EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000529/2023

Held in Edinburgh on 22, 23, 24 & 25 July 2025

Employment Judge McCluskey

Members: N Quinn and R Duguid

Mr G Beurskens **Claimant**

Livingston Football Club Limited **Respondent**
Represented by:
G Mann
Solicitor

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The unanimous judgment of the Tribunal is that:

1. The complaints of being subjected to detriments for making protected disclosures are not well-founded and are dismissed.
2. The complaint of automatically unfair constructive dismissal for making protected disclosures is not well-founded and is dismissed.
3. The complaint of unfair constructive dismissal is not well-founded and is dismissed.
4. The complaint of breach of contract (contractual notice pay) having been withdrawn by the claimant during the final hearing is dismissed.

REASONS

Introduction & Issues

1. The claimant makes the following complaints: being subjected to detriments for making protected disclosures under section 47B Employment Rights Act

1996 (ERA), automatically unfair constructive dismissal under section 103A ERA and unfair constructive dismissal under section 98 ERA. The complaint of breach of contract (contractual notice pay) was withdrawn by the claimant during the final hearing.

2. A list of the issues to be determined by the Tribunal was agreed by parties at the outset of the final hearing. The protected disclosures and detriments relied upon by the claimant had been set out by the claimant in a spreadsheet in response to a case management order sent to parties on 22 February 2024. The claimant clarified that these remained the protected disclosures and detriments relied upon by him. The claimant clarified that he relied upon the same detriment allegations to found his complaint of automatically unfair constructive dismissal for making protected disclosures and his ordinary unfair constructive dismissal complaint.

3. During the final hearing it became apparent that the date of one of the protected disclosures and the dates of two of the detriments relied upon by the claimant differed from the dates in the spreadsheet provided by the claimant. The respondent did not object to these dates being updated.

4. The list of issues for determination by the Tribunal, with the updated dates, is set out in the Appendix to this judgment. Parties were directed to the list throughout the final hearing.

5. There were two files of productions. The first file extended to 744 pages. We were not taken to any of the productions in the second file of documents during evidence. Any references to page numbers in this judgment are to first file of productions. We explained to parties at the outset of the hearing that we would only read documents or the parts of documents to which were taken during oral evidence.

6. The claimant gave evidence on his own behalf. John Ward a director of the respondent and David Martindale the respondent's first team manager gave evidence for the respondent.

Findings in fact

Time bar

7. The claimant commenced employment with the respondent on 1 August 2019. His employment ended on 31 August 2023.

8. The claimant commenced ACAS early conciliation on 18 September 2023. The ACAS early conciliation certificate was issued on 20 September 2023. The claim was presented to the Tribunal on 17 October 2023.

Background

9. The claimant was employed under a contract of employment with the respondent dated 31 August 2022. His job title was In-House General Counsel. The claimant's duties included providing day to day financial and other business support services to the respondent. The claimant's gross and net earnings were £600 per month.

10. The claimant was also engaged through his own consultancy company to provide services to the respondent. This was a separate arrangement from the claimant's employment with the respondent. There was no dispute that the claimant was employed by the respondent and that the claimant brought complaints against the respondent in this Tribunal in his capacity as an employee of the respondent.

Asserted disclosures

30 January 2023 email (page 359) (PD1)

11. On 30 January 2023 in an email to David Martindale cc John Ward the claimant wrote that he was being pressed by a colleague for a form of words to allow a payment to a player. The claimant wrote "I'm not able to do that and I'll explain why", The claimant set out concerns he had about a termination payment made to another player. The claimant used that example to set out why he was also concerned about the payment to the player who was the subject of the email. The claimant set out his concerns about the tax treatment of payments to players and referenced potential sanctions from HMRC and the SPFL (page 359);

31 January 2023 email (page 362) (PD2)

12. The respondent uses an accounting software package called Xero.

13. On 31 January 2023 the claimant sent an email to John Ward with the subject VAT return. He wrote that having worked on Xero over the last few months he had noticed certain things which made him uncomfortable. He wrote "For that reason I can't submit any further VAT returns as I can't give the statutory undertaking on accuracy and honest belief". He wrote "There are areas of our accounts where there are apparent inconsistencies and those run directly

contrary to our “cashless club” policy, not to mention the appearance that we may be taking unrecorded cash”.

2 March 2023 email (page 369) (PD3)

14. On 2 March 2023 the claimant sent Mr Martindale and Mr Ward an email about the financial position of the club. The email included the following “The question of trading whilst insolvent is a serious issue for the directors. If there are no plans in place, then the directors could be held personally responsible for the consequences”. The claimant set out in his email that he had prepared a strategic report about the financial position of the respondent. The claimant wrote that Mr Martindale and Mr Ward knew about the contents of the report and did not wish it to be circulated. The email referred to the involvement of the SPFL. The claimant’s email said that this was not about his views or opinions and that Mr Ward had met with the auditors. The claimant wrote that Mr Ward knew of the auditors' concerns about not only the finances but also the structure of the respondent and the risk the combined officers faced.

11 August 2023 by email (page 458) (PD4)

15. On 11 August 2023 the claimant sent an email to Mr Ward, cc Mr Martindale and Mr Black. The email included a statement “I’m not comfortable with lawyers instructing counsel to give undertakings in the Court of Session when they won’t even share the petition....We’re weeks down the line, it’s not generally known where we are, how it's being defended....I’m not being a pedant but the management of these cases stretches incredulity in terms of how little coherent information has been shared”.

23 August 2023 meeting (PD5)

16. On 21 August 2023 in a meeting Mr Martindale shouted and swore at the claimant.

17. On 23 August 2023 the claimant had a meeting with Mr Ward. He told Mr Ward about the meeting the claimant had on 21 August 2023 with Mr Martindale. The claimant told Mr Ward that he and Mr Martindale had had an argument about a power of attorney in the claimant’s name and had disagreed about the effect of that on Mr Martindale’s potential shareholding. The claimant told Mr Ward that he was unhappy at Mr Martindale shouting and swearing at him in the meeting. The claimant told Mr Ward that he had asked Mr Martindale three times to stop shouting and swearing at him.

18. Mr Martindale phoned Mr Ward on 21 August 2023 and told Mr Ward what happened at the meeting with the claimant. Mr Martindale told Mr Ward that he had been shouting at the claimant.

23 August 2023 email (page 471) (PD6)

19. On 23 August 2023 the claimant sent an email to Mr Martindale and Mr Ward. He wrote "I've just been made aware that my access to Xero has been terminated. I've no idea why anyone would think that was a good idea, particularly in the midst of an audit, but clearly you've made that decision. I don't see any constructive purpose to a meeting this afternoon so I'd prefer you put things in writing to me and we can take it from there".

