EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr E Rothwell	**- V -**	FreemantleMedia Group Ltd

Heard at: London Central **On**: 2 – 9 December 2025

Before: Employment Judge Baty
Ms R Butler
Mr S Godecharle

Representation:

For the Claimant: In person
For the Respondent: Mr T Emslie-Smith (counsel)

JUDGMENT

1. The tribunal does not have jurisdiction to hear the claimant's complaints under the Fixed Term Employees (Prevention of Less Favourable Treatment Regulations) 2002, for unfair dismissal, and for automatically unfair dismissal pursuant to section 103A Employment Rights Act 1996 ("ERA") (whistleblowing), as the claimant was not an employee of the respondent. Those complaints are accordingly dismissed.

2. The claimant's complaints of detriment under section 47B ERA (whistleblowing detriment) were presented out of time and it was reasonably practicable to have presented them in time. The tribunal does not therefore have jurisdiction to hear those complaints and they are struck out. If the tribunal had had jurisdiction to hear those complaints, they would all have failed.

REASONS

The complaints

1. The claimant brought two claims against the respondent: claim number 2201953/2024, presented on 19 February 2024 ("the first claim"); and claim number 6008262/2024, presented on 11 August 2024 ("the second claim").

2. The complaints brought under the first claim comprised various complaints under the Fixed Term Employees (Prevention of Less Favourable Treatment Regulations) 2002 ("the FTE Regulations").

3. The complaints brought under the second claim comprised unfair dismissal; automatically unfair dismissal pursuant to section 103A Employment Rights Act 1996 ("ERA") (whistleblowing); and detriment pursuant to section 47B ERA (whistleblowing detriment).

4. The respondent defended the complaints.

5. Whether the tribunal had jurisdiction to hear the claimant's complaints (with the exception of the whistleblowing detriment complaint) was contingent upon whether or not the claimant was an employee of the respondent. A preliminary hearing before EJ Adkin was held in June 2025. EJ Adkin held that the claimant was not an employee of the respondent. Consequently, the tribunal did not have jurisdiction to hear the complaints under the FTE Regulations or the complaints of unfair dismissal and automatically unfair dismissal.

6. It follows that those complaints should be dismissed for want of jurisdiction. As it appears that there has not yet been a dismissal judgment issued officially dismissing those complaints, we have included such a dismissal judgment at the first paragraph of the judgment above.

7. What remained was the complaints of whistleblowing detriment, which fell to be determined this hearing.

Claimant's amendment application

8. At a case management preliminary hearing on 17 January 2025 before EJ Bunting, the issues of the claims were agreed between the parties and the tribunal. This preliminary hearing took place before the subsequent preliminary hearing on employment status, and therefore covered agreement of the issues on the FTE Regulations and unfair dismissal complaints as well. At that hearing, the claimant confirmed clearly to the judge that the only act of detriment for the purposes of his whistleblowing detriment complaint was the respondent's failure to re-engage the claimant following his last contract with the respondent (which ended on 7 June 2024). That was reflected in the list of issues agreed at that hearing.

9. As noted, the employment status hearing then took place in June 2025 and all of the claimant's complaints with the exception of the whistleblowing detriment complaint consequently fell away. In light of the scope of the issues, both parties then agreed that the length of the final hearing could be reduced from 6 to 4 days and the tribunal reduced the hearing length accordingly.

10. The claimant then on 27 October 2025 wrote to the tribunal applying for four amendments to the claim. Amendments 2 and 4 were minor and were not opposed by the respondent. Amendment 1 was contested. However, the most significant amendment sought was amendment 3: this was an amendment to the claim to include what amounted to 17 further acts of alleged whistleblowing detriment. These could be identified by reference to paragraph 9 of the attachment to the second claim. That paragraph was not the paragraph setting out the whistleblowing detriment complaint, but was a later and subsequent paragraph headed *"Impact"*. In it, the claimant cross-referenced what he described as *"a series of hostile actions"* outlined in what has been referred to at this tribunal as his *"Retaliation Facts"* document. As we shall come to, the Retaliation Facts document is a document which the claimant put together on a rolling basis over a period of some months, following his submission of his grievance complaint to the respondent on 4 December 2023, and which sets out various allegations of what the claimant says was retaliatory treatment of him by various employees of the respondent. Paragraph 9 of the attachment to the second claim also included a further factual allegation of alleged behaviour on 10 April 2024. The claimant wanted all of these matters to be considered as allegations of whistleblowing detriment at the final hearing.

11. By email of 7 November 2025, the respondent initially opposed the application (in relation to amendments 1 and 3). The application had not been determined prior to the commencement of the final hearing. In the meantime, the respondent prepared a number of further witness statements to deal with the additional 17 allegations and served them on the claimant, roughly a week prior to the commencement of the hearing. The claimant objected to the respondent seeking to rely on these witness statements.

12. At the start of this hearing, Mr Emslie-Smith made clear that the respondent's position was that it would not oppose amendment 3, provided that it was allowed to adduce the new witness evidence in relation to it. He also asked, if amendment 3 was to be allowed, if the listing time for the final hearing could be returned to 6 days rather than 4 so that there would be enough time to deal with the additional issues.

13. All parties and the tribunal were able to accommodate the addition of the two further days to the listing.

14. However, the claimant was initially reluctant to concede that the respondent should be allowed to adduce the new witness evidence in relation to the 17 proposed new allegations. The judge explained to the claimant that it was reasonable that the respondent had originally only prepared to defend the original complaint of whistleblowing detriment and that, if the goalposts were changed at this very late stage such that there were a further 17 allegations, it

would not be fair to deny it the ability to produce the evidence to defend them. Furthermore, given the late date of the claimant's application to amend, it was inevitable that the respondent could only have produced this new witness evidence after the original dates for exchange of witness statements and the claimant had had the new witness statements (all of which were relatively short) for roughly a week prior to the commencement of this hearing. The judge said that the test for granting an amendment was essentially an exercise of balancing the prejudice to one party of granting the amendment against the prejudice to the other party of refusing it; and that in carrying that out, whether the respondent was permitted to properly defend the new allegations was likely to be a significant factor for the tribunal in its decision as to whether or not to grant the amendment at all.

15. Further to this discussion, the claimant said that he would not object to the inclusion of the new witness statements. On this basis, the application in relation to amendment 3 was not opposed and the tribunal therefore allowed it. The 17 new allegations were therefore incorporated into the list of issues.

16. As noted, amendments 2 and 4, which were minor, were not opposed by the respondent and the tribunal allowed them on that basis.

17. Amendment 1 was opposed. It related to the wording in the list of issues of the original whistleblowing detriment complaint in relation to the failure to re-engage the claimant. The additional wording which the claimant sought did not change the allegation and was not necessary. The judge explained this to the claimant. The claimant therefore withdrew amendment 1, and the wording of that complaint in the list of issues was agreed.

18. There was one point on the list of issues which the tribunal omitted to address in its discussion with the parties at the start of the hearing and which it then asked them about when the hearing reconvened on the second day. This was the issue at 1.1.5.4, which the respondent said was not part of the claimant's case. On discussion on the second day, the judge acknowledged that it did not appear to have been part of the case but that, rather than waste time arguing about it, it's inclusion probably did not alter the scope of what the tribunal had to determine very much. Mr Emslie-Smith agreed and withdrew his objection to the inclusion of that element of the list of issues.

The issues

19. On that basis, the list of issues was agreed. A copy of that list of issues is annexed to these reasons.

20. The judge made clear that these were the issues which the tribunal would determine and no others.

Adjustments

21. In the days in advance of the hearing, the claimant had written to the tribunal to request certain adjustments be made in relation to him.

22. The first of these was that he should be able to use a stress ball whilst giving his evidence. This was not opposed by the respondent and was allowed by the tribunal and the claimant did use a stress ball during his evidence.

23. The second was that there should be a screen between the claimant and the respondent's representative whilst the claimant was giving his evidence (but not at any other time during the hearing). The respondent opposed this, noting that the claimant had given evidence without problem and without a screen at the employment status hearing in June 2025 and noting the practical difficulties that would arise if Mr Emslie-Smith was not able to see the claimant and not able to adjust to any non-verbal cues from him.

24. There was a discussion about this at the start of the hearing. The judge acknowledged the points made by the respondent. The judge suggested that, instead, when it came to his giving evidence, the claimant could give his evidence from his own desk (rather than the usual witness desk which was in the middle of the parties' desks and therefore nearer to Mr Emslie-Smith). The claimant agreed to this and did not pursue his request that there should be a screen any further. Whilst the claimant did appear nervous at times whilst giving his evidence, he was able to give his evidence properly and effectively throughout. Furthermore, it was noticeable that Mr Emslie-Smith did indeed at times pick up on non-verbal cues from the claimant, for example at one point suggesting that there should be a break in the claimant's evidence at a point where the claimant appeared to be becoming quite emotional in a particular passage of cross-examination.

The evidence

25. Witness evidence was heard from the following:

For the claimant:

The claimant himself.

For the respondent:

Ms Leilah Mason, the Head of Production at Talkback Thames, one of the respondent's television labels;

Mr Josh Hoskins, who is employed by the respondent as a Production Executive at Talkback Thames;

Mr Paul McDonagh, who is employed by the respondent as a Line Producer at Talkback Thames; and

Ms Lisa Gettings, who is employed by the respondent as an Executive Assistant at Talkback Thames.

26. Witness statements were also produced to the hearing by the respondent from Ms Julie Burfoot, a Production Executive at Talkback Thames, and Ms Clare Mulvana, who was until 15 August 2025 an HR Manager at the respondent and who conducted the investigation into the claimant's 4 December 2023 grievance complaint.

27. Neither of them were at the tribunal to give evidence. Ms Burfoot could not attend because she was due to give birth during the week of the tribunal hearing. Ms Mulvana has since left the respondent's employment and Mr Emslie-Smith explained that that was the reason why she was not in attendance at the tribunal. The judge explained to the parties that the tribunal would read their witness statements but that, as they were not at the hearing to be cross-examined on their evidence, it may be the case that the tribunal could give less weight to that evidence. As it happened, we were able to give weight to the evidence in their statements, largely because much of it was corroborated by contemporaneous documentary evidence and by the witness evidence of those witnesses of the respondent who were present at the hearing.

28. An agreed bundle numbered pages 1-1034 was produced to the tribunal. The last few pages of the bundle (1025-1034) were added by agreement on the morning of the second day of the hearing.

29. The respondent also provided a chronology and a cast list. The parties did not have the opportunity to agree these documents prior to the start of the hearing. However, they were neutral and not controversial.

30. The claimant produced an opening note and a supplementary opening note. Mr Emslie-Smith produced an opening note and a suggested reading list.

31. The tribunal read in advance the witness statements and any documents in the bundle to which they referred, plus the documents on the reading list to the extent that they were not already referred to in the witness statements, plus the opening notes.

32. A timetable for cross-examination and submissions was agreed between the tribunal and the parties at the start of the hearing. This was adhered to.

33. Both parties produced written submissions, which the tribunal read in advance of hearing their oral submissions. The tribunal than adjourned to deliberate on its decision.

34. The tribunal gave its decision on liability and the reasons for that decision to the parties orally at the hearing.

Findings of fact

35. We make the following findings of fact. In doing so, we do not repeat all of the evidence, even where it is disputed, but confine our findings to those necessary to determine the agreed issues.

Background

36. The respondent is a television production company.

37. The respondent receives commissions for shows from broadcasters and streamers. Shows are commissioned on strict budgets. The commissioner usually dictates a ballpark tariff and the Head of Production and Line Producer are required to resource and budget the production according to the tariff, including the production team and crew numbers. Freelance workers are engaged according to the needs of each individual production, and a contract is agreed once the production is 'greenlit' by the broadcaster.

