



EMPLOYMENT TRIBUNALS

Claimant: Arvan Handa

Respondent: The Station Hotel (Newcastle) Limited

Heard at: Newcastle Employment Tribunal (remotely by video hearing)

On: 03 October 2025 (deliberations 20 November 2025)

Before: Employment Judge Sweeney
Lynn Jackson
Emma Wiles

Appearances

For the Claimant, D Bayne, counsel
For the Respondent, T Cordrey, counsel

RESERVED JUDGMENT ON COSTS

1. The Respondent's application for costs is dismissed.

REASONS

Background and findings of fact

1. The Claimant, Mr Arvan Handa, presented an ET1 on **16 May 2024** against:
 - 1.1. The Station Hotel (Newcastle) Ltd (**'the Respondent'**) (or **'SHNL'**)
 - 1.2. Paul Williamson (non-executive chairman of SHNL)
 - 1.3. Aran Handa (Director and shareholder of SHNL and brother of the Claimant)
 - 1.4. Steven Duncan (External HR consultant contracted by SHNL)
 - 1.5. Warren Wayne (External solicitor contracted by SHNL)

2. A sixth respondent, Nigel Mills, another non-executive director of SHNL, was added to the proceedings at a hearing on **30 July 2024**, permission having been granted by Employment Judge Loy. The claims were for unfair automatically unfair dismissal (in contravention of the 'whistleblowing' provision, section 103A Employment Rights Act 1996 ('**ERA**')); 'ordinary' unfair dismissal (section 98 ERA) and 'whistleblowing' detriment (sections 48 and 47B ERA).
3. The Respondent is a private limited company which owns and operates a portfolio of leisure properties in England and Scotland, principally hotels, operating under the trading name 'The Cairn Group'. The Claimant has a 35% shareholding in the Respondent. He is the brother of Aran Handa, who also has a 35% shareholding. They are the two sons of the founder of the Group, Roshan La Handa, who has a 30% shareholding. The Claimant was employed by SHNL under a service agreement until his summary dismissal on **14 February 2024**.
4. As Regards the above-named individuals:
 - 4.1. Mr Williamson made the decision to dismiss the Claimant.
 - 4.2. Steve Duncan carried out a fact-finding investigation into disciplinary allegations and provided a report of that investigation to the Respondent's Board.
 - 4.3. Warren Wayne carried out a fact-finding investigation into a grievance raised by the Claimant and into further disciplinary allegations against the Claimant and provided a report of those investigations to the Board.
 - 4.4. Nigel Mills had conduct of the Claimant's appeal against dismissal.

Other Proceedings

5. This dispute is one of a number of disputes in this jurisdiction and in the High Court. At its heart is the breakup of the Handa family, involving allegation and counter allegations. There are two sides to the family line under Roshan: Arvan's side of the family and Aran's side of the family. For the past couple of years they have been involved in bitterly fought litigation.

The whistleblowing complaints

6. The claims against the named individuals, Paul Williamson, Aran Handa, Steve Duncan and Warren Wayne were brought under sections 48 and 47B (1A) of the ERA. The claim against the Respondent was brought under section 103A and sections 48/47B. The Details of Claim identified alleged protected disclosures. In paragraph 17, the Claimant pleaded that he raised concerns about transactions '*identified in the schedule hereto.*' In paragraph 18 he pleaded that he had raised issues regarding those transactions '*on occasions too numerous to fully particularise*' but gave eight dates on which he relied as amounting to protected disclosures. The 'schedule' then set out the substance which the Claimant alleged he raised

about six transactions under paragraphs A to F. We refer to this as the '**Disclosures Schedule**'.

7. The Final Hearing in these proceedings started on **22 September 2025** and ended, as will be seen below on **25 September 2025** with the withdrawal of what had then remained of the proceedings. This led to the Respondent making an application for costs against the Claimant. Given the grounds of that application it is necessary for us to set out the factual history of the proceedings and for us to make findings of fact on the conduct of the Claimant.
8. As the claim involved complaints of whistleblowing detriment, a case management preliminary hearing ('PH') was listed on service of the ET1 on the respondents. That PH was listed for **30 July 2024**. On **04 July 2024**, the Respondent's solicitors wrote to the tribunal to say, among other things, that the Claimant's claim was not sufficiently particularised and that they would shortly be submitting a request for further information to the claimant in the course of conducting those proceedings.
9. On **08 July 2024**, the Respondent served on the Claimant a Scott Schedule which it invited him to complete. Although he had received legal assistance in the drafting of the ET1, the Claimant was not at that stage represented by solicitors. On **18 July 2024** Savage Silk Solicitors came on the record. On the same day, Mr Duncan and Mr Wayne applied to the Tribunal for an open preliminary hearing to have the claims against them struck out on a number of grounds.
10. The PH referred to in paragraph 8 above was heard by Employment Judge Loy. He granted permission to add the sixth respondent, Mr Mills. In addition he ordered the Claimant to complete the scott schedule as drafted by the Respondent by **27 August 2024** (paragraph 13 of his orders). Judge Loy also listed the final hearing for ten days to commence on Monday **22 September 2025**, ending on Friday **03 October 2025**.
11. On **02 September 2024** the Claimant's solicitors sent the completed scott schedule to the Respondent. This was after the directed date. However, Judge Loy order later amended paragraph 13 of his orders of his own initiative to **17 September 2024**. We note that Judge Loy's orders were not sent to the parties until **13 September 2024**. Whether that was why he varied the date we do not know but whatever the reason it was amended. Therefore, the scott schedule was provided after the original date of 27 August but before the amended date of 17 September.
12. The Respondent considered the scott schedule to be deficient. Therefore, on **12 September 2024**, its solicitors wrote to the tribunal seeking an unless order for the Claimant to provide a full and proper response to the request for further information. Whether it was deficient may be said to be debatable and insofar as this aspect is raised as an example of the Claimant's unreasonable conduct, we express our finding on that below. Nevertheless, the Respondent considered it to be deficient. In its application, the Respondent's solicitors stated that *"the purpose of the request was to enable the Claimant to set out (a) which concerns were raised in each meeting/email described in his details of claim; (b) what information was disclosed in relation to those concerns and (c) which of the circumstances*

in section 43B ERA each allegation related to". That may, indeed, have been the purpose but that was not the wording that were used in the template scott schedule that had been sent to the Claimant. We have looked carefully at what was provided by the Claimant's solicitors on **02 September 2024**. We consider that the Claimant had set out what had been asked of him in that:

12.1. He described what he contended amounted to a protected disclosure (as he was asked to);

12.2. He included details of when the disclosure was made and who it was made to (as he was asked to);

12.3. He identified the substance of each disclosure by reference to the Disclosures Schedule (as he had been asked to).

13. The Claimant identified seven dates between **28 May 2020** and **28 October 2022** inclusive when he made what he said were protected disclosures. Those dates coincided with the dates pleaded in paragraph 18 of his Details of Claim, save that the scott schedule omitted to refer to an eighth date (**15 December 2022**). What the Claimant did not do in the scott schedule was to say which of the matters A to F of the Disclosures Schedule he raised at which meeting. What is clear, however, is that the Claimant's case was that he had made the same allegation on each of those occasions, namely that others were misappropriating the assets of the Respondent and he had identified the substance of what he allegedly said about the transactions. Whilst it might have been the Respondent's expectation that more detail would have been given as to which of the A to F transactions was raised at which of the meetings identified in paragraph 18, the wording of the Scott Schedule did not make that explicit. But it seemed to us that the substance of what the Claimant was saying was reasonably clear and certainly sufficiently clear to enable the Respondent to understand the case and plead to it.