20. The claimant was involved in the respondent's audit. Mr Ward and the external auditors were also involved in the audit.

21. On 23 August 2023 Mr Martindale replied to the claimant . He wrote "I explained in my face to face with you and my email after our meeting that I have lost my trust in you. It was me who asked for you to be taken [off] as a temp measure until you had met John. I don't trust you due to the POA [power of attorney] and how that all came about".

Asserted detriments / constructive dismissal

30 January 2023 Mr Martindale told the claimant he did not need his permission in making payment to a player (Detriment 1)

22. On 30 January 2025 Mr Martindale sent an email to the claimant. It was in response to the claimant's email of the same date. Mr Martindale's email said "Point taken but I was asking for help Gordon not permission". Mr Martindale went on to say that he was going to follow help he had obtained from other football clubs. Mr Martindale ended his email by saying "Point taken though"

23. The claimant and Mr Martindale were both senior employees in the respondent. Mr Martindale was entitled to question the contents of the claimant's email on 30 January 2025. Mr Martindale was not obliged to follow the response which the claimant gave. Mr Martindale was entitled to get other opinions from elsewhere and follow a different course of action, which he did.

On 1 February 2023 Mr Ward suggested that the claimant resign from his employment (Detriment 2)

24. Mr Ward did not suggest in a conversation with the claimant on 1 February 2023 that the claimant resign from his employment to bring Mr Martindale to his senses.

On 7 February 2023 VAT returns were taken away from the claimant's list of responsibilities (Detriment 3)

25. Submission of VAT returns was not a task taken away from the claimant by the respondent. It was the claimant's decision that he no longer wished to submit VAT returns. There were no consequences for the claimant because of that decision. His role and pay continued unaltered.

In the period 1 March 2023 to 30 June 2023 Mr Martindale and Mr Ward made disparaging remarks about the claimant (Detriment 4)

26. There was no evidence led by the claimant about disparaging remarks, beyond a general statement that this had happened. Given the lack of specific evidence, we are not satisfied that this occurred.

On 2 March 2023 Mr Ward sent the claimant an email saying "it is probably a juncture to reevaluate your role and let you escape from the club" (Detriment 5)

27. Mr Ward sent an email to the claimant on 2 March 2023 (page 368) The contents of the email were about matters unrelated to VAT returns. Mr Ward's email set out some scenarios about press and media involvement where the claimant and Mr Ward had disagreed in the past. Mr Ward wrote at the end of the email "it is probably a juncture to re-evaluate your role and let you escape from the club.... Probably worth a face to face meeting. I'm around tomorrow and Monday Tues".

28. The claimant and Mr Ward did not discuss what had been written thereafter. The claimant and Mr Ward continued to work together until the claimant's employment ended on 30 August 2023.

On 23 August 2023 the claimant was removed from the Xero system thereby preventing him from carrying out his duties / On 23 August 2023 the claimant's access to Xero was not reactivated despite a request by the claimant to do so

29. On 23 August 2023 at 08.46 the claimant emailed Mr Martindale and Mr Ward. He wrote "I have just been made aware that my access to Xero has been terminated. I have no idea why anyone would think that was a good idea, particularly in the midst of an audit but clearly you've made that decision. I don't see any constructive purpose to a meeting this afternoon, so I'd prefer if you put things in writing to me and we can take it from there" (page 472).

30. On 23 August 2023 at 8.52 Mr Martindale replied to the claimant. In his email he said “It was me who asked for you to be taken [off] as a temp measure until you had met John. I don't trust you due to the PoA [power of attorney] and how that all came about” (page 471).

31. On 23 August 2023 at 8.57 Mr Ward replied to the claimant. He wrote “Gordon this is news to me. We should meet and figure how we navigate this. I’ve kept 1.30 free so it’s your call. But we do have to find a solution”.

On 23 August 2023 in a meeting with Mr Ward the claimant was undermined and abused and not taken seriously by Mr Ward (Detriment 6)

32. On 23 August 2023 at around 1.30pm the claimant and Mr Ward met. The claimant told Mr Ward about a meeting he had on 21 August 2023 with Mr Martindale. The claimant told Mr Ward that he was unhappy at Mr Martindale shouting and swearing at him in the meeting. The claimant told Mr Ward that he had asked Mr Martindale three times to stop shouting and swearing at him.

33. By the time of the meeting on 23 August 2023 Mr Ward had already heard from both the claimant and Mr Martindale about the meeting on 21 August 2023.The argument was about a power of attorney which the claimant held which may have impacted on the shareholding and control of the respondent. Mr Martindale was unhappy about that. At the meeting on 23 August 2023 Mr Ward suggested that the claimant, Mr Martindale, Mr Ward and a fourth party Robert Wilson (RW) meet to discuss the disagreement over the power of attorney. The claimant agreed with that course of action.

From 25 August 2023 – 31 August 2023 Mr Ward did not arrange a further meeting with the claimant as he promised to do

34. On 24 August 2023 at 8.11am Mr Ward emailed the claimant and asked if Monday 28 August 2023 suited for them all to meet if Ward could arrange that with the fourth party. The claimant confirmed that date was suitable for him. The claimant told Mr Ward that the power of attorney in the claimant's name was irrevocable (page 485). On 24 August 2023 Mr Ward and the claimant continued to discuss the power of attorney in further detail by email.

35. On 25 August 2023 at 7.19am the claimant emailed Mr Ward and continued the email discussion about the power of attorney. The claimant told Mr Ward that he had been speaking to the fourth party (RW) who could not make a meeting on Monday 28 August 2023. The claimant did not propose any other dates when the claimant and the fourth party (RW) were available to meet Mr

Ward and Mr Martindale after 28 August 2023 (page 479). In the same email the claimant wrote "I'm inclined to call it a day and leave it to you all to sort but I am in absolutely no doubt that I'll be thrown under the proverbial bus in a heartbeat if its suits the agenda". He also wrote that Mr Ward, the claimant and RW could "possibly grab ten minutes" at the game the following day [Saturday 26 August 2023].

36. On 25 August 2023 at 7.47am Mr Ward replied "I'm processing all of that but genuinely unclear why you feel you would be thrown under the bus or blamed for anything? Any next steps would be in agreement which is why I suggested 4 of us around the table. How could the club or I portray you in a negative light and what would be the purpose? I do think Davy [Mr Martindale] should be at any meeting as he and you seem polarised " (page 479).