38. The claimant was a freelance worker who had been engaged by the respondent on productions over a number of years. His first engagement was as a runner on X Factor Series 9 in 2012. He was engaged as an Associate Producer on X Factor Series 15 in June 2018. Since then, his engagements were most regularly as Post Production Supervisor ("PPS"), and he had been engaged on each successive season of Britain's Got Talent ("BGT") since series 8 in 2018.

39. The PPS role involves running the edit for a television production, overseeing the final post-production process of delivering shows, and providing technical services such as sourcing clips for the edit producers. The role has two main areas of expertise: "data wrangling" (transforming and structuring data from one raw form into a desired format and creating back-up drives) and working with Edit Producers and Editors during the post-production phase.

40. The respondent engages freelancers on a variety of different terms – mainly "Schedule E" terms and "Schedule D" terms. Those engaged under Schedule D terms invoice for their services and are treated as self-employed for tax purposes under HMRC's ESM guidance. The claimant has been engaged on Schedule D terms for each of his engagements bar one since 2019, (the exception being BGT 15 between 17 December 2019 and 5 May 2020. He contracted on Schedule D terms at his own request, and made deliberate arrangements to maintain self-employed status for his own financial purposes.

41. Prior to 2013, no pension scheme was available to those on Schedule D terms. Since 1 September 2013, the respondent has enrolled all freelancers (whether on Schedule D or Schedule E terms) into a pension scheme operated by the People's Pension. A separate pension scheme with Scottish Widows is operated for permanent and monthly-paid fixed term employees.

The economic environment in the television industry and the respondent's cost saving measures

42. In recent years, the television industry has faced economic challenges. There was an upturn in content production following the COVID pandemic, but by late 2023 – early 2024, many broadcasters were short of the necessary funds to commission new shows). A number of television labels and post-production facilities have dissolved, and major broadcasters and production companies have

made redundancies, closed labels/departments and implemented recruitment freezes. We have seen extensive evidence of this in the bundle provided to us.

43. The respondent has been commissioned on fewer productions, and those productions have smaller budgets. The respondent has had to consider its strategy and resources in order to respond. In August 2024, the respondent closed a factual independent label (Label 1). In September 2024, the respondent closed two more labels, "Euston" and "Undeniable", with staff made redundant. In September 2024, the respondent amalgamated two previously separate labels, "Talkback" and "Thames" (now known as "Talkback Thames") in order to protect its commercial interests. Shows commissioned under the new label now have stricter financial constraints.

44. Irrespective of market conditions, Ms Mason, the Head of Production at Talkback Thames, is required to forecast the number of commissions to be received, and to consider the budget and calculate the extent to which staff salaries can be recouped from budgets for commissions. The respondent's target is for 100% of the salary costs of most employees to be recovered from a budget.

45. Using salaried employees to perform roles which, in the past, were performed by freelancers allows the respondent to cross-charge their salary from the production budget for the period that they work on the production, and is thus considered a cost-saving measure.

46. The respondent has also sought to renegotiate certain production services by outsourced companies, in order to minimise external costs. In January 2022, the respondent engaged an external post-production company called Picture Shop to back up the recorded footage on auditorium cameras. In January 2024, this was extended to all roaming cameras. The data wrangling and tape labelling part of the claimant's service is therefore no longer required. For BGT 17, the claimant's role included filming the 'Gogglebox' segment of the show, which was made possible due to the reduction in the need for his services during the audition phase of production.

<u>The events relevant to this claim</u>

The claimant's enquiry regarding pensions

47. On 21 September 2023, the claimant emailed Helen Thomas, the respondent's Pensions Manager, with an enquiry about joining the *"more generous"* pension scheme.

48. On 22 September 2023, Ms Thomas responded that this was not possible because the pension scheme referred to was the arrangement for monthly paid employees.

49. On 25 September 2023,the claimant responded asking for the reason why staff get a *"more generous"* pension.

50. On 9 November 2023, Ms Thomas responded, referencing a response from an "employment law colleague" in the HR team, stating that freelancers have different benefits to employees because they are engaged on a *"different, more flexible basis*".

51. On 10 November 2023, the claimant emailed Ms Mason, asking to meet to discuss the issue raised with Ms Thomas.

52. On 14 November 2023, the claimant met Ms Mason in her office at 1 Stephen Street to discuss concerns relating to his pension. There is a dispute about precisely what was said, which we shall return to. However, in broad terms, Ms Mason and the claimant discussed the claimant's desire to be enrolled in the Scottish Widow's pension scheme. The claimant alleges that during this meeting, he mentioned the FTE Regulations and said words to the effect of *"there are laws against this*", in reference to the difference in pension available to freelance workers and employed staff. The claimant relies upon these statements as his PD1.

53. The claimant also alleges that, during this meeting, Ms Mason rocked back in her chair, laughed in his face, and said *"well that's not going to happen"* and relies upon this as detriment D1. Ms Mason denies doing and saying this.

54. On 16 November 2023, the claimant sent a list of further questions to Ms Thomas, this time asking for an *"objective justification"* in relation to the FTE Regulations and identifying an alleged permanent comparator in relation to this. The claimant referred to the *"3 month-minus one-day deadline in relation preserving my rights around escalating this issue*".

55. On 20 November 2023, Ms Mason emailed all production team members on every live production at Thames engaged under 'Schedule D' and 'Loan Out' terms to inform them that they would not be invited to the Christmas Party. The claimant relies on this as detriment D2.

56. On 28 November 2023, Ms Thomas emailed the claimant setting out an explanation of why different pensions were provided to freelancers and employed staff. The claimant relies on this as detriment D3.

57. On 28 November 2023, Ms Burfoot called the claimant to inform him that he could be contracted on Schedule D terms for BGT 17, but that he would need to take a month off after the BGT contract finished in order to maintain Schedule D status. The claimant relies on this as detriment D4.

58. On 4 December 2023, the claimant made a formal written complaint. He relies on various paragraphs of it as his PD2.

Investigation into the claimant's complaint

59. Ms Mulvana, an HR Manager at the respondent at that time, was appointed to investigate the claimant's formal complaint. She gathered information from the claimant and met with him on 7 December 2023 and on 8

January 2024. She also spoke with other individuals referenced in the claimant's complaint.

60. At the meeting with Ms Mulvana on 7 December 2023, the claimant explained his written complaint and Ms Mulvana asked him a number of questions about who said certain statements, and sought to understand the nature of the complaint.

61. The claimant covertly recorded this meeting without Ms Mulvana's knowledge.

62. The claimant relies upon various statements from the transcript of the meeting as his PD3.

63. On 8 December 2023, Ms Mulvana met Ms Mason. Ms Mulvana informed Ms Mason that the claimant had made a formal written complaint regarding his employment status and the respondent's contracting process. Ms Mulvana asked a number of questions about the process for determining the terms used to engage the claimant and whether there had been any discussion or consideration about the claimant being made a permanent employed member of staff. Ms Mason was not privy to the claimant's written complaint at any point during the investigation process. She was not aware of any allegation that the respondent was in breach of the law or the FTE Regulations.

64. On 13 December 2023, Ms Mason attended a further meeting with Ms Mulvana and Helen Moore (the Deputy Head of Production at Talkback Thames), at which she discussed the history of the claimant's contractual engagements with the respondent, including a review of the contracts database.

65. In December 2023, Ms Mason began to draw up the staffing schedule for BGT 18. At this point, it was thought that the claimant might well be involved in the production. On 20 December 2023, Ms Burfoot emailed Ms Mason with the names of people proposed to perform various roles. The email stated *"added Edwin in for more weeks so he is there for judge tour"*. Ms Mason replied to say that she would look at the staffing schedules after Christmas once Mr Hoskin had collated quotes from suppliers.

66. On 8 January 2024, Ms Mulvana and the claimant met again to discuss the claimant's complaint further. Ms Mulvana asked some follow up questions, in particular regarding a chain of WhatsApp massages between the claimant and Mr McDonagh in which the claimant was actively pursuing engagement on Schedule D terms (which appeared at odds with the claimant's suggestion that he should be treated as an employee of the respondent).

67. The claimant again covertly recorded the meeting without Ms Mulvana's knowledge.

68. During this meeting, the claimant said *"I do think that there's been an oversight on the employment law side of things"*. The claimant relies upon this statement as his PD4.

Certain further alleged detriments

69. The claimant alleges that on 9 January 2024, Mr Hoskins said goodbye to the *"rest of the team"* but not to him. He relies on this as detriment D5.

70. The claimant alleges that on 11 January 2024, Mr Rob Grey said *"you're not allowed candles in the office"* with a cheeky tone. He relies on this as detriment D6.

71. The claimant alleges that on 16 January 2024, Mr Hoskins ignored him when he said *"good morning*". He relies on this as detriment D7.

72. On 17 January 2024, Ms Mulvana emailed the claimant to inform him that matters from the investigation into his complaint had been passed to Mr David Oldfield, the respondent's then Chief Financial Officer.

73. The claimant responded to Ms Mulvana's email stating that he had *"experienced a level of hostility from production"* and asked whether anyone had been instructed not to speak with him. Ms Mulvana responded stating that she had not instructed anyone not to speak to him. The claimant relies on this as detriment D8.

74. Ms Mulvana followed up on this query by meeting with Ms Mason to ensure that no-one was treating the claimant any differently. Ms Mason assured Ms Mulvana that she was not aware of any negative behaviour towards the claimant, that she had informed those involved in the investigation that they should continue to interact with the claimant as normal, that any negative behaviour would not be tolerated and that she would reiterate this point to those involved in the investigation.

Outcome of claimant's complaint

75. The claimant met Mr Oldfield on 17 January 2024, via Teams Video Call. He relies upon two parts of the transcript as his PD5.

76. On 23 January 2024, Mr Oldfield sent his written decision on the claimant's complaint to the claimant. The complaint was not upheld. The claimant relies on this as detriment D9.

Certain further alleged detriments

77. The claimant alleges that, on 25 January 2024, Ms Burfoot told him off about his tone on emails. He relies on this as detriment D10. Ms Burfoot agrees that a conversation about the wording used on emails took place, but denies that she *"told the claimant off"*.

78. On 31 January 2024, Mr McDonagh sent the claimant an email stating that copyrights hadn't been declared properly. The claimant relies upon this as detriment D11.

79. The claimant alleges that on 31 January 2024 he was ignored by Mr McDonagh on two occasions and by Mr Hoskin on one occasion and relies on these as detriments D12, D13 and D14. Mr McDonagh and Mr Hoskins deny these allegations.

80. In January 2024, a freelancer, "NB", who had been considered the 'go-to' Netflix PPS, was informed that her services would not be required for the forthcoming series of 'Battle Camp' due to the need to assign Paul McDonagh to the production in order to cross-charge his salary.

The claimant's meeting with Ms Mason on 1 February 2024

81. In late January 2024, Ms Mason became aware through a conversation with HR that the claimant's complaint had not been upheld.

82. On 1 February 2024, Ms Mason met Amelia Brown, the respondent's Chief Executive Officer. During the meeting, and having just learned that the claimant's complaint had not been upheld, Ms Mason queried whether anyone had checked in on the claimant.

83. Later on 1 February 2024, noticing that the claimant was present at 1 Stephen Street, Ms Mason invited the claimant to come and speak with her in her office.

84. Ms Mason told the claimant that she wanted to see how the claimant was, rather than discuss the specifics of his complaint. The claimant alleges that he said *"It is the established norm that self-employed people don't get pension or holiday pay. Why are you paying holiday pay to individuals you are saying are self-employed?"* and relies upon this as his PD6.

85. The claimant also alleges that during this meeting, Ms Mason said *"I hope you've got a lot of money set aside because you're going to get a big tax bill"*, asked *"What did you think you were going to get out of it?"*, said *"it's been really difficult for everyone*", and made a threat of *"do you want your holiday pay or not?"*. He relies on these statements as detriment D16. Ms Mason denies making them.

