EMPLOYMENT TRIBUNALS

Claimant: Mr B Islam

Répondent: Central Mosque Northampton

Heard at: Cambridge Employment Tribunal (in person, in public)

On: 9 June 2025, 10 June 2025, 11 June 2025, 13 June 2025, 16 June 2025, 17 June 2025

Before: Employment Judge Hutchings
Ms L. Davies
Mr A. Hayes

Representation
Claimant: in person, supported by 2 friends
Respondent: Mr Saeed, solicitor

JUDGMENT having been sent to the parties on 23 July 2025 and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the request for which was referred to Employment Judge Hutchings on 4 August 2025, the following reasons are provided:

REASONS

Introduction

1. The claimant, Mr Badrul Islam, was employed by the respondent, Central Mosque Northampton, as an Imam with specified contractual duties leading prayers from 2 August 2010 until his dismissal on 7 May 2021. The respondent says it dismissed the claimant for reason of misconduct and that the claimant's conduct was so serious it warranted immediate dismissal without notice (this is sometimes referred to as gross misconduct). Early conciliation commenced on 30 July 2021 and a certificate was issued on 10 September 2021.

2. By a claim form dated 29 August 2021 the claimant brings the following claims:

    2.1. A claim of unfair dismissal pursuant to section 94 of the Employment Rights Act 1996;

2.2. A claim of automatic unfair dismissal pursuant to section 103A of the Employment Rights Act 1996;

2.3. A compliant of detriments on the grounds of making protected disclosures pursuant to section 47B of the Employment Rights Act 1996: detriment for making a Protected Disclosure; and

2.4. A claim of unlawful deduction from wages pursuant to section 13 of the Employment Rights Act 1996.

3. The respondent is a private limited company with charitable status; the company is responsible for the operation and management of a mosque located in Northampton. By undated grounds of resistance and amended grounds of resistance dated 4 January 2024 the respondent contests the claims. It says that claimant was fairly dismissed without notice on 7 May 2021 by reason of gross misconduct due to events between January and March 2021 during which time the respondent says the claimant exhibited disrespectful behaviour to his employer. The respondent submits it followed a full and fair procedure in treating the misconduct as a sufficient reason for the dismissal.

Procedure, documents and evidence

4. The claimant represented himself with support from 2 friends. The claimant gave sworn evidence. On the claimant's behalf, Mr Ali (one of the friends) asked questions of the respondent's witnesses.

5. The respondent was represented by Mr Saeed, solicitor, who called sworn evidence from:

5.1. Mr Osmani, the claimant's line manager, investigating officer and a trustee of the respondent;
5.2. Mr Bashir, a trustee of the respondent;
5.3. Mr Waqid, a member of the congregation at the mosque managed by the respondent; and
5.4. Mr Rafiq, the appeal officer.

6. The hearing was listed for 7 days; however, due to panel availability it took place over 6 days. We considered the documents from an agreed 735-page file of documents which the parties introduced in evidence. At the start of the hearing Mr Saeed sent a skeleton argument on behalf of the respondent to the claimant and the Tribunal. On day 5 Mr Saeed updated this document with a closing statement. On day 5 the claimant sent a written closing statement to the respondent and the Tribunal, which Mr Ali read out.

7. In compliance with the case management directions the claimant had submitted a schedule of loss. During the hearing, following dismissal of the complaint of public interest disclosure on the grounds that the Tribunal did not have jurisdiction to hear it (the decision for which is recorded in preliminary matters below), the claimant submitted an updated schedule of loss to the respondent and the Tribunal.

Reasonable Adjustments

8. At the start if the hearing, we agreed with the parties that the hearing would start at 10am each day and finish no later than 4pm. We took regular breaks, approximately 5 minutes each hour and an hour at lunch time. On day 5 we took a longer lunch break (12.45pm – 2.15pm) to allow parties to attend Friday prayers at a local mosque if they wished to do so. We made it clear that if anyone needed a break at any time they must let the Tribunal know and we would facilitate this. On day 2, after his oral evidence, the claimant raised concerns about his health and we explored with him whether he required a longer break. He confirmed that he wanted to proceed with the hearing, requesting that Mr Ali represent him and that our break pattern was appropriate and supportive. We continued, reminding the claimant that if he needed a break of any length he must tell us and we would accommodate this by revising the timetable agreed at the start of the hearing.

Preliminary matters

9. During reading on day 1 the Tribunal identified an issue with the time limits in the complaint of public interest disclosure detriments, in that the claim had not been presented in time, allowing for the dates of ACAS conciliation. At the start of the hearing on day 2 we raised this with the parties and, mindful that the claimant was not represented, summarised the legal test we must apply. The relevant law is summarised below. We also prepared a diagram setting out the relevant dates, a copy of which we shared with the parties when explaining why we considered the complaint was filed with the Tribunal after the deadline. We explained to the claimant that the onus of proving that it was not reasonably practicable to present the complaint within a period of three months was on him and therefore it was necessary for him to explain to the Tribunal the reasons he did not do so.

10. Having spent the morning explain the issue that arose and checking that the claimant and Mr Ali understood the preliminary issue about time limit we must determine, we took a longer break over lunch (11.30am to 2.15pm) to allow the claimant to prepare a statement setting out why he did not bring the claim within the primary time limit.

11. After lunch we read the statement; in summary the claimant relied on the fact he was not aware that there were deadlines to submit claims, a period of sick leave during this time and caring responsibilities as the reason he did not file his claim with the Tribunal before 15 July 2021. On oath, the claimant answered Mr Saeed's questions about his explanation. Both parties made a concluding statement about this issue. We took a break to consider our decision, which we delivered orally.

12. For the following reasons we concluded it was necessary to dismiss the complaint of public interest disclosure as being out of time.

13. First, we must decide whether the complaint of public interest disclosure was presented within the three-month limitation period. It was not. We have taken the claimant's case at its highest; the claimant relies on an alleged detriment *"20 days from 27 March 2021"* (issue 9.14.21). This gives a date of 16 April 2021 as the first date of the 3 month period. Three months (less a day) from this date is 15 July 2021. This deadline is not extended by the period of ACAS conciliation (which started on 30 July 2021 and ended on 10 September 2021 with the issue of a certificate) as the claimant commenced conciliation after

the preliminary deadline. In this circumstance, the period of ACAS conciliation cannot be used to extend the deadline. The ET1 claim form was filed on 29 September 2021, after the 15 July 2021 deadline.