37. On 25 August 2023 at 8.02am the claimant replied further about the power of attorney and wrote "I agree we should all be at the table" (page 478). The claimant had been in contact with the fourth party (RW) about the meeting. The claimant did not propose any other dates after Monday 28 August 2023 when the claimant and the fourth party (RW) were available to meet Mr Ward and Mr Martindale.

38. There was no further correspondence between the claimant an Mr Ward thereafter.

39. On 31 August 2023 at 8.43am the claimant emailed Mr Ward and said he was resigning from his employment and his consultancy role with immediate effect. He wrote that since the previous year he had been bullied and his ability questioned. He wrote that Mr Martindale had removed him from Xero denying him access to information he used on a day to day basis. He wrote that Mr Ward was aware he did not have access to Xero and had not renewed his access. The claimant referred to the power of attorney and expressed views about it. He wrote that there had been discussions last week about a meeting with the four of them but that hadn't happened. He wrote that he had continued in good faith to devote time to dealing with the business of the respondent but that further steps had been taken to isolate and effectively remove him from the management of the respondent. The claimant did not specify what those further steps were.

Observations on the evidence

40. This judgment does not seek to address every point upon which the parties gave evidence. It only deals with the points which are relevant to the issues we must consider, to decide if the claim succeeds or fails. If we have not

mentioned a particular point, it does not mean that we have overlooked it. It is simply because it is not relevant to the issues. Any references to page numbers are to the paginated first file of productions.

41. The standard of proof is on a balance of probabilities. This means that if we consider that, on the evidence, the occurrence of an event was more likely than not, then we are satisfied that the event in fact occurred. Likewise, if we consider that, on the evidence, an event's occurrence was more likely not to have occurred, then we are satisfied that it did not occur.

Relevant law

Time limits

42. Section 48 ERA provides *"Complaints to employment tribunals..... (1A) A worker may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of section 47B..... (2) 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. (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 ....."*.

Qualifying disclosure

43. Under section 43A ERA a protected disclosure is a qualifying disclosure (as defined by section 43B ERA) made by a worker in accordance with any of sections 43C – 43H ERA.

44. Under section 43B ERA 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 relevant wrongdoing including "(a) that a criminal offence has been committed, is being committed or is likely to be committed," and/or "(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject".

45. Section 43C ERA provides *"Disclosure to employer or other responsible person.(1)A qualifying disclosure is made in accordance with this section if the worker makes the disclosure (a)to his employer.....(2)....."*

46. Section 47B ERA prohibits a worker who has made a protected disclosure from being subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker made a protected disclosure.

47. Section 47B(1A) ERA provides that *"A worker ("W") has the right not to be subjected to any detriment by any act, or any deliberate failure to act, done - (a) by another worker of W's employer in the course of that other worker's employment, or (b) by an agent of W's employer with the employer's authority, on the ground that W has made a protected disclosure".*

Disclosure of information

48. The disclosure must be an effective communication of information, but it does not require to be in writing. The disclosure **must convey information or facts,** and not merely amount to a statement of position or an allegation (**Cavendish Munro Professional Risks Management Ltd v Geduld 2010 IRLR 38, EAT**). However, an allegation may contain sufficient information depending upon the circumstances (**Kilraine v Wandsworth London Borough Council [2018] ICR 1850, Court of Appeal**). .

Reasonable belief

49. The worker must genuinely believe that the disclosure tended to show relevant wrongdoing and was in the public interest. This does not have to be their predominant motivation for making the disclosure (**Chesterton Global Ltd v Nurmohamed [2018] ICR 731, Court of Appeal**). Their genuine belief must be based upon reasonable grounds. This depends upon the facts reasonably understood by the worker at the time.

50. The burden of proof is on the claimant. It is for him to show that when he carried out the acts which he asserts are protected disclosures or any one of them he reasonably believed that that the information he provided tended to show a criminal offence had been, was being or was likely to be committed; and/or a person had failed, was failing or was likely to fail to comply with any legal obligation.

Detriment meaning

51. If a reasonable worker (even if not all reasonable workers) might take the view that, in all the circumstances, the conduct was to the worker's detriment, the

test is satisfied. The test of detriment has both subjective and objective elements. The situation must be looked at from the claimant's point of view, but the claimant's perception must be 'reasonable' in the circumstances (**Warburton v Chief Constable of Northamptonshire Police 2022 ICR 925, EAT**).

52. It is not necessary for there to be physical or economic consequences to the employer's act or inaction for it to amount to a detriment. What matters is that the complainant is shown to have suffered a disadvantage of some kind (**Shamoon v Chief Constable of the Royal Ulster Constabulary 2003 ICR 337, HL**).

Detriment causation

53. When determining whether any act, or any deliberate failure to act by the employer is done on the ground that the worker made a protected disclosure the causation test is whether the protected disclosure materially (in the sense of more than trivially) influences the employer's treatment of the whistleblower (**Fecitt and ors v NHS Manchester (Public Concern at Work intervening) 2012 ICR 372, CA**).

Ordinary constructive dismissal

54. The right not to be unfairly dismissed is found in section 94 of the Employment Rights Act 1996 ("ERA") –
"(1) An employee has the right not to be unfairly dismissed by his employer."

55. Section 95 ERA (circumstances in which an employee is dismissed) provides, so far as relevant to this case, as follows – *"(1)….an employee is dismissed by his employer if…. (c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct."* This is commonly referred to as "constructive dismissal".

56. The test of whether an employee is entitled to terminate their contract of employment without notice is a contractual one: has the employer acted in a way amounting to a repudiatory breach of the contract or shown an intention not to be bound by an essential term of the contract: (**Western Excavating (ECC) Ltd v Sharp [1978] ICR 221**).

57. There must be a breach of contract by the employer. This may be a breach of an express or implied term. "*If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which*

shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed." (**Western Excavating**).

58. The breach may consist of a one-off act amounting to a repudiatory breach. Alternatively, there may be a continuing course of conduct extending over a period and culminating in a "*last straw*" which considered together amount to a repudiatory breach. The "last straw" need not of itself amount to a breach of contract but it must contribute something to the repudiatory breach. Whilst the last straw must not be entirely innocuous or utterly trivial it does not require of itself to be unreasonable or blameworthy (**London Borough of Waltham Forest v Omilaju [2005] IRLR 35**).

59. Whether there is a breach is determined objectively: would a reasonable person in the circumstances have considered that there had been a breach. As regards the implied term of trust and confidence: *"The test does not require a Tribunal to make a factual finding as to what the actual intention of the employer was; the employer's subjective intention is irrelevant. If the employer acts in such a way, and the Tribunal is satisfied objectively, that his conduct is likely to destroy or seriously damage the relationship of trust and confidence, then he is taken to have the objective intention spoken of…*" (**Leeds Dental Team Ltd v Rose [2014] IRLR 8, EAT**).

