



EMPLOYMENT TRIBUNALS

Claimant: Mr I Pikovsky

Respondents: (1) Crezco Limited
(2) Ralph Rogge
(3) Element Ventures LLP
(5) Michael McFadgen

Heard at: London Central

On: 21, 22, 23, 24, 25, 26, 29, 30 September; 1 2, 3 October 2025
(in person)
6, 7 October 2025 (in chambers, in person)

Before: Employment Judge B Smith (sitting with members)
Mr R Baber
Ms R Butler

Representation

Claimant: Mr T Ogg (Counsel)
Respondent: Ms L Bone (Counsel)

RESERVED JUDGMENT

The unanimous judgment of the Tribunal is as follows:

Unfair dismissal

1. The complaint of unfair dismissal is well-founded and is upheld.
2. There is a 100% chance that the claimant would have been fairly dismissed in any event two weeks after his dismissal date.
3. The claimant caused or contributed to the dismissal by blameworthy conduct and it is just and equitable to reduce the compensatory award payable to the claimant by 50%.
4. The claimant caused or contributed to the dismissal by blameworthy conduct and it is just and equitable to reduce the basic award payable to

the claimant by 50% because of the claimant's conduct before the dismissal.

Protected disclosure detriment

5. The complaint of being subjected to detriment for making protected disclosures is not well-founded and is dismissed. The complaint in respect of detriment three (*'responding in an aggressive and demeaning way to PD4'*) was not presented within the applicable time limit. It was reasonably practicable to do so. It is therefore dismissed.

Automatic unfair dismissal

6. The complaint of automatic unfair dismissal for making protected disclosures is not well-founded and is dismissed.

Direct age discrimination

7. The complaint of direct age discrimination is not well-founded and is dismissed.

Victimisation

8. The complaint of victimisation is not well-founded and is dismissed.

Aiding contraventions

9. The complaint of aiding contraventions of the Equality Act 2010 is not well-founded and is dismissed.

Unauthorised deductions from wages

10. The complaint in respect of holiday pay is well-founded. The respondent made an unlawful deduction from the claimant's wages by failing to pay the claimant for holidays accrued but not taken on the date the claimant's employment ended.

REASONS

Introduction

1. The claimant was employed as chief technology officer ('CTO') at the first respondent (a Fintech startup operating in the payments sector) between March 2020 and his dismissal with notice on 25 September 2023.
2. The second respondent is the first respondent's Chief Executive Officer ('CEO').
3. The third respondent is a management company and investment advisor of what was previously the fourth respondent, a private fund limited partnership (Element Ventures LP). Element Ventures LP is an investor in the first respondent.
4. The fifth respondent is a shareholder and investor of the third respondent. He also sits on the investment committee and participates in the investment activities of Element Ventures LP. He became a director of the first respondent in December 2022.
5. Claims against other respondents have otherwise been dismissed by the Tribunal. These reasons retain the original numeration of the respondents.
6. ACAS conciliation started for the first claim (2216628/2023) on 3 October 2023 and ended on 14 November 2023. The first ET1 was presented on 19 November 2023. ACAS conciliation for the second claim (2201506/2024) started on 3 October 2023 and ended on 14 November 2023. The second ET1 was presented on 1 February 2024.
7. The claimant brings claims of:
 - (i) Unfair dismissal;

- (ii) Being subject to detriment for making protected disclosures;
- (iii) Automatic unfair dismissal for making protected disclosures;
- (iv) Direct age discrimination;
- (v) Victimisation;
- (vi) Aiding contraventions of the Equality Act 2010; and
- (vii) Holiday pay (under the Working Time Regulations 1998 and or as unauthorised deductions from wages).

Procedure, documents, and evidence heard

8. The parties were represented by counsel instructed by solicitors. No adjustments were required or asked for by any of the parties or witnesses. The Tribunal took breaks as appropriate. The claimant and respondents' witnesses gave evidence under oath or affirmation and were cross-examined. The parties made oral and written submissions at the close of the evidence.
9. The parties were largely agreed on the list of issues. The tribunal settled the outstanding disagreement during the hearing to reflect its decisions on preliminary matters. The final list of issues reflected the claim as made in the claim form and further and better and particulars. We were mindful throughout that the list of issues was only a case management tool and not a pleading and it was important to not take a too legalistic or literal approach. The list of issues is at **Appendix A** below. The tribunal's amendments were only required to reflect (a) its decision that the claimant did not need to make an application to amend the claim (as set out below) and (b) to ensure that the list of issues fully reflected the pleaded claim in the disputed areas.
10. It was agreed with the parties that, as well as the issues relating to liability, we would also determine certain issues relating to remedy, namely: contributory conduct; Polkey; Devis v Atkins; whether disclosures made in good faith; and any applicable ACAS uplift.

11. The agreed documents were:
 - (i) Hearing bundle paginated to 1753 (the bundle was increased during the hearing by consent to that page);
 - (ii) Supplementary Bundle (claimant) paginated to 838;
 - (iii) Respondents' opening;
 - (iv) Claimant opening;
 - (v) Respondents' reading list with claimant's annotations, and respondent's later reading list partially agreeing the claimant's annotations;
 - (vi) Cast list with claimant's annotations and respondents' reply;
 - (vii) Claimant authorities bundles: opening;
 - (viii) Respondents' draft list of issues;
 - (ix) List of Issues;
 - (x) Witness statement bundle paginated to 218; and
 - (xi) Claimant's third witness statement (on disclosure).
12. We only took into account those documents which the parties referred to during the course of the hearing in accordance with the normal practice of the Employment Tribunals. The parties were made aware of this from the outset and both parties indicated specific pages for the tribunal to read.
13. It was made clear to the parties that if they relied on any specific findings of fact other than those inherent in the list of issues then this must be clearly drawn to the tribunal's attention. We have only resolved the issues of fact necessary to make our decisions. Our findings of fact below must be read as a whole when understanding how our conclusions were reached. Findings of fact were made on the balance of probabilities. However, in

making our findings of fact, we also had regard and applied any relevant burden of proof provisions as set out in the law below (for example, as with regards to the reason for the dismissal). Our findings of fact below are grouped under various headings but equally conclusions must be understood against the findings as a whole.

