his performance and perceived unsuitability for the role, and it appeared that his role was not genuinely redundant. As a result there were learning points for the business. However, it is also correct that Mr ST left the respondent as a result of a settlement agreement dated 12 December 2018, his role having been put at risk for redundancy on 9 November 20218. The redundancy consultation was never completed as a result. We do not find that the circumstances as whole for Mr ST amounted to proving the claimant's allegation of unlawful and unfair dismissal. The claimant also alleged that Mr ST's exit was a result of a power struggle, something expressly found not to be the case by the investigators. It follows that the gist of the second respondent's evidence is consistent with the investigator's findings.

283. The investigators had expressly found at p2325 that in relation to '*Allegation of systematic unethical behaviour by HR….We do not consider that we have seen sufficient evidence during the course of our Investigation to substantiate the allegation that HR is engaged in 'systematic unethical*

behaviour' in relation to the conduct of redundancy processes…' In relation to allegations about UT, the investigators referred this to HR to consider. In relation to SM it was found that he was neither dismissed nor purported to have been dismissed for redundancy (dismissing that element of the claimant's allegations). With regards to a particular allegation by the claimant that SM was dismissed because of a spurious allegation of racism, this was found to be not the central catalyst for this process. With regards to the claimant's allegation about there being no due process, Mr SM had resigned before his disciplinary investigation could proceed. The investigators found that for Mr SM a disciplinary process was instigated arising out of serious performance concerns, these concerns appeared to be genuine, he resigned before a disciplinary process was concluded, he left under a settlement agreement, he was not made redundant, another employee was persuaded to stay at the respondent around the same time but this was not motivated by the actions around Mr SM. In relation to Mr SE, he was dismissed for redundancy, and that credible explanations for his selection were provided. He also left under a settlement agreement (having received legal advice) and was also given the opportunity to make representations and was made aware of alternative roles. Accordingly, the investigators found that he was not unfairly or inappropriately dismissed (p2336). Allegations about Ms LD were about her dismissal in 2013, an employment tribunal claim was brought, but the matter was subject to a confidential settlement. The investigators found no evidence that she had been inappropriately 'gagged' by the agreement. Overall, therefore, the claimant's allegations were not substantiated by the internal investigation (save for the express matters identified above).

Whether the claimant was updated about the progress of the investigation

284. We find that, in general, the documentary evidence does not show the claimant being given regular clear updates about the progress and timelines for the investigation. However, there were no significant delays during which the claimant and the investigators were not in contact by email. Also, the claimant was demonstrably not hindered by this because he regularly

emailed the investigators including with very substantial documentation throughout the process as a whole. There was a clear line of communication between the claimant and the investigators at all material times as is clear from the evidence of Ms I1 and the supporting emails. The only interruption in communication was as a result of the claimant himself having raised an investigation into the investigators but there was also prompt communication from Mr AN during that interlude. The claimant also received prompt replies to his emails from the relevant individuals.

Findings on credibility

285. We note that the claimant asserted in his Grounds of Claim that he '*regularly received the highest bonus amount, based on personal and business performance'.* This is not accepted by Mr LM. It was not necessary for us to resolve this issue directly, but we do consider it to be an example of a clear example of a disconnect between the claimant's perception and that of others. Another example of this includes the performance notes about the claimant's relationships within the company suggesting that he did not have strong relationships, and the claimant's account during the internal interviews that '*I think I am a highly sociable person and I am extremely on good terms with practically everybody I have ever worked with'*. These two perceptions are difficult to reconcile.

286. Moreover, we accept many of the respondents' submissions on the claimant's credibility more generally. We were careful in making this assessment to not take into account the claimants demeanour or adjustments whilst giving evidence. It is right to record that the claimant was more than capable of answering questions in cross-examination by reference to his own statement and the evidence bundles. We did not, however, consider that it would be appropriate to hold the evidence around adjustments for the claimant's cross-examination against him with regards to his credibility and reliability for the substantive facts to be determined.

287. We do find, however, that the claimant's evidence was (at times) inconsistent with the contemporaneous document (including his own contemporaneous statements) and was, at times, inherently implausible. For example, the claimant's oral evidence was he had only made an allegation of civil harassment, and stated that '*I didn't accuse anyone of harassment of a criminal nature'.* This was patently untrue and inconsistent with the claimant's complaint documents as outlined elsewhere in this decision. This was a stark example of the claimant being prepared, in effect, to say something that was entirely at odds not just with what was documented, but had been expressly documented by him.

288. Similarly, the claimant's witness statement and written answers in cross-examination were that he still had trust and confidence in the first respondent up until the date of his dismissal. However, this is entirely different to what he was saying to the respondent in his written documents during the relevant time as set out above, including (at p470) that there was a '*fundamental erosion of trust'* (in a Slack message), repeated references to there having been a substantial breach of the implied term of trust and confidence (eg. p605), the claimant having completely lost faith in anything he was being told (p607). Also, in an email dated 25 January 2022 he talked about the broken relationship and '*fundamental confidence and trust erosion',* the Draft Additional Information Document further asserting breach of the implied term of trust and confidence (p1084) and similarly in the 12 April 2022 document (p1740 and 1795).

289. The claimant's written witness evidence included that his line managers remained almost entirely professional and there was almost no change since December 2021 (at paragraphs [75-76] of the claimant's supplemental witness statement). However, this is difficult to reconcile with the claimant's messages at the time, such as saying during the 5 January 2022 that he could not rely on his managers and the relationship was '*not there*' (p679) and on 6 January the claimant said that he didn't see how he could work under them, the trust having been violated to a point which was irremovable (p749). The Draft Additional Information Document referred to the broken

relationship in several places and the claimant refused to any outcome where he would still report to them (p1534). The claimant's oral evidence included a concession that it was difficult, and there were problems in how they worked together.

290. It follows that there was often a complete disconnect between the claimant's written documents made during his time of employment (and some messages, such as by email and Slack), his witness evidence (oral and written), and reality. There was also no evidenced explanation for the difference between the claimant's position and reality.

291. We also consider that the claimant was at times prone to misrepresenting things to suit his own case. For example, he initially referred to his list of escalations at p1485 (the additional information document) as '*not complaints: communications'*. He conceded under cross-examination that they were all, in effect, complaints.

292. The claimant also at times had misrepresented what others had said. For example, the claimant's oral evidence included that he could not accept the 25 January 2022 investigation outcomes because '*[the investigator] said probation was not appropriate because tasks in the new role were the same as the old role'.* However, this is not the same as what the investigators found, as set out in the document at p1040A or the later documents setting out their outcomes. The outcome was in fact that the claimant had the skills to perform the alternative role and the claimant had worked on (for some of the tasks) done some similar work before. That is not the same as expressly finding that the roles were the same (which would have supported the claimant's allegations of a sham situation, which was not upheld).

293. We also find that the claimant grossly exaggerated what the restructure amounted to. He described it as *'an intentional and calculated attempt to coerce me through fear and intimidation to agree to an unfair and unreasonable variation of terms of my employment contract'* (p531), also

referring to a lack of dignity, dishonesty, and being a victim of abuse (p510). This was entirely unreasonable and there is no objective or evidenced basis for such a view on what occurred. We agree with the evidence of Mr LMM that the claimant's perception was '*a million miles away from the reality'.* We similarly accept the respondent's submission that there was no properly evidenced basis for the claimant's perception of the investigators' behaviour as amounting to harassment or concealing information form him.

294. Another example of the claimant's evidence being divorced from reality was his attempt to suggest that his email to Ms I1, above, was not a threat (whether express or implied) in relation to her position as a regulated solicitor. The claimant's oral evidence of this was that he was not making a threat despite this being patently the case on the face of the document. There is also no evidenced basis on which this could be excused as a matter of perception or miscommunication. The claimant was again demonstrating that he was prepared to give oral evidence that was at odds with his own written documents.

295. Conversely, we found (generally) that the respondents' witnesses, and the second respondent, provided clear and detailed evidence which was, where possible, consistent with and supported by the documentary evidence. We also found that there was little to no meaningful undermining of their evidence through cross-examination.

296. We were cautious about accepting the claimant's witness' evidence given that they were former employees who were entirely happy about their exit. Overall, their evidence was not particularly relevant to the specific issues we needed to decide.

297. Although we make the above general findings and observations, we were also careful to consider the specific disputed facts separately, and were conscious that a witness can lack credibility or reliability on one issue but

not another. Equally, we acknowledge that a witness who is generally credible and reliable can also be incorrect on a specific issue.

Further factual findings in relation to disability

298. We make the following factual findings having conducted a thorough review of the relevant medical evidence

299. On 13 December 2021 the claimant's GP notes record reports of mental health issues, lots of anxiety connected to redundancy and '*brought down by restrictions'* and records of prescriptions for Citalopram and Propranolol. The claimant called the 111 Crisis team on 17 December 2021 reporting physical pain and not eating and sleeping properly due to stress, and reported being breathless, abdominal pain and nausea without vomiting to 111 on 31 December 2021. On 8 February 2022 the claimant's GP records that the claimant was suffering from anxiety. The 17 March 2022 GP notes record that '*Feels he has CVS'*. On 26 April 2022 the claimant's notes record a normal gastroscopy but state CVS symptoms persisting for 4-5 months. A therapy telephone conversation on 4 May 2022 includes presentation of symptoms of stress and anxiety with the claimant not enjoying anything anymore including socialising or cooking. Also on 4 May 2022 the claimant was referred to attend therapy sessions. A further assessment on 1 May 2022 with the Bupa Mental Health team refers to the claimant experiencing symptoms associated with severe depression and moderate anxiety, with the claimant feeling that the anxiety was having a more significant impact, and the main difficulties reported to revolve around work related stress. The assessment has CVS syndrome '*as a possibly stress induced response'* which is affecting the claimant's sleep. On 10 June 2022 the claimant's GP records as a diagnosis anxiety and depression.

300. The claimant started NHS therapy in August 2022. In August 2022 the claimant's telephone therapy session includes the claimant reporting that at first he was so anxious and stressed he would constantly worry, physically

shakes, get heart palpitations/panic symptoms and sweat, and he reported CVS affecting him 1-3 times a month.

301. The claimant attended A&E due to chest pain on 24 August 2022 but no abnormality was found. A test to rule out a stroke was carried out on 25 August 2022 because of partial facial paralysis.

302. The claimant was referred to a psychiatrist on 15 September 2022 on the basis that he had struggled with his mental health for the last 10 months and was hearing voices, as well as having been medicated on citalopram and propranolol.

303. The claimant received private confirmation on 21 October 2022 that his symptoms were suggestive of CVS.

304. The claimant's disability impact statement dated 30 June 2023 lists various affects he says his conditions have on his day-to-day living, however there is no clear evidence that these were in place during the relevant time (December 2021 to September 2022).

305. However, there is clear and consistent reporting by the claimant to his line manager, the investigators, and his GP and similar health professions that during the material time the claimant was having difficulty eating and sleeping. The respondent investigators share the claimant's concerns about his health. We find that there is no good reason to doubt this reporting, and so find as a matter of fact that during the material time the claimant was having difficulty eating and sleeping, and that this was as a result of his proven impairments, as was inherent in the medical evidence relied on.

306. As a question of fact, the effects of the claimant's conditions did not last 12 months until mid-December 2022. They had not lasted for 12 months for any of the relevant time of the claims (December 2021 to early September 2022).

307. In terms of knowledge, there was no clear evidence that any relevant decision maker had knowledge of all the relevant facts which amount to disability, although we have made factual findings above about who received particular communications from the claimant about his symptoms. In particular, there was no clear evidence that anyone relevant knew (as a matter of fact) that the effects of the claimant's impairment were likely to last 12 months.

The reason for the dismissal

308. We have considered very carefully the issue, as a matter of fact, as to the reason (or reasons) for the claimant's dismissal. Our decision has been made taking the evidence as a whole, although plainly the dismissal letter and the second respondent's evidence were particularly important on this issue.

309. We were conscious that as a matter of law, in respect of the detriment claim against the second respondent, we must consider whether as a matter of fact the dismissal was materially influenced by a protected disclosure. Equally, for the claim of unfair dismissal, we must consider what the reason (or ,if more than one, the principal reason) was for a dismissal as a question of fact.

310. It was also necessary to give anxious scrutiny to the respondents' purported reason for dismissal. This is because asserting that the reason for dismissal was because of acts relating to an alleged protected disclosure (or the manner of the disclosure) but not the disclosure itself must not amount to a 'get out of jail free card' in these types of cases.

311. We firstly reject the claimant's suggestion (made in cross-examination) that the second respondent had simply rubber-stamped what the investigators had said and concluded in making the decision to dismiss. The second respondent gave detailed oral evidence under cross-examination that he

had taken all of the relevant material, in mid-August, and spent at least five full days reading and digesting the material in his house in a particular region of the USA. His evidence, which we accept, was that he came up with 11 different possible outcomes and resolutions, and he created a vast array of Post-it notes to assist him in his decision making. He also received details from the Investigation into the investigation in September following which he reviewed his earlier logic, challenged his initial assumptions, and came to the same conclusion. There was no meaningful challenge to this evidence. The second respondent had plainly considered all possible outcomes for the situation. From his witness evidence, we also accept that he came to the conclusion that the claimant would not accept an end to the matter unless the respondent accepted all of the claimant's points, reinstated his original role and responsibilities and removed the Mr LM and Mr LMM. He reached this conclusion on clear grounds given the content of the claimant's alleged protected disclosures and his stated position (as set out repeatedly above). The second respondent's witness evidence also included, which we accept, that he considered what position the claimant could have in the future, and how an amicable solution might be reached. However, the second respondent could genuinely not see another role (and line management) for the claimant based on the risk of things continuing as they were before.

312. After very careful consideration, we decided as a matter of fact that the sole reason for the claimant's dismissal was the complete breakdown of the employment relationship of trust and confidence between him and his employer. We make this finding for the following reasons.

313. Firstly, there were very clear messages from December 2022 that the employment relationship had broken down. There are many quotes from the claimant's complaint documents above which entirely support this analysis: it was exactly what the claimant was saying at the material time. The messages about the relationship and trust being broken continued throughout the relevant period are consistent and repeated. The message is clear from the claimant's many lengthy complaint documents, his account

to the investigators in interview and by email, and in Slack messages to his line manager.

314. Importantly, this message is not just confined to the claimant's complaint documents (which amounted to his alleged protected disclosures), the content of which we have not always accepted at face value. Rather, this message was also communicated in the claimants other types of written communications, as set out above, and his investigatory interview in which he said that his relationship with his line managers was essentially not there, and the trust had been violated to an irrevocable point.

315. Although the claimant sought in his oral evidence to suggest that this was not the case, and in fact he did still have faith in his employers, this is entirely contradicted by the consistent messages in the written evidence and lacks any credibility.

316. Also, there was very clear evidence from Mr LM, Mr LMM, the second respondent, and the investigators, that the employment relationship had broken down.

317. We also find that the manner of the claimant's alleged protected disclosures and the manner of his communications with the first respondent more generally (ie. sending incredibly lengthy documents, and also making implied threats, such as to an investigator) contributed to towards the breakdown in the employment relationship. However, this is not the same as saying that it was the substance of his complaints that led to the breakdown. We consider this analysis to be the most appropriate way of finding what happened, as a matter fact, in this case. Also, we consider that other factors contributed to the breakdown, such as the claimant's expressed status of the relationship, and his dissatisfaction with his working circumstances. These are clear from his communications at the time which are set out more fully in the above factual narrative.

318. We do not find that the simple references to conduct in the dismissal letter were sufficient to find that this was a dismissal because of conduct per se. Rather, it was the claimant's conduct in so far as it was the manner of his alleged protected disclosures that contributed to the complete breakdown in the employment relationship. Although there were two examples of the claimant's conduct in the dismissal latter (gloating, and a threatening email), we consider that these were included less as grounds for dismissal and more as an illustration of the difficulties in the wider employment position. We also do not consider that these incidents were particularly material to the decision to dismiss. The second respondent was more giving examples of things that had happened rather than identifying conduct to justify the dismissal, taking the evidence as a whole (including the oral evidence).

319. We do not find that the claimant's performance was a reason for his dismissal. This is because although it was a factor behind the respondent wrongly (on its own account) including a probation period (which was withdrawn) for the proposed alternative role, there is no clear and cogent evidence that performance was a reason for the dismissal.

320. The employment relationship had also entirely broken down because the relationship had not improved despite nine months of investigation. During that time, as a matter of fact, the claimant sought to escalate matters where possible, and, when he did not agree with the initial outcomes, he caused the Investigation into the investigation. The claimant ultimately escalated matters to make the most serious allegations, namely criminality, about a wide range of senior individuals and considered the first respondent liable for that criminality. We consider that the making of ever increasing numbers of escalating and serious allegations was indicative of an employment relationship which was, as a matter of fact, entirely broken. This can be compared with individual personal relationships, which (on their own) might (in other circumstances) have been capable of being mitigated or managed. It is also relevant that the claimant even today does not accept the majority of the investigations findings: he still considers himself to have been bullied

and that there was unlawful systemic breaches of employment law rights relating to dismissal by the first respondent. This is clear from his evidence.

321. We also find as a matter of fact that the second respondent (representing the first respondent) had a genuine and reasonable belief that this was the case. This belief was grounded upon not just the plain written communications from the claimant, but the difficulties of the situation were also covered by the investigators' report to him. There is no good evidential or logical reason to doubt that he held this belief, as a matter of fact.

322. We also find, as a matter of fact, that the second respondent believed that attempting any redeployment of the claimant, or disciplinary process, would have been futile. The respondent genuinely believed on clear grounds, as set out in the dismissal letter, that the manner of the claimant's disclosures was such that it would be impossible to put him under new line management (given the risks involved) and also that any disciplinary procedure would be futile given the circumstances as a whole. The respondents had come to the view that the claimant was never going to accept the integrity of any disciplinary process on the basis of communications and actions so far.

323. Although it is correct as a matter of fact that the claimant was not given a specific warning or opportunity to change course, the claimant's behaviour over the nine month's investigation was in fact to pursue ever serious allegations, as opposed to accepting the initial outcomes (which did not materially change). The claimant therefore did have an opportunity to accept those outcomes and the new role, which he did not take. Also, the claimant was offered mediation as part of the proposed outcomes but this was rejected by the claimant: at p.1098 the claimant stated '*Without the proper recognition and acceptance of what had happened, internal mediation will result in* [LM] *and* [LMM] *receiving a company stamp of approval for their conduct, which I still view as unfair, unreasonable, unlawful unethical and systematic'*. This is indicative of someone, to the first and second respondent, who would not be helped by a formal process, and provided the context for the decision making about the claimant.

324. The offer of mediation also could have been an opportunity for the claimant to address difficulties in the employment relationship that he himself was describing in his documents. The claimant did not take that opportunity.

325. Also, to the extent that the claimant was not warned, we also find as a matter of fact that the magnitude of his allegations was not lost on him: he had accepted from the outset that the employment relationship was fundamentally broken. We find therefore that in those circumstances the respondents genuinely believed that a future warning to the claimant would have been futile.

326. We also find that the second respondent genuinely believed that the continued employment of the claimant amounted to a risk to the business and the welfare of other staff given the threats made by the claimant and the effect the manner of his disclosures had had on their welfare, in particular Mr LM. We accept his credible evidence on this point which was not meaningfully undermined by cross-examination or the other evidence.

327. Also, we find as a matter of fact that the respondents and the claimant viewed the situation as a stalemate. The respondents' evidence on this was clear and not meaningfully undermined by anything. Although the claimant denied that this was the case, given our concerns about his other evidence, we prefer his account in his medical records in which it was clear that he also viewed the situation as having reached a stalemate (above). On a proper analysis of the evidence as a whole, both sides to this dispute had concluded that the situation was a stalemate.

328. For the same reasons, as a matter of fact, we do not find that the dismissal was materially influenced by the claimant's disclosures. This is because we accept the second respondent's evidence on this point.

329. The claimant, in summary, relies (in particular) on the content of the dismissal letter and a particular passage of cross-examination.

330. We accept that it would be possible to read parts of the dismissal letter in isolation, and in isolation of the second respondent's evidence, and infer that the claimant's disclosures played a material role in the decision to dismiss. However, we consider that taking the evidence as a whole, this would be the wrong conclusion. This is because the wider evidence expresses a more nuanced position, consistent with our findings above, and we consider that the evidence of the second respondent was sufficiently clear, credible and reliable that the more nuanced position (namely that the dismissal was because of the breakdown in the relationship) is the true reason.

331. The claimant relies on the following passage of cross-examination of the second respondent in support of his position:

(Claimant) Counsel:	'*And do you agree he* [the claimant] *is being terminated because of the substance of his disclosures'*
Second respondent:	*'I think in part my termination decision was motivated by the unreasonable allegations associated with some of these complaints'*
Counsel:	'*We can go back to your witness statement for a moment.*
Second respondent:	'*Can I just clarify, unreasonable and unfounded, ultimately.'*

332. Claimant counsel then mentions the second respondent's witness statement referring to the formal HR disciplinary process as futile given the manner in which the claimant raised his complaints, and the second respondent agreed that the claimant wrote long and detailed documents. He did not agree that the length and manner of the disclosures was

reasonable. The second respondent then answers with evidence stating that claimant had not provided the bullet point list requested by the investigators, and refers to the claimant not accepting the findings of the investigation, and challenging the investigation of the investigation. Claimant counsel then moves onto a new topic.