60. **In Kaur v Leeds Teaching Hospitals NHS Trust [2018] EWCA Civ 978** the Court of Appeal listed five questions that it should be sufficient to ask in order to determine whether an employee was constructively dismissed (i) What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation? (ii) Has he or she affirmed the contract since that act? (iii) If not, was that act (or omission) by itself a repudiatory breach of contract? (iv) If not, was it nevertheless a part (applying the approach explained in Waltham Forest v Omilaju [2004] EWCA Civ 1493) of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a repudiatory breach of the implied term of trust and confidence? (If it was, there is no need for any separate consideration of a possible previous affirmation, because the effect of the final act is to revive the right to resign.) (v) Did the employee resign in response (or partly in response) to that breach?

Submissions

61. Mr Beurskens and Mr Mann made oral submissions. We carefully considered the submissions of both parties during our deliberations. We have dealt with

the points made in submissions, where relevant, when setting out the facts, the law and the application of the law to those facts in reaching our decision. It should not be taken that a submission was not considered because it is not part of the discussion and decision recorded.

Discussion and decision

Asserted protected disclosures

30 January 2023 email (page 359) (PD1)

62. We were satisfied that the contents of the email of 30 January 2023 conveyed information and facts. It set out concerns about the payment made to a player and why the claimant had those concerns. It set out information about the payments and the facts of those payments, as known to the claimant. It was a detailed email and not merely a statement of position or allegation.

63. We were satisfied that the claimant genuinely believed that the email tended to show wrongdoing and was in the public interest. The claimant referred to his knowledge about the payment to the other player, which he said was still unresolved with the auditors and HMRC and the potential further sanctions from the SPL. We were satisfied that the information in the email tended to show that a criminal offence was likely to be committed and that a person was likely to fail to comply with a legal obligation. We were satisfied that such a belief was reasonable. Even if the claimant's belief that the information disclosed tended to show one of the listed matters could be said to be subjective, we were satisfied that there was sufficient factual content and specificity, such that the email was a qualifying disclosure. As the qualifying disclosure was made to his employer it is a protected disclosure.
64. We concluded that the email on 30 January 2023 was a protected disclosure.

31 January 2023 email (page 362)(PD2)

65. We considered whether the email contained information or facts and was not merely a statement of position or an allegation. The contents of the information were fairly brief. However, an allegation may contain sufficient information depending on the circumstances. The claimant referenced the work he had been doing on the Xero financial management system and said that there were areas of the accounts and VAT returns which were inconsistent with what was recorded on the Xero system. The claimant referred to these inconsistencies. We were satisfied that the contents of the email were about apparent discrepancies between what was on Xero and what was in the accounts and that the email did convey information or facts.

66. We were satisfied that the claimant genuinely believed that the email tended to show wrongdoing and was in the public interest. The claimant referred to having carried out a comparison exercise with what was on Xero and what was in the accounts and the VAT returns to be submitted to HMRC. This related to potential underpayment of VAT to HMRC. We were satisfied that the information in the email tended to show that a criminal offence was likely to be committed and that a person was likely to fail to comply with a legal obligation. We were satisfied that such a belief was reasonable. Even if the claimant's belief that the information disclosed tended to show one of the listed matters could be said to be subjective, we were satisfied that there was sufficient factual content and specificity, such that the email was a qualifying disclosure. As the qualifying disclosure was made to his employer it is a protected disclosure.

67. We concluded that the email on 31 January 2023 was a protected disclosure.

2 March 2023 email (page 369) (PD3)

68. We considered whether the email contained information or facts and was not merely a statement of position or an allegation. The contents of the email made reference to a strategic report prepared by the claimant. The email made reference to a meeting with the auditors where they raised concerns about the finances and structure of the respondent. The email referred to the involvement of the SPFL. We were satisfied that the email contained information or facts.

69. We were satisfied that the claimant genuinely believed that the email tended to show wrongdoing and was in the public interest. The claimant made reference to the strategic report which he had prepared about the respondent's finances. The claimant referred to the concerns of the auditors about the respondent's finances. It was about potentially trading whilst insolvent. We were satisfied that the information in the email tended to show that a criminal offence was likely to be committed and that a person was likely to fail to comply with a legal obligation. We were satisfied that such a belief was reasonable based on what the claimant said were the concerns of the auditors. Even if the claimant's belief that the information disclosed tended to show one of the listed matters could be said to be subjective, we were satisfied that there was sufficient factual content and specificity, such that the email was a qualifying disclosure. As the qualifying disclosure was made to his employer it is a protected disclosure.

70. We concluded that the email on 2 March 2023 was a protected disclosure.

11 August 2023 email (page 458) (PD4)

71. We considered whether the email contained information or facts and was not merely a statement of position or an allegation. The contents of the email referred to the claimant's understanding of the way in which litigation against the respondent was being handled by external solicitors. The email referred to the petition in the Court of Session not being shared with others in the respondent and a lack of knowledge of how the litigation was being defended. We were satisfied that the email conveyed information or facts.

72. We next considered whether the claimant genuinely believed that the email tended to show wrongdoing as prescribed in section 43B ERA and was in the public interest. The claimant relied on wrongdoing which he asserted tended to show that a criminal offence was likely to be committed and that a person was likely to fail to comply with a legal obligation. He asserted that any action leading to a potential abuse of process in the courts may be unlawful and potentially illegal. The claimant did not expand upon this in evidence. In the absence of evidence as to the criminal offence which the claimant believed was likely to be committed or the legal obligation which he believed had not been complied with, we were not satisfied that the claimant had a reasonable belief of wrongdoing as set out in section 43B ERA.

73. The claimant also asserted that he had had made a protected disclosure in the same terms during a board meeting on 5 August 2023, as set out in a board minute. Mr Martindale had objected to the paragraph because he said that it had not been said by the claimant in the board meeting. We were not required to make any findings about whether it had been said. Even if it had been said, it was the same as the contents of the later email which we have found not to be a qualifying disclosure.

74. We concluded that the email on 11 August 2023 was not a protected disclosure.

23 August 2023 meeting (PD5)

75. We considered whether what the claimant told Mr Ward on 23 August 2023 conveyed information or facts. The claimant reported that Mr Martindale was shouting and swearing at him in a meeting on 21 August 2023 about a power of attorney held by the claimant. We were satisfied that it conveyed information to Mr Ward about what the claimant said was Mr Martindale's conduct in the meeting. The claimant had provided context as to the reason why they had disagreed and why Mr Martindale was shouting and swearing at him. We were satisfied that it was information and not merely an allegation.