14. As we have found the complaint of public interest disclosure was filed after the deadline, we must consider whether it was it reasonably practicable for the complaints to be presented before the end of the three months? We concluded it was reasonably practicable for the claimant to present his claim before 15 July 2021. We conclude it was. Taking the claimant's case at its highest based on the sick note evidence before us, we find that the claimant was absent from work until 31 May 2021. There is no evidence that he was absent from work or experience ill health after this date. He accepted he had access to the internet; therefore, we find that, during the period 31 May 2021 to 15 July 2021, the claimant was in a position to investigate time limits for bringing claims in the Employment Tribunal about those detriments of which he was aware at that time. There is no indication from what the claimant told the Tribunal at the case management hearing that he did not become aware of those detriments until a later date. In any event, the complaint of automatic unfair dismissal is proceeding so there is no prejudice to the claimant in respect of his claim that his dismissal was a detriment. The claimant also admitted that during the disciplinary and appeal processes he had the support of a trade union representative. For these reasons we conclude that it was reasonably practicable for the claimant to bring his complaint of public interest disclosure to the Tribunal before 15 July 2025. For these reasons, we must dismiss the complaint as being out of time.

15. We did not need to consider whether the public interest disclosure complaint was presented within such further period as the tribunal considers reasonable as we have found was reasonably practicable for the claimant to present this complaint in time.

Issues for the Tribunal to decide.

16. Mindful that the claimant was not represented, we explained the purpose of a list of issues.

17. The issues below are recorded in the case management order of Employment Judge Quill dated 17 July 2023 and sent to parties on 17 August 2023. Mindful that the claimant is not represented, we have specified the separate elements we must consider in the complaint of unfair dismissal in the list below. We explained these elements to the claimant at the hearing and note that he addressed these in his closing statement. As the complaint of public interest disclosure was dismissed as a preliminary matter as the Tribunal does not have jurisdiction to hear it, we have not listed the substantive issues in that complaint below.

<u>Unfair dismissal</u>

18. The claim of unfair dismissal is in time in that the claim form was filed with the Tribunal on 29 September 2021, within 3 months (less a day) of dismissal (7 May 2021) accounting for the time extension as a result of ACAS conciliation.

19. What was the principal reason for dismissal? The respondent asserts that it was a reason relating to the claimant's conduct. The claimant says the reason for his dismissal was that he made protected disclosures.

20. As the respondent has the initial burden of proof to prove, in the balance of probability, the reason for the dismissal, we consider the respondent's reason (conduct) first.

Misconduct dismissals

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

22. The Tribunal's determination whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case. It will usually decide, in particular, whether:

23. the respondent genuinely believed that the claimant actions amounted to misconduct

the respondent had reasonable grounds for that belief;

24. at the time the belief was formed the respondent had carried out a reasonable investigation;

25. the respondent otherwise acted in a procedurally fair manner; dismissal was within the range of reasonable responses.

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

27. Any considerations relating to contributory fault and any reduction in the compensatory award for unfair dismissal will be made under the principles set out in *Polkey v A E Dayton Services Limited 1998 ICR 142.* We shall refer to these principles as a 'Polkey deduction'. A Polkey deduction is a deduction made from a compensatory award in a successful unfair dismissal case to reflect the chance that, if a Tribunal finds that a dismissal was unfair, the Tribunal considers that the dismissal would have happened in any event. This can lead to any award for compensation being reduced by a percentage calculation based on the Tribunal's view of the likelihood of dismissal occurring. The hearing was listed for a day. It was not possible for the Tribunal to hear evidence on POLKEY as the time did not allow this. We explained Polkey the claimant and informed him that if we decided that he had been unfairly dismissed, this issue would be considered at a separate remedy hearing.

Protected disclosure dismissal

28. Was the principal reason for the dismissal that the Claimant had made a protected disclosure?

29. Did the claimant make one or more qualifying disclosures as defined in section 43B and 43C to 43H of the Employment Rights Act 1996? The Tribunal will decide:

30. The alleged disclosures the claimant relies on are as follows:

31. In September 2017, he prepared a 16 page document (pages 46 to 62 of preliminary hearing bundle) which he says he supplied by hand to three of the trustees [Mr. Adam Nasrullah Nasser; Mr. Pervez Bashir; Mr. Sabbir Patel] just after prayers in the mosque. The Trustees accept that they received this document.

32. In March 2021, he prepared a 40 page document (pages 6 to 45 of preliminary hearing bundle) which he does not claim to have supplied himself to the Respondent, but which he alleges came to their attention shortly after he supplied it to around 20 members of the mosque community. The claimant accepts that he did not give this report directly to the Trustees until after his dismissal. He says they knew of its contents as it will have been passed to the Trustees as a result of the claimant sharing the document with the community.

33. The claimant relies on the follow subsection(s) of section 43B(1) in relation to these alleged disclosures.

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

    In particular, he alleges that, in the 2017 report, he is referring to alleged breaches of what he believed were legal obligations:

    Paragraph 1.5 refers to alleged legal obligations for teachers to have qualifications and training

    Paragraph 1.7 refers to alleged legal obligations for vetting and DBS checks to work with children.

    Paragraph 1.9 and 1.9.1 refers to alleged legal obligations for providing services which have been paid for

    Paragraph 1.9.4 and 1.9.5 refers to alleged legal obligations for charities to be transparent and have complaint procedures

    Paragraph 3.2 refers to alleged legal obligations for a charity's trustees to avoid conflicts of interest and to only be paid officers if Charity Commission agrees

    Paragraph 3.5 refers to alleged legal obligations for use of a charity's property and facilities

34. Did he disclose information?

35. Did he believe the disclosure of information was made in the public interest?

36. Was that belief reasonable?

37. Did he believe it tended to show this information;

38. If either / both reports amount to a protected disclosure, did the respondent dismiss the claimant because of these reports.

39. If so, the claimant was unfairly dismissed

40. If not, then was the reason a potentially fair reason in accordance with sections 98(1) and (2) of the Employment Rights Act 1996 ("ERA")? The respondent says it dismissed the claimant due to his conduct.

Remedy for unfair dismissal (if relevant)

41. If the claimant was unfairly dismissed:

    41.1. Should reinstatement or re-engagement be ordered?

    41.2. What adjustment, if any, should be made to any compensatory award to reflect the possibility that the claimant might still have been dismissed had a fair and reasonable procedure been followed?

    41.3. Would it be just and equitable to reduce the claimant's basic award because of any blameworthy or culpable conduct before the dismissal, pursuant to ERA section 122(2)? If so to what extent?

    41.4. Did the claimant, by blameworthy or culpable actions, cause or contribute to dismissal to any extent? If so, is it just and equitable to reduce the amount of any compensatory award, pursuant to ERA section 123(6)?