Birthday allegation

86. The claimant alleges that on 1 February 2024, Ms Gettings went round the office asking people to celebrate Charlie Irwin's birthday and did not invite him. He relies on this as detriment D15. Ms Gettings agrees that she arranged birthday cake for Charlie Irwin but denies deliberately not inviting the claimant.

The claimant's tribunal claim

On 19 February 2024, the claimant filed the particulars of the first claim. The claimant relies upon this as his PD7.

International Day of Pink

87. On 10 April 2024, the claimant attended the Stephen Street office for *"International Day of Pink*". He was sitting in the seating area behind the reception desk. Ms Mason said *"what are you doing here?"* and *"why have they let you out of the edit?"*. The claimant relies upon this as detriment D17.

The decision not to renew the claimant's contract

88. On 19 April 2024, Ms Moore sent Ms Mason an email providing an update that Mr McDonagh had been required to cover the "Post Sup" role on "Battle Camp" and said *"it means for us we can recharge him to BC until mid/end October which solves a large recovery problem*". She said that she had explained to NB *"we do need to internally recover people, and even though she is our go-to person for NF shows we won't need her on this one*".

89. Ms Mason replied that same day stating, *"I think we are going to be in the same position with Josh in terms of recovering him for the rest of the year with no confirmed series yet*". She stated, *"I can mention it to Julie to garner her thoughts as it would unfortunately mean that Edwin would be in the same situation as [NB]*".

90. Later on 19 April 2024, Ms Mason sent Ms Burfoot an email stating as follows:

"We are in a position where we do not have much coming up in the latter part of this year so we may need to ask Josh to oversee the BGT edit as that's the only guaranteed show to date that's in the UK. He's currently booking editors anyway due to the change in schedule and turnaround time to get them confirmed (is the edit schedule confirmed with Clara / Pete now?) but wanted to check in with you on this first.

Helen will speak with Josh to let him know that it's an option we're looking at in terms of making sure as a staff role he is financially recovered.

It does however mean that he will need to replace Edwin. I'm not sure if he's been spoken too or not yet but wanted to put this out there before he is promised anything by yourself or anyone on the team. That of course is not ideal but Hells has just had a similar situation with Nicky for the Netflix show where we've had to make Paul the Post Prod Supervisor. The commissioning landscape is pretty grim at the moment."

91. On 24 April 2024, the claimant made an application to amend the particulars of the first claim, copying in Marsha Bull (Senior Employment Counsel at the respondent). The application to amend is relied upon as his PD8.

92. On 26 April 2024, Ms Burfoot called the claimant to inform him that the decision had been made not to re-engage him for BGT 18. Her contemporaneous notes of the call record:

"I explained that it is now going to be done by a staff person as we cannot recover them on other shows."

The claimant's notes of the call record inter alia:

"Someone else will be doing my role and it will be a staff member…The staff member's wages will be charged back to BGT."

93. In April 2024, Mr Hoskins was assigned to BGT 18 as a Line Producer. Since Picture Shop was already performing the data wrangling role, Mr Hoskins absorbed the remaining elements of the PPS role.

94. Mr Hoskin's assignment to BGT 18 as a Line Producer performing some of the PPS functions was effective in that he could manage finance and budgetary related tasks which a PPS would not usually perform.

95. Mr Hoskins worked on BGT 18 until 6 December 2024. In September 2024, the decision was made to assign him back to Blankety Blank. The respondent recruited a Post Production Manager (as opposed to a Post Production Supervisor), to continue to fulfil the role that Mr Hoskins had been performing. Dolores Laurino (who had previously been engaged by another of the respondent's labels as a Post Production Manager) was offered the role on 21 November 2024 and commenced work on BGT 18 on 2 December 2024, after a brief (4 day) handover period from Mr Hoskins.

96. Ms Laurino was engaged on a freelance basis. However, importantly, she had the skills and past experience as a Post Production Manager to carry on the role as it had been carried out by Mr Hoskins (i.e. of Post Production Manager rather than PPS); the claimant did not have those skills and experience.

Reliability of evidence

97. We need to make some findings about the respective reliability of the evidence of the claimant and of the respondent's witnesses. This is of particular importance when it comes to making factual findings in relation to those allegations where it is one person's word against another's and where there may be no documentary evidence available to assist.

The claimant

98. We do have concerns about the reliability of the claimant's evidence for the following reasons.

99. We note that the claimant is intelligent and has proved capable of researching and presenting his own case and doing so well. We accept that he can be expected to understand the implications of the allegations he has made against the respondent and to display a degree of cogency in explaining the basis of his case. However, we had numerous concerns about his evidence, of which the following are only examples.

100. First, the claimant was unwilling to make appropriate concessions and persisted with assertions that were plainly unjustified. One particularly clear example was that, although he accepted that the email from Ms Mason regarding the Christmas party was sent to the entire production team under "Schedule D", he continued to maintain that this email, which made clear that none of these

individuals could be invited to the Christmas party, was sent because of his protected disclosures.

101. Furthermore, throughout his evidence, he had a tendency to attribute illegitimate motives to his colleagues, even where such motives were demonstrably absent. Examples include his insisting that the innocuous and reasonable email sent by Mr McDonagh about copyrights was intended to victimise him personally, despite apparently accepting that Mr McDonagh genuinely believed that copyrights had been declared incorrectly.

102. Furthermore, further to Mr Emslie-Smith's submission, we accept that, on at least one occasion, the claimant was probably not telling the truth to the tribunal. This concerned the particular passage of cross-examination about why he did not approach the police or HMRC despite apparently believing that the respondent was cheating the public revenue; he proceeded to give several implausible explanations which were more likely than not to be invented reasons for not doing so.

103. In terms of the claimant's mindset in general, the chronology is informative. The claimant submitted his formal complaint on 4 December 2023; he clearly had an employment tribunal claim in mind by that point because of his prior references to tribunal time limits; he then covertly recorded his investigation meetings with Ms Mulvana, both on 7 December 2023 and later on 8 January 2024; there can have been no other plausible explanation for his doing so other than that he was seeking to catch her out and/or garner material for his claim/complaint (and indeed he duly used phrases from the transcripts as the basis for some of his alleged protected disclosures); he had contacted ACAS to commence early conciliation as early as 11 December 2023; during the period of a couple of months after that, he put together the document headed *"retaliation facts"*, which he described as his *"contemporaneous notes"* and which was a document which he added to on a rolling basis and in which he marked down any interactions with colleagues which he felt he might be able to use as the basis for employment tribunal complaints and which in due course formed the basis of the vast majority of the detriment complaints considered at this hearing. The allegations he set out in this document were against a wide range of colleagues with whom he had had good cordial working relationships, in some cases over a number of years.

104. On one level, and at best, the claimant had "gone down the rabbit hole"; in other words, he had taken a view that everyone was out to get him because of his complaint and then saw every innocuous interaction with his colleagues as an example of detrimental treatment, even when there was no evidence of that or the evidence that did exist was entirely to the contrary. At worst, he knowingly sought material for his tribunal claims which he consciously knew could not amount to allegations of detriment because of making a protected disclosure.

105. Charitably, we are inclined to conclude that it was the former; in other words that the claimant genuinely, albeit unreasonably, considered that the allegations of detriment added to his claim by amendment (in other words all of

the detriment allegations apart from the decision not to renew his contract) were detriments done because of protected disclosures.

The respondents' witnesses

106. By contrast, the witnesses for the respondent were all open and forthcoming in their evidence; they sought to answer the questions put to them; they were prepared to accept when they could have done things better; they were generous in their attitude to the claimant and had praise for his work and abilities; they were consistent, both with their own witness statements and with the witness statements of the respondent's other witnesses and with the contemporaneous documentation. In short, we did not have any concerns about the reliability of their evidence.

Summary on reliability of evidence

107. Therefore, where there is a conflict in evidence where there is no contemporaneous documentation to determine the matter, we are inclined to prefer the evidence of the respondent's witnesses over that of the claimant.

More detailed findings of fact on the individual detriments

108. We make more detailed findings of fact in relation to the individual alleged detriments alongside our conclusions on those detriments, as those findings read more easily next to those individual conclusions.

The law

Protected disclosures

Qualifying disclosures

109. For detriment complaints relating to protected disclosures, colloquially referred to as "whistleblowing", the claimant must first prove on the balance of probabilities that he made a protected disclosure. To do this the claimant must first prove that he made a qualifying disclosure under s.43B(1) of the ERA. A qualifying disclosure means any disclosure of information which, in the reasonable belief of the person making the disclosure, is made in the public interest and tends to show one or more of six categories set out at s.43B(1)(a-f). The categories relevant to this case are:

> (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;
>
> (d) That the health or safety of any individual has been, is being or is likely to be endangered; and

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

110. The burden is on the claimant to establish 1) that there is a disclosure of information 2) that he believed that the disclosure was made in the public interest 3) that such belief was reasonably held 4) that he believed that the disclosure tended to show one or more of the matters listed in sub-paragraphs (a) to (f) of section 43B ERA and 5) that such belief was reasonably held. All five elements must be established, and tribunals are encouraged to work through each in turn (Williams v Michelle Brown AM UKEAT/0044/19 (29 October 2019, unreported)).

111. Each alleged protected disclosure should be identified and considered separately. A "rolled up" approach should not be adopted by "lumping together" a number of complaints without considering which are disclosures of information made in the reasonable belief that they tend to show breaches of legal obligations (Blackbay Ventures Ltd t/a Chemistree v Gahir [2014] ICR 747 at [98]).

Disclosure of Information

112. In order to fall within the statutory definition, the disclosure must give information, in the sense of conveying facts. It is not sufficient that the claimant has simply made allegations about the wrongdoer (Cavendish Munro Professional Risks Management Ltd v Geduld [2010] ICR 325, EAT at [24]).

113. As made clear in Kilraine v Wandsworth LBC [2018] I.C.R. 1850 (subsequently applied in Simpson v Cantor Fitzgerald [2021] ICR 695), some "allegations" do contain "information," and so a rigid dichotomy should not be maintained between the two concepts. However, Kilraine affirmed that not every statement involving an allegation will contain information [31]. The question is whether the statement relied upon has *"a sufficient factual content and specificity such as is capable of tending to show one of the matters listed in subsection (1)"* [35]

Reasonable belief that information tends to show matters in subsection (1)

114. In respect of any disclosure of failings, the claimant must show, on the balance of probabilities, a) that there was in fact and as a matter of law, a legal obligation (or other relevant obligation) on the employer (or other relevant person) in each of the circumstances relied on (b) that the information disclosed tends to show that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject (Boulding v Land Securities Trillium (Media Services) Ltd UKEAT/0023/06 (3 May 2006, unreported).)

115. The claimant does not have to identify the legal obligation in precise or detailed terms at the point of making the disclosure, but at the stage of presenting the complaint to the tribunal, save in obvious cases, the source of the obligation should be identified and capable of verification by reference for example to statute or regulation (see Arjomand-Sissan v East Sussex Healthcare

NHS Trust UKEAT/0122/17 (17 April 2019, unreported), citing Eiger F Securities LLP v Korshunova [2017] ICR 561 and Blackbay Ventures Ltd t/a Chemistree v Gahir at [98]).

116. If the factual content of the claimed disclosure cannot reasonably be construed as tending to show the relevant matters in sub-paragraphs a) to f) of section 43B ERA, then no qualifying disclosure can be found, regardless of what the claimant subjectively believed (Williams v Brown at [35]).

117. Although the disclosure does not need to be true, the factual accuracy of the allegations may be an important tool in determining whether or not the employee had a reasonable belief (Darnton v University of Surrey [2003] ICR 615 at [29]). There must be more than unsubstantiated rumours in order for there to be a qualifying disclosure. The whistleblower is required to exercise some judgment consistent with the evidence and the resources available to him. [31]

118. For the purpose of s.43B(1)(a) ERA, it is not enough that the information tends to show that the respondent has acted in a way that is in some sense wrong, short of a criminal offence (see treatment of the word "manipulate" in Williams v Brown at [42]).