76. We next considered whether the claimant genuinely believed that what he told Mr Ward was in the public interest and tended to show wrongdoing as prescribed in section 43B ERA. The claimant relied on wrongdoing which he asserted tended to show that a criminal offence was likely to be committed or failure to comply with a legal obligation. We were not satisfied that this was the case. The claimant and Mr Martindale had had a disagreement about a power of attorney issue. Mr Martindale had shouted and sworn that the claimant. The claimant was unhappy about this. There was nothing in what the claimant told Mr Ward which asserted that a criminal offence was being committed or there was a failure to comply with a legal obligation in being shouted and sworn at. The claimant said in evidence that he had been told by Mr Martindale that "it would not end well for him", which the claimant said he took as a physical threat. Given the nature of the argument which was about a power of attorney and shareholding issue we were not satisfied that it was reasonable for the claimant to take this as a physical threat or that he had reported it as such to Mr Ward as tending to show that a criminal offence was likely to be committed. We were not satisfied that the motivation for the claimant in speaking to Mr Ward about Mr Martindale's conduct and what Mr Martindale said was in any sense that there was a relevant wrongdoing as prescribed by section 43B ERA or that such a disclosure was in the public interest.

77. We concluded that what was said by the claimant in the meeting on 23 August 2023 was not a protected disclosure.

23 August 2023 email (page 471) (PD6)

78. We considered whether the email contained information or facts. We were satisfied that it did. It referred to the claimant's access to Xero being terminated. It referred to the respondent being in the midst of an audit. The claimant was involved in the audit. It conveyed information about the claimant not being able to use Xero in his work on the audit. These were factual statements conveying information.

79. We considered whether the claimant genuinely believed that the disclosure of information was in the public interest and tended to show wrongdoing as prescribed in section 43B ERA. The claimant relied on wrongdoing which he asserted tended to show a failure to comply with a legal obligation as employment laws and workplace rules and practices were being ignored and there was a breach of the employer / employee relationship. Mr Martindale had instructed that the claimant's access to Xero was to be removed on a temporary basis. It involved a disagreement between two employees of the respondent. We were not satisfied that the claimant's email to Mr Ward and

Mr Martindale on 23 August 2025 was in any sense that there was a relevant wrongdoing as prescribed by section 43B ERA or that such a disclosure was in the public interest.

80. We concluded that the email sent by the claimant on 23 August 2023 was not a protected disclosure.

Asserted detriments

81. We have found that the claimant made the following protected disclosures - the email on 30 January 2023 (PD1), the email on 31 January 2023 (PD2) and the email on 2 March 2023 (PD3).

Detriment 1

82. The claimant asserts that he was subjected to a detriment for having made the protected disclosure on 30 January 2023 (PD1) in that he was undermined by Mr Martindale on 30 January 2023. The claimant relied on the email sent by Mr Martindale on 30 January 2025 in response to PD1 where Mr Martindale wrote “Point taken but I was asking for help Gordon not permission” and Mr Martindale said that he was going to follow advice he had obtained from other football clubs. The claimant’s evidence was that when Mr Martindale told the claimant that he didn’t need the claimant’s permission to make the payment, the claimant was undermined. In the claimant’s evidence he acknowledged that Mr Martindale could question the claimant’s response but he took offence at the “offhand” way in which Mr Martindale responded.

83. We looked at the situation from the claimant’s point of view. We asked ourselves whether the detriment asserted (being undermined) was reasonable in all the circumstances (Warburton v Chief Constable of Northamptonshire Police). We were satisfied that it was not. Both the claimant and the respondent were senior employees in the respondent’s organisation. The claimant acknowledged that Mr Martindale was entitled to question the response which the claimant gave. Mr Martindale was not obliged to follow the response which the claimant gave. Mr Martindale was entitled to get other opinions from elsewhere and follow a different course of action, which he did.

84. Accordingly, there was no detriment on 30 January 2025.

Detriment 2

85. The agreed list of issues included a detriment that on 1 February 2023 in a conversation with the claimant Mr Ward suggested that the claimant resign from his employment. The claimant asserted that this was a detriment for

having made a protected disclosure on 31 January 2023 (PD2). In evidence in chief the claimant said that Mr Ward had suggested in a conversation on 1 February 2023 that the claimant resign from his employment to bring Mr Martindale to his senses.

86. Mr Ward's evidence was that he could not recall a conversation on 1 February 2023 where he had suggested the claimant resign. We were not taken to any correspondence following any purported conversation on 1 February 2023 which recorded what had been said. The protected disclosure relied upon was about VAT returns which the claimant said were inconsistent with what was recorded on the Xero system and the claimant saying he would no longer submit them. That appeared to be the end of the matter.

87. On balance therefore we thought it unlikely that Mr Ward would have suggested on 1 February 2023 that the claimant resign from his employment. We decided that this did not happen. Accordingly, there was no detriment as asserted by the claimant on 1 February 2023. Even if we are wrong on that the claimant did not make any causal connection that statement and having made a protected disclosure about the VAT returns.

Detriment 3

88. The claimant asserts that he was subjected to a detriment for having made a protected disclosure on 31 January 2023 (PD2). The detriment asserted is that VAT returns were taken away from his list of responsibilities on 7 February 2023 when Mr Ward took them over. The claimant hesitated in evidence as to whether that was a detriment upon which he wished to rely. He said that it was his decision not to submit the VAT returns, for the reason he gave in his email of 31 January 2023 (page 362). He acknowledged in his evidence that they had not been taken away from him by the respondent.

89. We asked ourselves whether the detriment relied on (that VAT submissions had been taken away from him) had occurred. We were satisfied that was not the case. It was the claimant's decision that he no longer wished to submit VAT returns. The claimant referred to his own decision in his email of 31 January 2023 to Mr Ward about VAT returns. There were no consequences for the claimant because of that decision. His role and pay continued unaltered. We were satisfied that the claimant had not suffered the detriment relied upon.

Detriment 4

90. The list of issues recorded as a detriment that Mr Ward and Mr Martindale made disparaging comments about the claimant in the period 1 March 2023 – 30 June 2023. The claimant said this was a detriment for having made PD1, PD2 and PD3. The claimant's only evidence at the hearing about this was that the approach of Mr Ward and Mr Martindale was "generally disparaging". In the absence of evidence we were unable to conclude that the claimant had suffered any detriment as asserted.

Detriment 5

91. The claimant asserted that he was subjected to a detriment when Mr Ward wrote in an email on 2 March 2023 "it is probably a juncture to re-evaluate your role and let you escape from the club.... Probably worth a face to face meeting. I'm around tomorrow and Monday Tues". The claimant asserted that this was a detriment for PD1, PD2 and PD3.