14. At the start of the hearing the claimant confirmed orally, consistent with the claimant's written opening, that no application was made to exclude evidence on the basis that it was subject to without prejudice privilege. The tribunal was able to fairly and properly make its determinations below without further decisions on that issue.
15. At the start of the hearing the respondent had an outstanding application for specific disclosure. The claimant was ordered to provide a witness statement on the issue by 4pm on day one. This was complied with. The application for specific disclosure was refused. The tribunal's decision on disclosure is below at **Appendix B**.
16. At the start of the hearing the respondent also indicated, as set out in the respondents' draft list of issues, that the points outlined in 4.1, 4.3, and 4.9 were such that the respondents said that the claimant was required to make an application to amend the claims if the claimant wished to rely on further and better particulars of claim that had been provided during the course of the proceedings. The claimant disagreed. The parties agreed that this could be dealt with by the tribunal at the start of day 3.
17. The further and better particulars were provided by the claimant in a document dated 24 May 2024. That document was provided subsequent to the respondent's request for further information dated 18 April 2024 and by order of EJ Emery dated 24 April 2024. It was first necessary for the tribunal to decide whether the additional information was such that an application to amend the claim should be made, and if so, determine such an application.

18. The first contested element related to the first alleged protected disclosure (a verbal disclosure dated 3 April 2023). The relevant part of the claim form is paragraph 21 of the Grounds of Complaint (hearing bundle p23, 'hearing bundle' omitted hereafter). The further and better particulars were at p52. The second contested element related to the third alleged protected disclosure (a verbal disclosure dated 10 May 2023). The relevant part of the claim form is paragraph 26 of the Grounds of Complaint (p26) and the further and better particulars was at p56. The third contested element related to the ninth alleged protected disclosure, the claimant's written grievance dated 21 August 2023. The claimant's grievance was at p1025. The relevant part of the claim form is paragraph 63 (p32) and the relevant part of the further and better particulars was at p52.
19. The parties' written submissions on this topic were included in their opening notes. Oral submissions were also made. The tribunal decided that the claimant did not in all the circumstances need to make an application to amend the claim. This is because the relevant material was in fact already included in the content of the original claim such that the further and better particulars were not, on a natural reading and analysis of the scope of the claim as originally pleaded, seeking to add to or change the claims made.
20. More specifically, for the first alleged protected disclosure, the claim form for the relevant paragraph (read as a whole) included that the company had a contractual obligation to perform adequate KYC checks and that a failure to do so was a breach of the AML regulations and the company's responsibility to its client. The claim was that there was a breach of the company's obligations to its client and a breach of the AML regulations. It followed that within the claim, where it was then pleaded that the claimant informed the second respondent that this was unlawful, the pleaded claim was that both the breach of obligation to the client and the breach of AML regulations was part of the original claim. The further and better particulars did not expand or change the original claim.
21. It is similarly the case for the second alleged protected disclosure: the original claim form included allegations of breaching AML regulations and

contractual obligations to the client, and that the second respondent had been told that relevant actions were a breach of the company's legal obligations, plainly referring to the earlier obligations. The further and better particulars do not in those circumstances expand or change the claim in a manner such that an amendment application was required.

22. Equally, alleged protected disclosure 9 did not include anything in the further and better particulars which was not originally in the claim, namely that the claimant's grievance dated 21 August 2023 contained further protected disclosures. The fact that the further and better particulars gave some explanatory wording did not mean that an amendment application was necessary in the circumstances.
23. In all cases we did not feel that there was really a change in substance (or an actual expansion) to the claims alleged by virtue of the further and better particulars.
24. We granted the respondent permission to participate in the holiday pay claim for which no ET3 had been provided. No unfairness arose from this: the parties had fully evidenced positions on the points that were taken on the holiday pay claim and the Tribunal would have been duty bound to make the necessary enquiries during the hearing in any event. This is because there were relevant and evidenced disputes about the holiday pay claim which required a determination.

Relevant Law

25. We fully took into account and applied the law as set out in the parties written closing submissions. It is neither necessary nor proportionate to repeat that content here.

DIRECT DISCRIMINATION

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

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

(2) *If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim.*

[...]

27. Section 39 EQA reads:

(1) *An employer (A) must not discriminate against an employee of A's (B) –*

(a) *[...]*

(b) *in the way that A affords B access, or by not affording B Access to opportunities for promotion, transfer or training or for receiving any other benefit, facility or services;*

(c) *[...]*

(d) *by subjecting B to any other detriment.*

28. Detriment means a disadvantage. In Shamoon:

[34] ... the court or Tribunal must find that by reason of the act or acts complained of 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.

[35] ... this is a test of materiality. Is the treatment of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment? An unjustified sense of grievance cannot amount to 'detriment': Barclays Bank plc v Kapur (no 2) IRLR 87. But, contrary to the

view that was expressed in Lord Chancellor v Coker [2001] ICR 507 on which the Court of Appeal relied, it is not necessary to demonstrate some physical or economic consequence.

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

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

[...]

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

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

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

finding of the reason for his dismissal supplies the answer to the question whether he received less favourable treatment’.

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

VICTIMISATION

34. Victimisation is prohibited conduct under s.27 EQA:

A person (A) victimises another person (B) if A subjects B to a detriment because –

- (a) B does a protected act, or*
- (b) A believes that B has done, or may do, a protected act.*

35. Protected acts are defined in s.27(2) and include making allegations, whether or not express, that someone has contravened the Equality Act 2010 and bringing proceedings under the EQA. One relevant question is why was the discloser subjected to the detriment: was it because of the protected act, or for wholly other reasons.

AIDING CONTRAVENTIONS

36. Section 112 EQA says:

- (1) A person (A) must not knowingly help another (B) to do anything which contravenes Part 3, 4, 5, 6 or 7 or section 108(1) or (2) or 111 (a basic contravention).*

[...]