119. In Simpson v Cantor Fitzgerald the Court of Appeal upheld a tribunal's finding that communications lacked reasonable belief where the claimant was trying pass off personal financial concerns as protected disclosures in order to leverage his personal position.

Public interest

120. The claimant must have a reasonable belief that the disclosure is made in the public interest. In Chesterton Global Ltd v Nurmohamed [2018] I.C.R. 731 at [36], Underhill J *"refused to rule out"* the possibility that a disclosure in respect of a personal interest (in that case, breach of a worker's contract) could reasonably be regarded to be in the public interest if a sufficiently large number of other employees share the same interest. He added that employment tribunals should be cautious about reaching such a conclusion, because the policy behind the public interest provision was to prevent statutory protection from covering private workplace disputes, even where more than one worker is involved.

121. At paragraph 37, he went on to say,

"In a whistleblower case where the disclosure relates to a breach of the workers own contract of employment (or some other matter under section 43B(1) where the interest in question is personal in character), there may nevertheless be features of the case that make it reasonable to regard disclosure as being in the public interest as well as in the personal interest of the worker. Mr Reade's example of doctors hours is particularly obvious, but there may be many other kinds of case where it may reasonably be thought that such a disclosure was in the public interest. The question is one to be answered by the tribunal on a consideration of all the circumstances of the particular case, but Mr Laddie's fourfold classification of relevant factors which I have reproduced at para 34 above may be a useful tool. As he says, the number of employees whose interests the matter disclosed affects may be relevant, but that is subject to the strong note of caution which I have sounded in the previous paragraph."

122. The factors referred to at [34] are: a) the numbers in the group whose interests the disclosure served, b) the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed, c) the nature of the wrongdoing disclosed, d) the identity of the alleged wrongdoer.

123. The fact that a matter could hypothetically be disclosed in the public interest does not establish that a claimant holds that belief when making it (Parsons v Airplus International Ltd UKEAT/0111/17 (13 October 2017, unreported)).

Disclosure to employer

124. If the employee establishes that he or she made a qualifying disclosure, he or she must then prove that it was a protected disclosure. This can be done in a number of ways in accordance with s.43C-43H of the ERA. A disclosure made to an employer, as set out in s.43C, is one such way in which a qualifying disclosure can be a protected disclosure as well.

…on the ground that C has made a protected disclosure (causation)

125. The term *"on the ground that"* requires consideration of the reason why the employer has acted as they have. This involves an inquiry into the factors operating on the mind of the person deciding upon or doing the act (Harrow London Borough Council v Knight [2003] IRLR 140 at [15].)

126. The reasons that are relevant are those operating on the mind of the decision maker or the perpetrator of the detriment, and only that person. The exception is where a person in the hierarchy of responsibility above the employee determines that the employee should be dismissed for a particular reason, but hides that behind a different, invented reason which the decision-maker adopts (Jhuti v Royal Mail [2020] ICR 731). At paragraph [41], it was emphasised that such instances will not be common. In Kong v Gulf International Bank (UK) Ltd [2021] 9 WLUK 125 at [64 – 72], Auerbach J held that, for the exception to apply, the decision-maker had to be particularly dependent on the other person as the source of the underlying facts and information, and the person's role or position had to be such that their motivation could be attributed to the employer.

127. Liability arises if the protected disclosure is a material factor in the employer's decision to subject the claimant to a detrimental act (Fecitt v NHS Manchester [2012] ICR 372 at [43], Oxford Said Business School v Heslop EA-2021-000268-VP).

128. The claimant bears the burden of proof to show that a ground or reason for detrimental treatment is a protected disclosure. Under s.48(2) ERA, the respondent bears the burden of proof to show the ground on which any act, or deliberate failure to act, was done, and inferences may be drawn against them if they fail to do so (Malik v Cenkos Securities plc UKEAT/0100/17 [80] and Heslop, at [61] citing International Petroleum Ltd v Osipov UKEAT/0058/17).

129. Conversely, once an employer satisfies the tribunal that it has acted for a particular reason, that necessarily discharges the burden of showing that the proscribed reason played no part in it (Fecitt at [41] (see also Parsons v Airplus, in which at [43], the EAT rejected the argument that a coincidence in timing with dismissal established that the protected disclosure was the reason).

130. It is necessary for the decision maker/actor to know at least something of the substance of the disclosure that has been made. It is insufficient that they know merely the fact that a disclosure has been made. They must have some knowledge of what the employee is complaining or expressing concerns about (Nicol v World Travel and Tourism Council and others [2024] I.C.R. 893).

131. The statutory provisions protect the worker from detriment on grounds of the act of disclosure. A respondent is not liable for detriment on grounds of other conduct even if connected in some way to that disclosure, provided that it is genuinely separable from the disclosure (Panayiotou v Chief Constable of Hampshire Police [2014] IRLR 500 at [50]). This includes actions undertaken in order to show that belief in the disclosure is reasonable (Bolton School v Evans [2007] I.C.R. 641 at [9]).

Detriment

132. A worker is subject to a detriment if *"a reasonable worker would or might take the view that he had thereby been disadvantaged in the circumstances in which he had thereafter to work"*, considered from the point of view of the victim (Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337 at [34, 104]; Jesuadason v Alder Hey Children's NHS Foundation Trust [2020] ICR 1226). The disadvantage must be material, so an unjustified sense of grievance cannot amount to a detriment (Shamoon [35, 104]).

Time Limits

133. S.48(3)(a) ERA provides that a tribunal shall not consider a complaint under s.47B unless it is presented 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.

134. Time begins to run from the date of the act or failure to act to which the complaint relates, whether or not the claimant is aware that a detriment has been suffered (Flynn v Warrior Square Recoveries Ltd [2014] EWCA Civ 68; McKinney v Newham London Borough Council [2015] I.C.R. 495).

135. S.48(3)(b) ERA permits the Tribunal to extend time only where it was not reasonably practicable for the complaint to be presented before the end of the period of three months from the act.

136. In Porter v Bandridge Ltd 1978 ICR 943, the Court of Appeal ruled that the correct test as to whether ignorance of the law means that it was not reasonably practicable to have presented the claim on time is not whether the

claimant knew of his or her rights but whether he or she ought to have known of them.

137. Furthermore, where the claimant is generally aware of his or her employment rights, ignorance of the time limit will rarely be acceptable as a reason for delay. This is because a claimant who is aware of his or her rights will generally be taken to have been put on enquiry as to the time limit. Indeed in Trevelyans (Birmingham) Ltd V Norton 1991 ICR 488, EAT, Mr Justice Wood said that, when a claimant knows of his or her right to complain of (in that case) unfair dismissal, he or she is under an obligation to seek information and advice about how to enforce that right.

Conclusions on the issues

138. We make the following conclusions, applying the law to the facts found in relation to the agreed issues.

Alleged protected disclosures

139. We have heard extensive submissions from both parties about the alleged protected disclosures and whether they indeed amount to protected disclosures. We do not need to go through each one line by line, because we accept the respondent's analysis of whether each of the eight alleged protected disclosures do in fact amount to protected disclosures.

140. In summary, some of the alleged disclosures do not involve the disclosure of information and in the case of some, the claimant did not have a reasonable belief that the disclosure tended to show one of the four categories relied on; whereas others did satisfy one or both of these tests. However, for the reasons given by the respondent in its written submissions, we do not consider, in the case of each of those disclosures, that the claimant had a belief that the disclosure was in the public interest and certainly not that he had a reasonable belief that the disclosure was in the public interest. We refer to the respondent's reasoning in its written submissions in full in this respect and do not repeat it here.

141. It follows, therefore, that none of the alleged protected disclosures relied upon by the claimant were in fact protected disclosures. The complaints of whistleblowing detriment therefore fail at the first stage.

142. Whilst that disposes of the claim, we nonetheless make findings on the various detriments alleged by the claimant.

Alleged detriments

143. We take these in a chronological order, leaving the detriment relating to the failure to re-engage the claimant until the end.

144. As already indicated, we make more detailed findings of fact in relation to the individual alleged detriments alongside our conclusions on those

detriments, as those findings read more easily next to those individual conclusions.

14th November 2023 – Leilah Mason laughing at the claimant and saying "well that's not going to happen". ***[D1]***

145. Ms Mason denies laughing at the claimant and saying *"well that's not going to happen"*.

146. The meeting on 14 November 2023 was the first time the claimant had outlined his concerns about the pension to Ms Mason. We accept that the conversation was a positive one and that Ms Mason encouraged the claimant to request a more thorough response from HR and that, as she stated, she regularly has conversations like this with freelancers. In her witness statement, Ms Mason stated that, whilst the conversation with her was a positive one, the claimant was frustrated by his previous interactions with Helen Thomas, the pensions manager, in particular because of his perception of her delay in responding to him. In her oral evidence, Ms Mason stated that the claimant was *"irate"* about Ms Thomas. The claimant, somewhat absurdly, suggested that Ms Mason was changing her evidence in this respect; however, she was not; she was at all times consistent that her conversation with the claimant was a positive one, and the fact that she described the claimant as being *"frustrated by"* his interactions with Ms Thomas or *"irate"* as a result of Ms Thomas's actions is neither here or there. However, the fact that the claimant seized on this as a supposed example of inconsistency or even lying on the part of Ms Mason is symptomatic of the mindset which he has and which we described in our assessment of the reliability of his evidence. Ms Mason's evidence in this respect was entirely consistent.

147. We prefer the evidence of Ms Mason over that of the claimant and find that what he alleged was not said. As the allegation is not been made out on its facts, it fails at the first stage.

148. Furthermore, the claimant's complaint involved no criticism of Ms Mason and implied no negative impact on her. We therefore accept that it is inherently unlikely that, during the conversation, Ms Mason would subject the claimant to detrimental treatment because of the matters that he had raised during the same conversation. We therefore find that there was no detrimental treatment and nothing said during that conversation was done to the claimant because of any alleged protected disclosure.

149. This detriment complaint therefore fails.

20th November 2023 – Excluding the claimant from the Christmas Party, stating that it was 'due to tax reasons'. ***[D2]***

150. Ms Mason's email of 20 November 2023 is clear on its face that the reason for excluding freelance workers from the Christmas party was to maintain Schedule D status in line with HMRC requirements. As the claimant accepts, the

email was sent to all production team members in every live production at Thames under Schedule D.

151. First, we do not consider that this email could in any way be reasonably considered a detriment, by the claimant or by anyone else; the email is sent in order to benefit those on Schedule D, in other words to protect their tax status, rather than to subject them to a detriment. This allegation therefore fails for this reason.

152. Even more significantly, however, it was not sent because of any of the claimant's alleged protected disclosures. It is totally implausible that Ms Mason would disinvite all Schedule D workers from the Christmas party in order to victimise the claimant for making an alleged protected disclosure. The fact that the claimant continues to pursue this allegation is, as we have noted in our findings regarding reliability of evidence, simply extraordinary.

*28th November 2023 – an evasive response from Helen Thomas **[D3]***

153. Ms Thomas provided an entirely reasonable response to the claimant's query, as he requested. It was not unduly short and gave a succinct but full response to his query. It was certainly not evasive. It set out reasons why freelancers and employees had different pension schemes. As her response was not evasive, this allegation has not been made out on the facts and it fails at the first stage.

154. Furthermore, a reasonable worker could not consider this email to be a detriment. Therefore, as it was not a detriment, the allegation fails for this reason too.

155. Furthermore, there is absolutely no basis for suggesting that Ms Thomas wrote this email to subject the claimant to a detriment because he made an alleged protected disclosure; by contrast, she wrote this email in order to answer the question which he had asked her to answer. For this reason too, therefore, this allegation fails.