<u>Unlawful deduction from wages</u>

42. Did the respondent make unauthorised deductions from the claimant's wages?

43. If so how much was deducted?

Findings of fact

44. We need only make findings of facts relevant to the issues in dispute. Where we have had to resolve any conflict of evidence, we indicate how we have done so at the material point.

45. The claimant was employed as an Imam from August 2010; parties agree that this was formalised by an employment contract dated 23 March 2015 (page 321 of the hearing file). This document is not signed or dated; in evidence to the Tribunal the claimant and respondent accepted this was the claimant's contract and accurately reflected the terms of his employment from March 2015.

46. We have considered the terms of this contract. Clause 4 records the claimant's contractual employment duties as an Imam. It was for these duties he was paid. The claimant was contracted to lead:

"Fajr prayer time and Esha prayer time and any other prayer time decided upon by the two Imams subject to change according to the new prayer timetable".

47. While we have seen evidence, and both parties in oral and written evidence explained to us, that an Imam may voluntarily engage in other, wider pastoral and religious responsibilities within the community, for the purpose of these proceedings the Tribunal has reminded itself that this is an employment matter and we must only focus on the employment relationship and the claimant's duties recorded in his employment contract. We find, based on the clear terms of this contract, the claimant's employed role was limited to leading prayer; it is from these duties the claimant was dismissed by the respondent.

48. It is accepted by both parties that Mr Osmani was the claimant's line manager. In oral evidence, Mr Osmani told us the claimant's prayer duties took half an hour each day; the claimant did not challenge this. Therefore, we find the claimant's contractual obligation to lead prayers amounted to 3.5 hours a week.

49. Clause 6 of the contract sets out claimant's wage. He was paid £250 (which parties agreed was a net figure) per calendar month. We calculate that this amounts to £3,000 net a year, for 182 hours of work (3.5 hours a week multiplied by 52 weeks). This equates to an hourly rate of £16.50 net. The claimant accepts he was paid the amount of £250 net per month from March 2015 to the end of his employment. He complains that he should have been paid the same amount as the teachers working at the respondent's mosque (parties agree they were paid £350 net a month at the relevant time) and that he should have received a pay rise to reflect this. In his closing statement the claimant told us failure to give him a pay rise and/or to give the claimant salary parity with the teachers amounted to a breach of the implied term of trust and confidence implied into all employment contracts.

50. Mr Osmani told us the teachers conducted 2 hours of lessons after school each day, amounting to 10 hours a week. This was not challenged by the claimant. We find that the teachers did a different role, with different duties and longer hours. The list of salaries for the respondent's teachers shows that they were paid less than £16.50 per hour; the claimant did not challenge these figures. Based on a 10 hour working week, the teachers worked 520 hours a year for a salary of £4200 (£350 multiplied by 12). Therefore, we calculate that the teachers earned approximately £12 per hour (which accords with the table of salaries in the hearing file). In this regard, we find that the claimant had a higher hourly net rate than the teachers.

<u>September 2017 report</u>

51. In September 2017, the claimant wrote a report titled *"Northampton Central Masjid and Maktab: An Independent Report and Recommendations"* , the "2017 Report". The claimant says he supplied the 2017 Report by hand to three of the trustees just after prayers in the mosque. The parties agree that at all relevant times the trustees were Mr. Adam Nasrullah Nasser; Mr. Pervez Bashir; Mr. Sabbir Patel, the "Trustees". In their evidence to the Tribunal Mr Osmani, Mr Bashir and Mr Nasser accepted that they received a copy of this

report. The Trustees are not referred to by name in this report. In evidence Mr Osmani and Mr Bashir accepted that the reference to trustees in the report is a reference to them. We find that the reference to trustees in this report is a reference to the Trustees as defined but a reasonable and objective reader would not necessarily make this link without further enquiry. Given the Trustees acknowledged they received the report, we find they knew or ought to have known the contents of the report at the time it was received.

52. The claimant relies on this report as a protected disclosure. We have considered the contents of the report: section 3 addresses the claimant's concerns with the management of the mosque; section 3.2 identifies information about Trustees holding multiple roles; and section 3.5 records the claimant's concerns about the respondent's use of its property. It is evident from reading the report that the claimant was concerned about the management of the mosque.

Suspension and investigation

53. By letter dated 27 March 2021 the respondent employer suspended the claimant *"pending an investigation into allegations of gross misconduct against [him]"* regarding *"disrespectful conduct towards and undermining of the trustee board over the last 2 months, including but not limited to recent events on 10, 12, 20 and 21 March 2021 at the mosque".* Parties agree that the specified dates include an incident involving a dispute between Mr Osmani and the claimant about the direction of prayer and the claimant's concerns about the use of plastic trays to indicate social distancing spacing in the mosque's prayer room during the Covid-19 pandemic.

54. Mr Osmani, as the claimant's line manager, investigated these allegations and recorded his findings in a report, which he sent to the claimant on 21 April 2021 with an invitation to a disciplinary hearing. It is accepted by Mr Osmani that he did not interview the claimant or any witnesses as part of his investigation. He told us he relied on documentary evidence he found (which he identifies in the report) and his own recollection of events at which he was present.

55. We have read the investigation report. The findings made by Mr Osmani include events which predate January 2021. We note that the suspension letter is the start of a process; an employer is not limited to the concerns stated in a suspension letter if other concerns for the employer which fall outside the initial suspension emerge during the investigation. The investigation report refers to the following matters as evidence of alleged misconduct.

    55.1. Mr Osmani's investigation report makes it clear that he considered the wording used by the claimant in the 2017 Report critical of the Trustee's management of the mosque, the claimant's employer. The claimant accepted he was advocating for the removal of the Trustees. Objectively, the language he uses in advocating his view the Trustees should be removed is strongly worded and critical of his employer. We find that it was reasonable for Mr Osmani to conclude that the 2017 Report's contents was disrespectful to the claimant's employer. In oral evidence the claimant accepted that he shared the report publicly. We find that the

claimant shared his concerns about the management of the mosque in the public domain.