TIME LIMITS IN EQA CASES

37. Time limits for claims under the EQA are governed by s.123:

(1) *Subject to section 140B proceedings on a complaint within section 120 may not be brought after the end of—*

(a) *the period of 3 months starting with the date of the act to which the complaint relates, or*

(b) *such other period as the employment tribunal thinks just and equitable*

[...]

(3) *For the purposes of this section—*

(a) *conduct extending over a period is to be treated as done at the end of the period;*

(b) *failure to do something is to be treated as occurring when the person in question decided on it [...]*

38. We have a wide discretion to extend time on just and equitable grounds: Jones v Secretary of State for Health and Social Care [2024] EAT 2. Relevant factors we should normally take into account are: the length of (and reasons for) the delay, and whether the delay has prejudiced the respondent (for example, preventing or inhibiting it from investigating the claim while matters were fresh), whether someone was in ignorance of their rights or had received incorrect advice, if there was an ongoing internal procedure, and reasons relating to disability or ill health.

39. We must distinguish between acts which are properly analysed as conduct extending over a period and discrete acts with continuing consequences. Also, the statute requires us to distinguish between acts extending over a period and a succession of unconnected or isolated specific acts: Hendricks v Metropolitan Police Commissioner [2003] IRLR 96. The fact of common individuals to the allegations is relevant but not conclusive: Aziz v FDA [2010] EWCA Civ 304.

BURDEN OF PROOF – EQA CLAIMS

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

(1) *This section applies to any proceedings relating to a contravention of this Act.*

- (2) *If there are facts from which the court could decide, in the absence of any explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.*

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

‘In some cases there may be no evidence to suggest the possibility of discrimination, in which case the burden of proof may have nothing to add. However, if there is evidence that discrimination may have occurred it cannot be ignored. The burden of proof can be an important tool in determining such claims. These propositions are clear from the following well established authorities.’

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

42. It is not sufficient for the employee to only prove a difference in protected characteristic and a difference in treatment in order to shift the burden of proof: Madarassy v Nomura International Plc [2007] EWCA Civ 33.
43. Once the burden has shifted, the employer must prove that less favourable treatment was in no sense whatsoever because of the protected characteristic: Wong v Igen Ltd [2005] EWCA Civ 142.
44. We applied and took into account the EHRC Code of Practice (‘the Code’) where relevant.

UNAUTHORISED DEDUCTIONS FROM WAGES

45. The right not to suffer unauthorised deductions from wages is found in s.13 ERA 1996 which says:

Right not to suffer unauthorised deductions.

(1) *An employer shall not make a deduction from wages of a worker employed by him unless—*

(a) *the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or*

(b) *the worker has previously signified in writing his agreement or consent to the making of the deduction.*

[...]

(3) *Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.*

46. Holiday pay that it is outstanding on termination can also be claimed as unpaid wages: s.27 ERA 1996.

47. The ordinary time limit for an unlawful deductions claim is before the end of the period of 3 months, in this case beginning with the date of the payment of wages from which the deduction was made (s.23(2)(a) ERA 1996). That time limit will be extended to allow for early conciliation in accordance with s 207B ERA 1996. If the complaint is about a series of deductions or payments then the three-month time limit starts to run from the date of the last deduction or payment in the series: s.23(3) ERA 1996.

ABUSE OF PROCESS

48. A claim may be struck out as an abuse of process under the principal in Henderson v Henderson (1843) 3 Hare 100 ChD:

'where a given matter becomes the subject of litigation in, and of adjudication by, a court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case'

49. In Andras Szucs v Greensquare Areaccord Ltd [2025] EAT 11 at para [28 - 29] some relevant authorities in this area were reviewed, including Johnson v Gore Wood and Co [2002] 2 AC:

'I would not accept that it is necessary, before abuse may be found, to identify any additional element such as a collateral attack on a previous decision or some dishonesty, but where those elements are present the later proceedings will be much more obviously abusive, and there will rarely be a finding of abuse unless the later proceeding involves what the court regards as unjust harassment of a party. It is, however, wrong to hold that because a matter could have been raised in earlier proceedings it should have been, so as to render the raising of it in later proceedings necessarily abusive. That is to adopt too dogmatic an approach to what should in my opinion be a broad, merits-based judgment which takes account of the public and private interests involved and also takes account of all the facts of the case, focusing attention on the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before. As one cannot comprehensively list all possible forms of abuse, so one cannot formulate any hard and fast rule to determine whether, on given facts, abuse is to be found or not.'

UNFAIR DISMISSAL

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

51. This says:

- (1) *In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show-*
 - (a) *the reason (or, if more than one, the principal reason) for the dismissal, and*
 - (b) *that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.*
- (2) *A reason falls within this subsection if it –*
 - [...]
 - (b) *relates to the conduct of the employee,*
 - [...]
- (4) *Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –*
 - (a) *depends on whether the in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and*
 - (b) *shall be determined in accordance with the equity and substantial merits of the case.*

52. If the dismissal is proved to be for one of those reasons then the determination of the question of whether the dismissal is fair or unfair, having regard to the reasons shown by the employer, depends on whether in the circumstances, including the size and administrative resources of the employer's undertaking, the employer acted reasonably or unreasonably as

in treating it as a sufficient reason for dismissing the employee, and shall be determined in accordance with the substantial merits of the case. The tribunal must not substitute its own opinion about whether or not an employee should have been dismissed and must recognise that there will be a band of reasonable responses on the part of the employer. A dismissal should not be held to be unfair unless it falls outside of that range.