333. The passage of cross-examination of the second respondent relied on by the claimant as an alleged admission that it was a material influence is, in our judgment, not enough to find that such an admission was made. The second respondent did not agree in his evidence that the claimant was terminated because of the substance of his disclosures. Also, the second respondent was not asked in cross-examination to clarify which of the complaints was being referred to. It would be wrong to take that particular line of cross-examination in isolation of the second respondent's wider evidence, which suggests that the disclosures themselves were not a material influence on the decision. Also, the second respondent continued to mention the length of the claimant's disclosures, and the chain of events around the Investigation into the investigation, which provides a broader context to his evidence.

334. We gave separate consideration to whether the cumulative disclosures made by the claimant were the reason, or a principal reason, or were a material influence on the decision to dismiss. However, we do not consider that there is anything about the disclosures considered cumulatively, as opposed to separately, which leads us to a different conclusion. We also consider that our findings above are expressly supported by the terms of the dismissal letter, including the claimant being unable or unwilling to accept the outcome of the respondent's investigations, and that the claimant did not intend to try to properly recover his relationship with his colleagues, there was an irretrievable breakdown in trust and confidence, and a disciplinary process would have been both futile and risk making things worse.

335. We address now the points raised by the claimant in the list of issues said to indicate that the reason or principal reason for the dismissal was a protected disclosure (issue 10, below).

336. We do not consider that the dismissal letter, on a proper analysis (and when considered with the other evidence as a whole) shows that the reason for the dismissal was that the claimant had made a protected disclosure. Neither does the timing of the grievance outcome and dismissal demonstrate that he was dismissed for the reason or principal reason of having made a protected disclosure: the position is significantly more nuanced than that, and was as outlined above. To the extent that the dismissal letter raises points not raised with the claimant prior to his dismissal this does not suggest that he was dismissed for the sole or principal reason of having made a protected disclosure. We have also not found that the reasons contained in the letter were, as alleged by the claimant, not true. The alleged detriments do also not suggest that the reasons given in the dismissal letter are not the real reasons for the dismissal given our factual findings in relation to those alleged detriments.

Specific factual findings in respect of the alleged PDs:

Alleged PD 1

337. Alleged PD 1 was the 6 January 2022 interview (p714). This included the following content.

338. At p745:

'the practical aspect….if you take people like me, and you put them under running the threat of a dismissal…then you are essentially creating an environment where you are inducing and you are essentially your creating an environment which people are likely to take less care and they are likely to be subject to this to the system of perverse incentives…'

339. This statement was in response to a question about concerns the claimant had raised suggesting that the respondent had put its clients business at risk. Earlier in the interview the claimant had set out that in his view hard deadlines created risk to the business.

340. The claimant was asked by the investigators about his 22 December 2021 document in which he alleges unethical behaviour by the HR department relating to termination of employment and the variation of employment contract terms that is possibly systematic and routine. The claimant was asked whether this was in relation to his own interactions or a wider point and he said it was both (p745 onwards). He says (p746):

'*So the routine and normal way I mean basically being subjecting people to this arbitrary redundancy process or I mean essentially I mean violating and into an extent their statutory rights I mean in relation to the termination of employment. So in my mind, when* [SA] *was saying this to me and blocking accounts escorting people out of the building etc. etc. so when* [SA] *then she says that's the way we have always done that. …. But then I have* [LMM] *saying to me the same thing in the last meeting where he says this has been done before, I mean we have done this before to other people, … then I am putting these two and two together and I am saying look I mean I don't know what happened previously, but I know I mean that you know in 2018, I mean* [ST] *got escort to a room and he is basically made redundant and leaves the company, whereas in 10 days I mean not 10 days have passed since* [ST] *has been left has been shown the door,* [SF] *has being appointed to the very same role that* [ST] *has done, ….I mean I you have escorted him out of the door on that day, I sincerely doubt that if you have gone through a consultation process without even the consultant process has ended by*

this point in time, so and his job has by no means has been made redundant, I mean he has literally been filled by [SF] *literally within the space of 10 days, … Then within a month we lose another person who has essentially failed and a whole stack of rumours start to circulate around* [SM's] *dismissal that has something do with him being a racist or something like that…their characterisation of what happens in the room is that there is a witch hunt going on against* [SM]*….I don't know the details….so this process I mean essentially of eliminating people you see that happening all the time, they walk in the room, I mean again I don't know what happens in the room, whether their process looks the same as mine whether they were offered the consultation period not out for the consultation period, I have absolutely no information about any of these things because I am not in the room, but all I can see is basically what is happening from the outside and I am tying this together to what happened to me, and to the two statements that* [SA] *and* [LMM] *made to me that this a normal state of things I mean which we handle these affairs… there is no way for me to characterise this other than being a systematic routine and normal behaviour in the firm.'*

341. He further says '*I mean other people that have left of their own volition and we have lost I mean that turnover is quite big…So seeing all that happening and then I meant this, obviously there is a point I mean at which where do you speak up, I mean obviously you don't want to start undermining your superiors and people above you for no good reason but I mean then you get sort of treated by in the very same manner and it comes to a breaking point where you have to raise all these issues.'*

342. The claimant did suggest (at p721) that the decision to make his role redundant had been made and he did not go through any redundancy consultation process.

343. The claimant also asserts that what is happening to him is bullying*: 'they're bulling me essentially into accepting a variation of terms of my employment contract….So I have two people in a position of power which are threatening me with a sham redundancy essentially in order to get me to agree to this*

alternative (b) which in itself I mean as a continuous threat of my employment via the probation period…' (p734). This is also information in the context as a whole.

344. In terms of the claimant's beliefs, we find as a matter of fact that he held a belief that he was providing information that he has or was going through an unlawful redundancy process which could amount to bullying on the basis of there being no consultation process, and that the decision had already been made with consequential pressure to agree to changes in his role. We make this finding as to what his belief was based on the strength of feeling that can be inferred from the content of the interview as a whole.

345. We also find that the claimant, as a matter of fact, held a belief that the information he was providing in relation to Mr ST's exit was such that it could not, or was unlikely to, have followed a genuine and sufficient consultation period. This is clear from the content of the claimant's interview.

346. We did not find that the content is sufficient information disclosed about SM's exit to amount to a protected disclosure. The content of the claimant's disclosure was nothing more than a mere allegation rather than the presentation of facts. The claimant accepted that he has no information about this exit and is merely stating rumour rather than anything more concrete that amounts to information.

347. We do not find, as a matter of fact, that the claimant genuinely believed that his disclosures of information were in the public interest. This is for the following reasons.

348. The identify of the alleged wrongdoer was the claimant's employer. The nature of the alleged wrongdoing related to employment rights. Whilst there plainly can be breaches of employment rights, the claimant's disclosures of information were at most about a very limited number of individuals. The interest engaged was, in general, potentially a general public interest that employers (particularly larger employers) comply with employment law.

349. We are satisfied that the claimant's disclosure of information was purely in his own private interest and he did not genuinely believe (as a question of fact) that it was made in the public interest (in whole or in part). We make this finding because the disclosures on 6 January 2022 must be understood in the context of the 22 December 2021 document which triggered the interviews. The claimant's private messages about his complaint do not suggest a public interest element. Also, we are satisfied that the claimant throughout the entire process was doing everything he could to retain '*a job he loved'*. The language of the 22 December document clearly demonstrates self-research into the type of language which might bring an individual within the protections of whistleblowing legislation. Although the claimant in the document and interview seeks to evidence his belief in the public interest of his disclosures by reference to the threat to the respondent's business, this not appear to be genuinely held. There was no objective reason to believe that the respondent's business or client could be put at a material risk as a result of the restructure. The 22 December 2021 document also expressly says that he is making the complaint in order to protect himself from inappropriate conduct. Although he does identity other motives, we consider that these have only been included as content to bolster his own case and not because they genuinely reflect a belief in the public interest of his disclosures. Also, the claimant had not raised any concerns about the other exits until he has a private interest in the matter, namely his own potential exit from the company. This is consistent with the claimant acting entirely out of his own interests as opposed to genuinely believing his disclosures of information were in the public interest as well.

350. We also reach this conclusion because it is more consistent with the claimant's later actions in not accepting the outcomes of the investigation, causing the investigators to be investigated, not accepting the new role, and doing everything he could to prolong the investigation by providing more lengthy documents, whilst at the same time being opposed to anything other than the status quo.

351. The best evidence against this conclusion might have been the claimant's own written contention that he was making disclosures in the public interest. However, we also cannot accept the claimant's words at face value because of our concerns about the credibility and reliability of his words more generally, for example in relation to the SRA implied threat to Ms I1 and his denial of having allegations of criminality. We consider that these are examples of the claimant manipulating the words he carefully uses in documentation to suit his own ends rather than being a genuine reflection of his beliefs. This means that his own professed belief in the public interest of his disclosures can be given very little, if any, weight.

352. Also, in this case, the claimant's disclosures had direct relevance to his own situation. However, they did not on their face affect the situation of other current employees, other than in a more general sense as to how they might be treated in the future.

353. We also note that the timing of the claimant's complaint was on the basis that he understood he had a deadline to respond to Mr LM and Mr LMM about which choice he would make. In his 22 December 2022 document he expressly states '*The timing of this submission is also forced on me.'* However, we consider that the timing of the submission of the document is more consistent with the claimant using it purely to improve his own position, ie. to stall any decision about his role given the additional protection he thought he would receive by framing it as a public interest disclosure. Whilst this does not preclude there being a public interest element to his belief, we consider that timing of the document's submission is supportive of him acting purely out of a private interest as opposed to having a genuine belief that the disclosures are also made in the public interest.

Alleged PD 2

354. Alleged PD was dated 27 January 2022 (p1068) '*Bulling complaint, grievance and PIDA disclosure Additional Information – First draft'.*

355. This document on our analysis (as a question of fact), contains the following information.

356. It includes (p1077) that, at the same time that the claimant had received verbal outcomes from the 22 December 2021 complaint, the respondent was advertising for two execution research roles and he says that this undermines the authenticity of the suggestion that his role was redundant. He also says that this is evidence of him having been excluded and marginalised and evidences dishonesty on the part of those involved in the restructure.

357. He explains why he disagrees with the verbal outcomes the investigators gave him. However, this is not information: it is his own thoughts. In reality, this is him questioning the outcomes and stating things he does not understand rather than providing information.

358. The claimant asserts that '*My line manager, his line manager and a senior HR business partner have acted in a calculated manner that was likely to destroy or seriously damage the relationship of confidence or trust between employer and employee.* We consider that this does not amount to information: it is a mere allegation. It lacks sufficient factual content to amount to information in all the circumstances. The document continues at p1085 to make allegations as opposed to providing information. He continues at p1087 to disagree with their conclusions about whether or not he had unachievable goals as opposed to providing information. He continues to provide his analysis as to recent events as opposed to providing information, as well as making generalised allegations as opposed to information with sufficient factual content.

359. The claimant then provides information about other exits.

360. In relation to ST, the claimant provides more detailed information about the circumstances of the exit. These include that it was communicated to the claimant that the reason for the exit was redundancy, and the claimant provides information about the timings which could be regarded as

inconsistent with a full and genuine consultation process. He repeats the information about the role being promptly filled after the exit. He says that the business requirement for the role had also not gone.

361. The claimant then says that he believes that Mr ST was effectively bulled out of a job in a manner similar to the claimant. The claimant does not have any material information about SM and SE in this document. Although the claimant makes allegations of systemic unlawful activity in this document, the only material information is provided about Mr ST.

362. We find that the claimant's reference at p1095 to breaching EHS Management System of Managing Work Related Stress this is a mere allegation without sufficient factual content to amount, as a question of fact, to information.

363. We also consider that the comments by the claimant about his own process and complaints about the investigators investigation, on a proper analysis, amount (as an issue of fact) to commentary, disagreeing with outcomes, or analysis, as opposed to the provision of information.

364. We now address the beliefs held by the claimant as a question of fact. For the information about hiring other roles, we find that the claimant genuinely believed that this information tended to show a breach of a legal obligation in respect of the lawfulness of the processes around his role and the restructure. This could be a precursor to an unfair dismissal or breach of the implied term of trust and confidence.

365. We also find that the claimant did, as a question of fact, hold a belief that the information about ST's exit amounted to a previous failure to comply with a legal obligation. This is apparent from the claimant including this information in his document.

366. However, we do not find, as a question of fact, that the claimant had an actual belief that these disclosures were in the public interest, in whole or in part. This is for the same reasons as before with alleged PD1.

367. In addition to those reasons, at this stage the claimant had received oral feedback to the extent that he knew that many of his allegations had not been upheld. Also, he knew that the options available to him did not include simply continuing his old role as before. Given its content we find that this document was provided to challenge and effectively appeal against adverse findings. In doing so this suggests that the claimant's beliefs were that the disclosures were made in the purely private, as opposed to (in whole or part) public interest. We also consider that in his closing at p1112, when the claimant says that he is raising the concerns in order to protect himself from inappropriate conduct, this is evidence of him using the language of a protected disclosure purely to seek to attempt to obtain the protections under the ERA as opposed to actually having a real belief in the public interest in his disclosures.

Alleged PD 3

368. Alleged PD 3 was a letter dated 9 February 2022 (p1236).

369. Having considered this document, we find that this letter does include at paragraph [8] (p1238) allegations of unlawful conduct but it does not on our analysis contain information (as a question of fact). Equally, paragraph [10] includes further allegations but not information. At paragraph [18] the claimant makes allegations that the investigators '*have acted in a manner that in my view has now shown a genuine interest to thoroughly address the concerns I have raised in a fair, transparent and reasonable manner and are acting to frustrate my efforts to have these concerns addressed appropriately'*. However, this amounts to only an allegation, or at best the claimant's opinion, rather than genuine information, without sufficient factual content to amount to information.

370. The claimant also continues to make allegations about pressure being put on him through the investigators' manner, as opposed to in any real sense providing information. We also consider, taking into account its content, the

letter's covering email also only allegations as opposed than information with sufficient factual content.

371. We also do not find that the claimant held, as a question of fact, a belief that this disclosure was made in the public interest. This is for the same reasons as with the earlier disclosures. We consider that the evidence in fact demonstrated that the claimant's belief was that this was nothing more than his purely private attempts to resist any restructure of his previous role and maintain the status quo, for the same reasons as with the other disclosures. We similarly reject the claimant's asserted public interest belief on the basis of his demonstrable tendency to say (and write) things which are not correct. The claimant did not agree with the investigator's initial outcomes and we consider that this was in fact him seeking to attack that process as opposed to having an actual belief that the matters he was raising were (in whole or in part) in the public interest. This can be properly inferred from the content of the document and the context in which it was made.

Alleged PD 4

372. Alleged PD 4 was the claimant's 18 March 2022 letter to the Arcom (p1432). This letter was sent in response to an email from AN in which the Board rejects the claimant's allegations about the investigation.

373. At paragraph [4] (p1435), on the basis of the words used, we find (as a question of fact) that the claimant makes allegations without sufficient factual content, as opposed to providing information. This is simply question of our analysis. At paragraph [32] (p1441) the claimant makes, we find on a proper analysis of the words used, an implied threat that he would report his concerns to the SRA.

374. The claimant makes allegations about systemic unlawful conduct at paragraphs [37] onwards (p1442). However, on our analysis of the words used there is nothing sufficient in these paragraphs about his asserted concerns of systemic unlawful conduct which in fact contains information.

We consider that the reference to a matter *'involving a conspiracy and a bribe by senior C level executive(s*)' is, properly analysed, an allegation rather than information, and it is an allegation without sufficient factual content in all the circumstances.

375. We also do not find (as a question of fact) that the claimant held a belief that this disclosure was in whole or in part made in the public interest. This is for the same reasons as with the other disclosures. We are equally satisfied that the claimant's belief as held was purely in his private interest. This is because we reject the claimant's asserted public interest belief on the basis of his demonstrable tendency to say (and write) things which are not correct. We consider that this disclosure was, in fact, an attempt by the claimant to challenge the unfavourable outcome of the Investigation into the investigation by requesting further meetings purely to advance his private interests. This can be properly inferred from the content of the document and the context in which it was made.

Alleged PD 5

376. Alleged PD 5 was dated 12 April 2022 (p1480). This was the claimant's final draft expanded grievance.

377. We are satisfied that this particular communication contains a significant amount of information which goes beyond mere allegations. It is neither necessary or proportionate to explain our findings in relation to every possible piece of information in this document given its length. However, the information includes:

(a) a repetition of the investigator's own findings that the claimant should either have been subject to a formal redundancy process from the outset or simply put into a new role. We find as a question of fact that the claimant did have a genuine belief that this tended to show a breach of a legal obligation, namely the implied term of trust and

confidence, as this is inherent from his document, and was founded on the investigators' outcomes.

(b) the claimant provides more detail on the position of ST. We repeat our previous findings: the claimant did have a genuine belief that this tended to show a previous breach of a legal obligation, namely the implied term of trust and confidence and right not to be unfairly dismissed.

(c) the claimant provided more details about SM's exit. Much of this was information rather than mere allegations. However, there was also considerable detail about the wider context. We have focused on the high points of the claimant's disclosure in these reasons. We find that at around paragraphs [133-4] (p1635) the claimant provides information that the timescales and chronology are inconsistent with an exit following either a genuine or proper redundancy or misconduct process. We accept that the claimant had a genuine belief that this information tended to show a breach of a legal obligation, namely trust and confidence and or an unfair dismissal. This is inherent from his communication.

378. Although the claimant provides a narrative account which he says is information tending to show a bribe, the high point of this information is a hearsay account (from an anonymous team member) that an allegation of racism against SM was resolved by the complainant receiving a title increase and a pay rise in exchange, and that individual no longer leaving the respondent after a resignation. Bribery is a particularly serious allegation. We do not find that the claimant genuinely believed that this information tended to show a breach of a legal obligation. This is because the information is insufficient to feasibly draw such a conclusion from it. We do not consider that the claimant genuinely held this belief and it was included purely to bolster his own position in his dispute with his employer. The circumstances described are entirely circumstantial without sufficient information on which a serious allegation such as bribery could be founded.

The fact that an employee resigned and then returned on improved terms is more consistent with the respondent simply looking to retain someone than anything more nefarious and the claimant must have known this.

379. The information relied on by the claimant from Team Member B between pages 1653 to 1655 and thereafter, insofar as it relates to SM, doesn't change our conclusion about him (above). This is because these are just details as part of the alleged narrative and do not meaningfully add to the highpoint of the other information contained about SM's exit.

380. In terms of the other information about Team Member B included in these pages (including Team Member B having specific medical issues requiring a flexible working arrangement, and treatment arising from that), we find that this was information, and the claimant did have a belief that this account tended to show a breach of a legal obligation, namely in respect of disability discrimination. This is because the fact of his belief is inherent in the communication and set out, and it appeared to be genuinely held.

381. In respect of the information about SE (eg. p1674 onwards), which cumulates in an allegation that he was singled out for redundancy, the claimant is clear that he doesn't know the reason for many of the things, such as why the claimant was chosen for redundancy. This claimant's account is highly speculative. In circumstances of the claimant not understanding the full picture for a restructure and the claimant not accepting the business case behind we do not find that this showed an actual belief of a failure to comply with a legal obligation. It was too speculative for the claimant to actually hold such a belief.

382. The claimant did, in this document, provide information about Ms LD (p1682 onwards). We consider that the information provided about Ms LD did (as a question of fact) in the claimant's belief tend to show a historic breach of a legal obligation. This is because the information is that she was made redundant during maternity leave, a claim was made against the company (for breach of the EQA) and that claim was settled. This is clear from the nature of the information provided.

383. In this document the claimant also relies on his extremely detailed criticisms of the investigation and related matters, including allegations of tampering with evidence. To a degree, there is some information included. However, we do not find that the claimant actually believed that this tended to show a failure to comply with a legal obligation. These are, on any proper analysis, the claimant's disagreements with the investigator's decisions and some of the process followed. However, the information actually provided falls short of something tending to show that there was breach of any legal obligation here, even including the broader obligation for an employer to maintain trust and confidence. For example, the claimant's information that he was not provided with video recordings of his own interviews falls far short of establishing anything close to breach of a legal obligation or breach of the implied term of trust and confidence. The fact that the claimant claims not to understand some of his findings is also insufficient. The fact that the process did not include a right to appeal does not tend to show any breach of a legal obligation.

384. To the extent that the claimant alleges that he was given false information about whether or not the restructure was paused, we do accept that this was information such that the claimant believed at the time that he had been given false information and that this tended to show a breach of the legal obligation to maintain the implied term of trust and confidence in an employment contract. This is clear from the wording used.

385. We accept that the claimant's information about the following matters did in his belief tend to show a breach of a relevant legal obligation, namely whistleblowing detriment: that he was not involved in a set of his interviews, his alleged removal from PROJECTA, tampering and concealing evidence, and alleged false statements in the investigation. This is apparent from his disclosure.

386. On the basis of the information provided about alleged harassment by the respondent in the course of the investigation and restructure, none of this provides the basis for a belief that there has been a breach of a legal

obligation. We consider that the claimant's characterisation of the process to be gross exaggeration and the claimant must have known this given the lack of evidential basis for it. In the circumstances we do not find that he held such a belief.

387. The claimant's final section makes allegations of civil and criminal harassment. We consider this to be a gross exaggeration, also, of the circumstances as they were and what the claimant must have known that this was the case given our other findings about these allegations and the lack of basis for them. We do not consider (as a question of fact) that the information in the claimant's belief tended to show a failure to comply with a legal obligation in those circumstances.

388. Tellingly, at paragraph [2] on p1766, the claimant seeks to justify these conclusions because his original allegations of bullying and harassment were not upheld. We consider this, in reality, to be indicative of him including these allegations as a collateral attack on the original decision as opposed to any real and genuine attempt to provide information tending to show breach of a legal obligation.

389. The allegation is in part a gross exaggeration because it is wide ranging in manner and unsupported by the evidence, such as the inclusion of the COO/GC, who only had extremely limited email contact with the claimant.