55.2. A screenshot of a WhatsApp message sent on 21 March 2021 informing recipients that a Ramadan lecture the claimant was intending to deliver before an evening prayer was cancelled. The message states:

"Sadly, this is not going ahead. Masjid thuggery has stopped me"

55.3. Parties explained, and agreed, that Masjid is the religious word for Mosque. The Ramadan lecture was due to be delivered in the mosque. The claimant told us that the message related to a decision made by Mr Osmani to require the claimant to submit a written request by letter to conduct a lecture before prayer, despite him not previously being required to do so. We find that the reference to *"Masjid thuggery"* is a reference to the respondent's management. The claimant told us that the message was sent to a WhatsApp group which was a *"broadcast list of 100-150 ppl who on and off attended the mosque".*

55.4. A screenshot of WhatsApp message sent by the claimant on 21 March 2021 regarding a disagreement the claimant and the Trustees had about the Qibla (the direction towards the Kaaba in the Sacred Mosque in Mecca which is used by Muslims in various contexts including the direction of prayer), specifically a dispute over whether the carpet in the mosque prayer room align with the Qibla. The message states:

"As far as I have researched, digression from the precise qibla to such a significant degree only exists in Central Masjid [the mosque owned and managed by the respondent]. *All other masajid* [sic] *in Northampton are fine.*

The best thing to do would be for the community to put collective pressure on the 4 men who are hiding OUR masjid hostage and get this and many other serious problems sorted.

I have conveyed the message. It is now for the community to take action."

55.5. The claimant could not recall to whom he sent this message. Given the context, and the fact he accepted sending messages to a community, we find this message was in the public domain.

56. In summary, the report includes screenshots of these messages as evidence of the claimant's disrespectful behaviour and sets out Mr Osmani's findings about events which allegedly took place in the mosque in March 2021.

57. By letter dated 21 April 2021 the respondent (acting through its Trustees, including Mr Osmani who accepted he was a director of the respondent company) invited the claimant to a disciplinary meeting on 27 April 2021. We have read the letter; it summarises the allegations of misconduct as:

57.1. Disrespectful conduct towards trustees and undermining their authority to others.

57.2. Refusal to accept clear management instructions and directions from trustees.

57.3. Refusal to accept the Qibla direction and creating unrest and dissatisfaction amongst the congregation.

57.4. Publicly criticising the trustees in relation to the time of Jumu'ah prayers.

58. The claimant is referred to ACAS guidance, told the name of the panel members, informed of his right to be accompanied; the letter references enclosure of the investigation report. We find that, in receiving the report, he was informed of the specific allegations against him. Indeed, on 26 April 2021 the claimant emails Mr Osmani confirming he has read the summary of issues.

59. It is accepted that the claimant and respondent did not agree about the direction of the Qibla. It is also accepted that they had a disagreement on 12 March about this, when the claimant's line manager asked him to adjust his prayer mat and he refused to do so.

Disciplinary hearing

60. A disciplinary hearing took place on 27 April 2021 before the panel named in the invitation. The claimant was accompanied by a Trade Union representative. In its report of the same date the panel concluded that:

"…..any rational observer would conclude any relationship that may have existed has irretrievably broke down and furthermore [the claimant's] behaviour in the stringent criticism of the trustees particularly in his writings which have been shared on social media, and on various occasions in public constitutes on our view gross misconduct and brings the organisation into disrepute."

61. At the hearing Mr Rafiq (who heard the subsequent appeal) told us he considered the report and minutes of the disciplinary hearing (including those annotated by the claimant) and concluded that there were shortfalls in the conduct of the disciplinary hearing. When explaining his approach to the appeal hearing, Mr Rafiq told us he was trying to *"consider all aspects that should have been considered as part of the disciplinary process",* telling us *"there was a gap in the disciplinary process"*

62. We have read the same minutes. We agree with Mr Rafiq's assessment of the disciplinary hearing. We find that the claimant was not given the opportunity to respond to allegations in a fair manner. The respondent says this was rectified by the approach Mr Rafiq took in hearing the appeal. In this regard we do not need to consider whether the panel members were independent (the claimant says they were not as they were known to and acquaintances of the Trustees; the respondent says they were not) as the respondent's case is that any flaws at the disciplinary stage were rectified by the appeal process the respondent followed. Therefore, we consider below whether the appeal process "reset" the disciplinary process, rectified any flaws up to that point and ensured fairness of the dismissal procedure when considering the appeal process below.

Dismissal

63. The report produced by the disciplinary panel was considered by the respondent's Trustees at a meeting on 7 May 2021. Mr Osmani told us the respondent relied on the contents and conclusion of the panel's report in making the decision to dismiss the claimant as well as the contents of his investigation report. We find the record of the 7 May meeting accords with Mr Osmani's evidence.

64. There is no dispute as to the primary facts in relation to the way in which employment was terminated. The claimant was dismissed by the respondent acting through its Trustees in a letter dated 7 May 2021. The letter accords with Mr Osmani's evidence that the Trustees based their decision to dismiss on the recommendations made by the disciplinary panel. The letter informs the claimant of his right of appeal and right to be accompanied at any appeal hearing.

Appeal

65. On 12 May 2021 the claimant submitted a written appeal against his dismissal on 4 grounds; in summary:

    65.1. The disciplinary panel was not impartial;
    65.2. The meeting was unprofessional and intimidating;
    65.3. The disciplinary hearing and process did not follow the ACAS Code of Practice; and
    65.4. The meeting was confrontation, as evidenced by the minutes.

66. By email dated 18 May 2021 the respondent (acting through its Trustees) invited the claimant to an appeal hearing. The letter identified the name of the appeal officer, notetaker and reminds the claimant of his right to be accompanied. The claimant is invited to submit further details of his grounds of appeal. The claimant accepted that he received the documents enclosed with the letter.

67. An appeal hearing was conducted by Mr Rafiq on 28 May 2021. We have seen the minutes of that meeting, which both parties accept are accurate. In oral evidence Mr Rafiq accepted he had no professional qualifications in employment law or HR but had practical experience in HR and was qualified as a chartered accountant. Mindful there is no requirement for an appeal officer to be qualified as suggested by the claimant, we find that Mr Rafiq was suitable for the role of appeal officer. There is no evidence before us that his appointment was a conflict of interest. He was appointed by the respondent's HR adviser, which is common practice in this situation, particularly where the employer is a small company (as here) with limited internal management who could take on the role of an appeal officer.

68. We agree with Mr Rafiq that the claimant did not have the opportunity to put forward a response to the allegations in the disciplinary process. In adjourning the hearing, and allowing the claimant to submit a written response of 39 pages on 11 June 2021, we find that Mr Rafiq remedied the claimant's opportunity to reply to allegations, allowing him a reasonable amount of time to do so. We further find that in doing so he remedied the failures in the disciplinary process.