53. Misconduct is a potentially fair reason under section 98(2)(b) ERA 1996.
54. In ascertaining the reason for a dismissal the tribunal will often need look no further than the reasons given by the appointed decision maker. However, if that is an invented reason, it is the tribunal's duty to penetrate through the invention rather than allow it to affect the tribunal's own determination: Royal Mail Group Ltd v Jhuti [2019] UKSC 55.
55. Some other substantial reason can include a breakdown in trust and confidence, such as if caused by the conduct of the employee: Huggins v Micrel Semiconductor (UK) Ltd [2004] All ER (D) 07 (Sep) EATS/0009/04 at [33-35] and Alexis v Westminster Drug Project [2024] EAT 188. In Alexis the claimant raised a grievance after an unsuccessful interview which was part of a restructuring exercise. She raised a grievance about the interview process and rejected the outcome of the grievance, appealing that decision. She also rejected the appeal, both the original grievance outcome and appeal outcomes being largely favourable to her. She was called to a meeting to discuss whether her continued employment was tenable and the decision maker at the employer concluded that she had no confidence in her employer and the relationship had irretrievably broken down. The EAT dismissed an appeal of the original decision that this was not an unfair dismissal for some other substantial reason. In that case, the respondent genuinely and reasonably believed in the irretrievable breakdown, a reasonable enquiry had been held and the claimant had been given an opportunity to put forward her arguments (at [13]). Alternatives had been considered by the employer (at [12]).

56. A dismissal may be held to be fair notwithstanding a lack of any formal process (including the absence of a right of appeal) in certain circumstances: Gallacher v Abellio Scotrail Ltd UKEAT/0027/19/SS and Matthews v CGI UK Ltd [2024] EAT 38.
57. In Gallacher (at [45]) the tribunal at first instance concluded not just that the omitted procedure would not serve any useful purpose, but also that *‘if anything it would have worsened the situation’* (at [46]). Also, the tribunal had concluded that the claimant was not interested in retrieving the relationship at the time (at [47]). The dismissing officer also had a genuine belief that the relationship had broken down (at [37]). The EAT emphasised at [51] that *‘Dismissals without following any procedures will always be subject to extra caution on the part of the Tribunal before being considered to fall within the band of reasonable responses. Despite [counsel’s] careful and thorough submissions, I am satisfied that this Tribunal did exercise such caution and came to a conclusion that was open to it on the evidence that it heard. Ground 1 is therefore dismissed.’* In Gallacher (at [47]) and [49(c)] the tribunal at first instance found that the claimant was not interested in retrieving the relationship at the time and therefore mediation was not, in that case, necessarily a relevant consideration (according to the EAT). The tribunal must consider whether the employer’s actions in treating the reason for dismissal as sufficient to dismiss fell within the band of reasonable responses: Gallacher at [39], however *‘That band is not of infinite width and the Tribunal should be able to conclude that an employer’s response was outside the band without it being accused of substituting its own views for those of the employer...’*
58. In Matthews it was held to be reasonable for the respondent to dismiss without warning or appeal because the procedure was considered futile. In that case the claimant was advised that they were at risk of redundancy (at [9]), a grievance was partially upheld (at [11]), the claimant responded in a confrontational manner (at [12]), the claimant was given options of remaining in the team or going elsewhere (at [16]), the claimant did not agree with those options (at [19]), new grievances were prepared (at [21]), the working relationship had broken down (at [38]), and the tribunal had

concluded that the parties had reached a stalemate (at [73]). The respondent decided that the breakdown was terminal and it would have been futile to have given a warning (at [73]). The respondent was also not to blame and the respondent was genuine in its efforts to rebuild trust and keep the claimant employed (at [80]-[97]). Also, when considering fairness this was not to be considered in isolation (at [74]). The tribunal must focus on the respondent's perspective at the time it made the decision to dismiss and the reasonableness of the decision and whether it was within the range of reasonable responses for the respondent not to provide a warning or an appeal (at [76]).

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

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

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

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

61. The tribunal may be entitled to conclude that procedural errors were such that a dismissal because of an irretrievable breakdown in the relationship between the claimant and employer was unfair: Phoenix House v Stockman [2016] IRLR 848 EAT. There is, however, no set procedure to be followed in those circumstances. Whether the procedure followed by the employer will be fact and case sensitive.

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

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

63. The relevant passage continues:

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

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

65. Section 270A Trade Union and Labour Relations Act 1992 concerns uplifts to Tribunal awards for unfair dismissals. It does not apply if the reason for

dismissal was some other substantial reason: Phoenix House v Stockman [2016] IRLR 848.

66. Section 122(2) ERA says:

Where the tribunal considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given) was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the tribunal shall reduce or further reduce that amount accordingly.

67. Section 123(6) ERA says:

Where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding.

68. Applying Nelson v BBC (No. 2) 1979 IRLR 346 CA, we must be satisfied that the conduct was culpable or blameworthy; it must have actually caused or contributed to the dismissal; and it must be just and equitable to reduce the award by the proportion specified.

69. Section 123(6A) says:

Where –

(a) the reason (or principal reason) for the dismissal is that the complainant made a protected disclosure, and

(b) it appears to the tribunal that the disclosure was not made in good faith,

the tribunal may, if it considers it just and equitable in all the circumstances to do so, reduce any award it makes to the complainant by no more than 25%.

70. Section 123(1) ERA says:

Subject to the provisions of this section ... the amount of the compensatory award shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributed to action taken by the employer.

71. Applying Hill v Governing Body of Great Tey Primary School [2013] IRLR 274 at [24]:

A “Polkey deduction” has these particular features. First, the assessment of it is predictive: could the employer fairly have dismissed and, if so, what were the chances that the employer would have done so?...A tribunal is not called upon to decide the question on balance. It is not answering the question what it would have done if it were the employer: it is assessing the chances of what another person (the actual employer) would have done...

72. We may determine that the employment would have continued but only for a limited fixed period: Software 2000 Ltd v Andrews [2007] IRLR 568.

73. Applying W Devis & Sons v Atkins [1977] IRLR 314, subsequently discovered misconduct may provide a ground for reducing compensation under s.123(1) ERA. This is limited to conduct which occurred pre-termination.

PROTECTED DISCLOSURE DETRIMENT

74. Section 43A ERA says:

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

75. Section 43B ERA says:

(1) In this Part a ‘qualifying disclosure’ means any disclosure of information which, in the reasonable belief of the worker making the

disclosure, is made in the public interest and tends to show one of more of the following: -

- (a) that a criminal offence has been committed,*
- (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,*

[...]