14. We understand that at the further hearing that took place on **21 October 2024** the Claimant was ordered to provide a revised version of the Scott Schedule that he had provided on 02 September. We take this from paragraph 23.6 of the written costs application. We have not seen any such order (see below). Furthermore, we are at a different stage in these proceedings to the Judge who conducted that preliminary hearing. We are looking back and in doing so are required to set out our findings as to what happened (in order to adjudicate on the question of unreasonable conduct of the proceedings or part thereof). The judge who conducted the preliminary hearing on **21 October 2024** (Judge Martin) was making case management orders. She was looking forward. It may very well be that all concerned, the parties and the judge on the day believed that more precision was helpful (such as linking the matters in A to F to particular meetings if that was possible). Certainly no one could disagree with that. However, we are very much of the view and so find that by sending the scott schedule in the form that he did on **02 September 2022**, the Claimant cannot be criticised for not doing what he was asked to do by the Respondent. To seek an unless

order as the Respondent's solicitors did was in our view an unnecessary and certainly premature step – and we note that no such order was made.

Public Preliminary hearing

- 15.** The hearing that n we are referring to above, where a case management order was apparently made for provision of a revised scott schedule, was an 'open' or public preliminary hearing before Employment Judge Martin. It had initially been listed to determine the question of the Tribunal's jurisdiction to hear a complaint against Mr Duncan, who was at that time the fourth respondent. The hearing was then extended to enable the Tribunal to determine whether the claim against the then fifth respondent (Warren Wayne) was out of time. As set out above, the hearing took place on **21 October 2024**. At the outset of the hearing, Mr Bayne, counsel for the Claimant, confirmed that he was not proceeding with the claim against Mr Duncan and that this could be dismissed upon withdrawal. That left only the jurisdictional issue in respect of Mr Wayne. The Claimant gave evidence at that hearing. In a reserved judgment, sent to the parties on **18 November 2024**, Judge Martin determined that the Tribunal did not have jurisdiction and she dismissed the claim against Mr Wayne. With the dismissal of Mr Duncan, that left four respondents remaining in the proceedings – one corporate and three individuals.
- 16.** As indicated above, we have not seen any resulting case management order from that public hearing. We checked with the administration but there is none on file. No such order was produced in the Core or Main Bundle for the final hearing and none was included in the costs hearing bundle. There is only the reserved judgment on the substantive issues, which does not refer to any order that the Claimant provide a revised schedule. The parties do not dispute that there was an order. We suspect but are unsure that the Claimant volunteered to provide a further schedule and on that basis Judge Martin felt no need to make an order as such. However, that is supposition on our part. However, without sight of any written order we are unable to say precisely what the Claimant was ordered to do if anything.
- 17.** The purpose of providing further information is to enable the other party to understand sufficiently the case it has to meet. As we have stated above, the case the Respondent had to meet as of **02 September 2024** (when the first scott schedule was provided) was sufficiently clear which was that the Claimant had made protected disclosures on identified dates, to identified people by alleging that particular individuals (identified by him) had misappropriated corporate funds for their own use in the ways set out in paragraphs A to F of the Schedule of the Details of Claim. Paragraph 18 of the Claim Form gave the dates and places (virtual or physical) where meetings took place. The only thing that the Claimant did not do was to identify at which meeting which of the matters in A to F were allegedly raised. However, it seems to us that the Respondent had more than enough information to understand the case it had to meet. Those who were alleged to have been at the meetings on the stated dates (and their names were stated) would be able to say in evidence what, if anything was said at those meetings and whether any of the things identified in A to F had been discussed. Witness statements on both sides would inevitably be expected to address

those things. There is a saying in litigation: 'be careful what you ask for'. It seems that the Respondent being dissatisfied with what we find to be sufficient information to understand and plead to the case it was required to meet, sought more precise information.

18. Whatever was ordered the Claimant submitted a further scott schedule on **11 November 2024**. The accompanying email does not refer to it as a 'revised' schedule' nor does it identify any case management order. It refers to it as a 'further' schedule. It is clearly not a 'revision' of the first schedule because it deals solely with nine specific emails in which it was said the Claimant made protected disclosures about the matters already pleaded in paragraphs 18-24 of the Details of Claim. None of the dates of those emails tallied with the dates given in paragraph 18 of the Details of Claim (or the first scott schedule) although we suspect that number 7 (an email of **05 December 2022**) is likely to be a reference to paragraph 18(9) of the Details of Claim, which refers to an email of **15 December 2022**. The subject matter appears to be the same giving rise to the possibility that one or other of the dates (5th or 15th) is an error. However, it is right to say that on any analysis, the inclusion of the new dates in the '*further scott schedule*' would inevitably raise the question of amendment.
19. That is precisely what the Respondent did. On **15 November 2024**, its solicitors wrote saying that the Claimant would need to submit an application to amend his claim if he wished to pursue the additional alleged disclosures. They added that they were putting the disclosure review process on pause. They also put the Claimant on notice that they would seek to recover costs in relation to the matter and attendance at any preliminary hearing. This decision to 'pause' the disclosure review process explains why no costs were then incurred after **26 November 2024** in connection with work on the Scott Schedule or whistleblowing aspects (see below).
20. By **26 November 2024**, the Respondent's solicitors had received no response to that email so they made an application to the Tribunal. They sought an urgent preliminary hearing to consider the Claimant's purported application. The Respondent made it clear that it would formally oppose any application to amend and it asked for the current case management orders to be vacated pending that hearing. It asked for the email to be referred to Judge Martin. We see from the Tribunal file that the Respondent's email of **26 November 2024** was indeed referred to Judge Martin on **18 December 2024**. She directed that a preliminary hearing be listed to consider any application the Claimant may make for leave to amend and any application for costs that the Respondent may make. She gave a time estimate of 3 hours for the hearing and directed that the current case management orders be suspended until after that hearing.
21. Unfortunately, Judge Martin's above orders were not actioned and were not therefore communicated to the parties. The Respondent's solicitors emailed on **08 January 2025** asking for a response to their application of **26 November 2024**. Unsatisfactorily, that email does not appear to have been referred to a judge. The next document on the tribunal file is an email from the Claimant's solicitors dated **18 March 2025**. In that email the Claimant withdrew the whistleblowing claims against all respondents but stated he was pursuing the

ordinary unfair dismissal claim against the Respondent. He also asked for a stay of the proceedings in line with a stay in the High Court proceedings (which had been stayed pending ADR). This email was referred to the Judicial member of this Tribunal (Employment Judge Sweeney) as a 'duty referral' on **21 March 2025**. The Respondent was directed to say whether, in light of the withdrawal of the whistleblowing claims, it was still seeking a preliminary hearing and also to comment on the Claimant's proposal to stay the proceedings.

22. On **27 March 2025** the Respondent replied to say that it no longer required a preliminary hearing and that it did not agree to the proposal to stay. It proposed a revised timetable for case preparation for the final hearing as follows:

- 22.1. **11 July 2025 for disclosure of documents**
- 22.2. **25 July 2025 for agreement of a hearing bundle**
- 22.3. **22 August 2025 for exchange of witness statements**

23. On **16 May 2025**, a judgment was promulgated dismissing the claims under sections 48 and 103A. That left only the claim of 'ordinary unfair dismissal' against the Respondent to be determined by the Tribunal. The request for a stay was refused on **19 May 2025**.

24. On **11 July 2025**, the Respondent's solicitors emailed the Tribunal to say that the parties had agreed revised case management directions as follows:

- 24.1. **18 July 2025:** parties to agree a list of issues;
- 24.2. **08 August 2025:** disclosure of documents;
- 24.3. **22 August 2025:** parties to agree a hearing bundle;
- 24.4. **05 September 2025:** exchange of witness statements;
- 24.5. **22 September 2025:** six day liability hearing

25. Although the parties had agreed that six days would be sufficient to hear the remaining ordinary unfair dismissal claim, the ten-day listing for the final hearing remained in place.