156. Furthermore, there is no evidence that Ms Thomas was aware of the particular contents of the conversation which the claimant had with Ms Mason on 14 November 2023, which was the only alleged protected disclosure which had been made by the time of Ms Thomas' email on 28 November 2023; we therefore find that she was not aware of them. Therefore, her email could not have been because of the alleged protected disclosure. This complaint therefore fails for this reason too.

*28th November 2023 – Julie Burfoot telling the claimant that he must take one month off (unpaid) at the end of the contract **[D4]***

157. Ms Burfoot did tell the claimant that he needed to take one month off at the end of his contract in relation to BGT 17. The factual basis of this allegation is therefore established.

158. However, the context of this was that Ms Burfoot had previously raised a contract for the claimant for BGT 17 on Schedule E terms by accident. On 11 November 2023, she asked a member of HR staff, Alex McBride, whether the contract could be reissued on Schedule D terms. Ms McBride advised that the claimant could be engaged on Schedule D terms, but advised that there should be a break after BGT 17. Ms Burfoot passed this on to the claimant on 28 November 2023. Furthermore, he expressed his gratitude to have a break between contracts (which enabled him to go on holiday, which he wished to do).

159. This was not, therefore, detrimental treatment, for two reasons. First, the reason that the advice from Ms McBride was passed on by Ms Burfoot to the claimant was in order to benefit him by preserving the Schedule D tax status which he had always previously sought to have; it was not a detriment. Secondly, the claimant did not regard it as a detriment as he expressed gratitude in relation to the break between contracts. As it was not a detriment, this allegation fails.

160. Furthermore, the reason why Ms Burfoot said this to the claimant was because she had been advised by HR that a month's break at the end of the contract should be taken in order to contract the claimant on a Schedule D basis in accordance with HMRC guidance. It was not because the claimant made a protected disclosure. This allegation therefore fails for this reason too.

161. Furthermore, Ms Burfoot was not aware of the conversation which the claimant had with Ms Mason on 14 November 2023, which was the only alleged protected disclosure which had been made by the time of her making this statement to the claimant on 28 November 2023. Therefore, her statement could not have been because of the alleged protected disclosure. This complaint therefore fails for this reason too.

9th January 2024 – Josh Hoskins saying goodbye to the rest of the team and not to the Claimant whilst stood next to him. ***[D5]***

162. Mr Hoskins denies deliberately ignoring the claimant on 9 January 2024. Mr Hoskins was not working on the BGT production team at the time. The BGT team consisted of around 50 people. Mr Hoskins considers that he would not have extended a goodbye to the entire BGT team, or deliberately excluded the claimant had he known that he was standing next to him. Mr Hoskins considers that it is possible he said goodbye to the Blankety Blank team (which he was working on) as he was leaving that day. However, Mr Hoskins has no recollection of this incident taking place as alleged by the claimant and gave evidence that he would not have ignored the claimant on purpose. For reasons of respective reliability of evidence, we accept Mr Hoskins' evidence.

163. We therefore find that Mr Hoskins did not deliberately ignore the claimant; that he did not say goodbye to the rest of the BGT production team; and that he did not fail to say goodbye to the claimant whilst the claimant was standing next to him. The allegation is not, therefore, made out on the facts and therefore fails at the first stage.

164. Furthermore, even if the claimant was present and Mr Hoskins did not say goodbye to him, this was in the context of a busy office with a lot of people present and it was not done deliberately. It could not, therefore, be reasonably regarded as a detriment. As it was not a detriment, the allegation fails for this reason too.

165. Furthermore, there is no evidence that Mr Hoskins didn't say goodbye to the claimant because of a protected disclosure. He did not have any ill will towards the claimant and there was, therefore, no motivation for him to do so.

166. Furthermore, we accept Mr Emslie-Smith's submission that Mr Hoskins did not have sufficient knowledge of the content of the claimant's alleged protected disclosures to have acted "because" of them. He was interviewed by Ms Mulvana via Teams on 8 December 2023; he was told that the claimant had made a complaint regarding employment status and the respondent's contracting processes; he did not know the substance of the complaint and it was never disclosed to him; he was unaware of alleged protected disclosures 1, 3 and 4 (and the other alleged protected disclosures post-date the allegations against him).

167. We therefore find that any failure to say goodbye to the claimant was not because of a protected disclosure. This allegation therefore also fails for this reason.

11th January 2024 – Rob Grey saying "you're not allowed candles in the office." ***[D6]***

168. For reasons of respective reliability of relevant evidence, we accept Ms Mason's evidence as to the likely reasons for this comment over the slanted view which the claimant has given as to the reasons, which we consider is tainted by the claimant's tendency to read into actions motivations which they do not contain, and which we have referenced in our findings regarding respective reliability of evidence above. Furthermore, we draw no inference from the fact that Mr Grey was not at the tribunal to give evidence, as he has left the respondent's employment.

169. In summary, the respondent's facilities team have previously cited health and safety concerns about the presence of candles in the office, even a single candle on a birthday cake, and Ms Mason's expectation is that Mr Grey would have acted with this in mind. Based on her own interactions with Mr Grey, she thinks that he would have approached this with the claimant in an appropriate way, and if the candle was unlit then this would have likely been a "tongue in cheek" reference to the extreme lengths the facilities team have gone to in recent years; in other words he was making a joke at the facilities team's expense. We accept her evidence that Mr Grey and the claimant got on very well and were always friendly with one another when they crossed paths in the office. Furthermore, we accept her evidence that, as far as she is aware, Mr Grey was not aware of the fact that the claimant had raised a complaint until 15 January 2024, when he was interviewed by Ms Mulvana as part of her investigation, so he couldn't have made this comment to the claimant as an act of retaliation.

170. Therefore, whilst the facts of the allegation are made out, what was done was not a detriment, and this allegation fails for this reason.

171. Furthermore, the comment could not have been and was not said because of any of the claimant's alleged protected disclosures, and fails for that reason too.

16th January 2024 – Josh Hoskins ignoring the Claimant. ***[D7]***

172. Mr Hoskins evidence was that he had no recollection of this alleged incident taking place and that he would not have ignored the claimant on purpose. Mr Hoskins had always had a good working relationship with the claimant and had no reason to have any ill will against the claimant; furthermore, Mr Hoskins had only limited knowledge of the claimant's 4 December 2023 complaint and, although he was interviewed as part of the investigation into that complaint, there was no allegation in the complaint against him personally.

173. Furthermore, for reasons of respective reliability of evidence, we prefer Mr Hoskins' evidence to that of the claimant and find that he did not ignore the claimant. This allegation is not, therefore, established on the facts and therefore fails.

174. In any event, for the reasons above, there is no evidence to suggest that any actions of Mr Hoskins were because of any alleged protected disclosure by the claimant.

17th January 2024 – Clare Mulvana informing the Claimant that she had not instructed anyone not to speak to him. ***[D8]***

175. In an email of 17 January 2024 to Ms Mulvana, the claimant commented that it had been a *"strange week"* for him, saying that he had *"experienced a level of hostility from production"* and wanted to check whether anyone had been instructed not to speak with him. Ms Mulvana in her email reply that day confirmed that she had not instructed anyone not to speak to him.

176. The factual basis of this allegation is therefore established. However, it could not reasonably be seen to be a detriment; Ms Mulvana was simply replying, and replying truthfully, to a query raised by the claimant. The allegation fails for this reason.

177. Furthermore, this was clearly not done because of any alleged protected disclosure; it was done because the claimant raised a query and because Ms Mulvana replied to that query. This allegation fails for this reason too.

23rd January 2024 – not upholding the Claimant's complaint. ***[D9]***

178. David Oldfield, the respondent's then Chief Financial Officer, was the decision-maker in relation to the claimant's complaint. He provided a resolution to the complaint, in accordance with the respondent's procedure, by way of detailed

written reasons following a thorough and professional investigation undertaken by Ms Mulvana. We accept Mr Emslie-Smith's submission that a reasonable worker would not, in light of these facts, consider the outcome detrimental, and that any sense of grievance which claimant has in relation to the outcome of his complaint is unjustified. Therefore, as there was no detriment, this allegation fails.

179. Furthermore, there is no evidence to suggest that Mr Oldfield gave the outcome to the complaint which he did in order to subject the claimant to a detriment because the claimant made an alleged protected disclosure. By contrast, the outcome was a logical and understandable conclusion in the light of the evidence, following a very thorough investigation. The allegation therefore fails for this reason too.

25th January 2024 – Julie Burfoot calling the Claimant into her office and telling him off about "tone on email" and saying he should be more careful about wording of emails. ***[D10]***

180. The context of this allegation is that the Series Producer on BGT 17, Sarah Webber, contacted Ms Burfoot expressing surprise at the tone of an email sent by the claimant to Peter Cornes, the show's Executive Producer, in which the claimant had asked for *"justification"* for a particular engagement. Ms Burfoot emailed the claimant, saying *"Hi love, will you grab me about this before you go tonight"*. She spoke to the claimant later on and suggested to him that next time he approach matters slightly differently by not using the word "justification" as it could be misinterpreted, particularly in email correspondence to senior individuals and at busy times in the production schedule. She reassured him that it wasn't a reprimand. She suggested that in future he shouldn't rush sending emails and instead re-read his message carefully first. The next day, the claimant responded to the email working group and said *"Sorry you're completely right, I was rushing yesterday and should have properly checked before sending an email about it, we'll be fine to book him… Sorry again I promise not to send any more rushed emails"*. Ms Burfoot replied two minutes later to the claimant to say *"okay cool, Glad all is sorted"*. No further action was taken.

181. The above is reflected in Ms Burfoot's account in her witness statement. In that statement, her evidence is also that she did not "tell the claimant off" as he has alleged. We are conscious that Ms Burfoot was not at the tribunal to give evidence, but the reason why she was not here was an entirely understandable one, namely that she was due to give birth during the week of the tribunal hearing. Furthermore, her witness statement is consistent with the evidence of the other witnesses and with the contemporaneous documents, including the various emails referred to. For that reason, and because of our concerns about the reliability of the evidence of the claimant, we accept the evidence in Ms Burfoot's statement as set out above.

182. The tone of the *"Hi love, will you grab me about this before you go tonight"* email is consistent with a friendly and informal chat, and inconsistent with a motivated "telling off". We therefore accept that Ms Burfoot did not "tell the claimant off". Furthermore, although the claimant at this tribunal suggested that

he had no choice but to respond by email as he did (as referenced above), he did not say this at the time or raise any issue with being allegedly unjustifiably told off; all we have is his email apology which is consistent with a supportive chat with Ms Burfoot in response to an issue raised by another manager and the claimant taking note of that conversation and issuing a normal apology. It is everyday workplace management and has only being blown into something far bigger than that by the claimant in these proceedings.

183. Ms Burfoot's conduct did not, therefore, constitute a detriment, but a reasonable and supportive management conversation. This complaint therefore fails for this reason.

184. Furthermore, there is no evidence that Ms Burfoot did this because of the claimant's alleged protected disclosures. Rather, she had this conversation because of the concern raised about the claimant's email by Ms Webber. This complaint therefore fails for this reason too.

31st January 2024 – Paul McDonagh saying in an email that copyrights hadn't been declared properly. ***[D11]***

185. On 31 January 2024, Mr McDonagh received an email from another individual in relation to a particular production which stated *"Lots of the folders which has licences before appear to be empty"*. He replied to that email to say that copyrights hadn't been declared properly on that production. He did so because he believed that that was the case. The licensing company had not received the necessary details and payment and a freelancer whom Mr McDonagh had engaged to complete the postproduction paperwork did not know the correct details to submit this to the broadcaster for the footage which the respondent was looking to use. Mr McDonagh did not identify an individual as being responsible and did not see it as an issue or a problem. The claimant was copied in on the email as he was requested to re-save the licences for the production or let them know if he could see them.