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

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

[...]

76. Section 43C ERA says:

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

- (a) to his employer,*

[...]

77. Section 47B ERA says:

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

[...]

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

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

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

- (a) there was in fact and as a matter of law, a legal obligation (or other relevant obligation) on the employer (or other relevant person) in each of the circumstances relied on.*
- (b) the information disclosed tends to show that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject.*

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

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

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

80. For the purposes of this part notions of information and mere allegations are not mutually exclusive. Allegations can amount to disclosures information depending on the content and the surrounding context: Kilraine v London Borough of Wandsworth [2018] ICR 1850. There is no rigid dichotomy between information and allegations: Kilraine at [30]. The disclosure has to have '*sufficient factual content and specific such as is capable of tending to show*' one of the five wrongdoings: per Sales LJ in Kilraine at [35] (also Simpson v Cantor Fitzgerald Europe [2020] ICR at [43]).
81. Whether communications should be read together is a question of fact for the tribunal, and communications can be read with earlier communications: Norbrook Laboratories (GB) Ltd v Shaw [2014] ICR 540 EAT.
82. It is necessary for the discloser to have a genuine belief that the disclosure tends to show a relevant failure and that belief must be a reasonable belief. Reasonableness involves the application of an objective standard to the personal circumstances of the discloser: Babula v Waltham Forest College [2007] ICR 1026 at [75]. It is relevant what the discloser believed at the time of making the disclosure and not what they may have come to believe later on: Dodd v UK Direct Solutions Limited [2022] EAT 44 at [55]. The objective test is what a person in their position would reasonably believe: Korashi v Abertawe Bro Morgannwg University Local Health Board [2012] IRLR 4 at [62]. A belief may be a reasonable belief even if it is wrong: Babula.
83. The discloser must exercise their own judgment: Darnton v University of Surrey [2003] IRLR 133 at [31]: '*There must be more than unsubstantiated rumours in order for there to be a qualifying disclosure. The whistleblower must exercise some judgment on his own part consistent with the evidence and the resources available to him.*'
84. In Darton at [30] it was held that '*...Parliament has not sought to import into section 43B a requirement that the worker must hold the belief that the information and allegation disclosed are substantially true.*' Equally. at [32]: '*...for there to be qualifying disclosure, it must have been reasonable for the worker to believe that the factual basis of what was disclosed was true and*

that it tends to show a relevant failure, even if the worker was wrong, but reasonably mistaken.'

85. For a potential breach of a legal obligation the discloser must have made a disclosure of information tending to show that a break was likely to occur at some point in the future: Cantor Fitzgerald at [45].
86. In the context of the relevant failure, 'is likely to' means that the information disclosed should tend to show in the claimant's reasonable belief that the relevant failure was 'probable or more probable than not': Kraus v Penna [2004] IRLR 260 EAT.
87. For breach of a legal obligation as the relevant failure, this includes breach of an employment contract: Parkins v Sodexo [2002] IRLR 109.
88. The leading authority on whether the discloser has a reasonable belief that the disclosure is made in the public interest is Chesterton Global Limited v Nurmohamed [2018] ICR 731. The tribunal must consider all the circumstances, including the numbers in the group whose interests the disclosure served, the nature and extent of the interests affected, the nature of the wrongdoing, and the identity of the wrongdoer. There may be features of the case that make it reasonable to regard disclosure as being in the public interest as well as in the personal interest of the worker: Chesterton at [37].
89. The claimant must prove that they had an actual belief at the time of making the disclosure it was in the public interest and that belief must also have been reasonable: Chesterton at [27-28]. The tribunal must not substitute its own view of whether the disclosure was in the public interest for that of the worker: at [28]. This is a two-stage test and it should not be rolled into one: Ibrahim v HCA International Ltd [2020] IRLR.

90. Tribunals should be cautious about finding that the public interest requirement is satisfied in the context of a private workplace dispute merely from the number of others who share the same interest: Chesterton at [36].
91. The fact that a private purpose exists does not mean that there cannot also be a public interest: Dobbie v Paula Felton/Felton Solicitors [2021] IRLR 679 (referring to paragraph [17] of Chesterton): *'Provided that the worker making the disclosure reasonably believes that it is made in the public interest it does not matter that he might be making the disclosure for some other purpose; the protection can apply even where the disclosure is made in bad faith'* [at 23]. In mixed interest cases it is for the tribunal to make a finding as to whether there was sufficient public interest to qualify: Okwu v Rise Community Action Ltd [2019] UKEAT/0082/19, at [20].
92. Dobbie contains a helpful summary of the main principles to be allowed at [27] (HHJ Tayler):
- (1) *the necessary belief is that the disclosure is made in the public interest. The particular reasons why the worker believes that to be so are not of the essence*
 - (2) *while the worker must have a genuine (and reasonable) belief that the disclosure is in the public interest, that does not have to be his or her predominant motive in making it – Underhill LJ doubted whether it need be any part of the worker's motivation*
 - (3) *the exercise requires the Tribunal to recognise, as in the case of any other reasonableness review, that there may be more than one reasonable view as to whether a particular disclosure was in the public interest*
 - (4) *a disclosure which was made in the reasonable belief that it was in the public interest might nevertheless be made in bad faith*
 - (5) *there is not much value in trying to provide any general gloss on the phrase 'in the public interest'. Parliament has chosen not to define it,*

and the intention must have been to leave it to employment Tribunals to apply it as a matter of educated impression