Dispute regarding the content of the final hearing bundle

26. On **11 August 2025**, the Respondent's solicitors wrote to the Claimant's solicitors regarding what it referred to as the Claimant's disclosure bundle. The main concerns were that a large number of documents (approximately 4,000 pages) had been sent by the Claimant's solicitors to the Respondent's solicitors in an unstructured way, with no indexation and with erratic pagination. The Respondent's solicitors also stated that they contained apparently

irrelevant documents. They requested a correctly indexed and paginated bundle. They also asked what documents the Claimant would like to have included in the main hearing bundle which had not already been included in the Respondent's disclosure.

- 27.** On **12 August 2025**, the Claimant's solicitors asked for clarification on the request: was it for a new paginated bundle of documents from the Claimant? Or was it for the Claimant to identify which additional documents already disclosed by him should be included in the main bundle? The Claimant's solicitors also said that there were documents missing from the bundle provided by the Respondent and they identified some documents. On **13 August 2025** the Respondent's solicitors replied to say that they wished the Claimant to send a properly indexed and paginated disclosure bundle and the Claimant should also confirm which of those documents he would like to add to the main bundle. The Respondent expressed some confusion regarding the alleged missing documents saying that they were unable to identify from the description of the documents what they were and that in any event queried how they related to the dispute between the parties. The Respondent said it would not agree to include documents regarding the Claimant's shareholding as they were obviously irrelevant to the claim.
- 28.** On **19 August 2025**, the Respondent's solicitors then asked the Claimant to confirm whether there were any additional documents he would like to be included in the main bundle. They also sent, it seems, for the first time '*additional relevant documents*' highlighted in pink '*in line with our ongoing obligations of disclosure*'. We do not know which documents this refers to nor to the extent of those additional documents or the relevance of them. On **20 August 2025**, the Claimant's solicitor replied. He did not agree that documents relating to shareholding were irrelevant. He stated that he considered the Respondent's point that they were not relevant to be bizarre. he said that many documents disclosed by the Respondent were, in fact, on that very subject. He asked the Respondent to revisit the issue of disclosure of shareholder documents. The Claimant's solicitors said they will likely provide a bundle of documents that they believe are related to the issues and that need to be added to the bundle disclosed by the Respondent, all of which the Claimant says would already be in the Respondent's possession. The Claimant reserved the right to produce his own bundle if not agreed. On the same day the Respondent's solicitors asked for confirmation by 4pm the following day which documents the Claimant wished to include. They stated that if he wanted any more documents he would have to say why they were relevant. We take this request to state the relevance to include the shareholder documentation.
- 29.** On **21 August 2025** the Claimant's solicitors replied. Among other things they gave a rationale for inclusion of the shareholding documentations (in paragraph 4 of the email). They queried why the Respondent was including in the bundle a judgment relating to Neeraj Handa's private prosecution, something which he maintained was irrelevant. The Respondent's solicitors responded the same day to say that the private prosecution document was disclosed because it had been given to Mr Mills by the Claimant as part of the Claimant's appeal.
- 30.** On **22 August 2024** at 1.14pm the Claimant sent a list of documents that he wished to be included in the main bundle. The Respondent solicitors had asked for this to be sent by 5pm that day having previously asked for it by 4pm on **21 August**. The Respondent's solicitors replied to say that they had received the list but there was no way of identifying the

documents from their clients' disclosure index. The Claimant's solicitors responded to say that it appeared the Respondent was unwilling to cooperate, that all the documents were in the Respondent's possession and that the Claimant would provide his own bundle on Tuesday. On **26 August 2025**, the Respondent's solicitors emailed to say that it makes sense for the Claimant to prepare his own bundle

- 31.** On **15 September 2025**, the Respondent's solicitors emailed the Claimant's solicitors to say that further to exchange of witness statements the Claimant should be in position to identify which documents he intends to rely on. They asked the Claimant to revert by 2pm the next day. That same day, the Claimant's solicitor emailed to say that the Claimant intended to rely on all the documents within his bundle; that the documents were provided prior to producing the Respondent's bundle and asked that they be included in the main bundle. He also identified some further documents he would like to be included: an employment contract of Aneil Handa, and extracts of witness statements to be used in the Neeraj hand case. On **16 September 2025** the Respondent's solicitors emailed the tribunal to say that the parties were unable to reach an agreement on the content of the hearing bundle and that, as a result the parties would present their own bundles at the hearing.
- 32.** On **19 September 2025**, the Respondent uploaded the main bundle to the Document Upload Centre ('DUC'). This included some documents requested by the Claimant such as the shareholders agreement and the Claimant's amended grounds of complaint, which had been omitted from a previous version of the bundle.

The final hearing

- 33.** On Monday **22 September 2025**, the Tribunal convened to hear the claim of unfair dismissal. Counsel attended in the morning. After discussing some preliminary matters, the Tribunal spent the rest of the day reading into the case.
- 34.** It was clear from the pleaded case and made clearer still by Mr Bayne's opening note that the key issues on the unfair dismissal claim were:
- 34.1. The Reason for the Claimant's dismissal: the Claimant's primary case being that the principal reason for his dismissal was not gross misconduct but a family dispute between him and his son Neeraj on the one hand, and Aran and Aran's sons on the other (see paragraph 3 of the opening note and paragraph 9 of the Details of Claim).
- 34.2. If there was a potentially fair reason for dismissal, the decision to dismiss was unreasonable in all the circumstances: the Claimant challenged the reasonableness of the suspension, the investigation into the alleged misconduct, the reasonableness of the disciplinary hearing and appeal hearing and the reasonableness of the sanction.
- 35.** The Respondent advanced as the reason for dismissal that the Claimant had committed acts of gross misconduct as set out in paragraph 2.4 of its Amended Grounds of Resistance. Its primary case was that the reason related to conduct. In the alternative, it contended that the reason for dismissal was a breakdown in the relationship between the Claimant and the Respondent (and therefore a substantial reason such as to justify dismissal of an employee

holding the position that the Claimant held ('**SOSR**')) [see para 6.8 of the GOR, page 56 Core Bundle]

The progress of the final hearing

Tuesday 23 September 2025

36. Warren Wayne was sworn in at just after 10am and was cross examined by Mr Bayne. Paul Williamson was sworn in at 3.45pm and was cross-examined. The Tribunal adjourned at 4.30pm.

Wednesday 24 September 2025

37. Following a dispute regarding admissibility of some documents produced late by the Claimant (which we in part allowed) cross examination of Mr Williamson continued until lunchtime. Mr Mills was interposed at 2.05pm and he gave evidence up until 3.30pm, following which Mr Williamson's evidence was resumed. The Tribunal adjourned for the day at 4.30pm. There is one matter of evidence which we must note at this point. When Mr Williamson was being cross examined by Mr Bayne, he said: *"I can't deny he [the Claimant] was a whistleblower but he was not dismissed for that; what he did went beyond that"* This evidence was given just after 12pm.