186. We accept that a reasonable worker would not consider this ordinary workplace email, in the context set out above, to be a detriment. This complaint therefore fails for this reason.

187. Furthermore, Mr McDonagh said this because he believed it to be true and it was an appropriate response to the email which was sent to him. It was not on the grounds of any alleged protected disclosure. This complaint therefore also fails for this reason.

31st January 2024 – Paul McDonagh ignoring the Claimant when smiled at. ***[D12]***

188. Mr McDonagh has no recollection of this event, as is the case with all of the allegations of his ignoring the claimant. That is consistent with this being a "nothing incident". Furthermore we accept his evidence that he would not have ignored the claimant on purpose, especially if the claimant smiled at him; Mr McDonagh was an open and forthcoming witness and we have no reason to

doubt him in this respect. We also accept that at this time Mr McDonagh was very busy and in back to back meetings and he, very candidly, accepts that he may have been more distracted than usual as a result.

189. We therefore find that Mr McDonagh did not ignore the claimant and certainly did not deliberately ignore the claimant. We do not, therefore consider that there was any detrimental treatment and the complaint fails for this reason too.

190. Furthermore, there is no evidence that Mr McDonagh ignored the claimant on the grounds that he had made a protected disclosure. Furthermore, although he was interviewed twice by Ms Mulvana during her investigation into the claimant's complaint, he did not have detailed knowledge of the claimant's complaint, and the complaint raised by the claimant was not about him. He had always had a good working relationship with the claimant and he had no motivation to treat him detrimentally.

191. The claimant has made much of the fact that Mr McDonagh candidly accepted that he was nervous about the interviews in connection with the claimant's complaint. However, that was not because of the claimant's complaint itself but because of some of the matters that Mr McDonagh disclosed about his own actions and decisions. We accept Mr Emslie-Smith's submission that this is a matter properly separable from the fact of the claimant's alleged protected disclosure. Mr McDonagh had no motivation to treat the claimant detrimentally because of any alleged protected disclosure the claimant made. We find that he did not do so. This complaint fails for this reason too.

31st January 2024 – Josh Hoskins ignoring the Claimant. ***[D13]***

192. Again, Mr Hoskins has no recollection of this incident taking place, which is unsurprising if this was another "nothing incident". Furthermore, we accept that he would not have ignored the claimant on purpose. They worked on different shows and sat at separate banks of desks in the office at the time, so there would have been very little reason for their paths to cross or for them to communicate on a day-to-day basis at that time. The allegation is not therefore made out on the facts and fails at the first stage.

193. Furthermore, to the extent that the claimant may have felt ignored, this was not detrimental treatment as it was not deliberate and no reasonable employee could have considered that it subjected them to a detriment. This complaint fails for this reason too.

194. Again, there is no evidence of Mr Hoskins ignoring the claimant because he made an alleged protected disclosure. We reiterate our findings about the level of knowledge which Mr Hoskins had of the claimant's complaint in this connection. This complaint therefore fails for this reason too.

31st January 2024 – Paul McDonagh ignoring the Claimant. ***[D14]***

195. We reiterate our conclusions in relation to the previous allegation of Mr McDonagh ignoring the claimant on 31 January 2024. In summary, Mr McDonagh did not ignore the claimant and certainly did not ignore the claimant deliberately; there was therefore no detrimental treatment; and any interaction was not because the claimant raised an alleged protected disclosure.

196. For these reasons, this complaint also fails.

1st February 2024 - Lisa Gettings not inviting the Claimant to celebrate "Charlie's" birthday. ***[D15]***

197. Ms Gettings is as an Executive Assistant at the respondent. Whenever she is aware that someone in the office has a birthday, she tries to organise a cake and to see who is free in the office to wish the individual a happy birthday. On 1 February 2024, it was the birthday of Charlie Irwin, the Managing Director of TalkBack Thames. In accordance with what she would normally do on such occasions, Ms Gettings walked around the office to see who was available at the time to let them know if they wanted to join at that point to wish the individual a happy birthday. As usual, it was a relaxed informal gathering and everyone was welcome to join. We have no hesitation in accepting Ms Gettings' evidence that, on this occasion, as on others, she simply did a sweep through the office to see who was around and available and, to the extent that the claimant was anywhere in the office that day, she did not exclude him, deliberately or otherwise, and he would have been entirely welcome to join had he wanted to.

198. The complaint is therefore not made out on the facts and therefore fails at the first stage.

199. Furthermore, as there was no detrimental treatment, the complaint fails for that reason too.

200. Furthermore, there is no evidence that Ms Gettings acted because of the claimant's alleged protected disclosures. In fact, it is impossible that she did so because she did not know that the claimant had made a complaint until 22 May 2024.

201. The claimant has suggested that Ms Gettings must have known of his complaint because, on 13 December 2023, she was looped into an email chain from Ms Mason to schedule a meeting with Ms Mulvana and Ms Moore; the email chain was titled *"Catch up today?"* and the purpose of the meeting was stated to be discussing the timeline of the claimant's contracts. The meeting was therefore going to be a meeting connected with Ms Mulvana's investigation into the claimant's complaint; however, there was no way of knowing that from the contents of the email exchange itself. Furthermore, we have no hesitation in accepting Ms Gettings' evidence that she schedules countless meetings like this each day and that at no point did she analyse or scrutinise the reason for the meeting or infer from it that the claimant had raised a complaint; and that instead, she simply diarised a meeting for 4 PM that day.

202. We therefore accept that Ms Gettings did not have any knowledge of the claimant's alleged protected disclosures. She could not, therefore, have taken any action to subject the claimant to a detriment because of making alleged protected disclosures. This complaint therefore fails for this reason too.

1st February 2024 – Leilah Mason saying: "I hope you've got a lot of money set aside because you're going to get a big tax bill."; "What did you think you were going to get out of it?"; "It's been really difficult for everyone."; "Do you want your holiday pay or not?" ***[D16]***

203. Ms Mason's meeting with the claimant on 1 February 2024 was a supportive step which she chose to take, arranged out of a concern to check up on the claimant following the rejection of his complaint. Ms Mason denies that she made the comments alleged. For the reasons of respective reliability of evidence, we prefer the evidence of Ms Mason over that of the claimant and find that they were not made. The facts of this complaint are not therefore established and it fails at the first stage.

204. At the meeting, there was some discussion about tax and holiday pay but Ms Mason merely told the claimant that the respondent's approach to holiday pay in relation to freelancers was consistent with current industry norms and she asked him whether he had thought about the tax implications for him if he now took the position that he was actually an employee, having benefited from Schedule D tax treatment up to now. That however was a matter discussed simply as a concern for what was in the claimant's own best interests. It was not detrimental treatment.

205. Furthermore, there is no evidence that Ms Mason made any such statements because the claimant made an alleged protected disclosure. Even on the claimant's own evidence, the statements appear to be related to discussions about the claimant's tax position and holiday pay raised in the meeting, rather than a response to his complaint itself; indeed, as she sets out in her witness statement, Ms Mason was careful not to discuss the specifics of the complaint. This complaint therefore fails for this reason too.

10 April 2024 – Leilah Mason saying: "What are you doing here?; "Why have they let you out of the edit?" ***[D17]***

206. On 10 April 2024, Ms Mason noticed that the claimant was sat in the seating area behind the reception desk on the respondent's third floor, which is an area usually reserved for guests waiting to be greeted by the person they are visiting in the building. It was, therefore, unusual that he was there. She candidly accepts that she recalls saying words to the effect of *"What are you doing here?"* and *"Why have they let you out of the edit?"*. The factual basis of this allegation is therefore made out.

207. However, we accept Ms Mason's evidence that the comments were said in jest to the claimant because the edit process is an extremely busy time and the edit team based themselves at an off-site facility, so it is rare to see any of them in the office during this period. We accept Ms Mason's similar recollection that

she said similar phrases to Ms Webber when she was in the office a few weeks later. We further accept her evidence that it struck her as odd that the claimant was sat in the reception area when he had a pass to the building and a designated desk, which is the reason for her first question. However, when the claimant then explained that he was part of a Fremantle Pride Group and was meeting with them, she understood why he was sat there and she then continued with her day.

208. In this context, there was no detrimental treatment to the claimant; there is no reason to interpret these comments as expressions of displeasure at seeing him and the tone of them simply reflects the jovial and informal working relationship which Ms Mason and the claimant had. This complaint therefore fails for this reason.

209. Furthermore, there is no evidence that Ms Mason said them because the claimant had made a protected disclosure. The complaint fails for this reason too.

Fail to re-engage the Claimant? ***[non-engagement]***

210. We turn now to the allegation regarding the respondent's decision not to renew the claimant's contract.

211. There is no dispute that the respondent did not renew that contract and the factual basis of this allegation is therefore made out. Similarly, we accept that non-renewal of the contract amounted to detrimental treatment. The question is, therefore, as to the reason why the contract was not renewed.

212. We have seen extensive evidence that, as the respondent submits, the reason for the decision not to engage the claimant on BGT 18 was the need to assign Mr Hoskins to the production in order to recover his salary from the budget.

213. The commissioning landscape over the past couple of years is the worst the industry has experienced in a long time. Many organisations have gone out of business. The respondent itself amalgamated two of its labels. Furthermore, two of its labels were closed and the respondent was forced to make all the staff in them redundant. When shows are now commissioned, the respondent has stricter financial constraints to adhere to and budgets are typically smaller. In connection with this, the respondent's aspiration is for 100% of the salary costs for every employed member of staff to be recovered from the production budget somewhere. In connection with this, one such cost saving measure is the use of salaried employees to perform roles which, in the past, would have been carried out by freelancers. This enables the respondent to cross charge the employee salary to the show's production budget for the period they worked on.

214. One example of this which we have seen is the decision in early 2024 not to re-engage NB as a freelancer, even though she was the respondent's go-to PPS in relation to the show in question, but instead to recover Mr McDonagh's salary by assigning him to the production.

215. A similar decision was made not to renew the claimant's contract for BGT 18 but instead to recover Mr Hoskins' salary from the production by assigning him to it.

216. We have seen certain notes from Ms Mason's "Remarkable Tablet". These show that Ms Mason was considering recovery of Mr Hoskins' salary in around December 2023/January 2024 and March 2024. It is clear that a range of options were being considered. We accept that it is implausible that these notes have been prepared with a view to targeting the claimant's role.

217. Furthermore, this reason is stated clearly in the two emails between Ms Mason and Helen Moore and between Ms Mason and Ms Burfoot on 19 April 2024.

218. Ms Burfoot then informed the claimant by telephone on 26 April 2024 that he would not be engaged on BGT 18, explaining the reason to him in precisely these terms (and both Ms Burfoot's evidence and the claimant's evidence are consistent about the reason given by Ms Burfoot, namely because of the need to recharge the salary of a staff member).

219. The reason put forward by the respondent is entirely credible. The respondent had a genuine need to consider cost savings in light of the challenging economic climate and had carried out other cost savings measures including redundancies in other parts of the business. There was a cogent commercial rationale for assigning employed staff to productions in order to recover their salaries. The scope of the claimant's role had recently reduced due to the data wrangling function being outsourced to Picture Shop. The measure of requiring employed staff to assume roles previously undertaken by freelancers was not applied to the claimant's role alone and we have seen the evidence in relation to this process being applied in relation to NB.

220. On 20 December 2023, the claimant was named in an email from Ms Burfoot to Ms Mason as the proposed PPS for BGT 18. At this stage, both Ms Burfoot and Ms Mason thought the claimant might well be involved in the production; this in itself is indicative that the claimant's alleged protected disclosures 1 and 2 had not caused them to decide that he should not be re-engaged.