69. Mr Rafiq reconvened the appeal hearing 14 June 2021. We have read the minutes of this meeting (including those annotated by the claimant to include his comments). We find that, objectively, Mr Rafiq's conduct of this meeting was focused. The meeting lasted 2.5 hours during which Mr Rafiq told us, and we have seen from the minutes, that, on occasion, the claimant sought to digress from matters which are the subject of the allegations by the respondent and grounds of appeal by the claimant. We find that the minutes evidence that the claimant was given the opportunity to respond to the allegations. In this regard, we find the reconvened appeal hearing reset the process to that of disciplinary hearing.

70. On 5 July 2021 Mr Rafiq issued a report summarising the conclusions of his appeal. We have read this report. In upholding the respondent's decision to dismiss the claimant, Mr Rafiq takes account of the claimant's document and relies on the investigation report which evidences the claimant sharing his views on how the mosque was managed publicly to conclude that the claimant undermined his line manager and showed disrespect to his employer. There was no further right of appeal offered to the claimant.

March 2021 report

71. The claimant accepts he did not hand a copy of his March 2021 report (the "2021 Report") to the respondent (via the Trustees) until the appeal stage of the dismissal process. He told us that he shared it in the community before this date, something not challenged by the respondent. The claimant told us that it was "impossible for someone not to hand [the 2021 Report] over" to the Trustees. However, the claimant has not produced any evidence to support this belief. When asked, he could not name anyone who shared the contents of the report with the respondent. Therefore, we must find that the respondent did not receive the report until after the claimant's dismissal.

72. We have read the 2021 Report; the claimant refers to information from the Charity Commissions website and his correspondence with the Commission in which he raises concerns about the respondent's compliance. The report also addresses why the claimant considers the respondent has failed to comply with these obligations.

Relevant law

Jurisdiction - time limits

73. Section 48 of the Employment Rights Act 1996 provides:

(1)An employee may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of section
…..
(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, a temporary work agency or a hirer shall be taken to decide on a failure to act when he does an act inconsistent with 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.

74. The first day of the three-month period is the date of termination itself (Trow v Ind Coope (West Midlands) Ltd [1967] 2 QB 899, [1967] 2 All ER 900). Hence, the date in which the time period runs out is three months, less one day, from the date of termination, adjusted to take account of any period of ACAS conciliation.

75. For guidance on interpreting the word "practicable", we considered the case of Palmer and Saunders v Southend-on-Sea Borough Council [1984] IRLR 119 at [34], in which the Court of Appeal held:

"Perhaps to read the word "practicable" as the equivalent of "feasible" as Sir John Brightman did in [Singh v Post Office [1973] ICR 437, NIRC] and to ask colloquially and untrammelled by too much legal logic—"was it reasonably feasible to present the complaint to the [employment] tribunal within the relevant three months?"—is the best approach to the correct application of the relevant subsection."

76. In Porter v Bandridge [1978] IRLR 271 at [12], the Court of Appeal held:

"The onus of proving that it was not reasonably practicable to present the complaint within a period of three months was upon the applicant. That imposes a duty upon the applicant to show precisely why it was that he did not present his complaint. He has to satisfy the Tribunal that he did not know of his rights during the whole of the period of eleven months and that there was no reason why he should make enquiries or should know of his rights during that period."

77. Smith J in Nolan v Balfour Beatty Engineering Services EAT 0109/11 (unreported) held that:

"30. In summary, when deciding what would have been a reasonable time within which to present a late claim, employment tribunals plainly require to bear in mind the context, namely a primary time limit of three months and the general principle that litigation should be progressed efficiently and without delay. They then require to consider all the circumstances of the particular case, an exercise which will inevitably include taking account of what the claimant did and what he knew about time limits, what he, reasonably, ought to have known about them, and they require to ask themselves why it was that the further delay occurred."

78. In Cygnet Behavioural Health Ltd v Britton [2022] EAT 108, in response to the explanation provided by the claimant that he was ignorant of the time limits, the EAT noted that *"it makes no sense, in my judgment, that the claimant*

would not have been able to type a short sentence into a search engine and to seek information about unfair dismissal time limits" (see [56]).

Unfair dismissal

79. Section 94 of the Employment Rights Act 1996 (the '1996 Act') confers on employees the right not to be unfairly dismissed. Enforcement of the right is by way of complaint to the Tribunal under section 111. The employee must show that he was dismissed by the respondent under section 95. This is also satisfied by the respondent admitting that it dismissed the claimant (within section 95(1)(a) of the 1996 Act).

80. Section 98 of the 1996 Act deals with the fairness of dismissals. There are two stages within section 98. First, the employer must show that it had a potentially fair reason for the dismissal within section 98(2). Second, if the respondent shows that it had a potentially fair reason for the dismissal, the Tribunal must consider, without there being any burden of proof on either party, whether the respondent acted fairly or unfairly in dismissing for that reason.

81. Section 98(4) of the 1996 Act deals with fairness generally and provides that the determination of the question whether the dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend on whether 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 shall be determined in accordance with equity and the substantial merits of the case.

82. In misconduct dismissals, there is well established guidance for Tribunals on fairness within section 98(4) in the decision in British Home Stores Ltd v Burchell 1978 IRLR 379, EAT. The Tribunal must decide whether the employer had a genuine belief in the employee's guilt. Both parties reminded us that we must apply this test.

83. Then the Tribunal must decide whether the employer held such genuine belief on reasonable grounds and after carrying out a reasonable investigation. In all aspects of the case, including the investigation, the grounds for belief, the penalty imposed, and the procedure followed, in deciding whether the employer acted reasonably or unreasonably within section 98(4), the Tribunal must decide whether the employer acted within the band of reasonable responses open to an employer in the circumstances. It is immaterial how the Tribunal would have handled the events or what decision it would have made. Mindful of the cases to which parties referred us, we note that the Tribunal must not substitute its view for that of the reasonable employer Iceland Frozen Foods Limited v Jones 1982 IRLR 439, Sainsbury's Supermarkets Limited v Hitt 2003 IRLR 23 and London Ambulance Service NHS Trust v Small 2009 IRLR). The employer is the primary fact finder; the Tribunal's role is to review the facts evident during the disciplinary process, not what may be raised at a later date Fuller v The London Borough of Brent [2011] EWCA Civ 267. The Tribunal must not require the employer to have conducted a perfect investigation for every conceivable line of defence: Shrestha v Genesis Housing Association [2015] EWCA Civ 94.

84. The compensatory award if a claim of unfair dismissal is successful must be 'just and equitable'. As a result of the decision in Polkey v AE Dayton Services Ltd [1987] IRLR 503 a Tribunal may reduce the compensatory award to reflect the chance that the claimant would have been dismissed in any event had the dismissal followed a fair process. The Tribunal assesses this possibility by reference to the actual employer in the claim. To substitute the Tribunal's own mindset is an error of law.