390. We also find, as a question of fact, that the disclosure was not in the claimant's belief made in whole or in part in the public interest. This is because we similarly find for the same reasons as with the other documents that the claimant's belief was solely in his private interests and that this document was provided purely for the claimant to try and maintain the status quo in terms of his employment situation, and in so far as it prevented any changes to his role, and to advance his criticisms of the company and investigation from that perspective only.

391. In particular, we especially and separately consider that the claimant had no actual belief that his criticism of the investigation and allegations of

criminality or harassment were in the public interest. These sections, in particular, were included purely to advance the claimant's own interests. This is because they lacked any reasonable basis and were, in our judgment, part of a calculated attack by the claimant on the respondent purely to advance his own interests.

392. We also do not consider that the number of exits that the claimant provided information about was sufficiently high that this was demonstrative of having a belief that the disclosures were made in the public interest.

393. This document also contains sections outlined above, namely making demands of the respondent and suggesting that any further redundancy consultation for him would be impossible to do fairly. The claimant also expressly identifies that he should not suffer any detriment from making a protected disclosure. We find that this is strong evidence that the claimant's true belief was that this would simply maintain the previous status quo, namely a job he 'loved' without any changes to reporting line or anything he disagreed with.

394. We also cannot take the claimant's assertions about his belief in the public interest – whether that relates to the business risk or wider concerns about the company – at face value because the claimant (for reasons which are inexplicable) has sought to argue that he did not in fact allege criminality in this document. That position is entirely contrary to the written document and any reasonable analysis of the words he carefully used.

Alleged PD 6

395. Alleged PD6 is dated 4 July 2022, the 'Additional information' document 'New Information and Present State' (p2117).

396. The information provided at paragraph [27] on p2127 was a suggestion that Mr LM had told the claimant that the treatment of the claimant was specifically targeted at him, and that the real reason for the changes to his role couldn't be shared with him. We accept that the claimant believed (as a question of fact) that this information tended to show a breach of employment obligations.

397. The claimant did include details about changes in in management processes. We also do not find that the details provided about change in management processes (paragraphs 34-60, p2129) in the TEAM1 team and management changes was in the claimant's belief information tending to show breach of a legal obligation. This is because it is background detail form which no proper inference could be made. Also, it contains what is in effect no more than gossip, such as at [47] p2131 '[SI] *calls all the shorts, and* [LMM] *just does what* [SI] *wants him to do'*. This is insufficient to qualify in the circumstances as they were.

398. We accept that the claimant's allegations about exclusion from execution and algo work in his belief tended to show that there was a breach of a legal obligation in terms of his employment situation. This is clear from the wording used.

399. The claimant did as a matter of fact include additional information about the alleged conversation with team leader B. Our analysis of this is in the conclusions below.

400. The claimant does provide information about whether or not Mr UT called him (the claimant) a derogatory term (information said to have been given to the claimant by team member A). However, it is presented as information which undermines the dismissal of SM, namely the idea that Mr UT's alleged allegations of racism against SM were undermined by the suggestion that Mr UT was racist against the claimant. The claimant expressly says that he was not trying to assert that he was treated differently on the basis of discrimination. The logic underpinning this information is extremely convoluted. In those circumstances, we do not find that this information in

the claimant's belief tended to show a failure to comply with a legal obligation. It was sufficiently convoluted for us to reach this conclusion.

401. We accept that the information about Mr SE's exit was information in the claimant's belief that tended to show a failure to comply with a legal obligation, namely an unlawful dismissal. However, the information provided about SE's exit must treated with caution because it is third hand. Also, it is unclear how much of this was in fact information given to the claimant and how much of this is the claimant's gloss on what was said to him, reporting the conversation with a third party. Also, the information was that Mr SE was perceived as too light handed.

402. The document included further information from Team Member B. We accept that the claimant believed (as a matter of fact) that this tended to show a breach of a legal obligation, namely unfair dismissal practices, from its content. This was to a degree repeated at p2147 at paragraph [g].

403. We consider that the claimant's communications with the investigators about identifying individuals is not information (eg. paragraph [124] at p2148). Rather, it is the claimant's questions.

404. We also consider that the passages at p2148 show the claimant offering to disclose the identities of previously anonymised individuals to the respondent, even in a context where those individuals have expressed to the claimant that they had fear of reprisals if they made their views to the respondent. The claimant however then seeks in paragraph [124] to put the obligation on the investigators by inviting them to say to him if they want to know the identities of the relevant people. This must be contrasted with them having said to him that if others wanted to come forward, they could so.

405. The document included details at paragraphs [125-144] (p2149). Our analysis of this is in our conclusions below.

406. At [154] onwards (p2154) we consider that the claimant provides allegedly new information about other recruitment, however, none of the details change our previous findings on this area of information.

407. At paragraph [156] (p2155) onwards the claimant complains about apparently being the only individual doing handover work. However, this is not information that the claimant appeared to believe (given the words used) tended to show a failure to comply with a legal obligation. The claimant simply raises 'a reasonable concern about the company's intentions'.

408. The additional section about the restructure being paused contains insufficient new details to change any of our earlier factual findings about that area of information.

409. At p2165 the claimant says '*I am deeply grateful for your continued extensive efforts to thoroughly investigate the matters that I have raised, as is evident by the investigation now taking over 6 months, and 3 months since the submission of the additional information document'*. We consider that this is an another example of the claimant stating one thing and then something entirely different with no apparent basis. It is in direct contrast to the claimant's other direct criticisms of the investigation, suggesting that it was neither extensive nor genuine.

410. We also find, as a matter of fact, that this disclosure was not made with the belief that it was made (in whole or in part) in the public interest. We are satisfied that this was purely in the claimant's private interest to bolster his own attempts to maintain the status quo and resist changes to his role, and to prolong the process unreasonably. This is for the same reasons as with the earlier documents.

411. We also find that the claimant's characterisation as him providing additional information effectively at the request of the investigators is a complete distortion of the facts. Rather, any proper reading of the email evidence is that they simply allowed him to provide additional information that he said he would.

Conclusions

412. As with our findings of fact, we fully took into account the parties' detailed oral and written submission when reaching our conclusions both as findings of fact (above) and conclusions (below). The fact that a particular submission is not expressly referenced below does not mean that it was not taken into account.

I. LIABILITY ISSUES

A. WHISTLEBLOWING DETRIMENTS - SECTION 47(B)(1) ERA

Jurisdiction: time limits

1. Did any of the alleged detriments at paragraphs 78(a) and (b) of the RAGOC occur more than three months prior to 14 September 2022 (extended, as necessary, by ACAS conciliation) (the "Primary Limitation Period")?

2. If so, do any such alleged detriments form part of a series of similar acts or failures with each other, the last of which occurred within the Primary Limitation Period within section 48(3)(a) ERA?

413. We find that to the extent any of the alleged detriments occurred outside of the primary limitation period, they were in fact a series of similar acts or failures, the last of which occurred within the primary limitation period. Firstly, the investigation itself was plainly ongoing throughout the entire relevant period. Secondly, the alleged detriments in relation to work were also ongoing throughout the entire period and were similar to each other, with the same or similar individuals involved throughout (all, or the majority, relate in some way to the investigators and or the claimant's line management, specifically Mr LMM and Mr LM).

414. In those circumstances, and to that extent, we consider that the whistleblowing detriments claim is within time.

3. If not, was it reasonably practicable for such alleged detriment to be complained of within the Primary Limitation Period?

4. If not, was such alleged detriment complained of within such further period as the tribunal considers reasonable under section 48(3)(b) ERA?

415. It is not necessary to address these issues given our findings above.

Alleged Protected Disclosures

5. In respect of each of the six alleged protected disclosures identified in sub-paragraphs 74(a) to (e) of the RAGOC as follows:

(a) 6 January 2022 interview ("Alleged PD1");

(b) 27 January 2022 first draft expanded grievance ("Alleged PD2");

(c) 9 February 2022 letter to the Audit and Risk Committee of the Board of Directors ("Alleged PD3");

(d) 18 March 2022 letter to the Audit and Risk Committee of the Board of Directors ("Alleged PD4");

(e) 12 April 2022 final draft expanded grievance ("Alleged PD5"); and

(f) The additional information document sent on 4 July 2022 ("Alleged PD6").

416. It is important to note at this stage that the sheer length of the claimant's documents (over five hundred pages) relied on as protected disclosures precludes a detailed analysis in these Reasons of each and every part of those documents. Even though the claimant's counsel produced a schedule identify the parts of the documents relied upon, the amount of material was still too great (and analysed on the claimant's case in very broad terms) for

it to be reasonable or proportionate in these Reasons to identify every possible element for discussion. However, we have considered each document in detail, and in particular those passages identified by claimant's counsel (and also other passages, and the wider context) in making our decisions about whether or not they amounted to protected disclosures. These reasons will, generally, however, only explain our reasoning in relation to what we felt were the high points of the disclosures themselves. This does not mean, however, that any omission was ignored by the tribunal.

417. Our conclusions below also take into account the specific findings of fact above in terms of the content and beliefs held by the claimant. To the extent that any of those findings and reasons require repetition in this conclusions section, they are repeated.

6. In respect of each of the above Alleged PDs 1-6:

<u>Alleged PD1</u>

(a) Did the Claimant disclose information?;

(b) Was it in his reasonable belief made in the public interest?; and

(c) Did it, in his reasonable belief, tend to show that one or more persons had failed, was failing or was likely to fail to comply with a legal obligation to which they were subject within section 43B (1)(b) ERA?

The Claimant relies on the legal obligations included in paragraph 75 of the RAGOC.

418. Alleged PD 1 was the 6 January 2022 interview (p714).

419. The claimant sought, only in closing submissions, to submit that the 6 January 2022 interview should be read in combination with the information he disclosed in the 5 January 2022 interview and complaint document dated

22 December 2022. However, this was wholly contrary to the pleaded claim which limited the 6 January 2022 interview to just that. However, we interpreted the content of the 6 January 2022 interview in the context of the earlier interview and the 22 December 2021 given that any disclosure needs to be interpreted in its context. This did not, however, require us to analyse the 22 December 2021 on its own as containing potential protected disclosures.

420. We find that the high points of the claimant's information given in the 6 January 2022 interview are as set out above.

421. We find that the claimant in this disclosure, has provided information stating, in summary, that he has or is going through an unlawful redundancy process (which could amount to bullying), because there has been no consultation and the decision has already been made with consequential pressure to agree to changes in his role.

422. We accepted that the claimant did have a genuine belief that he the information tended to show a previous failure to comply with a legal obligation, namely the implied term of trust and confidence in contracts of employment, because of the clear strength of feeling that can be inferred from the content of the interview as a whole. However, we do not find that the claimant reasonably believed this in relation to allegations of bullying. The information he provided does not, objectively speaking, lead to the reasonable conclusion that it could amount to bullying. Although the claimant in the interview refers to the respondent's handbook definition of bully, we do not find that the information provided could reasonably meet that definition of bullying. Any belief the claimant had that there was a previous breach of a legal obligation in relation to bullying was not reasonable. This is because there was nothing, objectively speaking, about what had been done to the claimant at that stage, which could amount to bullying, whether on the application of the respondent handbook's definition or in more genuine terms.

423. We did find that that in relation to the redundancy/restructure information the claimant provided about his own process, the claimant did have a genuine belief that this tended to show a previous, current, or likely future failure to comply with a legal obligation, namely the rights not to be unfairly dismissed or the breach of the implied term of trust and confidence in an employment contract. We find that the claimant's belief that the information he provided tended to show this was reasonable. This is because it is a natural and not perverse conclusion that could be drawn from the information he was providing given the issues around the restructure of his role.

424. In this disclosure the claimant also provided information in relation to Mr ST making a similar allegation, namely that Mr ST's exit from the company was in a manner which could not, or was unlikely to, have followed a genuine and sufficient consultation period. Also, he provided information that Mr ST's role was immediately filled which casts doubt on whether his role was genuinely redundant.

425. We did find (as set out above) that the claimant genuinely believed that the information the claimant provided in this interview about ST tended to show that one or more persons had failed with a legal obligation. The relevant legal obligation would be the right not to be unfairly dismissed (s.94 ERA) and the implied term of trust and confidence in contracts of employment. We also find that, based on the information the claimant knew about Mr ST's exit at that time, namely that he may have left in a period inconsistent with a, or a genuine, redundancy consultation period, and in circumstances whereby he role was promptly filled by another, casting doubt on whether the role was genuinely redundant, the claimant's belief was reasonable. Whilst the claimant accepted 'not being in the room' we find that, given the low threshold to be met, the information he did have about the timing and circumstances of the exit, reasonably did tend to show a breach of a legal obligation.

426. We considered whether the claimant's disclosure of information was in his reasonable belief made in the public interest. We do not find that the claimant genuinely believed that his disclosures of information were in the public interest for the reasons already outlined above, and in effect repeated here to the extent necessary. We are satisfied that the claimant's disclosure of information was purely in his own private interest and he did not genuinely believe that it was made in the public interest.

427. We also find for the same reasons that, in the alternative should the above conclusion be wrong, that any such belief was not reasonable. This is for the following reasons.

428. The identify of the alleged wrongdoer was the claimant's employer. The nature of the alleged wrongdoing related to employment rights. Whilst there plainly can be breaches of employment rights, the claimant's disclosures of information were at most about a very limited number of individuals. The interest at stake was, in general, potentially a general public interest that employers (particularly larger employers) comply with employment law. Also, in this case, the claimant's disclosures had direct relevance to his own situation. However, they did not on their face affect the situation of other current employees, other than in a more general sense as to how they might be treated in the future. The actual information itself was extremely limited in so far as it could relate to the wider public interest such that any such belief in that the disclosure was made in the public interest would not be reasonable.

429. For those reasons, alleged PD1 is not a protected disclosure.

Alleged PD2

(a) Did the Claimant disclose information?;

(b) Was it in his reasonable belief made in the public interest?; and

(c) Did it, in his reasonable belief, tend to show that one or more persons had failed, was failing or was likely to fail to

comply with a legal obligation to which they were subject within section 43B (1)(b) ERA?

The Claimant relies on the legal obligations included in paragraph 75 of the RAGOC.

430. We repeat our findings about the information disclosed in this document as above.

431. As set out above, for the information about hiring other roles, we find that the claimant genuinely believed that this information tended to show a breach of a legal obligation in respect of the lawfulness of the processes around his role and the restructure. This could be a precursor to an unfair dismissal or breach of the implied term of trust and confidence. We also consider that this belief was reasonable in all of the circumstances. This is because the claimant lacked the information to know that it, in reality, had nothing to do with his role because it was in relation to a different team. However, on the information he had available, it was a reasonable conclusion he could reach.

432. We find that the claimant did have a genuine (as above) and also reasonable belief that the information about ST's exit amounted to a previous failure to comply with a legal obligation. This is for the same reasons as before.

433. We do not find that the claimant had a genuine (as set out above, as a question of fact) or reasonable belief that these disclosures of information were made in the public interest. This is for the same reasons as before with alleged PD1. We repeat the same reasons as above. In the circumstances as we have found them to be these were also reasons why any such belief would not have been reasonable. We did not consider that there was anything different that bought in a public interest element, such as the numbers of the group whose interests were served by the disclosure, the nature or extent of the interests affected, the nature of the wrongdoing identified or the identity of the wrongdoer.

434. For those reasons alleged PD2 is not a protected disclosure. It is not necessary for us to address the other elements of protected disclosures in the circumstances.

Alleged PD3

(a) Did the Claimant disclose information?;

(b) Was it in his reasonable belief made in the public interest?; and

(c) Did it, in his reasonable belief, tend to show that one or more persons had failed, was failing or was likely to fail to comply with a legal obligation to which they were subject within section 43B (1)(b) ERA?

The Claimant relies on the legal obligations included in paragraph 75 of the RAGOC.

435. On the basis of our findings above, repeated here, about the content of this document, we do not find that the claimant disclosed information, or alternatively sufficient information for it to meet that element of the test for a qualifying disclosure as set out above.

436. In the alternative, if we are wrong about the content of that letter about the investigators being allegations and not sufficient factual content to amount to information, we make the following findings. We have already found as a question of fact that the claimant did have a belief that the investigators had not shown a genuine interest in thoroughly addressing his concerns. However, we do not consider that any belief that the investigators had not shown a genuine interest in thoroughly addressing the concerns in a fair and transparent and reasonable manner was reasonable. This is because there was no evidence on which such a belief could be reasonably formed.

437. In the further alternative, if are wrong about all of our findings above, we did not find that the claimant had a genuine (as above) or reasonable belief that

this communication was in the public interest. We repeat our reasons as set out above, generally and in respect of this particular Alleged PD as an issue of fact. For the same reasons that we do not find that the claimant held this belief (as a question of fact) we also find that any such belief would not have been reasonable. There was nothing about the disclosures which, in our judgment, made any such belief reasonable in terms of the various factors which may engage the public interest, particularly given that this was, in reality, an attack on the investigators' process.

438. For those reasons, alleged PD3 is not a protected disclosure. It is not necessary for us to address the other elements of protected disclosures in the circumstances.

Alleged PD4

(a) Did the Claimant disclose information?;

(b) Was it in his reasonable belief made in the public interest?; and

(c) Did it, in his reasonable belief, tend to show that one or more persons had failed, was failing or was likely to fail to comply with a legal obligation to which they were subject within section 43B (1)(b) ERA?

The Claimant relies on the legal obligations included in paragraph 75 of the RAGOC.

439. Alleged PD 4 was the claimant's 18 March 2022 letter to the Arcom (p1432).

440. We repeat our findings and reasons above, namely that the content of this disclosure does not contain information, or allegations with sufficient content such that they fall within the ambit of information for the purposes of s.43B ERA.

441. If we are wrong about the above, then (in the alternative) we do not find that the claimant had an actual (as found above) or reasonable belief that this

was in the public interest. This is for the same reasons as the other disclosures. Even if we are wrong about whether or not he held such a belief, there was nothing about the disclosure that made such a belief reasonable in terms of the various factors which may engage the public interest element.

442. For those reasons, alleged PD4 was not a protected disclosure. It is not necessary for us to address the other elements of protected disclosures in the circumstances.

Alleged PD5

(a) Did the Claimant disclose information?;

(b) Was it in his reasonable belief made in the public interest?; and

(c) Did it, in his reasonable belief, tend to show that one or more persons had failed, was failing or was likely to fail to comply with a legal obligation to which they were subject within section 43B (1)(b) ERA?

The Claimant relies on the legal obligations included in paragraph 75 of the RAGOC.

443. Alleged PD 5 was dated 12 April 2022 (p 1480). This was the claimant's final draft expanded grievance.

444. We repeat our findings about whether this contained information as set out above.

445. We find that in terms of (a) the information about the investigator's own findings that the claimant should have been subject to either formal redundancy or simply put into a new role, the claimant's belief that this tended to show a breach of a legal obligation (namely the implied term of trust and confidence) was reasonable in all the circumstances. This is

because the investigator's findings were sufficient for the claimant's belief to be reasonable.

446. We find that in terms of (b) more detail on ST, we find that the claimant's belief that this tended to show a previous breach of a legal obligation (namely the implied term of trust and confidence and right not to be fairly dismissed) was reasonable, for the same reasons as before. There was sufficient information that the belief held by the claimant could be reasonably held.

447. We find that in terms of (c) about SM, on the basis of the actual facts known to the claimant, we do not find that the claimant's belief as to the lawfulness of Mr SM's exist was reasonably held. Although the claimant has provided a very lengthy amount of information, the conclusions that he draws from them are in fact highly speculative. Also, the claimant accepted (at p1641) that he had no real knowledge about the reasons for dismissal. This was insufficient to form a reasonable belief in all the circumstances that the information tended to show a failure to comply with a legal obligation. The information was insufficient to reasonably draw such a conclusion.

448. In respect of the bribery allegation, if we are wrong and the claimant did in fact hold such a belief that the disclosure tended to show a failure to comply with a legal obligation, no such belief would have been reasonable. This is for the same reasons as why we do not find that he actually held that belief.

449. In terms of the claimant's belief about Team Member B and medical issues, we do not find that the claimant's belief that the account tended to show a breach of a legal obligation was reasonably held. This is because conclusion the claimant reached is entirely speculative and one sided and in the absence of more detail his belief was not reasonable. The claimant's assertions are by his words based on things he does not know or understand, such as why a promotion was not followed through and why flexible working arrangements did not continue for Team Member B (eg. p1672). Also the suggestion of bullying and harassment is highly speculative and not sufficient in the circumstances. Also, Team Member B

resigned on 21 August 2019. We also note that there a significant passage of time between when the alleged events happened and when the claimant made this disclosure.

450. If we are wrong about the claimant's belief about what the information about SE tended to show, alternatively we do not find that any such belief was reasonable. This is because the information was far too speculative for any such belief to be reasonably held.

451. In respect of the information about Ms LD, we found (above) that the claimant's belief was that this tended to show a historic breach of a legal obligation. Such a belief would be reasonable in the circumstances in terms of a historic breach: if a claim was brought and settled, this would be sufficient. However, there can be no proper or reasonable inference from the sole fact that she settled that claim with a non-disclosure agreement that the use of such an agreement was in anyway problematic. Any such belief would not be reasonable because it is speculative and there was nothing that such a belief could reasonably be founded upon.

452. In terms of the claimant's detailed criticisms of the investigation and related matters, including allegations of tampering with evidence, we repeat our findings above that the information did not in the claimant's belief tend to show a failure (etc.) to comply with a legal obligation (generally). Even if we are wrong about that, then in the circumstances (as they were) no such belief would have been reasonable, either. There was insufficient information on which such a belief could be founded.