- (6) *the statutory criterion of what is 'in the public interest' does not lend itself to absolute rules*
- (7) *the essential distinction is between disclosures which serve the private or personal interest of the working making the disclosure and those that serve a wider interest*
- (8) *the broad statutory intention of introducing the public interest requirement was that 'workers making disclosures in the context of private workplace disputes should not attract the statutory protection accorded to whistleblowers'*
- (9) *Mr Laddie's fourfold classification of relevant factors may be a useful tool to assist in the analysis:*
 - (i) *the numbers in the group whose interests the disclosure served*
 - (ii) *the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed*
 - (iii) *the nature of the wrongdoing disclosed*
 - (iv) *the identity of the alleged wrongdoer*
- (10) *where the disclosure relates to a breach of the worker's own contract of employment (or some other matter under section 45B(1) where the interest in question is personal in character), there may nevertheless be features of the case that make it reasonable to regard disclosure as being in the public interest*

93. At [28] HHJ Tayler made further observations, summarised as follows: (1) that a matter that is of public interest is not necessarily the same as one that interests the public; (2) while the public will generally be interested in disclosures that are made in the 'public interest', that does not necessarily follow; (3) a disclosure could be made in the public interest although the

public will never know that the disclosure was made; (4) a disclosure could be made in the public interest even if it is about a specific incident without any likelihood of repetition; (5) the fact that it is a matter of educated impression does not mean that it is not to be determined by a principled analysis, and Mr Laddie's factors in Chesterton are of assistance, and failure to take into account relevant factors, or ignoring relevant factors, may be an error of law; (6) Parliament must have considered that disclosures about the types of wrongdoing in s43B ERA will often be about matters of public interest and the legislative history is important for understanding that the purpose was to *'exclude only those whose disclosures about 'wrong doing' in circumstances as where the making of the disclosure serves 'the private or personal interest of the worker making the disclosure' as opposed to those that 'serve a wider interest'; [...]* 8) while motivation is not the issue...the person making the disclosure must hold the reasonable belief that the disclosure is 'made' in the public interest.

94. The employer does not need to know that the disclosure qualifies as a protected disclosure in law: Croydon Health Services NHS Trust v Beatt [2017] ICR 1240 at [80].
95. Applying authorities decided in the context of the EQA, a detriment is treatment of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to their detriment: Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337 at [35] per Lord Hope. An unjustified sense of grievance does not amount to a detriment: Derbyshire v St Helen's MBC [2007] ICT 841.
96. The test is whether the worker was subjected to the detriment by the employer on the ground that they made a protected disclosure. The initial burden is on the worker to prove on the balance of probabilities that there was a protected disclosure, that there was a detriment, and that the employer subjected them to the detriment. If so, the burden shifts to the employer to show the ground on which the detrimental act was done (section 48(2) ERA): Serco v Dahou [2017] IRLR 81 at [29-31] CA.

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

98. Time limits are governed by section 40 ERA:

[...]

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

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

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

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

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

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

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

reasonably have been expected to do the failed act if it was to be done.

99. Early conciliation applies: section 48(4A) ERA.
100. If the last of an act of series of similar acts is dismissed as unfounded on the facts, or because it was not done on the grounds of a protected disclosure, this does not extend time for in time acts which were otherwise successful: Royal Mail Group Ltd v Jhutti (No. 2) EAT 0020/16.

AUTOMATIC UNFAIR DISMISSAL

101. Section 103A says:

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

102. The tribunal must carry out an examination of the subjective mental processes of the relevant decision-makers which caused the employer to act as it did; it is not a 'but for' test: Arriva London South Ltd v Nicolaou [2012] ICR 510 at [28].
103. If the employee has more than two years' service then the burden is on the employer to show that the reason for the dismissal is a potentially fair one.
104. Applying Kuzel v Roche Products Limited [2008] ICR 799, a three-stage approach must be taken. First, the employee must prove that they made a protected disclosure and produce some evidence to suggest that they have been dismissed for the principal reason that they have made a protected disclosure rather than a potentially fair reason advanced by the employer. Second, the tribunal must make primary findings of fact. Thirdly, the tribunal must decide what the reason or principal reason for the dismissal was, on the basis that it was for the employer to show the reason.

105. It is not enough for the making of a protected disclosure to be in the employer's mind at the time of dismissal: Eiger Securities LLP v Korshunova [2017] IRLR 115 at [63].
106. There are features which may be separable in law from the disclosures themselves: Kong v Gulf International Bank (UK) Ltd [2022] ICR 1513 at [56-59]. In particular:

[56] 'I would endorse and gratefully adopt the passages I have cited as correct statements of law. They recognise that there may in principle be a distinction between the protected disclosure of information and conduct associated with or consequent on the making of the disclosure. For example, a decision-maker might legitimately distinguish between the protected disclosure itself, and the offensive or abusive manner in which it was made, or the fact that it involved irresponsible conduct such as hacking into the employers computer system to demonstrate its validity. In a case which depends on identifying, as a matter of fact, the real reason that operated in the mind of a relevant decision-maker in deciding to dismiss (or in relation to other detrimental treatment), common sense and fairness dictate that tribunals should be able to recognise such a distinction and separate out a feature (or features) of the conduct relied on by the decision-maker that is genuinely separate from the making of the protected disclosure itself. In such cases, as Underhill LJ observed in Page [2021] ICR 912, the protected disclosure is the context for the impugned treatment, but it is not the reason itself.

[57] Thus the separability principle is not a rule of law or a basis for deeming an employer's reason to be anything other than the facts disclose it to be. It is simply a label that identifies what may in a particular case be a necessary step in the process of determining what as a matter of fact was the real reason for impugned treatment. Once the reasons for particular treatment have been identified by the fact-finding tribunal, it must evaluate whether the reasons so identified are separate from the protected disclosure, or whether they are so closely connected with it that a distinction cannot fairly and sensibly be drawn. Were this exercise not permissible, the effect would be that whistleblowers would have immunity for behaviour or

conduct related to the making of a protected disclosure no matter how bad, and employers would be obliged to ensure that they are not adversely treated, again no matter how bad the associated behaviour or conduct.'

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

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

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

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

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

Findings of fact

(i) Acas

110. ACAS conciliation started for the first claim (2216628/2023) on 3 October 2023 and ended on 14 November 2023. The first ET1 was presented on 19 November 2023. ACAS conciliation for the second claim (2201506/2024) started on 3 October 2023 and ended on 14 November 2023. The second ET1 was presented on 1 February 2024.