Thursday 25 September 2025

38. Mr Williamson's evidence resumed at 10am. There was a mid-morning break at 11.20am and the parties resumed at approximately 11.40am. His evidence continued to lunchtime at which point was the completion of the Respondent's case. The Tribunal adjourned for lunch at 1.05pm.
39. The Tribunal was to resume at 2pm but did not in fact get back under way until 2.20pm. At the moment at which the Employment Judge asked Mr Handa to come to the witness table, counsel explained that the Claimant was withdrawing the claim of unfair dismissal. This came as a surprise to the Tribunal. Although no initial explanation was given, Mr Bayne then referred to a recent development regarding a global settlement of the wider litigation (meaning the High Court litigation) following which the Claimant was withdrawing the tribunal proceedings. He referred to the parties being close to a global settlement. At this, Mr Williamson, who was sat behind counsel, shook his head to indicate that they were not close and gave very brief instructions to Mr Cordrey to that effect. Mr Cordrey, counsel for the Respondent, explained that he had only slightly more notice of the withdrawal, just a few minutes before they came back to the hearing room. We allowed a break for Mr Cordrey to take instructions following which he informed the Tribunal that the Respondent wished to make a costs application.
40. There was then disagreement as to whether the application should be heard on one of the days still available to the Tribunal. Mr Bayne thought it sensible to put any application off

until after resolution of the High Court litigation. The Respondent disagreed, submitting that the parties were not close to settlement. The Tribunal agreed with the Respondent that the application should be determined on what would have been the tenth day of the hearing, **03 October 2025** and issued the following directions:

- 40.1. The Respondent shall, by no later than **2pm on Monday 29 September 2025**, send to the Claimant and the Tribunal a full written application for costs setting out the grounds on which costs are sought and providing a schedule of the costs claimed.
- 40.2. The Claimant shall, by no later than **2pm on Thursday 02 October 2025** send to the Respondent and the Tribunal a full written response to the application, setting out the grounds on which the application is opposed.
- 40.3. If, in opposing the application, the Claimant intends to rely on any witness evidence or documentary evidence at the Costs Hearing, he must, by the same time (**2pm on 02 October 2025**), send to the Respondent and Tribunal a copy of any witness statement and/or the documentary evidence on which he intends to rely.
- 40.4. If the Claimant is to contend that the Tribunal should have regard to his ability to pay costs, he must include evidence regarding his ability to pay (see Rule 82 of the ET Rules 2024).
- 40.5. The Tribunal shall, insofar as it is able, read the documents on the afternoon of **02 October 2025** in advance of the Costs Hearing

The application for costs and the hearing on 03 October 2025

41. In accordance with the first direction, the Respondent sent its written application together with a costs schedule. The Respondent incurred costs on working on the Scott Schedule in the period **13 June 2024 to 26 November 2024** (see *Part 1: costs incurred from work on Scott schedule from 13 June to 26 November 2024 and Part 2: costs incurred from work on disclosure from 25 October 2024 to 26 November 2024*). Clearly the reason it incurred no further costs on that aspect of the proceedings was because it had decided to 'pause' any work on the matter pending a decision from the tribunal on listing a preliminary hearing (see paragraph 19 above). Its application was twofold: (1) an application to recover costs on work done on the scott schedule and associated work in the period **13 June 2024 to 26 November 2024** and (2) all costs from **19 May 2025**. It sought an order that the costs be assessed on the indemnity basis and requested a payment on account of £20,000.
42. The Claimant complied with the second direction by providing a full written response to the application. As regards the third direction, the Claimant's solicitor, Mr Cartledge added:

"Our client's witness statement with exhibits are with our client for approval who is overseas and will follow."
43. That witness statement was sent at 15:54 on **02 October 2025**. In the accompanying email, the Claimant's solicitors wrote:

“The Claimant confirmed that the witness statement attached to this email contains the evidence he has to give. He is in transit between Spain and the UAE and apologises for the delay – no disrespect is intended.”

44. No documents were sent until the following day, **03 October 2025**, at 09.24am, just over half an hour before the costs application was to be heard. This consisted of 8 pages as follows:

44.1. An email from Mischon de Reya Solicitors to Spencer West Solicitors dated **25 September 2025**. That letter referred to ‘dialogue between Mr Roshan Handa and the Claimant in relation to ‘the guarantee’. It went on to say that their client, Aran Handa, had no issue with the Claimant’s proposal for a confirmation from Aran Handa that he will agree to sell or wind up the company if payment is not made to the Claimant by ‘the long stop date’.

44.2. The letter from the Respondent’s solicitors dated **15 November 2024** (referred to in paragraph 19 above).

44.3. An email from the Respondent to the Tribunal dated **26 August 2025** stating, among other things that *‘whilst the Respondent is not opposed to settlement in principle, it is important for the Tribunal to be aware that the Claimant’s claim is just one set of proceedings in a much broader dispute between various related parties in respect of a family business ... The Respondent’s willingness to consider settlement would extend only to discussions of a global settlement which covers the Claimant’s claim and all other parallel proceedings and disputes referred to.’*

44.4. A screen shot of the Claimant’s mobile phone showing communication with Roshan Handa (the Claimant’s father) referred to as ‘Inda Papa Papa’ which shows on **25 September 2025**: a voice call at 00:29; a missed voice call at 11:34am;; a voice call at 11:38; a missed voice call at 12:36; a text at 12:47 saying *‘Your lawyer I getting the letter shortly’*; a text responding to that at 12:51 saying *‘Very good’*.

45. The Claimant did not attend the hearing on **03 October 2025**. Instead, he chose to fly to UAE and to be represented by counsel, Mr Bayne. On his behalf, Mr Bayne offered the Claimant’s apologies again, adding that he meant no discourtesy to the Tribunal. We do not accept that apology as a sincere apology. By not attending the hearing, the Claimant was on any objective analysis demonstrating disrespect to the Tribunal. Moreover, by not attending, he was, we find, intent on avoiding scrutiny on his financial means.

Relevant law

46. The tribunal’s power to award costs is contained in the 2024 Employment Tribunal Rules of Procedure (**ETPR**).

47. Under rule 74 (1) “The Tribunal may make a costs order...on the application of a party”. Under rule 74(2): “The Tribunal must consider making a costs order ... where it considers that:

“(a) a party (...) has acted vexatiously, abusively, disruptively or otherwise unreasonably either the bringing of the proceedings, or part of it, or the way that the proceedings, or part of it, has been conducted.”

48. It is well established that r74 (1) imposes a three-stage test:

48.1. First of all the tribunal must ask itself whether the party’s conduct falls within the grounds identified in rule 74 (2) (“the threshold” stage). This requires the Tribunal to make findings of fact about the paying party’s conduct.

48.2. Secondly, and if it does find that the threshold has been met, the tribunal must ask itself whether it is appropriate to exercise its discretion in favour of awarding costs against that party (the ‘discretion’ stage). The Tribunal must, at this stage, take account of all the relevant circumstances and this may include, where appropriate, the paying party’s ability to pay any costs (see rule 82 ETRP).

48.3. The third stage, if reached, requires the Tribunal to determine the amount of an order.

49. In the decision of **Yerrakalva v Barnsley Metropolitan Council** [2012] I.C.R.420, the Court of Appeal emphasised that it was important not to lose sight of the totality of the circumstances in any case. The tribunal must look at the whole picture when exercising the discretion to award costs or not. It must ask whether there has been unreasonable conduct in the bringing, defending or conducting the case and, in doing so, identify the conduct, what was unreasonable about it and what was its effect. Reasonableness is a matter of fact for the tribunal which requires an exercise of judgement.

50. The fact that a claimant has withdrawn proceedings does not automatically constitute unreasonable conduct of proceedings: **McPherson v BNP Paribas (London Branch)** [2004] IRLR 558.

51. In **McPherson**, Mummery LJ said:

“As the key question is whether the applicant conducted the proceedings unreasonably, it is necessary to examine in detail the course of the proceedings” (@ para 4)

“It would be unfortunate if claimants were deterred from dropping claims by the prospect of an order for costs on withdrawal, which might well not be made against them if they fought on to a full hearing and failed ... Notice of withdrawal might in some cases be the dawn of sanity and the tribunal should not adopt a practice on costs which would deter applicants from making sensible litigation decisions.” (@ para 28)

“On the other side ... tribunals should not follow a practice on costs which might encourage speculative claims, by allowing applicants to start cases and to pursue them down to the last week or two before the hearing in the hope of receiving an offer to settle, and then, failing an offer, dropping the case without any risk of a costs sanction” (@para 29)

“The crucial question is whether, in all the circumstances of the case, the claimant withdrawing the claim has conducted the proceedings unreasonably.” (@para 30)

Means

52. Rule 82 of the ET Rules expressly confers on the Tribunal a discretion to have regard to the paying party's means. It is not obliged to do so.