453. In respect of the information about whether the restructure was paused, we do not find that the claimant's belief about this was reasonable, ie. it did not in his reasonable belief tend to show a failure (etc.). This is because the claimant's assertion is wholly speculative. Also, the claimant must have been aware of the changes around him in the team, and also the claimant's asserted belief makes no distinction between the possibility that the restructure around his role could be paused whilst other change happened. No relevant reasonable belief could be formed from the information relied

on by the claimant in this section. We consider this to be an example of the claimant seeking to take brief statements by the investigators and then seeking to reframe it as evidence of dishonesty when no such reasonable conclusion of this could be reached in the circumstances. The claimant was clearly told in December that no changes would be made to his role, and the claimant has sought to extrapolate that into a wider promise that in fact was never made.

454. In terms of the information about whistleblowing detriments outlined above, and the claimant's belief, we do not find that such a belief was reasonable as follows.

455. We find that the claimant's information that he was not involved in a set of interviews (as a detriment) was not disclosed with a reasonable belief that it tended to show whistleblowing-type detriment (or other breach of a legal obligation). This is because, in part, we do not consider that this was an unusual set of circumstances (not taking part in a particular interview) that called out for an explanation, in the absence of which an inference could reasonably be drawn that the alleged detriment was because of having made a protected disclosure. It is too speculative to reasonably held such a belief. Similarly, the claimant's alleged removal from the PROJECTA does not amount, on the face of the information provided, to be sufficient to reasonably believe that it tended to show a beach of a legal obligation. It is purely speculative in the circumstances as they were. Similarly, the allegation in relation to tampering and concealing evidence does not contain information on which a belief that it tended to show a failure (etc.) in respect of a breach of a legal obligation could reasonably be held. This is because the claimant has jumped from his own asserted lack of understanding to a nefarious conclusion in circumstances of there being a more obvious explanation, namely that wiki pages with recruitment data could reasonably be expected to be limited to those who needed access, and it is sensitive data. The respondent's explanations provided in the information are not inconsistent with each other such that they could be considered suspicious. The idea that the claimant's access was removed to prevent him from

evidencing his allegations is entirely speculative and without reasonable basis. To the extent that the wiki-information was first limited to those involved in the exercise, then the wiki-information was removed entirely, this does not demonstrate a false statement as the claimant alleges. It also does not generate any reasonable basis for asserting a lack of trust and confidence in the investigation. To the extent that the claimant provides information about alleged false statements in the investigation, we consider this information to be without any reasonable basis and no applicable reasonable belief could be founded on the information provided.

456. If we are wrong about whether the claimant did in fact hold the relevant belief about his information in respect of allegations harassment by the respondent in the course of the investigation and restructure, then we equally find that no such belief would have been reasonable. This is because it was obviously a gross exaggeration of the process.

457. Similarly, if we are wrong about whether the claimant in fact held the relevant belief about civil and criminal harassment, we equally find that no such belief would have been reasonable. This is because it was a gross exaggeration of the circumstances as they were.

458. We also find that, the information overall (rather than taking the information about individual exits in isolation) was insufficient on which to found a reasonable belief that there were systemic behaviours by the respondent that amounted to breaches of legal obligations (at any time). This is because that conclusion is too speculative and not founded on sufficient evidence. The number of exits is low given the size of the company and the significant period of time that the claimant has used for his analysis (particularly given that the information about Ms LD, which dated back to 2013, p1682). A small number of allegedly suspicious exits over a long period of time is not something reasonably indicative of wider systemic behaviours by an employer. Our conclusions do not change even when taking the information cumulatively.

459. If we are wrong about our finding that the disclosures were not in the claimant's belief made in the public interest (individually or cumulative), we equally find that no such belief would have been reasonable. This is for the same reasons as before. In particular, the claimant's assertions about criminal and civil harassment had no reasonable basis. Also, there was insufficient factual information (in a context which was highly speculative) for any such element of a public-interest belief to be reasonable.

460. Equally, the extent of the claimant's private interests that he was seeking to advance were such that no belief (if there was one) that the disclosures were made in the public interest was reasonable. This is because of the claimant's demands of the respondent in this document, his suggestion that future redundancy would have been impossible to do fairly, and that the claimant should not suffer a detriment from making a protected disclosure, given the extent of the claimant's private interests that he was seeking to advance.

461. For those reasons alleged PD5 was not a protected disclosure.

Alleged PD6

(a) Did the Claimant disclose information?;

(b) Was it in his reasonable belief made in the public interest?; and

(c) Did it, in his reasonable belief, tend to show that one or more persons had failed, was failing or was likely to fail to comply with a legal obligation to which they were subject within section 43B (1)(b) ERA?

The Claimant relies on the legal obligations included in paragraph 75 of the RAGOC.

462. Alleged PD6 is dated 4 July 2022, the 'Additional information' document 'New Information and Present State' (p2117). As with the other documents,

these reasons focus on the strongest arguments that the claimant could make about the information presented, or high points, but we did consider the entire document, and document as a whole. To an extent we relied on our conclusions above where information was provided on a repeated basis, but we did also actively consider whether the additional information was sufficient to reach a different conclusion.

463. In respect of the information provided at paragraph [27] on p2127, a suggestion that Mr LM had told the claimant that the treatment of the claimant was specifically targeted at him, and that the real reason for the changes to his role couldn't be shared with him, we consider that this account is too speculative and vague to be information from which the claimant could found a reasonable belief that this tended to show breach of a legal obligation. It is too much of a leap to jump from a cryptic conversation (assuming that it took place) to breach of a legal obligation at any time. The claimant's belief was not reasonable in all the circumstances.

464. If we are wrong in our finding above that the claimant did not believe that the information about changes in management processes tended to show a breach of a legal obligation, then alternatively we find that no such belief was reasonable. This is because it was nothing more than background detail from which no such proper inference could be made, and it amounted to nothing more than gossip.

465. We also do not find that the claimant's allegations about exclusion from execution and algo work were such that a reasonable belief that it tended to show a breach of a legal obligation could be founded on them, particularly in the context of the claimant not having accepted the new role. This is because claimant's concerns are entirely speculative. The claimant's belief was not reasonable in all the circumstances.

466. We do not find that the additional information provided by the alleged conversation with Team Leader B is sufficient to change our conclusions about this type of information previously provided in early disclosures. The only potentially material new detail was that Mr UT had a job title which

raised some eyebrows amongst his team. It is entirely speculative to suggest that this supports allegations of bribery or other breaches of legal obligations. None of this information changes our conclusions on the exits of Mr ST and Mr SM and the claimant's beliefs in respect of them.

467. In respect of the information about whether or not Mr UT called him (the claimant) a derogatory term (information said to have been given to the claimant by Team Member A), if we are wrong that it did not in the claimant's belief tend to show breach of a legal obligation, then any such belief would not have been reasonable. This is because the logic underpinning this information is convoluted and the claimant makes entirely unreasonable inferences from it.

468. In respect of the information about Mr SE, we find that any belief that this information tended to show a failure to comply with a legal obligation as not reasonable. This is because the information does not sensibly suggest that Mr SE was dismissed for reasons of performance rather than redundancy because the information in fact was that he was perceived as too light handed, which was view both as a positive and a negative. This is insufficient to reasonably infer that the information tended to show that there was a breach of a legal obligation in his dismissal: it is too speculative and unreliable by its nature to be such that the claimant could reasonably form the required belief.

469. We do not consider that the further information provided from Team Member B was sufficient for a reasonable belief to be formed that it tended to show a breach of a legal obligation (at any time): it is vague, unspecific, and only a perception. This is too speculative to be capable of the claimant reasonably forming the required belief from it. For that reason, the claimant's belief that this information tended to show a failure to comply with a legal obligation was not reasonable. We similarly do not consider the information at paragraph [120g., h.] (p2147) is sufficient to reasonably believe that it tends to show a breach of a legal obligation. This is because is entirely speculative in nature. Also, it records a team leader's fear of

reprisals rather than information from which you could reasonably find or infer that reprisals have or are likely to be carried out for whistleblowing.

470. We do not find that the details at paragraphs [125-144] (p2149) is anything more than background detail rather than information that would change any of our previous decisions about that information. We also consider that the claimant's conclusion – that this was all part of a plan to promote Mr NLM to replace Mr LM – was entirely speculative on the claimant's part. Such a conclusion could not be reasonably drawn from the information.

471. At [154] onwards (p2154) we consider the claimant provides allegedly new information about other recruitment, however, none of the details change our previous conclusions on this area of information.

472. In terms of paragraph [156] (handover work), we also find that, no breach of a legal obligation could be reasonably inferred from this, not least because the claimant's handover work resulted from the undeniable fact that WORKA work had been consolidated. It was entirely speculative to suggest that other handover work being delayed had any bearing on the claimant's situation. This is because if it was delayed, it could be for many innocent reasons. Even if the claimant did believe that this information tended to show a failure to comply with a legal obligation, no such belief would have been reasonable in all the circumstances.

473. The additional section about the restructure being paused contains insufficient new details to change any of our earlier conclusions about that area of information.

474. We considered above that this document was not, as a question of fact, in the claimant's belief made in the public interest (in whole or in part). We are satisfied that this was purely in the claimant's private interest to bolster his own attempts to maintain the status quo and resist changes to his role, and to prolong the process unreasonably. This is for the same reasons as with the earlier documents. In the alternative, no such belief would have been reasonable in all the circumstances given the level of speculation involved.

475. Our conclusions do not change considering the content of document as a whole. This is because there is no good reason for them to do so.

476. For those reasons, alleged PD 6 was not a protected disclosure.

477. For all of the above reasons, the claimant did not make any protected disclosures. It follows that the claims of whistleblowing detriment and automatic unfair dismissal cannot succeed.

Alleged Detriments

478. Although it is not necessary for us to make further findings about the alleged detriments, we do so for completeness, and also in the alternative should any of our conclusions about the alleged protected disclosures be wrong.

7. Did the following occur:

(a) Was the manner in which the First Respondent conducted the investigation into the Claimant's expanded grievance unreasonable? (paragraph 78(a) of the RAGOC)?

The Claimant relies on the information provided to the investigation, the process of the investigation and its outcome as being unreasonable.

(b) Was the Claimant not assigned work and excluded from work by LM and "*management*", including experiencing pressure to not work and being suspended (paragraph 78(b) of the RAGOC)?

8. If yes, did these acts, whether considered in isolation or part of a course of conduct, amount to a detriment or to a deliberate failure to act by the First Respondent or others acting on its behalf?

***The Respondents admit that the Claimant was dismissed and that amounts to a detriment*.**

479. We take issues 7 and 8 together.

480. We do not find issue 7(a) proven, on the basis of the claimant's specific points or more generally. The manner in which the first respondent conducted the investigation into the claimant's expanded grievance was not unreasonable. Specifically, we do not consider that there was anything unreasonable about the information provided to the investigation, the process, or the outcome. This is because there is no good or evidenced basis for such a finding.

481. Although the claimant complains about the investigation not having included interviews of particular individuals, we accept the respondent's position that it was reasonable not to interview employees, especially in circumstances that they had left the company under settlement agreements. We consider, in fact, that to interview someone in those circumstances could be entirely inappropriate. It was also well-evidenced that the investigators had encouraged the claimant to let other individuals come forward, and this happened more than once. The investigators did not stop anyone contacting them to provide evidence to the investigation. In those circumstances, the identification by the investigators of individuals to interview was entirely appropriate on the basis of the information that they had. A significant number of people were also interviewed. Such an investigation only had to be reasonable in all the circumstances, and it does not follow that just because the claimant raised (often purely speculative points) about individuals who had left the company that there was a clear obligation on the investigators to proactively seek out them for interview, particularly in circumstances were on the claimant's on account some of them wanted anonymity and the investigators were entirely open and encouraging of others to come forward. We find therefore that interviews were as a matter of fact limited to those that were carried out, but no reasonable employee would consider the choice of individuals to interview to be a detriment or disadvantage.

482. The claimant also complained that he was not re-interviewed after providing the additional information that he did. However, we consider that re-interviewing him was not necessary. The claimant was subject to a detailed and extensive interview over two days. He then provided regular details and information and commentary in documentary form over a significant period of time. It was not the case that the investigators could reasonably have been expected to re-interview the claimant because, for example, his written documents required further elaboration or explanation. The investigation was not unreasonable because the claimant was not re-interviewed. Also, to the extent that the claimant was as a matter of fact not re-interviewed, no reasonable employee would consider that to be a detriment or disadvantage in the circumstances. The claimant did have an extensive interview and, on the facts, was provided with significant additional opportunities and support to provide any additional information that he wanted to for a long period of time.

483. On a related point, the claimant complains that he was not interviewed as part of the Investigation into the investigation. Although this is correct as a matter of fact, we consider that it was not reasonable for the claimant to be interviewed. There was no lack of clarity, or a requirement (or need) for more information or explanation or elaboration to the allegations he made which triggered the investigation. In all the circumstances, no reasonable employee would consider it a detriment or disadvantage to not be interviewed as part of that process.

484. The claimant also complaints that he was not provided with written outcomes from all of his meetings. We do not consider this proven as a matter of fact: taken as a whole, the claimant was eventually provided with the written outcomes as outlined above in our findings of fact. We also consider that the provision of written documentation to the claimant overall was reasonable in all the circumstances. No reasonable employee would consider the amount of documentation provided by way of outcomes to be insufficient, nor that it would amount to a detriment or disadvantage.

485. The claimant further complains that he was not interviewed about the outcome of the investigation. However, we consider this to be reasonable in all the circumstances: the claimant had expressly demonstrated a lack of trust and confidence in the first respondent in his disclosures. The first and second respondent had reasonably concluded that the relationship had broken down. An interview about the outcomes would not be reasonable or appropriate in those circumstances. In a situation where the outcomes had been decided and the employment relationship had broken down, no employee would consider it to be a detriment or disadvantage to not be interviewed about the outcomes in those circumstances.

486. The claimant also complains that he was not provided with the overall written outcome until the day of his dismissal. We disagree. The delay in producing the outcome report was largely due to the repeated and lengthy additional documents the claimant provided to the investigators, and also the delay caused by his own request for an Investigation into the investigation. Also, it was reasonable for the final outcomes to be considered internally and by the second respondent. Also, it was reasonable for the full report not to be provided to the claimant because it was an internal document and contained sensitive information. The headline points were communicated to the claimant with a reasonable level of detail in the circumstances. No employee would reasonably consider this to be a detriment or disadvantage.

487. The claimant also complains that the investigators provided inconsistent and contradictory information. This is rejected on the facts as outlined above. The evidence relied on by the claimant does not establish this without applying a convoluted analysis and or omitting the full picture.

488. The claimant further complains that he was not provided with all of the documentation considered by the investigators. We find that this did not render the process unreasonable. This is because the claimant was not reasonably entitled to see every document or interview carried out: the investigation was the first respondent's, not his. Also, much of the

documentation would be confidential and sensitive in nature, particularly relating to other employee's exits (and settlement agreements), and subject to data protection legislation. No employee would reasonably consider this to be a detriment or disadvantage in all the circumstances.

489. The claimant further complains that the process had no timescale. This is not proven on the facts. The claimant was provided with interim findings within around a month, and the investigators were then constantly waiting on the claimant to provide more information before any other outcomes could be finalised. The whole process was also delayed by the Investigation into the investigation – instigated by the claimant – and it was also delayed by the manner of the claimant's provision of information (such as the 4th July 2022 document, p2117). The process was significantly lengthened by the claimant providing lengthy and detailed (but often highly speculative) written documents, for example, as opposed to the bullet points requested by the investigators. Given the manner of the claimant's disclosures, any attempt at a realistic timescale would have been futile. Also, the email correspondence from the investigators showed that they were in regular contact with the claimant. No reasonable employee would consider this to be a detriment or disadvantage.

490. We have considered the information gathered by the investigators and outcomes. We conclude that the outcomes reached by them were reasonable on the facts as they were. This is because there is insufficient evidence or good reason to suggest otherwise. The fact that the claimant disagrees with some of the outcomes is insufficient in the circumstances.

491. We do find, however, that the fact that the claimant was not provided with a route of an appeal (to the investigation outcomes) in combination with providing him with an outcome letter on the day of dismissal was a detriment. Although the respondent's policies did not provide for an appeal in those circumstances, given that the claimant's complaints were about his own personal situation, his complaints were in reality akin to a grievance. Whilst we recognise that the respondent did permit a limited challenge to

the investigation in the form of the Investigation into the investigation, this fell short of being an effective appeal mechanism. We do consider that an employee in this situation would reasonably feel that they had been disadvantaged. We therefore consider this element of detriment (a) proven to that extent only.

492. In terms of alleged detriment (b), this related to alleged exclusion from work. Overall, consistent with our findings of fact above, the claimant was not excluded from work, but it is correct that there were items of work he did not do. To the extent that the facts demonstrated the claimant not doing particular tasks, we are satisfied that no reasonable employee would consider that to be a detriment or disadvantage. This is because of the factual reasons we have found for the claimant not doing particular things. We have accepted the respondent witnesses' explanation about why the claimant stopped working on PROJECTA. The claimant had not accepted the new role, and this limited the tasks he could reasonably be assigned (ie. not doing certain algo work). To the extent he wasn't on certain working groups, he did not have any need to be on them. For some of the relevant time the claimant was also working on handover from his old role. He was also spending a significant period of time on his documents for the investigators. He was also not being overburdened with work given his health. We do not consider that as a matter of fact the claimant had no work to do from April 2022 onwards, as found above. In particular, we accepted Mr LM's evidence that from April onwards the work included the handover, and (on the basis of accepting what he says at paragraph [173] of his statement) the claimant did have other work to do which was on a list of work originally agreed for that period. There was also no cogent evidence of there being a pressure for the claimant not to work, as he alleges: the claimant's points in this area amount to a misrepresentation of what was said to him by the investigators. It is not a detriment to be supportive of an employee. In terms of explaining our findings on this detriment, we have generally found the respondent's witnesses to be credible and reliable, and their evidence was supported by documentary evidence when appropriate

and possible, and their evidence (which we accept) was that this alleged detriment did not happen (as already set out above in our findings of fact).

493. No reasonable employee would consider the work profile to be a detriment or disadvantage in those circumstances.

494. In respect of the medical suspension, it is correct that the claimant was on medical suspension from work. However, this lasted only one day. We do not consider that this amounted to a detriment or disadvantage in the circumstances. The respondents had reasonable grounds to believe that the claimant was unfit for work in the circumstances and he was suspended only for a very short period of time with no evidenced consequences from that single day off work. We do not consider that an employee would reasonably consider that to be a detriment or disadvantage in the circumstances of this alleged detriment, including the respondent's commission of medical advice given the wider factual context.

495. We have separately considered whether acts taken in isolation, or as part of a course of conduct amounted to a detriment. However, for the reasons above we do not find that the conduct amounted to a detriment or a deliberate failure to act by the first respondent or others acting on his behalf. There is nothing about the events found proven taken cumulatively that suggests that that a different conclusion on this should be reached.

9. If yes, was the Claimant subjected to these detriments by the First Respondent on the ground that he had made a protected disclosure?

496. Further, or in the alternative (if any of our analysis or findings about the alleged detriments is wrong), we find that none of the alleged detriments (or limited proven detriment about a lack of appeal mechanism) were on the grounds that the claimant had made disclosures. This is because the respondent has shown that they happened for other good reasons which played no part whatsoever in its acts of omissions (applying Fecitt, above). The employers conduct was not materially influenced by the claimant's

disclosures. The reasons for the work-pattern were well-evidenced by the respondent's witnesses, in particular Mr LM and Mr LMM, and we accept their evidence as to why the claimant did the work that he did.

497. We also specifically consider that it is clear that the lack of appeal mechanism was because the first respondent's policies and procedures did not give that option. The respondent has shown that it had nothing to do with whether or not the claimant had made a protected disclosure. The employer's conduct was not materially influenced by the claimant's disclosures. We are satisfied that the evidence suggests that no appeal mechanism would have been in place regardless of whether the claimant had made protected disclosures given how the policies were applied.

498. The other proven detriment is that the claimant was dismissed, it having been accepted that a dismissal amounted to a detriment. There is plainly some overlap between our conclusions on this issue and the other issues to be determined for the other claims. Our reasons below should be considered in the context of our full reasons, including the findings above.

499. We do not find that the dismissal instructed by the second respondent was on the ground that the claimant had made a protected disclosure. We also do not find that, in respect of the second respondent, any protected disclosures (if made) were a material influence on the decision to dismiss. This is because the reason for the dismissal was because of the complete breakdown in the employment relationship, as outlined above.

500. We find claimant's disclosures were not a material influence on the decision to dismiss for the reasons already outlined above in our factual findings. We do find that the manner of the claimant's disclosures contributed to the complete breakdown in the relationship, similar to Matthews (above). However, this is insufficient for the complaint to be successful.

501. The tribunal acknowledges that the criminal allegations the claimant did make, which were on no proper basis whatsoever, and can only be considered a gross exaggeration of anything that could have happened (or could have reasonably believed to have happened), did form part of narrative of events that ended with the breakdown in the relationship. However this is insufficient to amount to a material influence on the decision to dismiss. The second respondent also effectively distinguished in his evidence between the complaints (ie. the disclosures) and the unreasonable allegations (such as criminality, and threating SRA proceedings to the investigators) and the manner (such as the length) of the disclosures.

B. <u>AUTOMATIC UNFAIR DISMISSAL - SECTION 103A ERA</u>

10. If the Claimant made any one or more of the alleged protected disclosures, was the reason (or, if more than one, the principal reason) for the Claimant's dismissal that he had made such protected disclosure(s), contrary to section 103A ERA?