92. Mr Ward's email was sent in reply to the claimant's email of 2 March 2023 about the financial position of the club (PD3). In Mr Ward's email on 2 March 2023 he wrote that the claimant seemed "to be offended and upset and I cannot figure the rationale for that". Mr Ward then referred to a scenario about press and media involvement where the claimant and Mr Ward had disagreed two years ago. Mr Ward then wrote "it is probably a juncture to re-evaluate your role and let you escape from the club.... Probably worth a face to face meeting. I'm around tomorrow and Monday Tues".

93. We considered whether the writing of this statement was a detriment, as asserted by the claimant. In evidence in chief the claimant said that he was undermined by what Mr Ward had written.

94. It is not necessary for there to be physical or economic consequences to the employer's act or inaction for it to amount to a detriment. What matters is that the claimant is shown to have suffered a disadvantage of some kind (**Shamoon**). There was no evidence led by the claimant of having suffered a disadvantage of any kind. There was no evidence that on or after 2 March 2023 any meeting had taken place between the claimant and Mr Ward where what Mr Ward had written was discussed. There was no evidence of the respondent changing the claimant's duties or his pay. The email exchange on 2 March 2023 was between two senior employees. Mr Ward's evidence which we accepted was that if the claimant was feeling offended or upset for reasons which he did not understand, he was letting him know that they could discuss the claimant leaving his employment, if the claimant wished to do so. Nether the claimant or Mr Ward took that discussion any further. There was no evidence of the claimant having suffered any disadvantage as a result of what

Mr Ward had written. Accordingly, we are satisfied that the statement was not a detriment nor was the claimant undermined such that he suffered a detriment.

Conclusion – detriments

95. The claimant's asserted detriments 1,2,3,4 & 5 for having made protected disclosures are not well founded for the reasons given.

96. The claimant asserted that he had been subjected to detriments 6,7,8 & 9 as set out in the list of issues on the grounds that he had made, variously, PD4, PD5 and PD6.

97. As we found that the asserted disclosures PD4, PD5 and PD6 were not protected disclosures there is no need to determine whether the claimant was subjected to detriments 6,7,8 & 9 for the purposes of the detriments complaints under section 48 ERA.

Time bar – detriments

98. We have already found that the claimant's detriments complaints pursuant to section 48 ERA are not well founded. If we are wrong on that we also considered the jurisdictional issue of time bar.

99. Any events which occurred before 19 June 2023 are potentially out of time, ACAS early conciliation having commenced on 18 September 2023. Asserted detriments 1,2, 3, 4 and 5 are all on the face of it out of time.

100. Section 48(3)(a) ERA provides that the complaint must be 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. We therefore considered whether the detriments in the agreed list of issues which are said to have occurred before 19 June 2023 are part of a series of similar acts or failures with detriments complaints which are in time.

101. We were satisfied that was not the case. The asserted detriments on or after 19 June 2023 (asserted detriments 6,7,8 & 9) were said to have been made on the grounds of acts which we have found are not qualifying disclosures as defined by section 43B ERA. Accordingly, section 48(3)(a) ERA cannot be engaged. There are no well-founded detriments complaints which are in time.

102. We then considered whether it was not reasonably practicable for the claimant to bring his detriments complaints 1,2, 3, 4 and 5 in time (section 48(3)(b) ERA). The dates of these were 30 January 2023, 1 February 2023, 7 February 2023 and 1 March – 18 June 2023. The claim was presented to the Tribunal on 17 October 2023. The claimant's only evidence for why these detriments complaints were presented out of time was that he thought he could handle matters himself internally. There was no evidence that, for example, there was any ignorance of rights, or of crucial facts, or that he had sought advice from advisors who were at fault or illness of the claimant. Based on the claimant's very limited evidence on this point we concluded that it was reasonably practicable for the detriments complaints to be presented in time.

103. Accordingly, even if we are wrong in determining that detriments complaints 1,2,3,4 and 5 fail, the Tribunal would have no jurisdiction to determine them in any event. They are out of time, and it was reasonably practicable for the claimant to present them in time.

Ordinary unfair constructive dismissal

104. We reminded ourselves of the terms of section 95(1)(c) ERA and the legal test for constructive dismissal as set out by Lord Denning in Western Excavating. There had to be a breach which goes to the root of the contract. It has to be sufficiently serious to entitle the claimant to resign immediately, regardless of whether he actually did so.

105. The claimant asserted that there was a breach of the implied duty of trust and confidence. He relied on the same asserted detriments which he had already identified for his complaints under section 48 ERA. We considered these in turn for the purposes of the ordinary unfair constructive dismissal complaint.

30 January 2023 Mr Martindale told the claimant he did not need his permission in making payment to a player

106. We were satisfied that Mr Martindale was entitled to reply in the way in which he did. Whilst Mr Martindale had asked the claimant for help on how to structure a payment to a player, Mr Martindale was not bound to follow what the claimant said. Whilst the opening line of the email is somewhat curt "Point taken but I was asking for help and not permission" the tone of the closing remark acknowledged what the claimant has said "Point taken though". We did not consider that Mr Martindale's email to the claimant when taken in its entirety was unreasonable.

On 1 February 2023 Mr Ward suggested that the claimant resign from his employment

107. For reasons already given, we did not find that in a conversation with the claimant on 1 February 2023 Mr Ward suggested that the claimant resign from his employment.

On 7 February 2023 VAT returns were taken away from the claimant's list of responsibilities

108. For reasons already given, we did not find that on 7 February 2023 VAT returns were taken away from the claimant's list of responsibilities. Rather the claimant decided that he did not wish to submit VAT returns.

In the period 1 March 2023 to 30 June 2023 Mr Martindale and Mr Ward made disparaging remarks about the claimant

109. For the reasons already given, we did not find that In the period 1 March 2023 to 30 June 2023 Mr Martindale and Mr Ward made disparaging remarks about the claimant

On 2 March 2023 Mr Ward sent the claimant an email saying "it is probably a juncture to reevaluate your role and let you escape from the club

110. Mr Ward sent the email to the claimant on 2 March 2023. As already found, there was no evidence that on or after 2 March 2023 any meeting had taken place between the claimant and Mr Ward where what Mr Ward had written was discussed. There was no evidence of any discussion about the topic at all. The claimant and Mr Ward continued to work together until the claimant's employment ended on 30 August 2023. There was no evidence of the respondent changing the claimant's duties or his pay. The email exchange on 2 March 2023 was between two senior employees. Mr Ward's evidence which we accepted was that if the claimant was feeling offended or upset for reasons which he did not understand, he was letting him know that they could discuss the claimant leaving his employment, if the claimant wished to do so. Nether the claimant or Mr Ward took that any further. There was no evidence of the claimant having suffered any disadvantage as a result of what Mr Ward had written. Accordingly, we are satisfied that the comment as part of an email exchange between two senior individuals of the respondent, when taken in context and when not advanced further by either party was not unreasonable.