53. In the case of **Vaughan v London Borough of Lewisham** [2013] IRLR 713, EAT, Underhill J (as he then was) stated in paragraph 28:

“The starting-point is that even though the Tribunal thought it right to ‘have regard to’ the Appellant’s means that did not require it to make a firm finding as to the maximum that it believed she could pay, either forthwith or within some specified timescale, and to limit the award to that amount. If there was a realistic prospect that the Appellant might at some point in the future be able to afford to pay a substantial amount it was legitimate to make a costs order in that amount so that the Respondents would be able to make some recovery when and if that occurred. That seems to us right in principle: there is no reason why the question of affordability has to be decided once and for all by reference to the party’s means as at the moment the order falls to be made.”

54. Therefore, there is no requirement to come to a concluded view that a claimant has funds at his or her immediate disposal so as to be able to pay forthwith or within some specified timescale the full amount which might be assessed in due course.

Respondent’s Submissions

55. We read the written application. We also heard oral submissions. We shall set summarise only those submissions regarding stage one of the exercise.

56. Mr Cordrey explained that the application was made on the following ground:

“Under r 74(2)(a) ETPR on the ground that the Claimant acted unreasonably in the way the proceedings have been conducted.”

57. The Claimant was said to have acted unreasonably in two respects:

57.1. Unreasonably continuing with his claim of unfair dismissal after **19 May 2025**.

57.2. Unreasonably pursuing a whistleblowing claim against named respondents.

58. In considering the application, he submitted that we should totally disregard and give no weight to the third statement of the Claimant, that is the one prepared for today's cost hearing. There was, he submitted, no substitution for evidence. This hearing was ordered to be an in person hearing and Mr Cordrey reminded the Tribunal that he specifically averted to the need to cross examination the Claimant regarding his means. He added that his cross examination would not have been limited to means. In circumstances where the Claimant was here in tribunal when the costs hearing was listed, he has clearly made an election not to turn up and not to subject himself to cross examination. Mr Cordrey submitted that it would not be in the interests of justice or fair to have his witness statement taken into account when he has not put himself forward to have it challenged or tested.
59. He further submitted that these proceedings should never have been issued and that from the outset they were used solely as a bargaining chip by the Claimant to improve his position around the settlement of his shareholder dispute with his father and brother. The proceedings were 'leverage', as Mr Cordrey described it. He submitted that although the tribunal litigation was unreasonable *ab initio*, he was not asking us to make any finding or form any conclusion as to whether the claim was misconceived. The Respondent sought costs from **19 May 2025** not earlier, with the limited exception of the work itemised in Part 1 and Part 2 of the costs schedule (relating to the scott schedule and whistleblowing disclosure exercise).
60. Mr Cordrey submitted that six points supported his leverage argument:
- 60.1. The Claimant drip fed particulars (this was about the scott schedule)
 - 60.2. The Claimant withdrew the whistleblowing claims
 - 60.3. The Claimant vacillated by adding and removing respondents
 - 60.4. The Claimant totally failed to cooperate with production of the bundle (Mr Cordrey referred to the 'clip of correspondence' in the costs bundle)
 - 60.5. There was a last minute ambush of 250 pages 4pm on Friday 19 September.
 - 60.6. There was the unexplained withdrawal on day 4 of the final hearing.
61. As to point number six, Mr Cordrey submitted that the withdrawal was highly unusual and called for an explanation. He submitted that the reason for withdrawal was the Claimant's failure to successfully use the proceedings as leverage. He referred to paragraph 17 of the written costs application, noting that the Claimant subjected the Respondent's witnesses to cross examination as a fishing expedition as he hoped he might turn up something on which to build a case or improve his negotiating position. He had caused disruption and ran up costs submitted Mr Cordrey. The timing of withdrawal was significant, he submitted. It came just after the Respondent's witnesses were subjected to three days of cross examination in

a public forum. It cannot be reasonable to subject them to the rigours of public examination then hide himself from the same process without explanation. Mr Cordrey referred to this as 'callous'. We were asked to put ourselves in Mr Wayne's shoes, who did nothing more than carry out his terms of reference. He had been required to come to this tribunal to give evidence when the Claimant had no intention to give evidence himself or to see the claim through. Not only did Mr Wayne experience disruption and loss of time in having to give evidence but he had his conclusions tested in open court on a one sided process. This was unreasonable. Mr Cordrey referred us to paragraph 18 of the costs application and the references there also to Mr Williamson and Mr Mills. The precise timing of the withdrawal was, submitted Mr Cordrey, to avoid the Claimant's own evidence being tested.

62. Mr Cordrey submitted that, had the Claimant not withdrawn, he was going to take the him in cross examination to the issue of trust and confidence, referring to paragraph 6.8 of the Grounds of Resistance [page 56 Core Bundle]. This submission was in response to the Employment Judge's observation during submissions that the claim had been going well for the Claimant at the time he withdrew. Quite rightly, Mr Cordrey observed that the Respondent had not yet put its case and that at 'half-time' the Tribunal only gets a partial picture. Had we heard the Respdnent's case we would see a different view. As it did not get a chance to do this, Mr Cordrey submitted that the Tribunal should draw inferences from the unexplained withdrawal: if the Claimant believed there was merit in his claim as opposed to using it merely as a bargaining chip, it makes no sense to withdraw on day four of the trial and the inference is that he knew his claim was without merit and was unwilling to be challenged.
63. As to the matter of drip feeding, Mr Cordrey referred us to the order of Judge Martin of **21 October 2024** (see paragraph 23.6 of the costs application). He referred to the revised Scott Schedule as being an attempt to serve new claims and a waste of time
64. As regards the whistleblowing claims, Mr Cordrey submitted that it was unreasonable to pursue these and then withdraw them after providing two scott schedules. Mr Cordrey submitted that the maintaining of the claim against Mr Williamson and Mr Mills personally was unjustified. There was no need to have personal liability hanging over those individuals. It was, submitted Mr Cordrey a classic example of unreasonable conduct to add Mr Mills in and then withdraw with no explanation given. Mr Cordrey submitted that the Tribunal is entitled to conclude that this was vindictive, unjustified and unreasonable.
65. In conclusion, submitted Mr Cordrey, by reference to paragraph 24 of the costs application, the Claimant's conduct of the proceedings has been manifestly unreasonable; the vindictive inclusion of Mr Williamson and Mr Mills, the other matters referred to and the unexplained abandonment of those claims reinforces the unreasonableness of the approach taken by the Claimant culminating in the withdrawal of the claim of unfair dismissal.

The Claimant's submissions

66. Turning to the oral submissions of Mr Bayne on the stage one exercise, he began by referring us to the cases of Yerrakalva and McPherson, and in particular, to paragraph 27

of the latter case noting that the reference to 'dawn of sanity' was an apt description of what had happened in this case.