The First Respondent relies on conduct and/or some other substantial reason, namely an irretrievable breakdown in trust and confidence, as the reason for dismissal.

The Claimant relies, amongst other things, on the timing of his grievance outcome and dismissal, and his dismissal letter dated 13 September 2022, where the First Respondent asserted several times that the reason for dismissal was that the Claimant had made a protected disclosure. The Claimant further asserts that the other reasons alleged in the dismissal letter are not true, were not appropriately investigated or even raised with the Claimant prior to his dismissal, and even if the Employment Tribunal found to be true, are not separable from the Claimant's protected disclosures. For further support that the other reasons in the

dismissal letter are not the real reasons for the Claimant's dismissal, the Claimant will rely on the detriments outlined in paragraph 78 of the RAGOC in relation to his protected disclosure.

502. This claim must fail because we have not found that the claimant made a protected disclosure. However, for completeness and in the alternative (should that conclusion be incorrect), we do express a clear conclusion on this issue. Consistent with our findings above, we did not find that the reason, or the principal reason, for the claimant's dismissal was that he had made a protected disclosure. This is because we are satisfied, after much careful consideration, that the reason why the claimant was dismissed was a total breakdown in the employment relationship. Whilst this breakdown was contributed to by the manner of the claimant's disclosures, it was not because of them or the substance of them. This was some other substantial reason.

503. The points raised on behalf of the claimant included in the list of issues are addressed in the findings section in relation to the reason for the dismissal.

504. We gave careful thought as to whether this was a case where the separability principle (or label) could properly apply to this case, applying Kong (above). We considered whether in this case the second respondent could legitimately distinguish between the disclosure itself and the manner in which it was made. We do conclude that this is such a case where the reason or reasons for the dismissal were sufficiently separate from the disclosure such that it could be considered separate. Equally, the reason for the dismissal (the breakdown in the relationship) was not so closely connected that such a distinction could not be fairly and sensibly be drawn (Kong). We decided that there was a sufficient distinction between the breakdown in the relationship as the reason for the dismissal and the claimant's disclosures, the manner of the disclosures having contributed to the breakdown, in light of the evidence as a whole. In this scenario the disclosures were sufficiently separate such that they could be sensibly and

fairly described as distinct from the breakdown in the relationship, that breakdown also stemming from the claimant's expressed status of the relationship and his dissatisfaction with his working circumstances.

C. ORDINARY UNFAIR DISMISSAL - SECTION 98 ERA

11. In the alternative, what was the First Respondent's reason (or, if more than one, the principal reason) for dismissing the Claimant?

The First Respondent relies on conduct and/or some other substantial reason, namely an irretrievable breakdown in trust and confidence as the reason for dismissal.

The Claimant relies on the dismissal letter dated 13 September 2022, which the Claimant asserts contains reasons that are not true, were not appropriately investigated and are not the real reasons.

505. We find that the reason for the dismissing the claimant was some other substantial reason, namely the complete breakdown in the employment relationship. We reject the claimant's points above for the reasons already outlined in respect of automatic unfair dismissal.

12. Was the First Respondent's reason (or if more than one reason principal reason) for dismissing the Claimant a potentially fair one within section 98 (1) and (2) ERA?

506. We find that the respondent has shown that it was for a potentially fair reason, namely some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

13. If yes, did the First Respondent act reasonably in treating it as a sufficient reason for dismissing the Claimant in all the circumstances pursuant to s. 98(4) ERA having regard to whether, in the circumstances, the First Respondent acted reasonably or unreasonably in treating the reason as a

sufficient reason for dismissing the Claimant and the equity and the substantial merits of the case?

The Claimant relies on the First Respondent not following a formal disciplinary procedure and the alleged reasons in the dismissal letter dated 13 September 2022 not being appropriately investigated or even raised with the Claimant prior to his dismissal and asserts that the First Respondent did not carry out a reasonable investigation, have reasonable grounds upon which to sustain belief in the reason(s) for dismissal and that his dismissal was outside the range of reasonable responses.

507. We considered this issue particularly carefully. It is correct that the dismissal did not follow a formal disciplinary procedure, or an informal procedure. We were also conscious that a fair dismissal in these circumstances will be rare, and had in mind the words of caution in Gallacher (at [51]):

'*Dismissals without following any procedures will always be subject to extra caution on the part of the Tribunal before being considered to fall within the band of reasonable responses…'*

508. However, we have concluded that in all the circumstances the dismissal was within the range of reasonable responses, and the respondent did act reasonably in treating the breakdown in the relationship as a sufficient reason for dismissing the claimant, taking into account equity and the substantial merits of the case. We find that this is one of those exceptional cases where the circumstances are such that the dismissal can fair and reasonable without a formal or informal procedure being followed. This is the case even taking into account the lack of formal warning, the lack of a disciplinary-type investigation, and the lack of a meeting to discuss the situation.

509. Such an approach can be lawful. A breakdown in trust and confidence can be a fair reason to dismiss as some other substantial reason (eg. Huggins, Alexis, above).

510. We consider that in reality there were very limited options for the respondent. For example, the claimant's demands in the 12 April 2022 document included those the extracts repeated above in our factual findings. These could not be reasonably be met by the respondent.

511. We conclude that, in the claimant's case, the respondent (through the second respondent) genuinely believed in the irretrievable breakdown in in trust and confidence. This was clear from the evidence of the second respondent, which we accepted. It was also clear from his evidence that he had given the question considerable thought and consideration over several days, and that his decision was one reached after genuine and extensive reflection. It was also a belief reached on reasonable grounds given the express tone of the claimant's disclosures as to his views of the employment relationship and the claimant's actions overall. The claimant had, on his own account, been working 'under protest' for a considerable period of time. It was also the case that alternatives had been considered by the second respondent, such as whether or not the claimant should face a disciplinary procedure, or work elsewhere, but he reasonably concluded on genuine grounds that these would be futile. For example, the second respondent was clear in his reasoning that a change in line management would not assist because the claimant had raised complaints about almost everyone he disagreed with, including causing the Investigation into the investigation, and his relationship with his line managers had effectively entirely broken down. There was no good reason to believe that this would be different under any other line management. We consider that the second respondent's belief that the claimant would not accept an end to the matter unless the respondent accepted all of the claimant's points, reinstated the original role and responsibilities and removed Mr LM and Mr LMM, was held on reasonable grounds given our findings of fact. We also consider that the second respondent's belief that the relationship had irretrievably broken

down was reasonable in all the circumstances, particularly given the claimant's own express words and the difficulties of the situation as reported by the investigators. The respondent had also conducted a reasonable enquiry (within the range of reasonable responses). This is because the decision maker had the benefit of the investigation report, the Investigation into the investigation. These gave the decision maker, in our judgment, sufficient material in order to reach a reasonable conclusion without further inquiry.

512. Whilst it is correct to note that, contrary to the situation in Alexis, the claimant was not given an opportunity to put forward his arguments, we consider that it was within the range of responses for the respondent to conclude that in the circumstances of the claimant's ever escalating written documents, which included his views on his employment relationship, and his continual challenges to outcomes, that any formal or informal procedure would have been futile (akin to Matthews). We accept the second respondent's evidence that this was his belief and we consider that belief to be genuinely held on reasonable grounds. We agree that, similar to Gallacher, the respondent reasonably concluded that any further procedure – including a formal disciplinary procedure – would not just serve no useful purpose, but would have worsened the situation. This is because, based on the claimant's conduct throughout the relevant period, the inevitable outcome would be a further deterioration of the employee-employer relationship with further employees brought into the ambit of the claimant's complaints. The respondent had also reasonably concluded that the claimant would seek to use any available procedure to continue his escalating challenges given how he had proceeded with his disclosures thus far. Similar to Matthews, the claimant in this case had responded to a partially upheld grievance in a confrontational manner and sought to escalate his concerns, the relationship had broken down, and the parties had reached a stalemate. We consider that the evidence in this case clearly established a stalemate between the claimant and respondents, given the way the situation was described by the claimant and the respondents. Also, the second respondent's genuine belief that the continued employment of

the claimant amounted to a risk to the business and welfare of the other staff was reasonable given everything that had happened.

513. We also do not consider the failure to specifically give the claimant a warning about his conduct rendered the dismissal unfair. This is because the claimant was expressly aware himself through his disclosures that the relationship had already broken down. We consider the respondent acted reasonably in not specifically giving the claimant a warning about something that he was already aware of being the case.

514. Similarly, although the claimant was not given an opportunity to appeal the decision, we consider that this was within the range of reasonable responses. This is because the relationship had broken down to such a degree that the respondent reasonably decided that an appeal mechanism would have been futile (as is clear from the dismissal letter) and simply would have provided the claimant with a further opportunity to seek to expand upon his disclosures and escalate matters as opposed to genuinely addressing the question of the breakdown in the relationship, and the respondent decided that an appeal would carry the same risk of deterioration as redeployment. This decision was also made in the context of the claimant having been part of an extremely protracted process (around 10 months). The decision to dismiss was also made by the President of the group company (plainly a very and sufficiently senior position).

515. We also consider that this was a case where the respondent had taken reasonable steps to seek to improve the relationship (considering Vestric and Matthews above). The respondent, upon being aware of the claimant's concerns about the role changes, appointed investigators who had undertaken an extremely detailed investigation into the claimant's concerns. The claimant was interviewed over two days. A largely favourable outcome was provided in around a month and provided to the claimant. However, despite this, the claimant failed to accept the new role or work constructively with his employer to remedy matters. Instead, the claimant sought to challenge the investigation and then escalate matters with increasingly

lengthy disclosures. The claimant made it clear that he would only accept outcomes that the respondent reasonably concluded were impossible to offer. The claimant also failed to accept an offer to mediate the situation.

516. In circumstances where the respondent put an unusually high level of resources into investigating the claimants disclosures, it provided the main outcome within a reasonably short space of time remedying the issues it had identified, and having conducted an investigation into its own investigation, and the claimant having been offered a reasonable alternative outcome, and mediation, we consider that the respondent did all it reasonably could to remedy the situation before dismissal.

517. Whilst it is correct that the dismissal letter referred to matters not raised with the claimant, or subject to a more traditional disciplinary investigation and dismissal process, we consider that these were included in the letter as illustrations of the difficulties in the employment position as set out above. Given that these were not, on the evidence we have accepted, central to the decision to dismissal, the fact of including them in the dismissal letter without a disciplinary investigation and process did not render the dismissal unfair in the wider circumstances.

518. Our findings also do not include that the respondent was to blame for the breakdown in the relationship. The respondent self-identified errors in the original events relating to the claimant's role through its own internal investigation and put in all reasonable steps to rectify the situation. These did not cause the breakdown in the relationship: they were simply events pre-dating the complete breakdown as part of the narrative.

D. DISABILITY DISCRIMINATION – SECTIONS 6, 13 AND 15 EQA

Disability

14. Was the Claimant a disabled person within the meaning of section 6 EqA at the material time(s)?

> ***The Claimant relies upon "his anxiety and depression and the physical manifestations from those impairments in the form of anxiety attacks and CVS" (paragraph 84 of the RAGOC). Beginning in mid-December 2021 the Claimant began experiencing depression and anxiety including panic attacks. This worsened in 2022 and ultimately manifested itself in physical disabilities. He experienced his first episode of CVS in December 2021 (see paragraph 55 of the RAGOC).***

Did the claimant had a physical or mental impairment, namely anxiety and depression and the physical manifestations of those in the form of panic attacks and CVS?

519. We refer to our factual findings in relation to disability above. We accept that the claimant's medical records are sufficient to find that the claimant had an impairment of anxiety from mid-December 2021 onwards and depression from the date of diagnosis, ie. 10 June 2022. The physical manifestations are also as found in our findings of fact.

Did it have a substantial adverse effect on their ability to carry out day-to-day activities? If not, did the claimant have medical treatment, including medication, or take other measures to treat or correct the impairment? Would the impairment have had a substantial adverse effect on his ability to carry out day-to-day activities without the treatment or other measures?

520. We find that the claimant's impairments did meet the above test. This is on the basis of our findings about the clear evidence of the claimant having difficulty eating and sleeping. This was a more than trivial adverse effect on his ability to carry out day-to-day activities, and this was recognised by the respondent's own investigators.

521. We also note that the claimant was on medication to address anxiety throughout the relevant period. Whilst there were many aspects of the claimant's life that did not appear to be affected by his conditions, such as the fact that he took no significant periods of sick leave during that time, and he insisted to his employer that he was fit to work, we cannot safely discount (on the evidence) the likelihood that his medication was correcting or reducing the impairment in all the circumstances.

Were the effects of the impairment long-term? Did they last at least 12 months, or were they likely to last at least 12 months? if not, were they likely to recur?

522. We repeat our finding above that the relevant effects did not last 12 months until mid-December 2022. They had not lasted for 12 months for any of the relevant time of the claims (December 2021 to early September 2022).

523. There is no real evidence that during that period the relevant effects were likely to last at least 12 months, adopting the correct meaning of 'likely' above. The claimant has produced no proper evidence from which this could be inferred. The medical records do not provide a clear and cogent prognosis. The only evidence relied on by the claimant was a chart suggesting that his PH9 score (which relates to depression and anxiety) got worse between 4 May 2022 and 13 September 2022. However, there is nothing inherent about the condition that means that moving from a moderate score in May to a more severe score in August/September was such that we could properly infer that it was likely to continue in the future.

524. Also, there was a considerable amount of evidence suggesting that there was some kind of link between the symptoms and the claimant's dispute at work which marked the onset of his symptoms. There was every reason to believe that once the work dispute was resolved the symptoms would reduce in severity, although we acknowledge that this is not what ultimately

happened. However, the fact that the symptoms did last 12 months does not mean that it was likely that they would at the relevant time.

525. There is also nothing inherently long-term about the claimant's conditions, nor are they of such a nature that the tribunal could properly take judicial notice of whether they were likely to be long-term (or that the effects of the impairment were long-term), nor was this a finding that could be made simply as a matter of common sense.

526. There was also no sufficient evidence that this was a condition which was limited but likely to recur.

527. For those reasons the claimant was not disabled for the purposes of s.6 EQA. All of the claimant's claims in relation to disability are therefore unsuccessful. However, alternative conclusions are made below in case that conclusion is incorrect.

Direct disability discrimination

15. If the Claimant was a disabled person at the material time, did the First Respondent subject the Claimant to less favourable treatment as compared to others?

(a) Was the Claimant not assigned work and excluded from work by LM and "*management*"?

528. In light of our factual findings above (generally, and similarly in relation to other claims), this allegation also fails as a question of fact.

529. Equally, to the extent that the Mr LM had the claimant's health in mind when considering matters to workload, we also do not consider that this is less favourable treatment. There is nothing less favourable in the claimant's health being taken into account when deciding on his workload. Whilst we accept that there may be other cases where, as a matter of fact, this is the

case (such as if people were excluded from work which would detrimentally affect their career), that is not the case here. There is no suggestion that the work assigned to the claimant had such an effect, or anything similar here. To the extent that the claimant was not doing particular tasks that he may have liked to have done, we are satisfied that (consistent with our findings above) this is because of his decision not to accept the new role and not because of the decisions of others which took into account his health.

530. Also, the claimant's medical suspension was only for a day. We also consider that the respondent was acting entirely reasonably in all the circumstances in requesting the claimant for some evidence that the claimant was fit to work given his self-reporting of serious symptoms (and in the contact of the medical advice the respondent received on an anonymous basis). This is not, in of itself, less favourable treatment.

(b) If yes, was this, in whole or in part, because of his disability?

The Claimant relies on the First Respondent's admission in paragraph 53 in the RAGOR.

531. If we are wrong about the above, we do not find the treatment was in whole or in part because of disability. Although the claimant seeks to rely on the relevant paragraph above, this simply includes that '*Mr LM….was also conscious of giving the Claimant too many tasks, in light of the Claimant's prior concerns about the list of handover objectives presented to him being unachievable … and the concerns the Claimant had relayed regarding his health.'* This is insufficient to amount to an admission of the claim. There is no evidence from which we could properly infer that someone in the same material circumstances who was not disabled would have been treated. That comparator would also have to have health concerns which may impact on their ability to do a certain volume of work, but not health concerns which amounted to a disability. This claim must also fail for lack of evidence about any actual or hypothetical comparator.

532. We also do not feel that the claimant's submissions on this point are in fact supported by the evidence at p2224 of the bundle, in which Mr LM simply reiterates that he was conscious of internal guidance at the respondent not to stress the claimant by giving him too many tasks due to concerns he had relayed about his health. Rather, we find that the evidence was in fact of a supportive employer who in fact had identified itself a medical risk to the claimant if he was overworked. This was also in circumstances where, based on the anonymous medical evidence sought about the claimant, the respondent on reasonable grounds had concerns about his fitness to work (p1381). There is also no proper basis on which we could find that the placing of the claimant on a single day's medical suspension was because of his disability.

(c) Did the First and Second Respondents decide to dismiss the Claimant because of his disability?

The Claimant relies, amongst other things, on being dismissed within days after having informed the First Respondent of his disabilities worsening and of his intention to take a significant period of sick leave. Further, the First Respondent was well aware of the Claimant's disabilities prior to this date and of his worsening conditions as admitted by the First Respondent as reason to not provide and exclude him from work because of "what he had told him about his health", namely his disability (paragraph 53 of the RAGOR).

533. In light of our other findings (above) about why the claimant was dismissed, we also conclude that he was not dismissed by either respondent because of any disability. We have not found as a matter of fact that the claimant had informed the respondents as a matter of fact that his condition was worsening or that he was likely to take a period of significant sick leave. We disagree such a thing was obvious to the respondents, as the claimant suggests. This is because there was nothing inherent about the reported

symptoms such that it was obvious he would need to be off sick for a prolonged period of time. We also find that the fact that the claimant's private health insurance was extended for the period after his dismissal was nothing more than a supportive gesture, and not an acknowledgement that he was likely to take long-term sick leave.

534. For completeness, we did not find that there was evidence which would cause the burden of proof shifted to the respondent on this claim, applying the test set out above.

535. It follows that the claim of direct disability discrimination would also fail for the above reasons.

Discrimination arising in consequence of a disability

16. Further or in the alternative, if the Claimant was a disabled person at the material time:

(a) Was the Claimant not assigned work and excluded from work by LM and "*management*"?

536. In light of our factual findings above (generally, and similarly in relation to other claims), this allegation also fails as a question of fact. The claimant was neither not assigned work that he should have been doing nor excluded from work by LM or anyone else.

537. However, we do find (as above) that Mr LM had the claimant's health in mind when considering his workload. However, that is not the same thing as the allegation made by the claimant.

538. It is right that the claimant was suspended from work (for a day, on full pay), due to the respondent's concerns about his health.

(b) If yes, was this unfavourable treatment?

539. We do not find that our findings of fact in relation to the claimant's workload and his health amounted to unfavourable treatment. No reasonable employee would consider it to be so in the circumstances. On the contrary, it would have been unfavourable treatment for the claimant's health concerns to have been ignored by the respondent. The actions of Mr LM and the investigators in having the claimant's health in mind were, we consider, entirely supportive in nature and were what any reasonable employer would have done in the circumstances, particularly where the claimant resisted any kind of medical leave. Specifically, our findings of fact do not amount to the claimant being excluded or not being assigned work that he should have been doing. There is proven no unfavourable treatment by the respondent in respect of the claimant's health.

540. We equally do not find that suspending the claimant for a single day on full pay amounted to unfavourable treatment. Any reasonable employee would accept that in circumstances of them reporting to their employer serious concerns about their own health that the employer would ask them for evidence of fitness to work. There was no material disadvantage to the claimant from this, particularly given that the situation was remedied rapidly by the respondent.

(c) If yes, was this, in whole or in part, because of something arising in consequence of his disability contrary to s. 15 EqA (see paragraphs 92 and 93 RAGOC)?

The Claimant relies on the consequences of his disability as set forth in paragraph 92 of the RAGOC and alleges that he was not assigned work and/or was excluded from work because of those consequences in that the First Respondent admitted that it made the decision to not provide and exclude him from work because of "what he had told him about his health",

namely the consequences of his disabilities (paragraph 53 of the RAGOR).

541. In light of our conclusions above, it is neither necessary nor appropriate to address this issue.

(d) Did the First and Second Respondents decide to dismiss the Claimant because, in whole or in part, of something arising in consequence of his disability contrary to s. 15 EqA (see paragraph 94 and 95 of the RAGOC)?

It is agreed that dismissal is unfavourable treatment.

The Claimant relies on the consequences of his disability as set forth in paragraph 94 of the RAGOC and alleges that he was dismissed because of those consequences in that "the Respondents were fearful that the Claimant would be taking a significant period of sick leave because his mental and physical health had worsened to a point that he was unable to perform his work duties" (paragraph 95 of the RAGOC).

542. We repeat our findings of fact and conclusions above about the reasons for the claimant's dismissal. We have found above that the reason for the claimant's dismissal was not because, in whole or part, of anything arising in consequence of his disability. This allegation is therefore unsuccessful. The allegation is also predicated on findings of fact that we have not made, namely the suggestion that the respondents were fearful of the claimant taking a significant period of sick leave. This was not the case.

17. Were (a) and (d) above each a proportionate means of achieving a legitimate aim?

543. If we were wrong about (a), above, then we would also find that taking into account an employee's health when considering workload (and requesting

evidence of fitness to work) was a proportionate means of achieving a legitimate aim.

544. The respondent relies on the legitimate aim of preventing a situation where the claimant was asked to carry out tasks relating to a role he had not accepted whilst he continued to raise serious concerns about the restructure, ensuring productivity by assigning work to others where the claimant was spending working hours on his complaints rather than his day-to-day role, and protecting the claimant's health, safety and welfare.