221. Furthermore, Ms Mason was the sole decision maker in relation to this decision, and there is no evidence of Ms Mason deciding how to resource the role for reasons to do with the claimant's alleged protected disclosures. We accept that the claimant relies entirely on insinuation and inferences, particular the fact that he had been engaged by the respondent, albeit on different contracts, over a number of years and the timing of the decision not to offer him a further contract. This however is not evidence of causation; it is a coincidence of timing and it is not one from which we could reasonably draw any inferences.

222. There is, with one exception, therefore no evidence whatsoever which might possibly suggest that the reason for not renewing the claimant's contract was anything other than the reason put forward by the respondent.

223. That exception is a WhatsApp exchange which was at page 1026 of the bundle and which the parties agree is an exchange between the respondent's CEO, Amelia Brown, and its Managing Director, Charlie Irwin, which dates from September 2024, some five months after the decision not to renew the claimant's contract was taken by Ms Mason. In that exchange, which appears to cover a number of different matters, there is a longer WhatsApp message from Mr Irwin to Ms Brown which, in its midst, includes the words *"Josh - BGT edit (for Edwin reason and recoveries) / budgets."*.

224. The claimant submits that this message is evidence that at least part of the reason for the non-renewal of his contract was that he made protected disclosures; he maintains that the *"Edwin reason"* must be the fact that he made alleged protected disclosures and that, whilst recoveries may be part of the reason, the fact that he made alleged protected disclosures must also be part of it.

225. Mr Irwin was not at the tribunal. Ms Mason was asked about this email exchange by the judge but, unsurprisingly as it is part of a wider series of WhatsApp messages to which she was not party, was not able to throw any light as to what Mr Irwin meant by that.

226. However, it is unclear what "*for Edwin reason"* means. There is no context to the phrase. The WhatsApp messages are in a very shorthand "note" form; there is nothing amounting to a full sentence from which one might get a clearer idea of the meaning. We fully accept Mr Emslie-Smith's submission that it would be unsafe for us to make a finding that it necessarily meant that Mr Hoskins was put in the claimant's role because of the claimant's alleged protected disclosures; it is just as likely to be a reference to certain functions that the claimant used to perform.

227. Furthermore, neither Mr Irwin (nor Ms Brown) were decision-makers in relation to the decision not to renew the claimant's contract. The decision was Ms Mason's decision alone. The judge deliberately asked Ms Mason, before taking her to the WhatsApp exchange in question, whether the decision was hers alone, whether anyone else had any input into it and whether Mr Irwin and Ms Brown were informed of the decision and, if so, when. Ms Mason confirmed that the decision was hers alone. She also confirmed that neither Mr Irwin nor Ms Brown had input into this decision. She also confirmed that, whilst she informed them that she had taken the decision, she did not inform them about it until after that decision had been taken. We have no reason to doubt that evidence and we accept it.

228. There is no evidence, and indeed it is not claimant's case, that Mr Irwin determined to prevent the claimant from being engaged (such that the limited exception in Jhuti should apply). Ms Mason was not dependent upon Mr Irwin as the source of the *"underlying facts and information for [her] decision"* (the test set out in Kong). Therefore, whatever reasons or knowledge he had cannot be attributed to Ms Mason. There is no evidence whatsoever that Ms Mason took into account any *"Edwin reason"*, whatever that may be. The WhatsApp

exchange is dated from September 2024, five months after the decision was made. It sheds no light on Ms Mason's mental processes.

229. The WhatsApp exchange therefore has no impact on our analysis.

230. We therefore find that the reason for the non-renewal of the claimant's contract was the need to assign Mr Hoskins to the production in order to recover his salary from the budget, and no other. It was not because of the claimant's alleged protected disclosures. This complaint of detriment therefore fails.

Summary of detriment complaints

231. In summary, therefore, all of the complaints of detriment fail.

232. However, we also need to consider the jurisdictional issues in connection with time limits.

Time limits

Complaints presented out of time

233. The whistleblowing detriment complaints were brought under the second claim. That claim was presented on 11 August 2024. Early conciliation in relation to the second claim commenced on 25 July 2024 and concluded on 29 July 2024. Therefore any act or omission of alleged detriment said to have taken place prior to 26 April 2024 is prima facie out of time.

234. Although the claimant was informed by Ms Burfoot on 26 April 2024 that he would not be re-engaged, the decision not to re-engage him was made by Ms Mason. Ms Mason gave clear evidence, in response to the judge's questions, that, whilst it was a decision which she had been mulling over for some time, she made the final decision not to re-engage the claimant in the couple of days prior to 26 April 2024, in other words either on 24 or 25 April 2024. We have no reason to doubt her evidence and we accept it.

235. That allegation of detriment was therefore presented out of time.

236. The other allegations of detriment, which all predate the decision not to renew the claimant's contract, were all therefore also presented out of time.

Reasonable practicability

237. We therefore turn to the issue of whether the time limit should be extended on the basis that it was not reasonably practicable for the claimant to have presented his complaints in time.

238. During the evidence, the claimant did not present any evidence in relation to this issue, either in his witness statement or in the documentation in the bundle. However, when he subsequently presented his written submissions to the tribunal, he also presented a pack of email correspondence between him

and ACAS. The claimant submitted that he was advised by ACAS that he needed to bring an "unfair dismissal" claim within three months less one day from the "employment termination date" and that he relied on that advice and that that was why it was not reasonably practicable for him to have presented his claim within the tribunal time limit.

239. Mr Emslie-Smith's primary submission is that this evidence, presented when it was, is inadmissible. We accept that submission. The claimant could have presented this evidence at any stage, even at the start of the trial. The claimant is an intelligent and organised individual who could very easily have done this. However, he did not present it until after the evidence was completed. There has, therefore, been no opportunity for him to be cross-examined on this evidence. We accept therefore that it is inadmissible.

240. In the light of that, the claimant has put forward no reason as to why it was not reasonably practicable to present the claim within the tribunal time limit, nor have we identified any such reason in any of the evidence before us; consequently time is not extended and the tribunal does not have jurisdiction to hear any of the complaints of whistleblowing detriment brought and they are all struck out.

241. However, we also consider the position if we had decided that this evidence was, at the late stage that it was presented, nonetheless admissible.

242. ACAS are not legal advisers; rather they are conciliators. The claimant is an intelligent individual who has clearly done considerable amounts of research on the law and has got to grips to a high level of detail with very complex concepts of employment law in relation to protected disclosures. He therefore either knows or should have known that ACAS are not legal advisers and, to the extent that he had any questions about time limits, he could or should have established what the correct position was either through his own research or by choosing to get legal advice. However it appears that he did not.

243. All that the ACAS email states is that the "unfair dismissal claim" needs to be "registered with the tribunal within three months less one day from employment termination date"; it is a general statement of the law - in relation to unfair dismissal. However, the complaints before us are not complaints of unfair dismissal (nor can ACAS be expected to know from high level conversations in the course of conciliation the finer details of the various different types of complaint the claimant was proposing to bring). ACAS was certainly not advising on whistleblowing detriment complaints; the only statements by ACAS which could possibly be interpreted as advice related to unfair dismissal.

244. The claimant did bring an unfair dismissal claim, alleging that the date of his dismissal was 7 June 2024, which was the date his contract with the respondent came to an end. However, that claim fell away following EJ Adkins' decision that the claimant was not employed by the respondent. The claimant maintains that he could not have known about the time limit position until that point. However we do not accept this. It was clear from at least as early as the consideration of the claimant's grievance complaint by the respondent that the

respondent's position was that the claimant was not an employee. The claimant could and should have established what the position was on time limits in relation to detriment claims at an earlier stage such that he could have put those claims in on time. Furthermore, it is clear from the email correspondence with ACAS that, at least as early as 1 May 2024, he was considering when he should put in the second claim; had he submitted it at that point, the claim would have been in time, at least in relation to the alleged detriment about the non-renewal of his contract.

245. As noted, in Porter v Bandridge Ltd 1978 ICR 943, the Court of Appeal ruled that the correct test as to whether ignorance of the law means that it was not reasonably practicable to have presented the claim on time is not whether the claimant knew of his rights but whether he ought to have known of them. In the case of an intelligent, organised claimant, albeit a litigant in person, who had already brought one employment tribunal claim by that stage and who had clearly been able to research the law on complex employment law issues, we consider that he certainly ought to have known of the rights.

246. Furthermore, where, as is the case here, the claimant was generally aware of his employment rights, ignorance of the time limit will rarely be acceptable as a reason for delay. This is because a claimant who is aware of his or her rights will generally be taken to have been put on enquiry as to the time limit. Indeed in Trevelyans (Birmingham) Ltd V Norton 1991 ICR 488, EAT, Mr Justice Wood said that, when a claimant knows of his or her right to complain of (in that case) unfair dismissal, he or she is under an obligation to seek information and advice about how to enforce that right.

247. For all these reasons, even if we had considered that the claimant's late disclosure of his correspondence with ACAS was admissible, we would still have concluded that the claimant has not shown that that was a reason why it was not reasonably practicable for him to have presented his whistleblowing detriment complaints within the tribunal time limit.

248. Furthermore, we have not identified any other reason in any of the evidence before us as to why it was not reasonably practicable for him to have presented his whistleblowing detriment complaints within the tribunal time limit, nor has any other reason been suggested by the claimant.

249. Consequently, it was reasonably practicable for the claimant to have presented his whistleblowing detriment complaints on time. The tribunal does not therefore have jurisdiction to hear those complaints and they are struck out.

250. If they had not been struck out, they would have failed for the reasons set out above.

Written reasons

251. After the judge had delivered the reasons for the tribunal's decision orally, he explained that he would, in a moment, ask the parties whether they wanted the written reasons for the decision and that they would be able to

request them either now at the hearing or within 14 days of the judgment being sent to the parties.

252. Before doing so, the judge explained, for the claimant's benefit, two things. First, he said that, if a party wished to appeal the tribunal's decision, that party would need the written reasons in order to do so, although he stated that an appeal could only be founded if there was an error of law by the tribunal or if its decision on the facts was perverse; there were no grounds for appeal if a party simply disagreed with the factual findings that the tribunal had made. Secondly, he explained that, if written reasons were produced, they would be published online on the tribunal's website and that the tribunal had no discretion as to whether or not to do this. He added that the reasons were searchable by name and that the tribunal was aware that potential future employers might carry out such a search. The judge made these remarks because he was concerned about whether it was in the claimant's own best interests for the written reasons to be produced and consequently published online.

253. The judge then asked the parties whether they wanted the written reasons.

254. The claimant said that he did not want the written reasons.

255. Mr Emslie-Smith, having taken instructions from his client, said that the respondent would like the written reasons.

256. Accordingly, these written reasons have been produced.

_____
Employment Judge Baty

Dated: 17 December 2025

Judgment and Reasons sent to the parties on:

22 December 2025
……

……
For the Tribunal Office

ANNEX

AGREED LIST OF ISSUES

Terminology and Abbreviations

"The First Claim" refers to claim 2201953/2024, brought by way of an ET1 received by the Tribunal on 19th February 2024.

"The Second Claim" refers to claim 6008262/2024, brought by way of an ET1 received by the Tribunal on 11th August 2024.

"FTE Regs" refers to the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002.

1. Protected Disclosure (Employment Rights Act section 43A and 43B)

1.1 Did the claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996? The Tribunal will decide:

1.1.1 What did the Claimant say or write? When? To whom? The disclosures relied on by the Claimant are set out in appendix 1 to this list of issues.

1.1.2 Did the Claimant disclose information?

1.1.3 Did the Claimant believe the disclosure of information was made in the public interest?

1.1.4 Was that belief reasonable?

1.1.5 Did the Claimant believe that it tended to show that:

1.1.5.1 a criminal offence had been, was being or was likely to be committed;

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

1.1.5.3 the health and safety of any individual has been, is being or is likely to be endangered;

1.1.5.4 any matter had been, is being, or is likely to be, deliberately concealed.