On 23 August 2023 in a meeting with Mr Ward the claimant was undermined and abused and not taken seriously by Mr Ward

111. In evidence in chief the claimant said that he had been undermined and abused by Mr Ward in the meeting and that it did not appear to the claimant that Mr Ward was taking seriously that Mr Martindale had been shouting and swearing at him. The claimant gave no other evidence about being undermined and abused and not taken seriously by Mr Ward on 23 August 2023.

112. Mr Ward's evidence, which was not challenged, was that by the time of the meeting on 23 August 2023 Mr Ward had already heard from both the claimant and Mr Martindale about the meeting on 21 August 2023. The disagreement was about a power of attorney which the claimant held which may have impacted on the shareholding and control of the respondent. Mr Martindale was unhappy about that.

113. We were satisfied that before the meeting Mr Ward was engaging with the claimant by email to try to understand the disagreement about the power of attorney and to consider how the disagreement between the claimant and Mr Martindale could be resolved. Mr Ward had emailed the claimant on the morning of 23 August 2023 in a supportive manner suggesting that they meet (which they did at 1.30pm) to figure out how to navigate matters and that they needed to find a solution. Mr Ward suggested at the meeting that the claimant, Mr Martindale, Mr Ward and a fourth party Robert Wilson (RW) meet to discuss the power of attorney. The claimant agreed with that course of action.

114. We were satisfied that there was no evidence to support the assertion that Mr Ward had undermined and abused the claimant in their meeting and not taken the claimant seriously.

On 23 August 2023 the claimant was removed from the Xero system thereby preventing him from carrying out his duties / On 23 August 2023 the claimant's access to Xero was not reactivated despite a request by the claimant to do so

115. On 23 August 2023 Mr Martindale arranged for the claimant's access to Xero to be removed as a temporary measure due to Mr Martindale's concerns with how the power of attorney held by the claimant had come about. There was no evidence that the claimant had made a request on 23 August 2023 for his access to be reactivated. The claimant's email of 23 August 2023 does not ask for his access to be reactivated, although that may well have been what he hoped.

116. We were not satisfied that the claimant was prevented from carrying out his duties because his access to Xero had been removed temporarily. The

claimant said in evidence that it was his duties relating to the audit which he was unable to carry out, rather than all his duties. The claimant was involved in other duties for the respondent. This included assisting with litigation by and against the respondent. In his resignation email the claimant wrote that since the discussion the previous week about a four way meeting he had continued in good faith to devote time to dealing with the business of the respondent. Whilst we accepted that the claimant's involvement in the audit may have been made more difficult there were external auditors involved, the action was a temporary one, we did not hear precisely what he was unable to do and the audit work was only part of his duties.

117. Accordingly, when taken in context and from the evidence presented, we were not satisfied that the action was unreasonable

From 25 August 2023 – 31 August 2023 Mr Ward did not arrange a further meeting with the claimant as he promised to do

118. This is the last straw relied upon by the claimant. We considered that Mr Ward found himself in a difficult position in the period from Friday 25 August 2023 until the claimant's resignation early in the morning of Thursday 31 August 2023. We were satisfied that Mr Ward had been trying to engage with the claimant to arrange a meeting between the claimant, Mr Ward, Mr Martindale and the fourth party (RW). In the claimant's emails he said that he was speaking to the fourth party (RW) about RW's availability to attend a four way meeting. It was the claimant who told Mr Ward that RW wasn't available on Monday 28 August 2023. The claimant, who was the one who was speaking to RW about availability didn't propose any date after Monday 28 August 2023 for the four way meeting. The claimant did suggest possibly grabbing 10 minutes at the game the following day but Mr Martindale would not have been present at that and the discussion and agreement between the claimant and Mr Ward was about a meeting when all four, including Mr Martindale, were present.

119. The claimant and Mr Ward knew that a four way meeting on Monday 28 August 2023 was not possible. Thereafter two days went by (Tuesday 29 August and Wednesday 30 August 2023) when neither the claimant nor Mr Ward were in touch about arranging the meeting. It was the claimant who had been speaking to the fourth party (RW) about availability. The claimant said only that RW was not available on 28 August 2023 but gave no other proposed later availability.

120. The four way meeting was in the course of being arranged by Mr Ward and the claimant. We were satisfied that this was a two way communication

between them. Mr Ward was navigating a disagreement between the claimant and Mr Martindale which he was trying to understand. In the circumstances we were satisfied that it was not unreasonable that Mr Ward had not emailed the claimant about the meeting in the short period after their email exchanges on Friday 25 August 2023 and before the claimant resigned early on 31 August 2023.

121. We were satisfied that the approach of the respondent in relation to each of the allegations i – viii was reasonable. The final allegation (ix) about the period 25 August – 31 August 2023 (which the claimant relied upon as the final straw) was not of itself a repudiatory act. Nor was it part of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a repudiatory breach of the implied term of trust and confidence.

122. Objectively, we were satisfied from the perspective of a reasonable person in the position of the claimant that these events when considered together did not constitute a course of conduct calculated or likely to destroy or damage the relationship of trust and confidence without reasonable and proper cause. There was no repudiatory breach and accordingly the claimant did not terminate his contract in circumstances in which he was entitled to terminate it without notice by reason of the respondent's conduct. The claimant was not therefore constructively dismissed and instead resigned voluntarily.

123. In the circumstances it is not necessary for us to consider whether the alleged breach was a factor (i.e. played a part) in the claimant's resignation or whether the claimant affirmed the alleged breach.

Automatic unfair dismissal for making a protected disclosure

124. We found that the claimant made the following protected disclosures -the email on 30 January 2023 (PD1), the email on 31 January 2023 (PD2) and the email on 2 March 2023 (PD3). The claimant relied upon a last straw and based his complaint on the totality of the respondent's conduct.

125. For the reasons already given, we are satisfied that the actions of the respondent did not amount to a fundamental breach of contract. We were satisfied that the claimant resigned and was not constructively dismissed. We were also satisfied that had there been a constructive dismissal, there was no evidence such that we could have concluded that PD1 PD2 or PD3 had in any sense motivated the various acts of the respondent including the last straw which the claimant relied upon. The various acts relied upon involved a range of different matters, latterly involving a disagreement over a power of attorney in August 2023. There was no evidence to suggest that protected disclosures

in January 2023 and March 2023 were in the mind of the respondent and were the reason or principal reason for the respondent's cumulative actions to 31 August 2023.