85. The respondent referred us to the case of The British Waterways Board trading as Scottish Canals v Mr David Smith UKEATS/0004/15/SM which it considered analogous as the case involved an employee being dismissed for posting offensive messages about his employer.

Automatic unfair dismissal

86. Section 103A Employment Rights Act 1996 provides:

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

Protected disclosure

87. Section 43A of the Employment Rights Act 1996 provides:

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.

88. Section 43B of the Employment Rights Act 1996 defines "qualifying disclosure" as:

In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—

(a) that a criminal offence has been committed, is being committed or is likely to be committed,

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

(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,

(d) that the health or safety of any individual has been, is being or is likely to be endangered,

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

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

89. A disclosure within the meaning of the Act includes "any disclosure of information". A disclosure is made even when the person receiving it was already aware of that information: s43L ERA.

90. The claims are made against the claimant's employer; therefore, they fall within section 47C of the Employment Rights Act 1996, which provides:

(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.
(1A)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.
(1B)Where a worker is subjected to detriment by anything done as mentioned in subsection (1A), that thing is treated as also done by the worker's employer.
(1C)For the purposes of subsection (1B), it is immaterial whether the thing is done with the knowledge or approval of the worker's employer.
(1D)In proceedings against W's employer in respect of anything alleged to have been done as mentioned in subsection (1A)(a), it is a defence for the employer to show that the employer took all reasonable steps to prevent the other worker—
(a)from doing that thing, or
(b)from doing anything of that description.
(1E)A worker or agent of W's employer is not liable by reason of subsection (1A) for doing something that subjects W to detriment if—
(a)the worker or agent does that thing in reliance on a statement by the employer that doing it does not contravene this Act, and
(b)it is reasonable for the worker or agent to rely on the statement.
But this does not prevent the employer from being liable by reason of subsection (1B).
(2) This section does not apply where—
(a)the worker is an employee, and
(b)the detriment in question amounts to dismissal (within the meaning of Part X).
(3)For the purposes of this section, and of sections 48 and 49 so far as relating to this section, " worker ", " worker's contract ", " employment " and " employer " have the extended meaning given by section 43K.

91. The Tribunal directed itself to the following cases which we considered relevant to determining whether the disclosures on which the claimant relies constitute protected disclosures:

91.1. Cavendish Munro Professional Risks Management Ltd v Geduld [2010] IRLR 38 at paragraph 24 for guidance on the meaning of "information";

91.2. Kilraine v LB Wandsworth [2018] EWCA Civ 1436 for guidance as to whether "*a particular statement or disclosure is a 'disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the [matters set out in sub-paragraphs (a) to (f)]";*

91.3. Williams v Michelle Brown AM UKEAT/2004/19) for guidance on the 5 stage test the ET should apply; and

91.4. Dobbie v Felton t/a Feltons Solicitors [2021] IRLR 679 for guidance on the public interest test.

92. To determine whether the dismissal was on the grounds that the claimant had made a protected disclosure, we note that by s48(2) ERA it is for the respondent to prove the ground on which the acts were done. This issue requires an analysis of the mental processes (conscious or unconscious) which caused a respondent so to act, rather than an application of the "but for" test (Harrow v Knight [2003] IRLR 140). The question is whether the protected act(s) *materially influenced* Rs' treatment of C (Fecitt v NHS Manchester [2011] EWCA Civ 1190 at paragraph 45).

Unlawful deduction from wages

93. Section 13 Employment Rights Act 1996 sets out the right of an employee not to suffer unauthorised deductions from their wages. It provides:

(1)An employer shall not make a deduction from wages of a worker employed by him unless—
(a)the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or
(b)the worker has previously signified in writing his agreement or consent to the making of the deduction.
(2)In this section "relevant provision", in relation to a worker's contract, means a provision of the contract comprised—
(a)in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or
(b)in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.
(3)Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.
(4)Subsection (3) does not apply in so far as the deficiency is attributable to an error of any description on the part of the employer affecting the computation by him of the gross amount of the wages properly payable by him to the worker on that occasion.
(5)For the purposes of this section a relevant provision of a worker's contract having effect by virtue of a variation of the contract does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the variation took effect.
(6)For the purposes of this section an agreement or consent signified by a worker does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the agreement or consent was signified.
(7)This section does not affect any other statutory provision by virtue of which a sum payable to a worker by his employer but not constituting "wages" within the meaning of this Part is not to be subject to a deduction at the instance of the employer.
.....

Conclusions

Unfair dismissal

94. The respondent has satisfied the requirements of section 95 of the 1996 Act, admitting that it dismissed the claimant (within section 95(1)(a)) on 7 May 2021.

95. The first issue to determine is the reason for the claimant's dismissal. The respondent says the reason was gross misconduct based on its findings that the claimant was disrespectful to the respondent's management. As the respondent has the burden to prove to the Tribunal, on the balance of probability, the reason for dismissal, first we apply our findings to the legal test for a misconduct dismissal set out by the Employment Appeal Tribunal in British Home Stores Ltd v Burchell 1978 IRLR 379, EAT.

96. In doing so, we remind ourselves that it is immaterial how we would have handled the events or what decision we would have made in the same circumstances. We must focus on the facts known to the person deciding to dismiss the claimant (here Mr Osmani as the claimant's line manager) at the time the decision to dismiss is made. We must consider the facts evident to that decision maker (Mr Osmani) during the disciplinary process. We need to decide whether the respondent, acting through its Trustees, genuinely believed the claimant had committed misconduct. The respondent has the burden to prove this.

97. We conclude that, on the balance of probability, it has. We have found that the suspension letter referred to concerns about the claimant's disrespectful conduct during the period January to March 2021. An investigation by Mr Osmani revealed WhatsApp messages the claimant admitted he sent in which the claimant referred to his employer (the respondent's management) as thuggery, criticised the respondent's interpretation of the Qibla and in doing so alleged that his employer was holding the mosque hostage. We have found the claimant publicly criticised his employer on several occasions; while he may believe his criticisms were justified, the language he used and the reach of his public forum (his social media internet sites and a community WhatsApp group) evidence reasonable grounds for his employer to conclude his conduct disrespectful. That the respondent held this view is reflected in the contemporaneous investigation report, disciplinary report and Mr Rafiq's appeal report. The contemporaneous documents evidence that the respondent acting through its Trustees took issue with these communications, genuinely believing them to be disrespectful. Furthermore, we find that Mr Osmani had a genuine belief that the claimant refused to follow a management instruction about the Qibla, something the claimant accepts.