- 67.** Noting Mr Cordrey's submission that the claims were unreasonable or misconceived from the outset (although noting that this did not form the ground for the application) Mr Bayne submitted that the Tribunal was able to make an assessment as to whether this was misconceived by the end of the Respondent's evidence. This submission was he said a 'non-starter'. The Tribunal was well-placed to make an assessment. As regards the question of loss of trust and confidence, this was, Mr Bayne submitted a case of summary dismissal for gross misconduct. That was the stated reason. A dismissal for loss of trust and confidence would have to be on notice. Further, even if the Tribunal had to consider Polkey issues on the issue of a breakdown of trust and confidence, there was still a valuable claim: there would be a basic award; there would be a period of time fairly to dismiss. Even if the Respondent was right about the reason for dismissal (which Mr Bayne did not accept) it was still not a claim that was misconceived
- 68.** As to the collateral purpose of putting the Respondent to expense and disruption (paragraph 15 of the costs application) Mr Bayne submitted that the problem with that submission is that the Claimant owns the same number of shares as his brother Aran. He submitted that Aran can control how much money is spent on this litigation, not the Claimant. Expense cannot, he submitted, have been a collateral purpose. As for disruption, Mr Bayne's principal point was that the Respondent insisted that it would not settle this claim unless it was part of wider a settlement of the wider dispute – he referred to the Respondent's email at paragraph 44.3 above. If the Respondent had been seriously worried about disruption it would and could have entered into negotiations on the employment tribunal claim but they did not. This case has, since March 2025, been an unfair dismissal claim in respect of which compensation is capped. This, he submitted, undermines the point about the proceedings being a 'disruption' as it was within the Respondent's power to negotiate on this claim and avoid any so-called disruption.
- 69.** There were, he submitted, also a number of problems with the Respondent's 'fishing expedition' submission. That submission is inconsistent with the Claimant's application for a stay which was for the purposes of seeking resolution. Why, asked Mr Bayne rhetorically, apply for a stay if the Claimant was intent on fishing? He submitted that one might think that the Respondent opposed the proposal for a stay and turned up at these proceedings with 'an army of lawyers' as he put it, that the Respondent (and not the Claimant) saw this hearing as an exercise 'to fish' but that was certainly not the Claimant's position. Mr Bayne reminded the Tribunal that, at the outset of this hearing, both he and Mr Cordrey made it clear that the Tribunal needed to steer well clear of the High Court pleadings and issues. He referred us to paragraph 16 of Mr Cordrey's opening note for the final hearing. We were to make no findings of fact on fraud or allegations against the Claimant and allegations against the Respondent. That was an agreed position between the parties.
- 70.** At this stage, counsel had a brief 'whispered' or 'off-stage' conversation before us about what could be said by Mr Bayne about without prejudice discussions. Mr Bayne then told the Tribunal, without objection, that during the course of the hearing, when the Respondent's witnesses were giving evidence, there had been conversations outside the tribunal room regarding the possibility of a settlement which would not involve the Claimant receiving any

payment. The reason it was important to know that, said Mr Bayne, is in case the Tribunal felt there was something sinister in the timing of the withdrawal. This casts light on that matter, he submitted.

- 71.** As regards the question of unreasonable conduct from **19 May 2025**, Mr Bayne observed that it was not clear to him why that date is significant. That was the date when tribunal decided not to postpone the final hearing following the Claimant's application for a stay. He submitted that because the parties were at the time focussed on the wider dispute, that was a sensible application for the Claimant to make. Once it was refused, it was unclear to him why it then becomes unreasonable for the Claimant to pursue the claim when it is not claimed to be unreasonable to have pursued the claim before that date. There is nothing he submitted that suggests unreasonable conduct from that point in time.
- 72.** As regards the whistleblowing claims, Mr Bayne referred to paragraphs 18 and 19 of the Details of Claim [page 20 – 21 core bundle]. He referred to Judge Loy's order for further information. Mr Bayne accepted that the way in which the protected disclosures were described 'was not great'. Mr Bayne accepted that Judge Martin made a further order and that there were additional protected disclosures set out in the second schedule.
- 73.** Mr Bayne referred to the Respondent's correspondence of **15 November 2024** about adding new disclosures and the threat of costs; that the costs in relation to the whistleblowing complaints are calculated up until about 11 days after this letter. He submitted that the Claimant was then faced with two options:
- 73.1. To apply for leave to amend or
- 73.2. To take the view that the Respondent was right, that the disclosures were not well particularised and to take a sensible and pragmatic step to withdraw them.
- 74.** Mr Bayne submitted that this was important because it is put that the claims had no merit. However, the Claimant genuinely believed that there had been wrongdoing and that he was a whistleblower. Even if that claim goes, the core belief about wrongdoing and the core unfair dismissal claim remained and the Claimant pursued the unfair dismissal claim. This was not an unreasonable position to take.
- 75.** Mr Bayne moved to the next point made against the Claimant, that he had vacillated. That was a not fair characterisation he submitted. There was clarity in front of EJ Loy as to the identity of the 5th respondent (Mr Wayne). That was a simple clarification. At the same hearing one additional respondent (Mr Mills) was added by amendment. The appeal which had been conducted by Mr Mills took place after the ET1 had been lodged. The process of adding after presentation of the ET1 was the right process. Then, two respondents were 'knocked out': the claim against Mr Duncan was withdrawn and the claim against Mr Wayne was knocked out on a time point. Mr Bayne submitted that there was nothing in this that was vindictive and that in any event, the people to make that costs application were Messrs Duncan and Wayne. He submitted that where you have a family dispute such as this and people take entrenched perspectives, it is not at all unusual to believe that everyone on the other side of the fence is in league with each other and singing to the same tune. Parliament allows for claims to be brought against named individuals. If the Claimant genuinely believed

that they were part of the 'stitch up' then there is nothing wrong in including them in the proceedings. He is entitled to do so.

- 76.** The next criticism against the Claimant was one of 'total failure to engage' with the bundle. Mr Bayne submitted that we must look at the exchange between the legal representatives. There was a dispute about the bundle but in the end the Claimant's solicitors said they would produce a separate bundle. There was not a 'total' failure to engage. Mr Bayne accepted that the preparation was not ideal but not out of the ordinary in employment tribunal proceedings.
- 77.** Mr Bayne turned to the next criticism, namely, the production of documents at the last minute (250 pages referred to in paragraph 15 of the costs application on **19 September 2025**). It is not unusual to get documents at last minute he submitted. Counsel said that he must bear some responsibility for this. He had asked to see some documents and to ensure they were included in the bundle. He does not know if the 250 pages referred to had been disclosed or not before **19 September 2025** but he submitted that many were documents in other proceedings or in the public record. As regards the description 'ambush' he submitted that very few were referred to (about 4 documents of public record). He could not see how that could be described as 'ambushed' and was not sure how it can be seen to have disadvantaged the Respondent.
- 78.** Mr Bayne then addressed us on the withdrawal of proceedings. On its own, this is not unreasonable conduct. The issue is essentially the motivation and whether the tribunal can infer anything nefarious behind it, he submitted. He referred to the fact that the Respondent is critical of the Claimant not being here today and he can understand why. However, the Respondent does not have any evidence of improper motive, he submitted. Although recognising Mr Cordrey's submission as to weight, Mr Bayne submitted that the Tribunal is able to put some weight on parts of the witness statement if it considers there is other evidence to corroborate what is said. Crucially, as to reason for withdrawal, there is some corroborating evidence. He referred to page 8 of the bundle of documents sent by the Claimant's solicitors, namely a WhatsApp log showing that was in communication with his father during the morning the claim was withdrawn. His father told him he was getting a letter shortly. The letter is at page 1 of the bundle. Mr Bayne submitted that the parties were close to heads of terms; they were agreed as to value on the shares but a big sticking point was what happens if Aran was not able to pay the money. The letter from Mischon de Reya deals with that he submitted: that Aran would either sell the company or wind it up if not paid by the long stop.
- 79.** Mr Bayne said we should give weight to what is said in paragraphs 18-20 of the Claimant's unsworn statement because we have the whatsapp log and the Mishcon letter. If the Claimant's intention had only ever been to frustrate and cause disruption, he could have given evidence and continued. He had already given evidence before at the open preliminary hearing. Mr Bayne referred to the 'second witness statement' being the statement used at that hearing.
- 80.** In answer to a question from the Employment Judge as to whether we could legitimately draw an inference from the Claimant's absence that he does not wish his finances to be scrutinised, Mr Bayne answered yes.