126. Accordingly, the complaint of automatically unfair constructive dismissal is not well-founded and is dismissed.

Conclusion

127. Having concluded that each of the complaints is not well founded there is no requirement for us to consider remedy. Accordingly, the claimant's claim is dismissed.

Date sent to parties 07/08/2025

APPENDIX 1

AGREED LIST OF ISSUES

List of issues for final hearing

The issues the Tribunal will decide are set out below.

1. Time limits

    a. Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 19 June 2023 may not have been brought in time.

    b. Was the detriment made within the time limit in section 48 of the Employment Rights Act 1996? The Tribunal will decide:

        i. Was the claim made to the Tribunal within three months (plus early conciliation extension) of the detriment complained of?

ii. If not, was there a series of similar acts or failures and was the claim made to the Tribunal within three months (plus early conciliation extension) of the last one?

iii. If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?

iv. If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?

2. Protected disclosure

a. Did the claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996? The claimant says they made disclosures on these occasions:

i. On 30 January 2023 in an email to David Martindale cc John Ward about payment to a player (page 359);

ii. On 31 January 2023 in an email to John Watt about apparent financial irregularities and VAT filings (page 362);

iii. On 2 March 2023 in an email to Mr Martindale and Mr Ward about the financial position of the respondent and the risk of trading whilst insolvent (page 369);

iv. On 5 August 2023 orally in a board meeting of the respondent and on 11 August 2023 by email to Mr Ward cc Mr Martindale about the arrangements in place for the respondent to instruct solicitors and counsel to act for the respondent in court proceedings (pages 453 and 459);

v. On 23 August 2023 orally in a meeting with Mr Ward about Mr Martindale's conduct in a meeting between the claimant and Mr Martindale on 21 August 2023 (claimant's note of meeting at page 490);

vi. On 23 August 2023 in an email to Mr Martindale about the claimant being shut out of the Xero financial system (page 471);

b. Did they disclose information?

c. Did they believe the disclosure of information was made in the public interest?

d. Was that belief reasonable?

e. Did they believe it tended to show that:

i. a criminal offence had been, was being or was likely to be committed; and/or

ii. a person had failed, was failing or was likely to fail to comply with any legal obligation;

f. Was that belief reasonable?

g. If the claimant made a qualifying disclosure, it was a protected disclosure because it was made to the claimant's employer.

3. Unfair dismissal

a. Was the claimant dismissed? Did the respondent do the following things:

i. On 30 January 2023 Mr Martindale told the claimant he did not need his permission in making payment to a player;

ii. On 1 February 2023 Mr Ward suggested that the claimant resign from his employment;

iii. On 7 February 2023 VAT returns were taken away from the claimant's list of responsibilities;

iv. In the period 1 March 2023 to 30 June 2023 Mr Martindale and Mr Ward made disparaging remarks about the claimant;

v. On 2 March 2023 Mr Ward sent the claimant an email saying "it is probably a juncture to reevaluate your role and let you escape from the club" (page 368);

vi. On 23 August 2023 in a meeting with Mr Ward the claimant was undermined and abused and not taken seriously by Mr Ward;

vii. On 23 August 2023 the claimant was removed from the Xero system thereby preventing him from carrying out his duties;

viii. On 23 August 2023 the claimant's access to Xero was not reactivated despite a request by the claimant to do so;

ix. From 25 August 2023 – 31 August 2023 Mr Ward did not arrange a further meeting with the claimant as he promised to do;

b. Did that breach the implied term of trust and confidence? The Tribunal will need to decide: whether the respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent; and whether it had reasonable and proper cause for doing so;

c. Was the breach a fundamental one? The Tribunal will need to decide whether the breach was so serious that the claimant was entitled to treat the contract as being at an end.

d. Did the claimant resign in response to the breach? The Tribunal will need to decide whether the breach of contract was a reason for the claimant's resignation.

e. Did the claimant affirm the contract before resigning? The Tribunal will need to decide whether the claimant's words or actions showed that they chose to keep the contract alive even after the breach.

f. If the claimant was dismissed, what was the reason for the breach of contract?

g. Was it a potentially fair reason?

h. Did the respondent act reasonably or unreasonably in all the circumstances, including the respondent's size and administrative resources, in treating that reason as a sufficient reason to dismiss the claimant?

i. The Tribunal's determination whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case.

4. Automatic unfair dismissal

a. If the claimant was constructively dismissed, was the reason or principal reason for the claimant's dismissal that the claimant made a protected disclosure? If so, the claimant will be regarded as unfairly dismissed.

5. Detriment (Employment Rights Act 1996 section 48)

a. Did the respondent do the following things:

   i. On 30 January 2023 Mr Martindale told the claimant he did not need his permission in making payment to a player (PD1);

   ii. On 1 February 2023 Mr Ward suggested that the claimant resign from his employment; (PD2)

   iii. On 7 February 2023 VAT returns were taken away from the claimant's list of responsibilities (PD2);

   iv. In the period 1 March 2023 to 30 June 2023 Mr Martindale and Mr Ward made disparaging remarks about the claimant (PD 1,2,3);

   v. On 2 March 2023 Mr Ward sent the claimant an email saying "it is probably a juncture to reevaluate your role and let you escape from the club" (PD 1,2,3);

   vi. On 23 August 2023 in a meeting with Mr Ward the claimant was undermined and abused and not taken seriously by Mr Ward (PID 5);

   vii. On 23 August 2023 the claimant was removed from the Xero system thereby preventing him from carrying out his duties (PD6);

   viii. On 23 August 2023 the claimant's access to Xero was not reactivated despite a request by the claimant to do so (PID6)

   ix. From 25 August 2023 – 31 August 2023 Mr Ward did not arrange a further meeting with the claimant as he promised to do (PD5,6);

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

c. If so, was it done on the ground that [they made a protected disclosure?

6. Remedy for unfair dismissal

   a. Does the claimant wish to be reinstated or re-engaged and if so should the Tribunal make such an order?

   b. If there is a compensatory award how much should it be?

   c. What basic award is payable to the claimant, if any?

d. Would it be just and equitable to reduce the claimant's basic or compensatory award and, if so, to what extent?

7. Remedy for protected disclosure detriment

a. What financial losses or other losses has the detrimental treatment caused the claimant?

b. Was the protected disclosure made in good faith?

c. Would it be just and equitable to increase or decrease any award payable to the claimant and, if so, to what extent?