98. In our judgment, the references in these reports to the respondent's concerns about the claimant publishing his views and the language he used in expressing concerns in the community via WhatsApp and a website evidence the respondent's belief that, at the time of his dismissal, the claimant had been disrespectful to his employer.

99. Furthermore, that the respondent had reasonable grounds for this belief is evident from the language the claimant chose to use in the 2017 Report and WhatsApp communications. Objectively, terms such as thuggery and hostage

are inflammatory; it is reasonable for an employer to take issue with this language. That this employer did is evident from the references in the report.

100. Second, we must consider whether the respondent acted reasonably in all the circumstances in treating the public communications as a sufficient reason to dismiss the claimant. Essentially we must ask ourselves was the respondent's belief the claimant was disrespectful based on reasonable grounds? In doing so we must explore the evidence the employer had before it at the time the decision to dismiss was made and decide whether the respondent acted reasonably in all the circumstances in treating the misconduct as a sufficient reason to dismiss the claimant. We conclude that the Trustees, and particularly Mr Osmani as the claimant's line manager. had reasonable grounds for concluding the claimant had committed misconduct. The Trustees considered the report produced by Mr Osmani and the disciplinary panel at the 7 May 2021 meeting. Both reports cite the public communications of the claimant in March 2021 and the 2017 report and conclude that the language chosen by the claimant was disrespectful and an attempt to shame his employer. We find this belief genuine and the reasonable grounds for forming this belief is the claimant's own words, accurately reproduced in the reports the Trustees considered.

101. For these reasons, we conclude that the respondent acting through the claimant's line manager, Mr Osmani, had a genuine belief that the claimant had been disrespectful, and the language used gave the employer reasonable grounds for reaching that conclusion. Whether or not the concerns were justified is not a matter for the Tribunal. It is sufficient for the Tribunal to be satisfied that, at that time, the respondent believed the words used were disrespectful. We are.

102. The claimant's assertion that he was dismissed because of the 2021 Report has no basis in fact and law. By his own admission, he did not hand the report to his employer until the appeal stage of the dismissal process. As a matter of chronology, receipt of the report by the respondent at this time could not have been the reason for the claimant's dismissal, as the receipt post-dated the dismissal. The claimant's belief that someone who became aware of the contents of the report following the claimant sharing it in the community and told the respondent about its content is just that, a belief, which is not supported by evidence. As we have found the 2021 Report could not have been the reason for the dismissal, we do not need to consider whether the contents of that report amount to a protected disclosure.

103. Third, we must decide whether, at the time the respondent formed its belief that the claimant had committed misconduct by being disrespectful, it had carried out a reasonable investigation. On balance, we conclude it did not. We have found that neither the claimant nor any witnesses were interviewed as part of the investigation process. While the claimant's public communications speak for themselves by the words he chose to use (and, we have concluded, were central to the respondent's decision to dismiss), Mr Osmani also investigated alleged events the respondent considered disrespectful (the issue with Qibla and the plastic trays). Mr Osmani admitted he relied on his presence at the events to formulate findings about the claimant's conduct. This precluded the claimant the opportunity to put forward his recollection of events. Furthermore, he did not have the opportunity to explain his choice of words in the public communications.

104. In reaching this conclusion, we are mindful the respondent is a small employer, which has charitable status and limited resources. Notwithstanding these genuine limitations on the respondent's ability to conduct an investigation, we conclude that a reasonable employer of similar resources would have interviewed the claimant as part of the investigation and asked him if he wanted anyone else to be interviewed to corroborate his recollection of the March events. While we have found that Mr Rafiq did afford the claimant a right of reply by adjourning the appeal hearing to allow the claimant to submit a written response, his attempt to reset the dismissal process did not include interviewing the claimant or asking him if he wanted anyone else to be interviewed. In this regard, we conclude that the dismissal was unfair. Furthermore, we note Mr Osmani was present at both appeal hearings. Therefore, the respondent did not afford the claimant the opportunity to be interviewed, or put his recollection and defence forward in private. We conclude that this also impacted the fairness of the investigation and dismissal process.

105. Fourth, we must consider whether the respondent otherwise acted in a procedurally fair manner. We have found the disciplinary hearing wanting in that the claimant did not have the opportunity to respond to the allegations nor put forward the names of other present at the time of the alleged conduct who he wanted the panel to interview. Mr Rafiq's approach to the appeal process rectified this. The adjourned hearing gave the claimant the opportunity to respond to the allegations in the investigation report, which he did comprehensively. However, we consider it procedurally unfair that Mr Osmani (who was a direct party to some of the allegations) was present. At the second appeal hearing Mr Rafiq remained focused in his consideration of the claimant's response. However, by resetting the process at the appeal stage, it follows that the claimant should have been given been afforded the opportunity to appeal Mr Rafiq's decision. He was not and in this regard we conclude that, overall, the process was procedurally unfair; essentially the claimant was not afforded the right of appeal.

106. Finally, we must decide whether the respondent's decision to dismiss was within the range of reasonable responses. When considering the fairness of the sanction of dismissal, we remind ourselves we must not substitute our own view for the employer's view. The Tribunal must decide if the sanction fell within the range of reasonable responses of an employer with the size and resources of the respondent. The claimant's case is that a lesser sanction, such as a written warning, would have been reasonable given he had never had his conduct called into question at any time during his employment until he received the suspension letter. Given the clear evidence of the written messages which we have found that the respondent, reasonably, concluded were disrespectful and which were shared within the community, we conclude the respondent's decision to dismiss was within the band of reasonable responses. Given the nature of the communications, and the words the claimant used to describe his employer and its Trustees, and the context of the employer (a religious organisation), we conclude in the all the circumstances as we have found them at the time of the dismissal, the respondent's decision to dismiss was within the reasonable band.

107. In summary, we have concluded that the reason for the claimant's dismissal was misconduct, specifically communications criticising his

employer which he shared publicly, one of which was shared with a WhatsApp group populated principally by the congregation of the mosque operated by the respondent company. For the reasons stated we have concluded that the respondent acting through its Trustees had a genuine belief the claimant had been disrespectful given that the claimant admitted sending the messages and sharing the 2017 Report publicly, and we have found, objectively the language he used was critical and offensive. The respondent had reasonable grounds for this belief given at the time of the dismissal it was known to all parties as a matter of fact, and clear on the face of the communications, that the claimant was the author.