545. In respect of placing the claimant on a very brief period of medical suspension, the legitimate aim was protecting his health, safety and welfare.

546. There was no obvious alternative option which could have been utilised the respondents which would have been less discriminatory, either as identified by the claimant or by the tribunal of its own motion. It was entirely legitimate and proper that the first respondent consider an employee's health when making decisions about his workload and also take into account the fact that the claimant had not accepted the new role and was in the course of a long-term complaint about the restructure, and also needing to maintain productivity whilst this was ongoing. It was also entirely legitimate to take into account the fact that the claimant was spending time on his complaints rather than his day-to-day role in terms of business productivity.

547. It was also proportionate to have these as a factor to be taken into account, rather than determinative of anything in particular or determinative of an arbitrary approach. We consider that it was entirely proportionate to act as Mr LM and the investigators did, to the extent that we found they have. We have considered the objective balancing exercise between the reasonable needs of the respondent and any discriminatory effect on the claimant, and see no reason why this should be in the claimant's favour given the limited impact on him and importance of, in particular, maintaining a safe working environment and protecting his health and welfare.

548. Although not articulated as a separate issue in the list of issues, the question of knowledge must be addressed and the parties included this in their submissions. We also find that the respondents (and any relevant decision maker) did not know, and could not reasonably have been expected to know, that the claimant had a disability and the complete defence under section 15(2) EQA is established in any event. This is in part because of our findings of fact on knowledge above. Specifically, whilst there was clearly some knowledge of the fact that the claimant had health concerns, there was not knowledge that the effect of those concerns was likely to last for 12 months. Also, the relevant decision maker's position was reasonable given that on the claimant's own reporting there was a link between his health conditions and the dispute such that once it was resolved his symptoms could reasonably be inferred to be likely to abate. We also do not find that the decision makers could reasonably have been expected to know that the claimant had the disability. This is because the claimant did not accept occupational health support, the claimant only provided the respondent with medical evidence at the medical suspension stage, and the respondent's own investigations into the claimant's health did not warrant further investigation beyond that provided. We therefore do not find that if the respondents had made further enquiries that the claimant was likely to cooperate given his previous actions, and was not volunteering sufficient additional information himself, such that constructive knowledge is established.

549. For completeness, we did not find that there was evidence which would cause the burden of proof to shift to the respondent on this claim, applying the test set out above.

550. It follows that the claim of discrimination arising in consequence of disability would also fail for the above reasons.

II. REMEDY ISSUES FOR LIABILITY HEARING

551. In light of our conclusions above on liability it was neither necessary nor appropriate to resolve the issues that would have been relevant to remedy only (bad faith, Polkey, and contributory fault).

Approved by

Employment Judge B Smith
18 July 2025

SENT TO THE PARTIES ON

22 July 2025
.....

.....
FOR THE TRIBUNAL OFFICE

Appendix A – Reasonable adjustments

552. The adjustments in place for the claimant's benefit included the following:

(i) A HMCTS intermediary was present throughout the hearing, including during breaks and the claimant's oral cross-examination, to assist the claimant with communication. The tribunal took breaks when requested by the intermediary. The claimant had a written chart which was used at times as required to communicate basic instructions to the intermediary, such as if he required a break or didn't understand. The intermediary asked on a small number of occasions for questions in oral cross-examination of the claimant to be rephrased. The intermediary also had previously approved the written cross-examination questions and confirmed to the tribunal that no further amendments were requested before oral cross-examination. The claimant's oral cross-examination to a large degree drew upon the pre-approved written cross-examination questions.

(ii) The claimant was provided with a pen and blank paper as an aid during his oral cross-examination.

(iii) Respondent witnesses who observed the claimant's oral cross-examination did so by CVP and were not visible during the hearing.

(iv) The tribunal utilised an adjusted sitting pattern so that the claimant had shorter days, and did not (generally) sit on Mondays (save for day 1) to enable the claimant to attend medical appointments. In general, the tribunal sat only between the hours of 1pm and 4:30pm, with breaks of around 20 minutes for every hour of the claimant's evidence. It was necessary to sit for slightly longer of the last day of the claimant's oral evidence for tribunal questions to be completed and ensure that the claimant was not under affirmation over the weekend period. No applications or difficulties arose from this. With

the claimant's consent, the tribunal heard the evidence of Mr SM on a Monday in the claimant's absence, but he was represented on that day and had access to that day's transcript.

(v) With the tribunal's permission, at the respondents' cost, the proceedings were transcribed each day and a copy of the transcription made available to the claimant and the tribunal. The claimant was permitted to read the transcripts during his oral evidence.

(vi) The claimant was provided with a private waiting room. Also, to avoid contact between the respondents' witnesses and the claimant, a private waiting room for the respondents' witnesses was arranged by the tribunal.

(vii) The claimant was permitted to use a stress-type ball throughout his evidence and to wear sunglasses, including when giving evidence.

(viii) The claimant was at various times screened from the respondents' attendees, and the respondents' attendees were minimised throughout. Although it was, after hearing submissions, accepted that at times up to two respondent witnesses may be present in the hearing room whilst waiting to give their evidence, in fact this did not happen. No issues affecting the claimant arising from the presence of the respondents' attendees or witnesses were raised during the hearing, in terms of any actual detriment suffered by the claimant. In general, the respondents' attendees and witnesses observed by CVP. During the claimant's evidence only the respondents' counsel and one external solicitor were present in the hearing room. The tribunal room layout was also adjusted several times throughout the hearing to accommodate the needs of the claimant and other parties, such as to ensure appropriate lines of sight and screening.

(ix) The claimant's wife was permitted to be present as a support, including sitting close to the claimant during his evidence.

(x) The claimant was provided with a court diary, at the claimant's cost, and was permitted to make his own recording of the hearings in accordance with the tribunal's earlier case management orders.

(xi) Privacy orders under Rule 50 Employment Tribunals Rules of Procedure 2013 were also in place for the claimant's benefit. The entire hearing was heard in private.

(xii) During the claimant's evidence he used a clean laptop, at his own cost, which had been checked by the respondents' legal team, to access the hearing bundles and other documentation. This laptop was configured by the claimant according to his accessibility needs.

(xiii) The claimant also had access to a suitable toilet facility, and the tribunal hearing room minimised adverse lighting and noise levels as much as possible. No difficulties around these areas arose during the hearing.

(xiii) The oral cross-examination was correctly conducted on the basis of the proper appropriate to the cross-examination of vulnerable witnesses by the application of the principles set out in the Advocate's Gateway. The tribunal records that the respondents' advocate had received training on the cross-examination of vulnerable witnesses and had reviewed the relevant materials on this topic prior to the claimant's oral evidence. The cross-examination was conducted with simple questions, rephrased as necessary, which, in general, only dealt with one topic at a time, and the cross-examination was conducted in a slow, careful and patient manner, with signposting throughout.

553. The tribunal was alive to the need to keep reasonable adjustments under review and be flexible during the hearing to ensure the effective participation of all parties and witnesses.

554. A considerable amount of tribunal time was spent on the claimant's adjustments. This was the case even with a number of preliminary hearings having taken place, in part to make decisions on adjustments.

555. The claimant's answers in oral cross-examination were sufficiently detailed as to demonstrate that he was fully engaging in the process and he demonstrated a good forensic knowledge of his claims and the evidence materials, including the final hearing bundle. The claimant at times was able to find other documents in the bundle which he referred to during his cross-examination. There was no suggestion by his counsel or the intermediary that the claimant was failing to understand or respond to the questions put to him.

556. We were satisfied that the claimant received a full and fair hearing throughout.

Appendix B – RE-AMENDED AGREED LIST OF LIABILITY ISSUES

I. THE CLAIMS

By his Re-Amended Grounds of Claim (the "**RAGOC**") dated 5 June 2024, the Claimant brings the following claims:

(a) whistleblowing detriments contrary to section 47B(1) Employment Rights Act 1996 ("**ERA**").

(b) automatic unfair dismissal contrary to section 103A ERA;

(c) in the alternative to (b), ordinary unfair dismissal contrary pursuant to section 98 ERA;

(d) direct discrimination on the basis of disability contrary to section 13 Equality Act 2010 ("**EqA**"); and

(e) further or in the alternative to (d), discrimination arising in consequence of a disability contrary to section 15 EqA.

By their Re-Amended Grounds of Resistance (the "**RAGOR**") dated 19 June 2024, the claims are denied by the Respondents.

II. LIABILITY ISSUES

A. WHISTLEBLOWING DETRIMENTS - SECTION 47(B)(1) ERA

Jurisdiction: time limits

1. Did any of the alleged detriments at paragraphs 78(a) and (b) of the RAGOC occur more than three months prior to 14 September 2022 (extended, as necessary, by ACAS conciliation) (the "**Primary Limitation Period**")?

2. If so, do any such alleged detriments form part of a series of similar acts or failures with each other, the last of which occurred within the Primary Limitation Period within section 48(3)(a) ERA?

3. If not, was it reasonably practicable for such alleged detriment to be complained of within the Primary Limitation Period?

4. If not, was such alleged detriment complained of within such further period as the tribunal considers reasonable under section 48(3)(b) ERA?

Alleged Protected Disclosures

5. In respect of each of the six alleged protected disclosures identified in sub-paragraphs 74(a) to (~~d~~e) of the RAGOC as follows:

(a) 6 January 2022 interview ("**Alleged PD1**");

(b) 27 January 2022 first draft expanded grievance ("**Alleged PD2**");

(c) 9 February 2022 letter to the Audit and Risk Committee of the Board of Directors ("**Alleged PD3**");

(d) 18 March 2022 letter to the Audit and Risk Committee of the Board of Directors ("**Alleged PD4**");

(e) 12 April 2022 final draft expanded grievance ("**Alleged PD5**"); and

(f) The additional information document sent on 4 July 2022 ("**Alleged PD6**").

6. In respect of each of the above Alleged PDs 1-6:

(a) Did the Claimant disclose information?;

(b) Was it in his reasonable belief made in the public interest?; and

(c) Did it, in his reasonable belief, tend to show that one or more persons had failed, was failing or was likely to fail to comply with a legal obligation to which they were subject within section 43B (1)(b) ERA?

The Claimant relies on the legal obligations included in paragraph 75 of the RAGOC.

Alleged Detriments

7. Did the following occur:

(a) Was the manner in which the First Respondent conducted the investigation into the Claimant's expanded grievance unreasonable? (paragraph 78(a) of the RAGOC)?

The Claimant relies on the information provided to the investigation, the process of the investigation and its outcome as being unreasonable.

(b) Was the Claimant not assigned work and excluded from work by LM and "*management*", including experiencing pressure to not work and being suspended (paragraph 78(b) of the RAGOC)?

8. If yes, did these acts, whether considered in isolation or part of a course of conduct, amount to a detriment or to a deliberate failure to act by the First Respondent or others acting on its behalf?

The Respondents admit that the Claimant was dismissed and that amounts to a detriment.

9. If yes, was the Claimant subjected to these detriments by the First Respondent on the ground that he had made a protected disclosure?

B. AUTOMATIC UNFAIR DISMISSAL - SECTION 103A ERA

10. If the Claimant made any one or more of the alleged protected disclosures, was the reason (or, if more than one, the principal reason) for the Claimant's dismissal that he had made such protected disclosure(s), contrary to section 103A ERA?

The First Respondent relies on conduct and/or some other substantial reason, namely an irretrievable breakdown in trust and confidence, as the reason for dismissal.

The Claimant relies, amongst other things, on the timing of his grievance outcome and dismissal, and his dismissal letter dated 13 September 2022, where the First

Respondent asserted several times that the reason for dismissal was that the Claimant had made a protected disclosure. The Claimant further asserts that the other reasons alleged in the dismissal letter are not true, were not appropriately investigated or even raised with the Claimant prior to his dismissal, and even if the Employment Tribunal found to be true, are not separable from the Claimant's protected disclosures. For further support that the other reasons in the dismissal letter are not the real reasons for the Claimant's dismissal, the Claimant will rely on the detriments outlined in paragraph 78 of the RAGOC in relation to his protected disclosure.

C. ORDINARY UNFAIR DISMISSAL - SECTION 98 ERA

11. In the alternative, what was the First Respondent's reason (or, if more than one, the principal reason) for dismissing the Claimant?

The First Respondent relies on conduct and/or some other substantial reason, namely an irretrievable breakdown in trust and confidence as the reason for dismissal.

The Claimant relies on the dismissal letter dated 13 September 2022, which the Claimant asserts contains reasons that are not true, were not appropriately investigated and are not the real reasons.

12. Was the First Respondent's reason (or if more than one reason principal reason) for dismissing the Claimant a potentially fair one within section 98 (1) and (2) ERA?

13. If yes, did the First Respondent act reasonably in treating it as a sufficient reason for dismissing the Claimant in all the circumstances pursuant to s. 98(4) ERA having regard to whether, in the circumstances, the First Respondent acted reasonably or unreasonably in treating the reason as a sufficient reason for dismissing the Claimant and the equity and the substantial merits of the case?

The Claimant relies on the First Respondent not following a formal disciplinary procedure and the alleged reasons in the dismissal letter dated 13 September 2022 not being appropriately investigated or even raised with the Claimant prior to his dismissal and asserts that the First Respondent did not carry out a reasonable investigation, have reasonable grounds upon which to sustain belief in the reason(s) for dismissal and that his dismissal was outside the range of reasonable responses.

D. DISABILITY DISCRIMINATION – SECTIONS 6, 13 AND 15 EQA

Disability

14. Was the Claimant a disabled person within the meaning of section 6 EqA at the material time(s)?

The Claimant relies upon "his anxiety and depression and the physical manifestations from those impairments in the form of anxiety attacks and CVS" (paragraph 84 of the RAGOC). Beginning in mid-December 2021 the Claimant began experiencing depression and anxiety including panic attacks. This worsened in 2022 and ultimately manifested itself in physical disabilities. He experienced his first episode of CVS in December 2021 (see paragraph 55 of the RAGOC).

Direct disability discrimination

15. If the Claimant was a disabled person at the material time, did the First Respondent subject the Claimant to less favourable treatment as compared to

others?

(a) Was the Claimant not assigned work and excluded from work by LM and "*management*"?

(b) If yes, was this, in whole or in part, because of his disability?

The Claimant relies on the First Respondent's admission in paragraph 53 in the RAGOR.

(c) Did the First and Second Respondents decide to dismiss the Claimant because of his disability?

The Claimant relies, amongst other things, on being dismissed within days after having informed the First Respondent of his disabilities worsening and of his intention to take a significant period of sick leave. Further, the First Respondent was well aware of the Claimant's disabilities prior to this date and of his worsening conditions as admitted by the First Respondent as reason to not provide and exclude him from work because of "what he had told him about his health", namely his disability (paragraph 53 of the RAGOR).

Discrimination arising in consequence of a disability

16. Further or in the alternative, if the Claimant was a disabled person at the material time:

(a) Was the Claimant not assigned work and excluded from work by LM and "*management*"?

(b) If yes, was this unfavourable treatment?

(c) If yes, was this, in whole or in part, because of something arising in consequence of his disability contrary to s. 15 EqA (see paragraphs 92 and 93 RAGOC)?

The Claimant relies on the consequences of his disability as set forth in paragraph 92 of the RAGOC and alleges that he was not assigned work and/or was excluded from work because of those consequences in that the First Respondent admitted that it made the decision to not provide and exclude him from work because of "what he had told him about his health", namely the consequences of his disabilities (paragraph 53 of the RAGOR).

(d) Did the First and Second Respondents decide to dismiss the Claimant because, in whole or in part, of something arising in consequence of his disability contrary to s. 15 EqA (see paragraph 94 and 95 of the RAGOC)?

It is agreed that dismissal is unfavourable treatment.

The Claimant relies on the consequences of his disability as set forth in paragraph 94 of the RAGOC and alleges that he was dismissed because of those consequences in that "the Respondents were fearful that the Claimant would be taking a significant period of sick leave because his mental and physical health had worsened to a point that he was unable to perform his work duties" (paragraph 95 of the RAGOC).

17. Were (a) and (d) above each a proportionate means of achieving a legitimate aim?

III. REMEDY ISSUES FOR LIABILITY HEARING[1]

Bad faith reduction

18. Were any, or all, of the Claimant's protected disclosures not made in good faith by him?

19. If so, should any compensation awarded to the Claimant in respect of his s.47B and/or s.103A ERA 1996 claim be decreased pursuant to s.49(6A) and/or s. 123(6A) ERA 1996 and if so, by what percentage (up to 25%)?

Polkey reduction

20. Is there a chance that the Claimant would have been dismissed by the Respondents in any event, either on the same date or sometime thereafter?

21. If so, should there be a reduction in any compensation awarded to the Claimant in accordance with *Polkey v AE Dayton Services Ltd* [1987] IRLR 503 and, if so, by what percentage (up to 100%)?

Contributory fault

22. Did the Claimant cause or contribute, to any extent, to his own dismissal?

23. If so, should any compensation awarded to him be reduced in accordance with s. 123(6) ERA 1996 or otherwise on a just and equitable basis and, if so, by what percentage (up to 100%)?

29 January 2025

[1] These are the issues on remedy to be determined during the liability hearing. This does not include the full issues on remedy, as set out in the pleadings, which would be determined if necessary at a separate remedy hearing.

Appendix C – List of documents

Claimant documents

i. Chronology
ii. Glossary
iii. Cast list
iv. Pre-reading: medical
v. Claimant opening
vi. 2nd witness statement of the claimant on cross-examination process
vii. Witness statement of [claimant's wife] on cross-examination process
viii. 2nd witness statement of Cathryn James on cross-examination process
ix. Claimant authorities bundle
x. Trial practice note
xi. Claimant's suggested reading list

Respondent documents

xii. Respondent opening
xiii. Skeleton argument on the claimant's evidence
xiv. Trial practice note
xv. Factual chronology
xvi. Procedural chronology
xvii. Cast list
xviii. Glossary
xix. Respondent's outline trial timetable
xx. Respondent's updated trial timetable as at day 5 (10.1.25)
xxi. Respondents' suggested reading list
xxii. Third witness statement of Robbie Sinclair, Partner of Allen Overy Shearman Sterling LLP dated 2 January 2025
xxiii. Respondents' authorities bundle
xxiv. New oral cross-examination questions not yet reviewed by intermediary
xxv. Respondents' skeleton argument on claimant's second application re completion of his evidence

Joint documents

xxvi. Final hearing bundle:

a. Vol 1-5: pleadings, orders, correspondence and evidence (4687 pages)
b. Vol 6: digital material on USB drive (23 items)
c. Vol 7: claimant's answers to written cross-examination questions (408 pages)
d. Vol 8: respondents' written cross-examination questions for claimant; not to be shown to the claimant
e. Vol 9: transcripts bundle (updated throughout the hearing)
f. Vol 10: respondents' additional documents bundle (190 pages)

xxvii. Agreed timetable (updated throughout hearing)

xxviii. Agreed reading lists (1) for completion of claimant's evidence (2) for liability trial

xxix. Witness statement bundle and index

xxx. Agreed re-amended list of issues dated 29.1.25

xxxi. Redline of agreed re-amended list of issues dated 29.1.25 against version dated 7.1.25

Further documents[2]

xxxii. Respondent letter 5 January 2025

xxxiii. Alex Bailey email 5 January 2025

xxxiv. Redlined version of claimant's chronology, cast list and glossary

xxxv. Respondent email 5 January 2025

xxxvi. Claimant email 8 January 2025

xxxvii. Claimant letter 8 January 2025

xxxviii. Claimant psychiatrist letter 7 January 2025

xxxix. Email correspondence chain between claimant's wife and claimant psychiatrist

xl. Two screenshots of text messages with claimant's medical team

[2] Due to the volume of additional documents provided to the tribunal any error in this list should be drawn to the tribunal's attention for correction. The hearing transcripts should also contain references to any documents provided to the tribunal.

xli. Chronology: claimant's application to reconsider order about claimant's evidence / Chronology: respondent's chronology of recent events
xlii. Additional respondents' authorities bundle
xliii. Third Witness statement of Cathryn James
xliv. Respondents' skeleton argument on disclosure of treating psychiatrist's instructions
xlv. Respondents' redlined versions of claimant treating psychiatrist's letters
xlvi. Claimant's further disclosure on historic draft letters to treating psychiatrist
xlvii. New page 1040A.1 – Talking Points for 25/1/22 meeting
xlviii. Email exchange from AOS to the tribunal regarding the respondent's letter to the Tribunal dated 5 January 2025
xlix. Employment Tribunal Procedure Rules 2024
l. Email exchange ending from George Symes to AOS regarding the written cross-examination process dated 5 January 2025
li. Email correspondence chain between claimant's wife and claimant psychiatrist including claimant's draft psychiatrist letter dated 7.1.25
lii. Al Sadeq v Dechert LLP High Court

Documents in closing

liii. Joint key authorities bundle
liv. Respondents' closing submissions (with appendix A)
lv. Respondents' detailed note on the evidence
lvi. Claimant's closing submissions
lvii. Respondents' closing bundle including updated Procedural Chronology, Factual Chronology, Updated Glossary
lviii. Updated agreed cast list

Appendix D – Written reasons for case management decisions

1. These are the tribunal's written reasons for rejecting the claimant's application by letter dated 27 December 2024 for the claimant's written cross-examination to be completed after the oral evidence of the other witnesses during the final hearing. The application was made because, in summary, the bulk of the claimant's cross-examination was previously intended to be through a written procedure, pursuant to previous tribunal orders, however, in the time allocated the claimant had only answered around 10% of the questions posed. The respondents invited the claimant's cross-examination to be conducted orally.