81. Mr Bayne referred back to the afternoon of **25 September 2025**, where Mr Williamson was shaking his head at the suggestion of the parties being close to settlement. He submitted that we could now see that that is indeed the reality. We must have regard to the familial context and pressures he submitted. It would be harsh in the extreme to criticise the Claimant for stepping back, for saying we are nearly there, that I will lower the ante and stop this claim.

Respondent submissions in reply

82. Mr Cordrey submitted that it is a question of what inferences we can properly draw in this case any reticence and he referred us to McPherson paragraphs 30-37.
83. He said that the Tribunal had correctly characterised how he placed the Respondent's case on conduct from 19 May, being the pursuit of a claim for reasons of leverage. However, he submitted that we were not tied to his characterisation. If we were to find that there was unreasonable conduct of the proceedings, we may not choose the same wording; we may for example find that it was continued for say a fishing expedition. He cautioned us not to be overly fixated by his language or how he has characterised the conduct.

Discussion and Conclusion

The first stage: threshold

84. The essential question for us was whether the conditions for satisfying stage one had been met, that is whether the Claimant had acted disruptively or unreasonably in the way that he had conducted the proceedings. If there was unreasonable conduct in that sense, then how Mr Cordrey characterised his conduct (such as 'callous' or 'vindictive' for example) was not the point. Nevertheless, we did not consider it right to ignore altogether the characterisation, as the language used was carefully chosen to describe the nature of the conduct relied on. As Mr Cordrey said in his oral submissions, the word 'callously' was not chosen lightly. But the question is the statutory question and not the language of counsel. To answer the statutory question we needed to understand what conduct was relied on for saying that the threshold had been met.
85. We will start and end with the withdrawal of the claim. That was undoubtedly the trigger for the costs application. As set out above, the withdrawal of a claim, even at as late a stage as happened in this case is not of itself capable of amounting to unreasonable behaviour in the conduct of proceedings.
86. During Mr Cordrey's submission that the precise timing of the withdrawal demonstrated that the Claimant did not wish to have his evidence tested, we expressed that at the half-way stage of the hearing, the case had in our assessment been going well for the Claimant. We were in a good position to make that assessment at that stage, having heard from the three key Respondent witnesses.
87. We have no hesitation in saying that the Claimant had established a compelling case both as to the 'reason' for suspension and dismissal and the 'unfairness' of the decision to dismiss. We agree that it was only 'half-time' but the only burden on an unfair dismissal case

is on the Respondent. It must show the actual genuine reason for dismissal and that the reason related to conduct (in a conduct case). We recognised that Mr Cordrey had yet to put his case to the Claimant at the point of withdrawal but the best evidence in establishing the genuineness of the reason obviously comes from the Respondent witnesses. As to the neutral burden of reasonableness / fairness, the assessment of what the Respondent did by way of investigation and procedure and the reasonableness of sanction again comes from the Respondent witnesses. There may well be points to score and submissions strengthened by what comes out of cross examination of a claimant, that we accepted. But in an unfair dismissal case, it is for the Respondent to show the principal reason. This was set out in the letter of dismissal and in the Grounds of Resistance, paragraphs 2.4, 6.1 and 6.3. Mr Cordrey referred to paragraph 6.8 of the Grounds of Resistance but at no point did anyone say that the actual reason for dismissal was anything other than the conduct relied on by Mr Williamson. Mr Williamson was of the view that relationships had broken down, that is for sure. He dealt with 'relationships' in paragraphs 112 – 115 of his witness statement and the decision to dismiss in paragraphs 134-137. However, the letter was clear as was his oral evidence that the reason for dismissal was the claimant's gross misconduct. We found Mr Bayne's submissions on trust and confidence to be compelling.

- 88.** The essential point of this discussion is that, even recognising the points Mr Cordrey made at the costs hearing, at the time the Claimant withdrew he had made considerable ground in establishing a compelling case on unfair dismissal. To that extent, the decision to withdraw came as a real surprise to the Tribunal. It was of course open to the Claimant simply to say that he was not giving evidence but continue with the claim. There is no compulsion on a claimant to give evidence. We may well have considered it appropriate not to give any weight to his witness statement had that happened but he could have simply proceeded and relied on submissions based on the evidence we had heard on the reason and the investigation and procedure. Leaving that aside, we agree with Mr Cordrey that we have to arrive at a conclusion as to what is more likely than not to have caused the Claimant to withdraw.
- 89.** In assessing this, we then considered the conduct of the proceedings as a whole as per Mr Cordrey's submissions. That was necessary because an act of withdrawal in itself is not unreasonable conduct but it may be the ultimate manifestation of unreasonable conduct of proceedings.

(1) Drip feeding of particulars: the Scott Schedule

- 90.** We do not accept that the Claimant acted unreasonably in this regard. We have set out our findings of fact on the scott schedule. We have noted the absence of a written order from Judge Martin (even though it is agreed that 'an' order was made for a revised schedule). It was the Respondent who suggested a Scott Schedule. We have found that the schedule it provided was responded to sufficiently to understand the case the Respondent had to meet – whether that is a finding of fact or a question of judgement on our part matters not. On this particular issue it amounts in substance to the same thing. The scott schedule may not have been perfect or ideal but the drafting of the scott schedule did not make explicit what was required, whatever its purpose was intended to be. The response was sufficient – and that is not to detract (nor is it inconsistent with) an order that a further, more detailed schedule be provided – if indeed that was the order.

91. It is right that the second schedule introduced further alleged disclosures. However, these were all about the same subject-matter and in the end they went nowhere and put the Respondent to no work or cost. We are satisfied that the conduct of the Claimant in this regard cannot be regarded as ‘drip feeding’ of information. And, in deference to Mr Cordrey’s plea not to attach too much significance to his language, we are satisfied that it was not unreasonable. Undoubtedly, the Claimant’s solicitors when serving the second scott schedule should have highlighted that it referred to new emails and should have raised the question of potential amendment. We considered that when stepping back and looking at matters overall – the whole picture – before coming to any final conclusion.

(2) The withdrawal of the whistleblowing claims

92. As stated a number of times, the withdrawal of a claim is not in itself something that amounts to unreasonable conduct. The Claimant withdrew the legal claim of section 48 and section 103A but the underlying factual complaint – about the alleged fraudulent transactions and the alleged removal of him and his son for fear of voicing those allegations - remained as a key part of his ordinary unfair dismissal claim. He challenged the genuineness of the reason. We cannot see that there is anything in itself unreasonable in identifying an underlying state of affairs as a ‘whistleblowing’ claim but subsequently withdrawing that cause of action and continuing with the same underlying factual complaint. We are conscious that we must look at the whole circumstances and step back and look at all of these instances together. We refer to our note of Mr Williamson’s evidence in paragraph 37 above. Whilst we by no means regard this as an admission by Mr Williamson that the Claimant in fact made public disclosures within the meaning of the ERA, it demonstrates to us that Mr Williamson at least saw the Claimant as a whistleblower (whether or not what he said fell strictly within the statutory definition). If he can say that, why we asked was it unreasonable for the Claimant to believe that he was a whistleblower. We did not consider that the Claimant was mischievously casting himself as a whistleblower at the outset – and even though we heard no evidence from him, we were unable legitimately to infer that he did not believe this when considering the withdrawal of those particular complaints and his overall conduct in the proceedings.