108. We have concluded the dismissal was unfair in that the claimant was not interviewed as part of the investigation process and while the appeal sought to rectify the failings with the disciplinary hearing (at which we have found the claimant was not given the opportunity to respond to the allegations), it only did so in terms of affording the claimant a right of reply. It did not complete the process by allowing the claimant the opportunity to appeal

109. As we have found the process of dismissal unfair we must apply the test in the case of Polkey v AE Dayton Services Ltd [1987] IRLR 503 to consider whether the compensatory award should be reduced to reflect the chance that the claimant would have been dismissed in any event had the respondent followed a fair process. Mindful the claimant is not represented, we explained the test to the claimant on day 2 of the hearing when discussing the list of issues. Essentially, we must decide whether the failure to interview the claimant or to afford him a right of appeal to Mr Rafiq's report would have changed the outcome. We remind ourselves that we must assess this possibility by reference to the actual employer in the claim as to substitute our own mindset is an error of law.

110. Interviewing the claimant at the investigation stage would have afforded the claimant the opportunity to speak to the events in March 2021 and suggest witnesses to corroborate his recollection. However, his public communications are personal to him only; the words he chose to use speak for themselves. He accepts he shared the communications publicly and had a wide audience. As this allegation of disrespectful behaviour is founded in the written word, we conclude witness corroboration would have made no difference to the respondent's conclusion. Furthermore, the claimant had the opportunity to justify his choice on language to his employer in his written reply during the appeal. While the process was unfair, given the emphasis on the claimant's written public communication in the respondent's conclusion the claimant behaved in such a disrespectful way it amounted to misconduct, we conclude interviewing the claimant at the investigation stage or allowing him a further right of appeal would have made no difference to the tariff of dismissal. Indeed, at the hearing the claimant's view was that his WhatsApp messages and the contents of the 2017 Report were not offensive. Had he shared this view at the investigation stage or on appeal, we conclude it would have made no difference to the respondent's decision to dismiss him. Therefore, applying Polkey, we conclude that the claimant's compensatory award must be reduced by 100%.

Protected disclosure dismissal

111. As we have found that the reason for the claimant's dismissal was his conduct due to his public communications, it follows that, as a matter of law and fact he was not dismissed because he made a public disclosure. As to the 2017 Report, the respondent accepts it had received the report prior to the claimant's dismissal. The respondent accepts that the report informed its decision to dismiss the claimant; the investigation and disciplinary reports refer to the contents of the 2017 Report to evidence the claimant's disrespectful and public communications about his employer.

112. For completeness, we have considered whether the report constitutes a protected disclosure. We have found that this report contains information about the respondent's charitable status. We conclude that this constitutes a disclosure of information, specifically section 3. It is accepted it was sent to his employer. The claimant had a reasonable belief the respondent was not managing the mosque properly. We consider that the claimant's concerns were raised in the public interest as in the report the claimant expresses concerns about people in a company with charitable status being appointed to several roles, making the decision to appoint themselves. It is evident from the report that the claimant genuinely had this concern.

113. In determining whether the claimant believed that this report was sent in the public interest we have considered the summary set out by the EAT in Dobbie v Felton t/a Feltons Solicitors [2021] IRLR 679 at paragraph 27 and specifically the guidance that a belief that the disclosure is in the public interest does not have to be the predominant motive in making it. It is our judgment that it is in the public interest to ensure employers with a charitable status comply with their obligations. It is irrelevant if there was a breach of the obligations or not. It is sufficient for the claimant to believe there was a breach, which the detail in his report and references to the website evidence that. For these reasons, we conclude that the 2017 report is a qualifying disclosures pursuant to s.43B ERA 1996 tending to show that the respondent failed, is failing or is likely to fail to comply with a legal obligation for a charity's Trustees to avoid conflicts of interest and to only be paid officers if the Charity Commission agrees.

114. The 2017 Report being a public disclosure does not change our finding that the claimant was dismissed for gross misconduct because of his communications about his employer mostly particularly the WhatsApp message. It was the contents of the report which the respondent reasonably found to be part of the communications it concluded amounted to gross misconduct and not the fact that the claimant blew the whistle. The motivation for the dismissal was the language used by the claimant in criticising his employer and his failure to follow management instructions in the direction of prayer.

Wages

115. The claim for unlawful deductions from wages is misguided. At the hearing the claimant relied on a comparison with wages the respondent paid to teachers to claim to additional wages. An employee does not have an automatic entitlement to a pay rise; there has to be a written or oral agreement to receive a pay rise and an unlawful deduction from wages arises

(in certain circumstances) when an employer does not fulfil that promise. On the facts before us, the claimant's requests for a pay rise were refused by the respondent. Furthermore, the teachers are not a comparator as they were employer in a different role and worked more hours each week than the claimant (based on the claimant's contractual duties; we note he attended the mosque at other times but this was not in an employed role). We have seen evidence that the teachers did receive a pay rise, to ensure they were paid the legal minimum wage based on the number of hours they worked. In any event, the claimant's hourly wage was above the minimum wage throughout the time he worked and higher than that received by the teachers.

116. In his closing statement the claimant relied on a breach of the term of trust and confidence.

117. Had the claimant resigned and brought a claim for unfair dismissal a breach of the term of trust and confidence may have been relevant if he had a claimant of constructive dismissal. He did not resign and this claim is not before the Tribunal. There is no implied term in employment contracts that an employee will receive a pay rise. We have found that the claimant's contact entitled him to be paid £250 net per month. He accepts he was paid this amount throughout his employment. The respondent did not unlawfully deduct any amounts from the claimant's wages.

118. As the compensatory award is reduce to £0 at the remedy hearing the Tribunal does not need to consider whether the respondent unreasonably failed to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures 2015 in accordance with s 207A Trade Union & Labour Relations (Consolidation) Act 1992. as any uplift only applies to any compensatory award.

119. For these reasons it is the unanimous judgment of this Employment Tribunal that:

119.1. The complaint of public interest disclosure was not presented within the applicable time limit. It was reasonably practicable to do so. The complaint of public interest disclosure is therefore dismissed.

119.2. The claim of unlawful deduction from wages is not well founded and is dismissed.

119.3. The complaint of unfair dismissal is well-founded. The claimant was unfairly dismissed due to procedural unfairness.

119.4. There is a 100 % chance that the claimant would have been fairly dismissed in any event.

119.5. The complaint of automatic unfair dismissal pursuant to section 103A Employment Rights Act 1996

120. Parties have been sent a case management order with a date and orders for a remedy hearing.

Case No: 3320829/2021

Approved by:
Employment Judge Hutchings

6 August 2025

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON
11 August 2025
.....

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FOR EMPLOYMENT TRIBUNAL