1.1.6 Was that belief reasonable?

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

2. Detriment (Employment Rights Act 1996 section 47B)

2.1 Did the Respondent do the following things:

2.1.1 Fail to re-engage the Claimant? **[non-engagement]**

2.1.2 14th November 2023 – Leilah Mason laughing at the claimant and saying "well that's not going to happen". **[D1]**

2.1.3 20th November 2023 – Excluding the claimant from the Christmas Party, stating that it was 'due to tax reasons'. **[D2]**

2.1.4 28th November 2023 – an evasive response from Helen Thomas **[D3]**

2.1.5 28th November 2023 – Julie Burfoot telling the claimant that he must take one month off (unpaid) at the end of the contract **[D4]**

2.1.6 9th January 2024 – Josh Hoskins saying goodbye to the rest of the team and not to the Claimant whilst stood next to him. **[D5]**

2.1.7 11th January 2024 – Rob Grey saying "you're not allowed candles in the office." **[D6]**

2.1.8 16th January 2024 – Josh Hoskins ignoring the Claimant. **[D7]**

2.1.9 17th January 2024 – Clare Mulvana informing the Claimant that she had not instructed anyone not to speak to him. **[D8]**

2.1.10 23rd January 2024 – not upholding the Claimant's complaint. **[D9]**

2.1.11 25th January 2024 – Julie Burfoot calling the Claimant into her office and telling him off about "tone on email" and saying he should be more careful about wording of emails. **[D10]**

2.1.12 31st January 2024 – Paul McDonagh saying in an email that copyrights hadn't been declared properly. **[D11]**

2.1.13 31st January 2024 – Paul McDonagh ignoring the Claimant when smiled at. **[D12]**

2.1.14 31st January 2024 – Josh Hoskins ignoring the Claimant. **[D13]**

2.1.15 31st January 2024 – Paul McDonagh ignoring the Claimant. **[D14]**

2.1.16 1st February 2024 - Lisa Gettings not inviting the Claimant to celebrate "Charlie's" birthday. **[D15]**

2.1.17 1st February 2024 – Leilah Mason saying:

2.1.17.1 "I hope you've got a lot of money set aside because you're going to get a big tax bill."

2.1.17.2 "What did you think you were going to get out of it?"

2.1.17.3 "It's been really difficult for everyone."

2.1.17.4 "Do you want your holiday pay or not?" **[D16]**

2.1.18 10 April 2024 – Leilah Mason saying:

2.1.18.1 "What are you doing here?

2.1.18.2 "Why have they let you out of the edit?" **[D17]**

2.2 By doing so, did it subject the Claimant to a detriment?

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

3. Time Limits

3.1 Were the detriment claims made within the time limit in s.48(3) Employment Rights Act 1996? (with the extension for ACAS conciliation)? The Tribunal will decide:

3.1.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?

3.1.2 If not, was there conduct extending over a period?

3.1.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

3.1.4 If not, was it not reasonably practicable to bring the claims before the end of that period?

3.1.5 If so, is it reasonable for the Tribunal extend time, and for how long?

4. Remedy for Protected Disclosure Detriment (Employment Rights Act 1996 section 49)

4.1 What financial losses has the detrimental treatment caused the claimant?

4.2 Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?

4.3 If not, for what period of loss should the claimant be compensated?

4.4 What injury to feelings has the detrimental treatment caused the claimant and how much compensation should be awarded for that?

4.5 Has the detrimental treatment caused the claimant personal injury and how much compensation should be awarded for that?

4.6 Is it just and equitable to award the claimant other compensation?

4.7 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

4.8 Did the respondent or the claimant unreasonably fail to comply with it?

4.9 If so is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?

4.10 Did the claimant cause or contribute to the detrimental treatment by their own actions and if so would it be just and equitable to reduce the claimant's compensation? By what proportion?

4.11 Was the protected disclosure made in good faith?

4.12 If not, is it just and equitable to reduce the claimant's compensation? By what proportion, up to 25%?

Appendix 1: Protected Disclosures

PD1 – Verbal disclosures at the Claimant's meeting of 14th November 2023 with Leilah Mason.

> *The Claimant used words to the effect of "there are laws against this" in referencing the pension inequality. The Claimant specifically mentioned the FTE Regs during the conversation. The Claimant said to Leilah he wanted the pension he had missed out on by not having his permanent status recognised.*

PD2 – Written disclosures in the Claimant's complaint letter of 4th December 2023:

> *The ... contracts database apparently also flags when someone has accrued a continuous service period, and it alerts management to the need to impose a contract break, to maintain tax compliance, and to prevent employment rights from accruing.*
>
> *Similar issues are explored in the case of Ms M Gorman v Terence Paul (Manchester) LTD: 2410722/2019 where a "contract for services" was used to mask an employment scenario.*
>
> *A new starter on a permanent contract would get access to the more generous pension scheme from Month 1 of their employment, this creates an unacceptable unfairness.*
>
> *It is also fair to say that the lack of employment stability caused by being kept on repeated fixed-term contracts, all containing a cliff-edge one-week notice period, for 12+ years, has compounded my anxiety and depression.*
>
> *In line with the policy of the parent-group RTL, I would have expected pension policy to be regularly reviewed for its compatibility with local laws, however it seems in September 2023, there was no assessment in this regard and no*

reasoning available at this time. I chased three times for a response to get the reasoning for the difference in treatment. I received a response some 7 weeks later on the 9th November 2023.

I felt this reasoning did not fulfil the requirements of being an "objective justification" as required by the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002. In fact, it seems to state that the terms of the contract are the very reason for the Less Favourable Treatment.

I also noted that there was a Permanent Comparator in my case, Andrea Gordon, however no response was given in this regard.

The outcome which I am seeking is to receive a contract that matches up to the reality of the working situation, and to recognise that this permanent arrangement has been in place since June 2018. This contract should clarify that I have been a permanent employee since June 2018 and provide me with a written statement of permanent terms of contract.

PD3 - Verbal disclosures in the Teams Video Call with Clare Mulvana on 7th December 2023:

PD3A - *"But there's issues around, um, less favourable treatment. But obviously, we've talked about that Law might not apply to me. And as as one of the responses that's been given is, um uh, that I have no protection under that less favourable treatment rules because the company sees me as being, um a self-employed contractor, which obviously I disagree with that, um, so, yeah, um, contract for services is what I've worked under since June 2018, and the the time amounts to five years and five months."*

PD3B - *"We got to a point where it was, like, less favourable treatment doesn't apply to me. The law doesn't work for me because ... you don't see me as an employee."*

PD3C *"I've always noted down anxiety on those forms, Um, but that this is a long standing thing that happened when I was a teenager. That's been going on. So it's*

not like the job has caused issues with anxiety and depression. But what's scary in day to day life is knowing that you're on a one week, Um, a one week notice period essentially this time next week could be out of a job, and I have no rights and no control over despite working here for a very long time, I have no control over, um, anything."

***PD3D** I'm fine, like, Yeah, I'm on antidepressants. Speak to my GP. I've got, um, therapy that. I can access whenever I want. So, like, I'm absolutely fine in terms of, like, managing it and looking after it.*

PD4 - Verbal disclosures in the Teams Video Call with Clare Mulvana on 8th January 2024.

I do think that there's been an oversight on the employment law side of things.

PD5 - Verbal disclosures in the Teams Video Call with David Oldfield on 17th January 2024.

***PD5A -** I mean, when you know, at the time when I went to self employment and everyone was telling me about the benefits of self employment and the tax situation, and it will be this fantastic situation for you that you'll save money on tax if you go down the self employed route, um, has not turned out to be true because, as we've seen in the messages, these breaks have been imposed. And I've described in my complaint after this current BGT contract in 2024 I've been told I then have to have another month off unpaid, and it's all to maintain this tax status and actually which, um, yeah, I've been pushing to maintain that. But out of necessity.*

***PD5B -** But obviously in September, I found out about this pension, and that's really when I thought, Hang on. This is not right. Like, um, ... this isn't the best deal… I've given away the, uh, the employment rights by going self employed, which actually I think I do have.*

PD6 - Verbal disclosures at the Claimant's meeting of 1st February 2024 with Leilah Mason:

> *It is the established norm that self employed people don't get pension or holiday pay. Why are you paying holiday pay to individuals you are saying are self employed?*

PD7 – Written disclosures in the Particulars of the First Claim, sent to the Respondent on 19th Febraury 2024

> ***PD7A -*** *Paragraph 5 b iii: The Employer has significant influence over which scheme is used for payment. My evidence shows that the Respondent will 'flip flop' an Employee between the PAYE system and a self-employed arrangement to circumvent Employment Law.*
>
> ***PD7B -*** *Paragraph 5 b iv: In the written response, the Respondent claims that excessive use of Fixed Term Contracts is Objectively Justified due to business and commercial reasons. No further detail is provided by the Respondent, and there is no mention of what the specific "legitimate aim" might be.*
>
> ***PD7C –*** *Paragraph 6 a vi: An Objective Justification is not provided by the Respondent. HR explain that in their opinion, different contract types result in different benefit packages. There is no further detail provided. … Additionally on this date, HR also say to me that the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations do not apply to me.*
>
> ***PD7D –*** *Paragraph 6 b i: I … raised the issue of the Respondent's use of a contracts database to prevent employment rights from accruing. … While the generally accepted norm is that those paid under a self-employed arrangement shall not be entitled to Holiday Pay, the Respondent goes against this. Therefore, the Respondent could be seen to be persuading Employees to go into a sham self employment arrangement, by giving irregular financial incentives. … In terms of the contracts database, I have evidence to show that managers were repeatedly receiving red flags from the database about my length of continuous service… I*

had been told on numerous occasions that I had been working for the Respondent "for too long". Managers were under instructions from HR to break my continuous service. This created an environment of tension, where managers claimed to be on my side, and they would agree to doctor the contracts database to create the appearance of contract breaks to satisfy the HR department, but in reality, I could continue working for the managers.

PD7E – *Paragraph 6 b ii: The Respondent states that the intention of paying Holiday Pay at the end of each Fixed Term Contract has been to cover the enforced unpaid non-working periods.*

PD7F – *Paragraph 6 c ii: The written response from the Respondent's UK Chief Financial Officer dismisses … concern by denying that a Permanent Comparator exists within the entire business.*

PD7G *– Paragraph 6 d ii: Hostility was flagged to the HR department. No action was taken. The lack of action contravenes the Bullying and Harassment Policy.*

PD7H – *Paragraph 10: Despite being aware of my ongoing mental health conditions, nothing has been done to stop this retaliation. I am distressed by the way in which the Respondent has dealt with my concerns so far.*

PD8 – Written disclosures in the Application to Amend, sent to the Respondent on 24th April 2024:

The omission of any response in the Grounds of Resistance to the allegation of the making of irregular payments of holiday pay and pension contributions.

The Respondent has revealed that they are relying on their own interpretation of two pieces of HMRC guidance, to justify their behaviour of undermining legislation. The legislation in question is the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002. The Respondent's interpretation and application of the HMRC guidance, has the effect of cheating the public revenue, in addition to the negative impacts on employment rights for

those engaged by the Respondent. The Respondent is a "large organisation" and as such, it must not fail to prevent fraud, enforced by the Economic Crime and Corporate Transparency Act 2023.

- *I described the Respondent's methods, in their circumvention of employment law, relating specifically to the Regulations designed to prevent abuse of Fixed-term contracts.*
- *I described how my experiences are shared by many other individuals working for the Respondent.*
- *I described how the discrimination around pension arrangements applies to whole groups of employees.*
- *I described concerns related to irregular payments of holiday pay and pension contributions being made to individuals that the Respondent chooses to recognise as being self employed.*
- *I also described the general use of "sham self employment", relating not only to myself but to others. Whilst I suggested this in my ET1, I would like to make the point absolutely clear now, that it is not just me affected by the Respondent's actions.*
- *I also mentioned the impacts on my mental health from living under this control for a number of years.*