93. We do feel that the Claimant ought to have withdrawn his whistleblowing claims sooner than he in fact did, in March 2025. He had received the costs warning in mid-November 2025 and it would have been reasonable for him to have communicated a withdrawal by the end of the year if he was going to do it. We note, however, that the Respondent had paused work on that aspect from **26 November 2024**.

(3) Vacillation by adding and removing respondents

94. We do not accept that the Claimant vacillated or (ignoring the language) that he acted unreasonably in adding and removing respondents. All but Nigel Mills were included on the ET1 from the outset. There was a confusion with regards to Mr Wayne’s full name. the ET1 referred to him and his then law firm. All that happened subsequently was that the Claimant clarified that the claim was not against the law firm but against him as a named respondent. There was no vacillation in this regard. There was then only one respondent added after service of the ET1, namely Mr Mills. He could not have been included on the ET1 as he had not conducted the appeal by that stage. The only proper thing to do if he was to be named as a party was to add him at a later stage. That is what happened.

95. If by vacillating, the Respondent means that the Claimant subsequently withdrew the claims against those named individuals, we have addressed that above. Yes he did but we do not consider that, in the circumstances of the case as a whole, to be unreasonable – nor do we infer from it that he did not believe he was a ‘whistleblower’. We would add that a claimant has a right to proceed against individuals for whistleblowing detriments. We do not accept that there was anything callous in what the claimant did in putting the respondent witnesses through cross examination. In a case of this nature, it is natural to expect the respondent to call the investigator (Mr Wayne), the decision maker (Mr Williamson) and the appeal officer (Mr Mills). The Respondent was defending a claim of unfair dismissal. They decide which witnesses to call. Mr Wayne’s commercial work (indeed that of Mr Duncan also) involves carrying out investigations which might result in a person’s dismissal. It must be a natural expectation in that line of work that from time to time the quality of or reasonableness of the investigation will be challenged and that there may be a need to appear as a witness in employment tribunal litigation. Similarly, where non-executive directors get involved in decision making such as terminating employment or hearing appeals, they too can reasonably expect to have to give evidence in any litigation that might ensue. There is nothing unusual about this.
96. If we had been of the view that the Claimant’s motivation all along was simply leverage, disruption or however one wishes to characterise it, then we may well have felt otherwise. But as we did not consider it legitimate to infer that the Claimant did not believe himself to be a whistleblower and given that he had identified the subject matter of the alleged disclosures from the outset in the pleading and in any event raised compelling points about his suspension, reason for dismissal and reasonableness of the process, we did not consider it legitimate to infer that his motivation in bringing and then withdrawing the whistleblowing claims was disruptive.
97. During Mr Cordrey’s submissions, the Employment Judge asked what fish the Respondent says the Claimant hoped to catch if that was his intention by pursuing his claims to the point that he did. Mr Cordrey said not a lot but surmised that the Claimant might have thought otherwise. He speculated that perhaps he thought there might be something from Mr Wayne or perhaps from Mr Williamson. We found this unconvincing. We preferred Mr Bayne’s submission on this. What was there we asked ourselves to suggest that the Claimant’s motivation in pursuing this claim (rather than withdrawing) was ‘fishing’ any more than the Respondent’s motivation in defending it (rather than seeking to settle it) might be said to be ‘fishing’? Each could accuse the other of that, as Mr Bayne essentially submitted. But that does not mean that there would be substance in either accusation. As Mr Cordrey said, this is all about inference. But of course, it has to be legitimate to draw the inference contended for.

(4) The Claimant totally failed to cooperate with production of the bundle

98. There is nothing in this, in our judgment. The allegation was put squarely that there was a total failure to cooperate in production of the bundle. There clearly was not. We refer to our extensive findings on this. Recognising that perhaps the Respondent had overstated the point by referring to ‘total failure’, we do not consider that there was partial failure either. It

is right that the disclosure by the Claimant initially was unstructured and with erratic pagination. That is not to be condoned. Rightly, the Respondent's solicitors highlighted that it was disproportionate for them to have to go through that and that this should have been done by the Claimant's solicitors. But the simple point is that the parties were unable to agree on the bundle. As a tribunal we do not like this. We do not encourage it. We encourage agreement and proportionality. But there is often disagreement. We are conscious just how bitter was the falling out in this family and a background of distrust on both sides often leads to disagreement. We have studied the history of the proceedings carefully and what we have seen, being far from ideal, does not amount to what the Respondent says it does, in our judgement. We have not shone a light on the Respondent's handling of the bundle because the application is against the Claimant and not against it. However, we noted that there were some omissions from the bundle which were down to the Respondent (the amended details of complaint being one). Further, we noted the Respondent's very strict stance on the irrelevance of the shareholding documentation. We have to say that that documentation seemed very relevant given the factual matrix in this case. We also note that it was eventually produced and uploaded to the DUC on **19 September 2025**, or at any rate very late in the day. We repeat, we do not condone this sort of behaviour but we have seen worse on both sides.

(5) The last minute ambush of 250 pages

- 99.** We will say that to provide 250 pages the last working day before a hearing is not reasonable. However, we have to stand back and look at the overall picture. Only a handful of the documents were relied on and they were matters of public record. The Respondent was not put to any disadvantage.

(6) The withdrawal of the unfair dismissal claim on 25 September 2025

- 100.** We then returned to the withdrawal, having looked carefully at what preceded it. Having discussed and analysed the above matters, we considered whether taking them together we could conclude that the Claimant had acted unreasonably in the conduct of the proceedings up to and including the point of withdrawal. We noted that the Claimant might reasonably have withdrawn the whistleblowing claims earlier than he did and that by sending 250 pages of documents late in the day (even if the respondent already had these in its possession from other proceedings) was not reasonable. However, standing back, we did not consider this conduct to amount to unreasonable conduct of the proceedings. The case law makes clear that we are to look at the whole picture and that is what we did.
- 101.** What then is the most likely explanation for the sudden withdrawal of a claim that was going well, we asked. Is it contrary to the interests of justice for us to give any weight to any part of his unsworn statement?
- 102.** We reminded ourselves that we considered the Claimant's absence to be disrespectful. But we must be careful not to allow our own sense of indignation to drive us to a conclusion that does not sit with our view of the reality of the situation. The reality is that this case was

going well for the Claimant. We are satisfied that he received a message from his father regarding the wider litigation and withdrawing these proceedings. The timing of the voice call from the screenshot provided matches exactly the time the tribunal took a break on **25 September 2025**. (see paragraphs 38 and 44.4 above). We have seen the letter from Mischon de Reya. We have seen that the parties were close to a settlement. We understand that there was some attempt to discuss settlement outside the tribunal room without success.

103. We accept Mr Bayne's submission that it is appropriate to give weight to those parts of the Claimant's statement that speak to the withdrawal of the unfair dismissal claim. That explanation is much more likely that the rather speculative one advanced by the Respondent. We do not accept that the withdrawal, unexpected to us as it was in this case, was motivated by a desire not to be exposed to cross examination. We did not accept the leverage argument. Looking at the whole picture, we do not accept that there had been unreasonable behaviour in the conduct of the proceedings and we could not legitimately infer anything nefarious from the withdrawal. We agree with Mr Bayne, that if anything, the withdrawal (to quote Mummery LJ in McPherson) was the '*dawn of sanity*' in this sad case. We were satisfied that we were in the area described in paragraph 28 of **McPherson** and not in the area summarised in paragraph 29 of that case (see paragraph 51 above).

104. We conclude that the Claimant did not act unreasonably in the conduct of the proceedings. Therefore, the application does not get beyond stage one and the application for costs must be dismissed.

Employment Judge Sweeney

Date: 24 November 2025