2. A summary of the tribunal's oral reasons for the decision is as follows. The tribunal was not strictly bound by any previous order about how the cross-examination of the claimant would be conducted because there was a material change of circumstances. This is because the claimant had only answered a very small percentage of the questions asked in writing. Also, the previous orders, strictly speaking, had in fact been followed because the original process was that there be written-cross examination followed by some oral cross-examination. We also found that there was no sufficient medical evidence to support the argument that the claimant should not have any oral cross-examination, oral cross-examination having been anticipated in all of the previous tribunal orders. We agreed that, with hindsight, the number of written questions was too many for the claimant to answer in the time available. Also, we accepted that, if the tribunal had been directing the questions on a question-by-question basis, then not every written question would have been permitted. However, it was impossible to assess exactly how many questions would have been permitted at this stage, in an ideal setting, or how long would be a reasonable period for the claimant to have to answer them. There was no clear evidence about how many questions the claimant could reasonably have been expected to answer in written or oral cross-examination. We found that, whilst the process was not, with hindsight, ideal for all concerned, we did not find that the evidence showed that the written cross-examination process did not complete because of the

respondents' fault. We also found that EJ Goodman, who had recently considered the preparations for written cross-examination, was aware of the general volume of questions to be asked, and it was clear that the number of questions increased significantly as a result of the respondents following the intermediary's recommendations. We did not criticise those recommendations. We did not find that the claimant's proposal to continue written cross-examination was practical and it was wholly contrary to the overriding objective. It would involve very considerable delay to a case that had already been postponed once; it would create practical difficulties with the possibility of the claimant's answers being with the knowledge of the respondents' witnesses' oral evidence (including transcripts of that evidence). We considered that this was particularly important because, for majority of the claims, the claimant had the initial burden of proof and things to prove. We did not consider the claimant's proposal to be fair to the respondents. We also found that for the claimant to have five weeks of additional written cross-examination time after the current listing would be disproportionate. We found that the only practical option which was fair to everyone and consistent with the overriding objective was for the claimant's oral cross-examination to be extended from the anticipated two days to a further time limited period, to be defined at a later date. It was premature to define the period at that stage (this was later determined, after hearing from the parties, to be four days). The oral cross-examination was to be conducted in accordance with the reasonable adjustments previously ordered by the tribunal and, taking into account, as necessary and fair, the intermediary's recommendations. The intermediary was to provide support to the claimant and tribunal as required, and the respondents were required to significantly shorten the cross-examination to only cover the evidentially important issues in dispute with a focus on the factual issues. The tribunal accordingly will take a generous approach to the extent to which the respondents were required to put their case and challenge the points in dispute. Also, the tribunal would monitor the claimant's ability to fairly give oral evidence. We took into account the fact that the respondents' proposed questions, almost entirely, had already been considered by the intermediary, and we encouraged the respondents to further considerably

reduce the number of questions. We decided that this decision was entirely consistent with the medical evidence and previous orders in light of the circumstances. The tribunal reminded itself to be flexible to any change of circumstances, taking into account the Presidential Guidance: Vulnerable parties and witnesses in Employment Tribunal proceedings ('the Presidential Guidance, incorrectly referred to as a practice direction in the oral reasons), the relevant caselaw, and the Equal Treatment Bench Book ('ETBB').

3. More detailed reasons are set out below.

4. Key parts of the procedural background to the issue are set out below.

30/6/23	Claimant application, including for adjustments and an intermediary. The application was predicated on the claimant's mental and physical health problems including Cyclical Vomiting Syndrome, unspecified non-organic psychosis, severe anxiety disorder and panic attacks, severe depression disorder, insomnia, new daily persistent headaches (migraine type), and '*pre-diagnosed with PTSD'*.
	One of the claimant's treating psychiatrists ('the Treating psychiatrist') provided a letter dated 16 June 2023 in which it stated '*I believe that this gentleman will require reasonable adjustments in order to be able to effectively participate in proceedings and give his best evidence. I have had sight of the list of reasonable adjustments prepared by his solicitors and I agree that this list of adjustments is necessary, taking into account both the metal and physical health conditions currently affecting* [the claimant]*. The adjustments proposed meet his clinical needs and the list will be shared by his*

solicitors. Without these reasonable adjustments the participation of this gentleman in the proceedings and the quality of his evidence is likely to be diminished by reason of mental illness and vulnerability, and it would further expose him to unnecessary stressors and put him at high risk of further deterioration in his mental state, interfering with the possibility of him recovering from his current, severe episode of psychosis.'

The list of reasonable adjustments referred to is at p.2990 of the bundle. These included limited sitting days, breaks, and:

'1. Cross examination questions and answers provided in writing.

Should oral evidence be required in any format: […]'

It then listed various adjustments such as having a pen and paper, breaks, signposting, minimal references to trauma, and time to read and review documents.

25/9/23 EJ Smart ordered an intermediary be appointed (by consent).

13/11/23 First intermediary report.[3]

12/12/23 Second intermediary report.

17/1/24 First Ground Rules Hearing (EJ Nicholle).

[3] Several intermediaries were appointed during the course of proceedings. Nothing turns on this.

29/1/24	EJ Nicholle orders made, including postponing the final hearing, originally listed on 17 June – 4 July, on the claimant's application on grounds that the claimant's mental health disabilities made it more difficult to prepare for trial. The orders also included at [33] – [40] that the claimant would be provided with questions for cross-examination in writing and the claimant would answer in writing. The proposed list of questions was to be provided to the intermediary, those questions to be amended by the intermediary with changes, and a further ground rules hearing to include reviewing and approving the questions in advance. In summary, the claimant was to complete the written answers in prescribed circumstances to maintain the integrity of the process. Paragraph [45] of those orders included that '*It is agreed that the Claimant's evidence shall be given at the beginning of a day and if necessary continue into a second day rather than being heard with the 1st Respondent's witnesses interposed'*. It was inherent in this that up to two-day's oral cross-examination of the claimant was ordered. These orders were subject to later variations, including on 4 April 2024 changing various deadlines.
5/6/24	Re-Amended Grounds of Claim finalised.
19/6/24	Re-Amended Grounds of Resistance finalised.
13/8/24	Amended orders of EJ Nicolle included at [58] that the written cross-examination arrangements '*should not preclude cross-examination of the Claimant with any further clarification oral questions at the final hearing, providing these seek to adhere to the prescribed adjustments suggested by the intermediary an ordered*

by the Tribunal' (p.3757). Paragraph [49] of those orders also provided for a ground rules hearing on day one of the final hearing for any oral cross-examination.

20/9/24 — Respondents submitted draft written cross-examination questions to the intermediary company. There were originally 1,129 draft questions over 127 pages (third witness statement of Robin Sinclair at [13]).

Subsequent to this there were delays in the process arising from a change in intermediary, and the administrative arrangements with the intermediary company and ensuring that all of the questions were forwarded to the new intermediary for review.

29/10/24 — A new intermediary provides comments on three of the four parts of draft questions on the mistaken assumption that the questions would be asked orally.

13/11/24 — Intermediary provides revised versions of parts 1, 2, and 4 of the draft cross-examination questions to reflect cross-examination in writing.

14, 15/11/24 — Second Ground Rules Hearing (EJ Goodman). Part of this was closed to the claimant and representatives to discuss the intermediary's comments on the draft written-cross examination questions.

15/11/24 — EJ Goodman's rejected a previous application by the respondents for an independent medical expert report about the claimant's health.

Previous case management orders were varied on account of previous delays. Importantly, the requirement for judicial approval of the written cross-examination questions was dispensed with (paragraph 2, p3798).

The intermediary provided the respondents with final amendments and recommendations to the draft questions.

29/11/24 Written cross-examination process starts, with the claimant being supervised by invigilating counsel. Some time was unavailable to be used due to the claimant's health.

18/12/24 Written cross-examination process ends.

Respondents write stating that the claimant had only answered 10% of the questions and suggesting that the remaining questions be answered orally during the final hearing.

27/12/24 The claimant writes in response. This included allegations that the conduct of the respondents was to undermine the reasonable adjustments previously ordered, including by giving the claimant an excessive number of questions. It is proposed that as soon as possible after the end of January the claimant undertaken 20 days over five weeks of written cross-examination, with the tribunal having reviewed the remaining questions.

Both parties have agreed in correspondence that the final hearing should not be postponed.

5. We fully took into account and applied the ETBB, the Presidential Guidance, and the applicable caselaw, including that set out in the orders of EJ Nicholle dated 29 January 2024, on the issue of reasonable adjustments. We were cognisant of the fact that any reasonable adjustments should be supported by evidence and provide for a fair hearing to all concerned. The tribunal recognised that these decisions are highly fact-specific. Each case should be judged according to the needs of the individual.

6. We also fully took into account the medical evidence relied on by the claimant, in particular the letters from his treating psychiatrist.

7. Witness evidence about the written cross-examination process and applications was filed by both sides. Oral evidence was not requested by either party and was not, in any event, necessary in the judgment of the tribunal. It would have been disproportionate to conduct a 'mini-trial' about the process so far.

8. The claimant made oral submissions. These included relying on the orders of EJ Nicolle dated 29 January 2024 which were made following a review of the medical evidence and the law in this area. It was submitted that there had been no change of circumstances (which the tribunal took as a reference to Serco v Wells UKEAT/0330/15/RN) and the need for written cross-examination remained. It was submitted that the number of questions had reached 3,000 which was excessive, and the questions that had been answered were on issues which were not in dispute. It was submitted that the respondent had not been mindful of the claimant's disabilities and the ETBB. The claimant also relied on R v Lubemba [2014] EWCA 2064 at [45] that advocates must adapt to the witness and not the other way around. We fully took into account all of the authorities relied on by the parties and there is no need to repeat them all in these reasons.

9. There was some confusion between the parties about whether or not EJ Goodman was aware of the number of questions. This may have arisen in part due to things said verbally which were not fully reflected in a written order. In any event, the claimant's team formed the impression that there would be 300, as opposed to closer to 3000, written questions. It was also submitted that this (3,000) was too many questions to be reasonably answered.

10. It was also submitted that the ETBB clearly established that written answers of cross-examination can be an appropriate reasonable adjustment, and that the questions should have been more focussed. The claimant focussed on some of the written questions, suggesting that they were irrelevant, such as whether or not there was a particular workplace policy at the respondent. The claimant submitted that there would be no unfairness if the claimant continued with written cross-examination after the respondents' witnesses had given their evidence because witnesses are regularly interposed for practical reasons and there was unlikely to be any surprises in their evidence. Also, it was submitted that the possibility of recalling a witness was low.

11. There was no real dispute, however, that the factual reason why the number of written questions increased dramatically was as a result of the intermediaries recommendations. This arose primarily because questions needed to be broken down into smaller questions, but this could easily lead to one question becoming ten. Although the claimant disputed that this was appropriate, ultimately this was the outcome of the intermediary's input, and the requirement for judicial approval of the questions had been removed by previous order.

12. Article 6 of the European Convention on Human Rights includes a fair determination of civil rights and obligations within a reasonable time. Fairness includes fairness to both parties: O'Cathail v Transport for London [2013] ICR 614. Cross-examination is important to overall fairness: Jones v National Coal Board [1957] 2 WLR 760 at [768]; also Le Brocq v Liverpool

Crown Court [2019] 4 WLR 108 (at [62]). It is not an error of law for the tribunal to take into account, as one factor, potential unfairness from hearing witnesses in a reversal of the usual running order: Kaler v Insights Esc Ltd [2024] EAT 195 at [36-37].

13. The Presidential Guidance: Vulnerable parties and witnesses in Employment Tribunal proceedings includes:

[13] 'In any relevant case, and where and as appropriate, the tribunal and the parties should consider the vulnerability of a party or witness as part of the tribunal's case management powers.

[14] When deciding whether to make appropriate directions or orders to facilitate participation in Employment Tribunal proceedings regard may be had in particular to: …. - whether the party or witness has or may have a mental disability or other mental health condition … whether the party or witness has or may have a physical disability or other physical health condition … the nature and extent of the information before the tribunal (including any medical or other evidence) … the issues arising in the proceedings … whether any measure is available to the tribunal … the costs of any available measure … the views of the vulnerable party or witness…any other relevant matter.'

[…]

[34] '*A refusal to make a particular adjustment for a vulnerable person to ensure their effective participation in proceedings and the giving of best evidence should be a reasoned one. However, these obligations are not without limited. The right to a fair hearing also applies to both parties'.*

14. We fully took into account the claimant's views when making our decision.

15. The ETBB adjustments for mental disability include the room layout (paragraph [43]), the order of evidence ([45]), powers to prevent inappropriate questioning ([47]), going part-heard ([52]), and adjustments to cross-examination ([62]).

16. There is no need to repeat the respondents' detailed written and oral submissions. They were fully taken into account. In summary, they resisted the claimant's proposal on the grounds that it was contrary to the overriding objective and would incur disproportionate costs and delay, as well as being unfair.

17. We accept the evidence of Mr Robert Sinclair, solicitor for the respondents, in his third statement, about the effect that a postponement would have on the respondents in terms of prejudice. This is because there is no good reason to doubt this evidence. In particular, the dismissing officer and second respondent is a US citizen who lives in the USA. His travel and accommodation requirements for the final hearing in January 2025 were already in place. The hearing has very significant consequences for him as named individual respondent to a very high value claim. The second respondent is also retired and had a reasonable expectation that the claim he is a respondent to would be resolved within a reasonable timeframe. Another important witness for the respondent, a former Chair of the Board, had also retired from that position. We also accept that the proceedings had put considerable strain on the claimant's previous line manager who had taken a significant period of time off from work for mental health reasons during the relevant time. He has also retired from his position at the respondent. A further important witness, the claimant's line manager's manager, is regulated by the Financial Conduct Authority ('FCA') which will necessarily need to be updated with the outcome of the claim. In addition, the principal investigator witness to the claims (and a solicitor), whose evidence is central to the claimant's allegations, is unavailable between March 2025 and March 2026 due to professional commitments with other litigation faced by the respondent. This litigation, listed for 12 months in the Commercial Court, will also involve a very significant amount of the

respondent's in-house legal team. Whilst we acknowledge that an external firm of solicitors are instructed in this claim, the need to liaise with an in-house team of solicitors (particularly for ongoing matters of disclosure) means that this is not a complete answer to the prejudice that delay would cause to the respondents.

18. We also accept that the claimant's proposal would have entailed very significant, and disproportionate costs to the respondents. It is right to note that the claimant offered to pay the costs of invigilating counsel if this was determinative of the application. However, the need for further cross-examination in writing would necessarily involve the facilitation costs of the respondents solicitors. Also, a significant amount of hearing time costs would be involved in the tribunal reviewing the outstanding questions and hearing from the respondents' counsel on that issue. Also, for the final hearing process to be ultimately extended by a number of weeks would necessarily involve a significant amount of additional counsel and solicitor costs.

19. We also agree with the respondents that even if the claimant had a further five weeks to answer questions in writing, there was no guarantee or certainty as to whether he would complete the process, given the scope of the questions and the ability in a written cross-examination process to provide lengthy and detailed answers which cross-refer to all of the available evidence. This would subject the final hearing process to a high degree of risk in terms of delay.

20. On the issue of 'fault' for the situation the tribunal was faced with on day one of the hearing, we considered that this was relevant but not determinative. If the claimant had succeeded in establishing that the situation was the fault of the respondents or their representative then this would have been a factor in his favour, although the overriding objective and fairness to the parties would remain the paramount factors to take into consideration. We do not make this finding in any event. Such a finding is not supported by sufficient evidence. It is neither necessary nor

proportionate to analyse every detail as to what happened with the written cross-examination procedure. However, overall, we consider that the principal reason why the procedure did not result in the majority of the questions being answered was the volume of questions. This does not establish fault on the part of the respondents, however.

21. Having considered the questions themselves, the tribunal repeats its finding above, namely that, if the tribunal had undertaken a line-by-line examination of the questions, not every question would have been permitted on grounds of relevance. However, it would be highly impractical to undertake that analysis retrospectively, and we are conscious that questions which might (on their face) not appear relevant may in fact be relevant after we had heard from the respondents as to why they had been included. We also do not consider that we are in a position to find that the majority of the questions were irrelevant or that the respondents had clearly gone overboard. Moreover, the reason for the number of questions dramatically increasing, having looked at some of the original questions and intermediaries recommendations as reflected in the new questions, was the requirement to break down a question into several different questions. Also, the fact that the questions were being answered in written format, at the request of the claimant, meant that the respondents were not in a position to tailor subsequent questions to a previous answer. This meant that, in order to be comprehensive, more questions had to be asked then would have been necessary in oral cross-examination. This was also a contributing factor to the volume of questions and one which was inevitable with the process the claimant had requested (and tribunal granted).

22. We also took into account the claimant's answers as already provided. These included some very detailed answers to questions which could have been answered with a simple yes or no. Also, there is evidence of the claimant going back to earlier answers on later days and providing slightly different answers, with more detail and an explanation why. This is not necessarily a criticism. Some of the medical evidence in support of written cross-examination suggested that this may be necessary for fairness so that

the claimant's answers genuinely reflected his position. However, the result of this is that the written cross-examination process, at least in part, had become more of a written examination in which the claimant extensively cross-referenced his witness statement and the evidence bundle. This meant that his answers were sometimes significantly longer than would have ever been anticipated, or necessarily permitted, in oral cross-examination. As a result of the claimant simply being left to answer the questions at his own pace the tribunal had no control over the length of time spent on each question as would have been the case in oral answers. The possibility that this might happen was not anticipated by the tribunal or parties in making its earlier orders.

23. It is also the case that there was no cogent evidence about the number of questions that the claimant could reasonably be expected to answer. Although this is something the tribunal is experienced in managing for oral cross-examination, and accordingly limits the questions and detail of the answers to what is proportionate to the issues and necessary for a fair determination of the claims, there was no obvious evidence that the written questions would be too many. We also stress that whilst around 3000 questions may sound like a significant amount, many of these questions were simple and only warranted a yes/no answer. In the absence of evidence about how many written questions would be a reasonable amount we do not criticise the respondents, the intermediary, or the tribunal for the amount of questions asked. We consider that the volume of questions to be something that was only evidenced to be a problem with the benefit of hindsight.

24. Ultimately, we are satisfied that EJ Goodman was aware of the general volume of questions to be asked prior to any expansion as a result of intermediary recommendations as this is clear from her orders and the evidence of Mr Sinclair (at paragraph [23]). Although there appeared to be some confusion about the exact number referred to during the hearing before EJ Goodman (see Mr Sinclair at [57]), the relevant point for this application's purposes is that the number of questions ultimately increased

following the intermediary's recommendations, and the requirement for judicial approval was dispensed with. In that scenario, and in any event, the respondents cannot be sensibly blamed for the volume of questions when the tribunal placed no limits on them and did not raise the issue of volume at that stage. The later expansion of the questions was following the intermediary's recommendations which the respondents were, ultimately, bound to do. Also, we agree with the respondents' submission that during the 14 and 15 November 2024 before EJ Goodman the questions had already been fully reviewed by an intermediary and therefore the respondents were entitled to understand that their questions (including the total number of questions being asked) were appropriate and reasonable, the need for judicial approval having been dispensed with.

25. We should also record that the respondents had concerns before the final hearing about the claimant's health, including his capacity and fitness to engage to conduct written and oral cross-examination (p4275). This was part of the respondents' application for an independent medical examination of the claimant dated 13 November 2024 (p.4276) which arose from a series of comments from the claimant's solicitors including suggesting that there had been '*a serious deterioration in his mental and physical health'* (p.4234). This application was rejected by the tribunal. However, it would then be unfair to the respondents to criticise them for the process which followed when they were actively trying to confirm with medical evidence that the claimant was fit to complete what was proposed.

26. Whilst a number of procedural issues are raised on behalf of the claimant as to the conduct of the written-process, we consider that the evidence of Mr Sinclair is provides sufficient answer to these issues. In general, we prefer his evidence because Ms James' evidence, as the claimant's solicitor, has relied on what she has been told as opposed to having a closer connection with the process, even taking into account [the claimant]'s own statement about the process, which is more focussed on his experience and how he felt. Ultimately, we do not consider that the evidence establishes any material fault about the process which rendered it unfair. We consider

that the use of signposting and types of questions used were in fact consistent with the intermediaries recommendations and best practice in this area, in particular taking into account the Advocates' Gateway materials. We consider that the criticisms of the questions made by the claimant are made from an incomplete perspective, including the intermediaries recommendations. We make no criticism of the fact that a helpful reference instruction document was not provided to the claimant's solicitors: this was not ordered and the process did not require their involvement. We also see no proper basis for the other criticism levied by the claimant's solicitor, including the interactions of invigilating counsel.

27. It is also right to record that the claimant was unable to complete questions for two days because of illness. This is not the fault of the respondents and they did seek to make the process available for two extra days, albeit these could not be used by the claimant in the circumstances.

28. There was no practical opportunity for the claimant to complete written cross-examination during the final hearing listing without the hearing being adjourned part-heard for a significant period of time for respondents' witnesses evidence to be heard or completed. Although there were four weeks of hearing time, a substantial amount of the first week was taken up with this application. Also, it was only envisioned (as a reasonable adjustment for the claimant) that he would take part in proceedings during the afternoons on Tuesday - Friday. Also, if written cross-examination was to continue, the tribunal would, in all the circumstances, have wanted to complete an extensive review of the questions asked. However, this would have necessarily reduced the time available in the original listing for any written cross-examination to take place. Taking the tribunal panel's availability into account, it was exceptionally unlikely that it could reconvene before September 2025 for the length of time required to complete the evidence of the respondents' witnesses and submissions (around three weeks). This also did not take into account what was a reasonable need to accommodate counsel's availability given the significant cost that briefing a new or varied counsel team would have involved for the respondents.