(ii) Relevant people and legal entities

111. The claimant was employed as chief technology officer ('CTO') at the first respondent between March 2020 and his dismissal with notice on 25 September 2023. The second respondent is the first respondent's Chief Executive Officer ('CEO'). Mr Olaf Rogge is the second respondent's father. The third respondent is a management company and investment advisor of what was previously the fourth respondent, a private fund limited partnership (Element Ventures LP). Element Ventures LP is an investor in the first respondent. The fifth respondent is a shareholder and investor of the third respondent. He also sits on the investment committee and participates in the investment activities of Element Ventures LP. He is a director of the third respondent and became a director in the first respondent in December 2022. As well as Element Ventures LP, MMC Ventures was an investor in the first respondent. Oliver Richards was a partner at MMC Venture who also attended board meetings as an observer from January 2023.

(iii) Overall narrative

112. The first respondent was incorporated by the second respondent as sole director and shareholder on 7 January 2019. Subsequently the claimant and second respondent discussed and worked on ideas for the company. The claimant became a shareholder in the first respondent on 29 January 2020

and employee on 1 June 2020 and a director on 2 June 2020. The claimant's wife started working at the first respondent on a freelance basis on 17 November 2021. She ceased working on 7 April 2023.

113. The first respondent was a startup Fintech company working in the area of business-to-business payments seeking to take advantage of new business opportunities enabled by open banking.
114. Broadly speaking, the claimant was the first respondent's CTO and the second respondent was the first respondent's CEO. Although there was a dispute about the exact role of the claimant and how that changed over time – for example, he later started describing himself as CTO/COO – it was not necessary for us to make exact determinations about that particular dispute save as below. This is because (save as set out below) it was not necessary to do for a fair determination of the claims.
115. The startup was a small company which changed in size over time and grew to around 20 employees at the material times of the dispute. It had substantial venture capital funding but also had relatively high overheads to maintain.
116. The working relationship between the claimant and the second respondent ultimately soured over various concerns. These included the claimant's wife working for the first respondent and issues arising from this, disputes about overall strategy, and the approach that should be taken to compliance.
117. The first respondent was regulated by the FCA. It had a contractual obligation with a company called Currency Cloud. Currency Cloud is a foreign exchange broker providing the first respondent with currency conversation services and e-wallet infrastructure. The first respondent's contract with Currency Cloud included provisions around the first respondent being responsible for carrying out a degree of KYC checks on behalf of Currency Cloud as Currency Cloud's agent.

118. The compliance disputes between the claimant and the second respondent included whether the first respondent's proposed activities required an application to be made to the FCA for Variation of Permission ('VoP'), and with regards to KYC and screening (eg. sanctions compliance) such as the manner and extent of conducting KYC and other checks.
119. As the working relationship became increasingly strained and difficult various events in 2023 cumulated in the claimant's dismissal by vote of the board of directors of which the claimant was a member. Prior to this, on around 25 July 2023 the second respondent brought in an independent HR advisor to provide HR services in connection with a proposed without prejudice settlement meeting for the claimant's exit. The HR advisor prepared a script for use at the proposed meeting, which was to take place on 2 August 2023, but in the end she did not attend the meeting at the claimant's request. On 5 September 2023 the second respondent contacted the HR advisor requesting support: she was told that the situation with the claimant remained, and the second respondent wanted to book a meeting to discuss the exit. The proposed process was for a 'Some Other Substantial Reason' and the HR advisor had not previously conducted such a procedure. She was ultimately commissioned to undertake a review of the situation and consult with the claimant before providing a report to the Board. The process was to involve a consultative meeting with the claimant which took place on 15 September 2023. During that meeting the claimant's position was that the working relationship had not broken down. The report was concluded on 19 September 2023 (p1247). The HR adviser concluded that there was an irreconcilable breakdown in the relationship as leaders, directors and shareholders that had led to a loss of trust.
120. A considerable volume of correspondence was sent between the various individuals in the form of emails, WhatsApp messages, Slack messages, and otherwise. We make a finding of fact that the correspondence as set out in the hearing bundle was sent between the various individuals and that the content of those communications was as set out in the hearing bundle. It is neither necessary nor proportionate to set out the entirety of the correspondence here. We took it into account in reaching our conclusions

on the disputed items of fact. Although we have included extracts from some of the most relevant correspondence, we relied on the full content of the relevant communications in reaching our decisions.

(iv) Alleged protected disclosures

121. It was not in dispute that, if made, the alleged disclosures below were made to the claimant's employer save for alleged PD6, which was made to the FCA. We find accordingly.
122. We make the following findings of fact in respect of each of the alleged PDs.

PD1 – 3 April 2023

123. This was said by the claimant to be an oral disclosure from the claimant to the second respondent about alleged KYC failures and alleged AML breaches in regards to Currency Cloud following an ad hoc request by Currency Cloud about KYC.
124. Whether or not this disclosure was in fact made at all was a contested issue of fact. The burden was on the claimant to establish the relevant fact that the disclosure was made. The claimant gave evidence that it was. This was disputed by the respondents, in particular by the second respondent.
125. Applying the balance of probabilities, the burden being on the claimant to prove the relevant facts, we do not find it more likely than not that PD1 was made. This is for the following reasons.
126. The claimant did not in evidence establish a sufficiently strong factual basis for this disclosure having taken place in circumstances where there were key factual ambiguities around the alleged conversation. For example, it was not in dispute that the second respondent had returned from the Bahamas. We accept his credible evidence that he was working from home that day and so the conversation alleged by the claimant (being a face to

face conversation) did not take place. The claimant's evidence on this was slightly confusing because the claimant's evidence was that the second respondent had also still run to the office that evening because of the Currency Cloud spot check, but also that the disclosure may have been made over the phone. We agree with the respondent that, as a result of them sending each other Slack messages at the relevant time, this is more consistent with them not working close to each other and so prefer the second respondent's evidence. Whilst we do not consider inconsistency over the method of communication to be determinative, it is one factor against the claimant having a reliable evidential basis for a dispute fact where it was, in the main, one person's word against another.