Although counsel's availability is rarely determinative of listing matters, we considered that it was reasonable for the same counsel team to remain instructed given their extensive involvement so far (including the consistency of leading counsel attendance at the pervious hearings). The respondents' counsel team were unavailable for a very significant part of 2025 which precluded the practicability of a new tribunal panel being convened at an earlier date. Also, the tribunal itself could not accommodate a new listing of a 3-4 week case in 2025 without putting other listed hearings in jeopardy, and it is necessary (to a degree) as part of the overriding objective to take the needs of other tribunal users into account when listing hearings.

29. It is right to record that cost the very extensive process of written cross-examination, with invigilating counsel, was met by the respondent.

30. We also do not consider ourselves bound by the orders of EJ Nicholle and EJ Goodman to continue the claimant's cross-examination in writing on the basis of Serco v Wells. Firstly, there has been a material change of circumstances: we were making our decision at the time of the final hearing after the written cross-examination procedure had been attempted without material success or completion. Those orders did not expressly limit what the tribunal could do in that scenario. Rather, those orders were made on the assumption that the majority of the questions would be completed in the time available before the final hearing. Secondly, we were also of the view that there the respondents' proposal that the claimant continue his cross-examination orally was not, in fact, inconsistent with those orders. The previous tribunal orders were made with the express provision that there would be at least some oral cross-examination during the final hearing, for example at paragraph 45 of the Orders of EJ Nicholle dated 29 January 2024, and it is implicit in this order that the claimant's evidence could last for two days. Paragraph 58 of EJ Nicholle's orders dated 13 August 2024 expressly provided for oral cross-examination of the claimant at the final hearing. Also, the medical evidence in support of written cross-examination also expressly provided for the adjustments that should be in place in the

event that oral cross-examination took place, namely the evidence of Dr Villa dated 16 June 2023 above.

31. Having considered the claimant's medical evidence in some detail, we were not persuaded that there was medical evidence to support the argument that the claimant should not have any oral cross-examination at all. Rather, we considered that the evidence of the difficulties the claimant may have with oral cross-examination could be best met with the very extensive reasonable adjustments that the Tribunal could (and did) put in place. It is right that Dr Villa's evidence dated 31 October 2024 included the likelihood of additional distress to the claimant from answering questions on the spot. However, this evidence does not show establish he cannot have some oral cross-examination (as reflected in the tribunal's previous orders on the claimant's evidence).

32. We also found that the claimant's proposal would be wholly contrary to the overriding objective.

33. In particular, we considered that it would not put the parties on an equal footing. Rather, we agreed with the respondents that, by allowing the claimant to give his oral evidence in writing after the entirety of the respondents' evidence, this would be unfair to them. The claimant would be given a benefit not normally available to any claimant to focus and refine his evidence knowing what had already been said at the tribunal. The respondent would have no way of addressing what was said by the claimant without needing to apply to recall witnesses, which might not be granted by the tribunal, and would necessarily involve a significant amount of additional tribunal hearing time. This would incur additional costs and have a human impact in terms of travel time and pressure on the respondent witnesses (in particular, the second respondent who had travelled from the USA). We considered that it was only fair for the claimant's evidence to be heard first because he carried the burden of proof on the majority of the claims. Also, the claimant would have had the benefit of being able to study the hearing transcripts before completing his evidence and, potentially, be able to refer

to them in his evidence. We did not consider the possibility of needing to recall witnesses to be remote because the claimant had already demonstrated in his existing written answers that he would seek to revisit previously given answers in order to make corrections and add detail. There was every possibility that the claimant would say something new in his written cross-examination and also seek to refer to the respondents' witnesses' evidence also. The claimant's proposal was not one that had previously been endorsed by the tribunal.

34. We considered that the claimant's proposal, namely to spend five further weeks on written cross-examination after the current final hearing listing, and then have a further period of oral cross-examination, followed by closing submissions, was disproportionate. Whilst we accepted that the claim had a reasonable degree of complexity and was high value, the amount of tribunal time given to any one claim must be proportionate and fair in all of the circumstances. In addition to a five-week process, there would need to be a bare minimum of two days oral cross-examination for clarification in a future hearing (which could easily be an underestimate) plus any recalled witnesses. There would also need to be time for submissions and deliberation. We considered that the likely minimum additional tribunal time would be between 6-8 days. However, this would need to take place over at least two weeks given the claimant's need to only sit on a reduced timetable. We did not consider that the extra 6-8 weeks (including written cross-examination) was proportionate in all the circumstances. Also, this assumed that the written cross-examination would be successful second time around in the claimant answering all of the questions asked. We did not consider that the evidence on the first attempt was such that we could be sure that this would happen, which would necessitate further hearings to address any problems. There was also the very real risk of a deterioration in the claimant's health which would result in further delay, with some time being lost during the original process due to the claimant's health.

35. We also considered that the claimant's proposal would cause unconscionable delay to the final resolution of the claims. The claims were about events from 2021 – 2022. Although the focus of the claims was between December 2021 and August 2022, there were elements of the claims that were about the leadup to December 2021, including the background to the restructure and the focus of the claimant's job and performance around that time. The final hearing had already been postponed once on the application of the claimant (the previous trial listing being mid-2024). For the claims to continue with a significant period of written cross-examination after January, and then reconvene on a date unknown but highly unlikely to be before September 2025, we considered that the delay would be too great. This would be the case for the many claims before the Employment Tribunals. However, we accepted the evidence of Mr Sinclair that further delay would put undue pressure on the second respondent, in particular, who was individually named by the claimant, and also the respondent witnesses who were in retirement and understandably sought an end to what had demonstrably been a stressful time for all concerned (including the claimant). Given the inherent difficulties in the claimant's proposal we considered that there was also a sense in which the proceedings would become open-ended if the proposal was accepted.

36. Any extension to the proceedings would also result in the respondents facing significant additional legal costs, both in terms of solicitors and counsel, and also internal costs given the pressure of the case on their in-house legal team. We considered the use of external solicitors and leading and junior to be appropriate and proportionate to the complexity and value of the claims made, but this necessarily carried more significant additional costs should the claim not be resolved within the allocated listing.

37. We also considered that the claimant's proposal would be contrary to the overriding objective in terms of the indirect impact on other tribunal users. To the extent that the tribunal's resources were focussed on this claim,

further hearings in the future would reduce the resources available to other claims.

38. On the other hand, the respondents' proposal was entirely consistent with the overriding objective. It would enable the claim to be heard within the allocated trial listing. It would involve no additional delay or material costs. It was consistent with the medical evidence which did not preclude oral cross-examination. It was consistent with the tribunal's orders that included oral cross-examination for two days (without necessarily limiting it). Although the respondents originally requested up to six days, this did not bind the tribunal. Also, the respondents' proposed questions, almost entirely, had already been considered by the intermediary and there was further opportunity (and encouragement from the tribunal) for the volume to be considerably reduced. The respondents' proposal was, therefore the only practical option which was fair to all parties.

39. In light of the lack of clear and cogent medical evidence about how long the claimant should have for oral cross-examination, we decided that it was premature to determine at that stage exactly how long it should last. This is because much would turn on the presentation of the claimant during the process, and we considered that an arbitrary and premature decision on this could be unfair. However, it should be recorded that the tribunal later determined that four days (on a significantly reduced timetable) would be sufficient in order for the respondents to fairly test the claimant's evidence and for the claimant to respond, taking into account his additional needs as a result of his health.

40. It was also the case that the claimant was, in one sense, part way through his evidence, having started written cross-examination before the final hearing, but not completing it. We did not have a clear indication from the claimant's representatives about how this might practical issue could have been resolved, given the likely need for them to take instructions from the claimant on the respondents' witnesses' evidence as they were being cross-examined. We did not consider this to be in any way a determinative factor

against the proposal, but it was something else that would have needed to be addressed if the claimant's proposal had been granted.

41. We record for completeness that if the claimant's application had been granted then the respondents would have pursued a strike out application. It was not necessary for us to determine that application because of the decisions we made.

42. Neither party had suggested postponing the final hearing. However, such a postponement would have been refused for the same reasons as rejecting the claimant's proposal: it would have been entirely contrary to the overriding objective and include disproportionate delay and costs in all of the circumstances.

43. We were satisfied that that our decision gave the claimant a reasonable opportunity to present his case in all the circumstances. However, we were conscious of the need to monitor the claimant's ability to fairly give oral evidence as matters continued.

Further matters

44. It is right to record that, subsequent to the tribunal's oral judgment on the above issue on day 1 of the hearing, the claimant collapsed just outside of the tribunal room. He was assisted by his wife and returned home. No ambulance was requested or required.

45. A formal application was made by his solicitors to re-open the decision above attaching new medical evidence from Dr Villa dated 7 January 2025. It was asserted that requiring the claimant to complete the bulk of his cross-examination orally would cause *'a high risk of further deterioration'* to his health and this amounted to a threat to his life contrary to article 2 ECHR.

46. However, according to the claimant's representatives on both day 3 and day 4, it was said that the claimant was in fact fit for oral cross-examination and was able to do so.

47. The claimant's application was in writing dated 8 January 2025.

48. The letter from Dr Villa dated 7 January 2025 was expressly provided as an addendum to her earlier letters and stated to be read in conjunction with them. It included that *'I have today … been informed that changes have been made to the already agreed reasonable adjustments and I am aware that* [the claimant] *experienced a severe panic attack and collapsed at court today….I understand that his ex-employer has put approximately 3,000 written questions to him. I also understand that* [the claimant] *was only able to answer the first 287 questions at a pace of about one question every 5 minutes. I consider that this pace of answering questions is consistent with* [the claimant]*'s medical condition. I understand that* [the claimant] *is now being asked to answer the bulk of the questions orally in court over a period of 5 to 7 days. This is destabilising and compounding the anxiety and trauma response that is already experienced by* [the claimant] *on a daily basis. I believe that requesting him to answer questions orally will be of detriment to* [the claimant]'s *mental health. It is likely to cause the participation of this gentleman in the proceedings and the quality of his evidence to be significantly reduced. It will also put him at high risk of further deterioration in his mental state, interfering with the possibility of him recovering from his current, severe episode of psychosis….I would be most grateful if in the interest of this patient's health this gentleman could be spared the stressor of answering the bulk of his questions orally and if he could be allowed to finish answering questions in writing as such arrangement will meets [sic] his clinical needs. This letter has been written at the request of the patient and with their consent. It is to be read in conjunction with previous correspondence'. Dictated and checked electronically…*

49. Dr Villa is one of the claimant's treating psychiatrists but this letter was not because of a specific further assessment (or reassessment) of the claimant.

50. We fully took into account all of the authorities provided to us and it is not proportionate to repeat them here.

51. The claimant relied on, in particular, LQP v City of York Council [2022] EAT 196 at [30] in which it was held that a failure to take into account new medical evidence when considering an application previously refused could be an error of law. The application also referred to the Presidential Guidance, above, and the need for adjustments to be kept under review, and the need to have regard to the ETBB, and the fact that an adjustment can be of such fundamental importance that, without, there may not be a fair hearing: Buckle v Ashford and St Peter's Hospital NHS Trust UKEAT/0054/20/DA at [22-23].

52. There followed further case management orders of specific disclosure of the communications which gave rise to the Dr Villa letter above, and other medical evidence from Dr Villa. This is because it was explained by the claimant's counsel that the 7 January 2025 letter in fact had been originally drafted by the claimant's wife, albeit with subsequent amendments by Dr Villa. The tribunal also determined, after hearing argument from both sides, that these communications were not subject to litigation privilege.

53. It is important to record that in relation to the Dr Villa letter, when making original enquiries, the tribunal expressly stated that it was not straying into matters that were privileged and gave the claimant's counsel an opportunity to decline to answer questions. The tribunal asked about the 7 January 2025 letter because the hearing on the previous day had ended at around 15:00, but the claimant had left around 14:00. The claimant's counsel explained that after the collapse the claimant's wife had contacted his medical team and spoke about what had occurred, she 'caught them up to speed'. This was without direct input from the claimant's legal team.

54. It does not appear that there is any request for written reasons from the parties on the issue of litigation privilege and subsequent disclosure. Given

the already lengthy written reasons required to deal with the substantive claims, and oral reasons having been provided during the hearing, these will not be detailed here. However, should either party require written reasons on the issue of litigation privilege and disclosure of the Dr Villa communications, they may be requested within 14 days of the date these reasons were sent to the parties.

55. The claimant's counsel then made further oral submissions on the application to re-open the tribunal's earlier decision about the claimant's evidence. The claimant relied on the Presidential Guidance that ground rules should be kept under view, and applying the overriding objective and rule 30, the tribunal should review the 7 January 2025 letter because in the tribunal's oral reasons in declining to adopt the claimant's proposal it had been stated that there was no sufficient medical evidence. As to why the Dr Villa evidence had not been produced before the tribunal made a decision about the claimant's oral evidence, the tribunal pointed out that there was no application at the start of the hearing for more time to address the issue, and the claimant's counsel accepted that no application had been made. The claimant's counsel stated that the claimant's position was that the evidence in the earlier letters from Dr Villa was sufficient to support his application. Claimant's counsel clarified that the purpose of the evidence was to address the tribunal's finding that there was no sufficient medical evidence regarding oral cross-examination and no clear evidence regarding 'any' oral examination and no clear medical evidence concerning the volume of questions. It was on that basis that the tribunal was asked to review its earlier decision. Also, taking into account the claimant's right to a fair trial and article 2 ECHR rights, the tribunal was asked to vary its order so that the bulk of cross-examination was in writing, and not done orally. It was submitted that there was still time for a determination within a reasonable period, it still being less than two years since the claim was filed. It was also submitted that the claimant's medical team was unavailable to provide the evidence over the Christmas break. The claimant's counsel outlined in more detail the chronology of 7 January 2025 that led to the Dr Villa letter being drafted, including the claimant's wife sending a draft letter.

It transpired from later disclosure that the draft letter was sent to the doctor at 16:22 in which the covering email included as instructions to the doctor that '*he is being asked to start giving evidence orally tomorrow and he is in no state to do that. There was a process in place for him to answer questions in writing, calmly in a room with a legal representative. It was working, but it has now been derailed by his ex-employer giving him 3,000 questions to answer (he managed to answer about 300 questions in the time that he had). As you are aware, they are doing everything they can time after time to derail his reasonable adjustments. Unless a medical support letter is provided he will be required to answer bulk of the questions orally instead...'*

56. The tribunal notes two important inaccuracies in the letter of instructions. Firstly, that the original questions in writing process was 'working'. Secondly, it either express, or at least strongly implied, in these instructions that the oral cross-examination will consist of 3,000 questions.

57. Dr Villa stated by email at 17:10 that she would look at the draft but not until later that evening. At 21:26 Dr Villa stated she was '*just looking at it now'* by email, and the letter was sent at 21:42. It follows that the letter was completed in just over five hours since the original request. This undermines the suggestion that there was insufficient time to get the letter before the tribunal made its original decision about the claimant's evidence.

58. Importantly, the letter was also not drafted after any particular assessment of the claimant and it relied entirely on the claimant's wife's account of the proceedings. It specifically does not give an express and informed opinion on the claimant's ability to have oral cross-examination with full knowledge of the reasonable adjustments in place, the role of the intermediary, and the style of cross-examination which would be utilised by the respondents' counsel.

59. The claimant's counsel, when asked if the letter was evidence that the claimant was unfit for any cross-examination (which may have consequences for the rest of the hearing), stated that the evidence showed that Dr Villa's concern was about whether the claimant was going to have five to seven days of oral cross-examination. When asked how the evidence changed the tribunal's conclusions about unfairness to the respondent, the claimant submitted that it demonstrated that his specific needs put him at a significant disadvantage, compared to cross-examination in writing. She confirmed that the claimant was prepared to begin cross-examination.

60. The respondents made oral and written submissions on this issue. We fully took them, and all authorities referred to, into account. The respondents' submissions included that the claimant only wanted to have cross-examination on his own terms and this was not a basis for the tribunal to change its decision. It was submitted that the claimant had made submissions based on article 2 ECHR without a proper basis. The tribunal's previous decision was in accordance with article 6 ECHR, and that seeking to achieve 'best' evidence was not the same as 'perfect' evidence. The adjustments had already been made on the basis of medical evidence which might not be as reliable as previous judge's had thought, and there had been no material change since the tribunal's original decision. The submissions continued to include a clear statement of the proposed style of cross-examination. Also, if the hearing were to be postponed, then the next available date for leading counsel was 14 September 2026.

61. The claimant's application was refused. We did undertake a review of our decision on the basis of the new medical evidence. However, this was not sufficient for us to change our original decision.

62. Importantly, we did not find that there had been any material change of circumstances since our original decision. This is because we gave the evidence of Dr Villa little weight. This is because it was not predicated on the full picture having been presented to her, in part due to the way in which her evidence had been commissioned by the claimant's wife completing the

initial draft as opposed to clear (and accurate) instructions, which would normally be provided by a represented party's solicitor in this type of situation. In particular, Dr Villa's letter was predicated on the oral cross-examination lasting for 5 - 7 days, which was not something the tribunal had suggested. Also, the medical evidence was insufficient to show that the claimant was unfit for cross-examination. Also, it did not fully take into account or reflect the significantly varied type of questioning that the claimant would face given the application of the Advocate's Gateway principles. Dr Villa's evidence, on its face, did not fully address the fact that the amount of questions would be significantly reduced from the proposed original written questions.

63. During the submissions on day one the claimant's representative did not suggest that he could not undertake any oral cross-examination, accepting one-two days as appropriate. The claimant's application letter dated 8 January 2025 also included that the claimant was prepared to start oral evidence on that day, if that was what was ordered.

64. Further, we did not consider that the claimant's submission or new evidence addressed the fundamental problems with continuing the written cross-examination after the respondents' evidence. It did not address the unfairness to the respondents in terms of reversing the order. Neither was it strong enough evidence to displace that unfairness. It did not address the prejudice that would arise from the cost or delay that the claimant's proposals would entail. It did not address the fact that the claimant's proposal remained wholly contrary to the overriding objective.

65. The claimant's proposal was also in the context of the claimant having previously resisted independent assessment of the claimant's medical health, including his fitness for trial (and therefore including oral cross-examination).

66. We also consider that there was no sufficiently good reason for the Dr Villa evidence not to have been obtained before the tribunal's decision on day one of the hearing. The claimant was aware as of 18 December 2024 that the written cross-examination was not completed and the respondents' proposal for oral cross-examination. Whilst we accept that there may have been some delay over the Christmas period, the claimant has many treating medical professionals and Dr Villa's letter was produced within hours of the tribunal's decision on 7 January 2025. Independent evidence could also have been obtained over that period. Also, if the claimant's position was that the original decision should be adjourned for medical evidence to be sought on oral cross-examination, then that could and should have been done before the tribunal made its decision, rather than waiting for an adverse decision and then seeking to re-open it based on new medical evidence that could and should have been obtained earlier.

67. Also, we do not consider that Dr Villa's evidence amounts to clear and cogent medical evidence as to how many questions the claimant can reasonably be expected to answer, especially given the type of questions which were proposed and style of questions appropriate under the Advocate's Gateway principles.

68. We were also satisfied that the evidence was insufficient to amount to a threat to the claimant's life, even taking into account the more historic matters relied on by the claimant's application.

69. It was also relevant that on day 4 the claimant's counsel submitted that her clear instructions were that the claimant was physically fit to have oral cross-examination.

70. The claimant's alternative proposal that the proceedings should be postponed in light of this evidence was rejected for the same reasons. A postponement would be highly prejudicial to the respondents and would be wholly contrary to the overriding objective. The next time the respondent's

existing legal team were available was not until mid-September 2026. Even if there were to be a change in counsel (which would be highly unlikely to be just in all the circumstances, in any event, given the costs incurred so far), there would be a considerable delay before the tribunal could reconvene, at a minimum until September 2025. Either delay would be entirely unconscionable and not amount to a determination within a reasonable timeframe, in our judgment.

Postscript

71. In light of the claimant's disclosure (following tribunal orders during the final hearing) of the communications that gave rise to the previous Dr Villa letters, on which the tribunal had heavily relied during previous hearings about reasonable adjustments, it would have been possible to revisit the question of what reasonable adjustments should be in place at all. We did not do this and no party asked us to. As such we expressly make no findings (at this stage) on whether the previous reasonable adjustments were granted on a misleading basis. However, given that the claimant relied on the original orders in support of his request at the start of the final hearing for the bulk of his cross-examination to be done in writing, it is perhaps important to record that the claimant's wife had a significant role in preparing first drafts of Dr Villa's previous letters and providing instructions to her, as opposed to the claimant's legal team.

72. Also, it is right to record that in an email from Dr Villa to the claimant's wife on 12 June 2023 at 15:01 Dr Villa stated:

'*I am willing to assist with a generic supporting letter for Court. I will list all of* [the claimant's] *coexisting medical diagnosis (both physical and mental health related) and ask for reasonable adjustments to be made, taking into account all the diagnoses and the related needs. However it is outside my clinical role to be very specific and prescriptive regarding the adjustments*

and I will leave it to your solicitors to take the matter further and to the Court to decide which measures are feasible from a legal point of view'.

73. Further, it is also important to record that, ultimately, the claimant's oral evidence was limited to four days, with the tribunal sitting roughly between 13:00 and 16:30. Although the claimant did require breaks, sometimes at his request, the oral cross-examination was concluded fairly and successfully. There were a handful of times that the claimant had difficulties but these were sufficiently addressed by the taking of breaks, and by appropriate use of the intermediaries support. No unfairness arose from the tribunal's decisions about his evidence in all the circumstances.