127. There were no independent witnesses to the relevant conversation. The claimant relied on the second respondent saying to the claimant in a Slack message on 3 April that '*I [the second respondent] do not want compliance, regulatory, board reporting advice. I am quite confident in this department.*' We accept that this comment was made as documented. The claimant relied on this as evidence in support of his contention that the verbal was made, because otherwise the respondent would have no need to make that comment. However, we consider this to be equally consistent with the claimant having other conversations with the second respondent around that time given that a spot check had just been made. We accept and find that the evidence taken as a whole is such that it was more likely than not that the claimant and second respondent were having discussions about the Currency Cloud spot check. However, in the circumstances, there is no sufficient way of establishing the exact words used in any such conversations. It is important to be able to identify the words used with sufficient clarity to establish whether or not they amounted to a protected disclosure. However, we do not have enough reliable evidence to make such a finding in the circumstances as they were. We consider, overall, that the evidential points made by the claimant are more supportive of the fact that the Currency Cloud spot check had happened, rather than the claimant making the exact (or sufficiently exact) disclosure alleged. We consider that even if there was a conversation along those lines, we are not sufficiently clear on the words used such that we could find that, as a matter of fact, the

claimant made a disclosure of information tending to show a relevant wrongdoing.

PD2 - 9 May 2023

128. This was said by the claimant to be an email from the claimant to the second respondent about the VoP application.

129. We find as a matter of fact that the claimant by email at 8:21 sent to the respondent said, in response to FCA queries: '*Just for the record re the FCA queries. I do however objected to the inclusion of any factually untrue information.*'

130. Also, at 20:34, the claimant stated:

1. Policies must be phrased using only job titles, rather than names of specific people. This means that when a particular position gets filled by a new person, the policy does not immediately become obsolete. The only place where we mention specific names is on the front page – policy owner/approver.

2. Incident reporting policy (as it now became) is a domain of the MLRO. I am not an MLRO and I do not own it. I do own the incident response policy, - the policy that has been actually implemented and followed, but not this reporting one.

3. For AML policy the owner can only be an MLRO.

4. FCA reporting template – this is a standard document. We should not submit it. It is included into our policy by reference. This is a standard legal method, which means that when they decide to change the template, our policy does not become obsolete.

5. Governance. a. We do not have a Management Board. We have a Board of Directors. b. We may indeed put together a Management Committee, but a committee of 7 for the company of 23 people is rather ridiculous. c. The committee – if we are to have one – should consist of specific job titles (e.g.,

CEO), rather than specific people. d. David most obviously is not responsible for Operations e. Responsibilities listed under Management Board fall squarely under the Board of Directors – including, most notably, the overall business strategy. f. We do not have any of the other committees mentioned – therefore they can't "continue to meet quarterly."

131. The above email was, however, sent in context, and that context included the claimant stating during the longer email conversation at 22:45: *'I have sat down and reviewed the documents. After that I provided you with specific and constructive feedback, which you are free to either use or discard.'*
132. We do not find as a matter of fact that when making the disclosure the claimant did believe that the disclosure tended to show a breach of a legal obligation. This is because we find that the belief held by the claimant is best evidenced by the words used in the email chain rather than how he views his previously communications with the benefit of hindsight in the context of litigation. The wording of the claimant's email at 22:45 above is, we consider, indicative of the claimant's belief being that he was providing feedback to the second respondent about responding to the FCA rather than him holding a belief that he was disclosing information tending to show a breach of a legal obligation (or other wrongdoing). This is also supported by the words used by the claimant in his actual disclosure: he is stating variously things he says to be factually correct, with some views (such as who the owner of an AML policy can be). The fact that he records earlier his objection to the provision of factually inaccurate information is not, in our judgment, sufficient to establish that the claimant in fact believed that he was communicating to the second respondent that any particular information was false. He was also not expressing, as a matter of fact, to the second respondent with sufficient clarity that the information was false or misleading given that the second respondent was free to *'either use or discard'* the feedback.

PD3 – 9 May 2023

133. This was said to be by the claimant an oral disclosure from the claimant to the second respondent about alleged KYC failures and alleged AML breaches in regard to Currency Cloud following an ad hoc request by Currency Cloud about KYC.
134. We do not find it more likely than not that conversation happened. This is for the following reasons.
135. The burden is on the claimant to establish that it is more likely than not that the disclosure was made. The claimant's evidence was that this conversation happened but this was disputed by the respondent in his evidence. There were no independent witnesses to the alleged conversation. As with alleged PD1, there was an evidential ambiguity as to the location of the alleged conversation. The second respondent said it did not happen face to face as alleged because he was at a trade show that day. The claimant said that a face to face conversation was still possible because attendance at the office was still possible. It was not overall necessary for us to establish who was where, given that there are other ways in which this conversation could have happened, although we considered that the claimant did not overall have a clear and cogent evidential basis to show that this disclosure was made given the ambiguity about the details. We also do not consider that the claimant's allegation is consistent with the other contemporaneous messages sent that day between him and the second respondent. It is right that on that day the claimant sent a long WhatsApp message to Olaf Rogge on this topic on 10 May 2023. This included the fact that *'Since September 2022....we are talking literally about a handful of FX clients, and I am not sure that we are completely in the clear with all the regulatory and AML requirements for these payments. To say that we are sailing close to the wind in terms of compliance would be a massive understatement. ...'* However, this falls short of suggesting that the claimant made the disclosure alleged. Specifically, the claimant is not reporting to Olaf Rogge words to the effect of *'And I told your son the following information today'*. We consider that the

message does establish that the claimant had genuinely held and serious concerns about compliance around that time. However, this is insufficient for us to find that he made a disclosure with sufficient clarity of wording for us to find that he disclosed the information he says he did, given the lack of supporting evidence and disputed nature of this allegation.

PD4 - 17 May 2023

136. This was said by the claimant to be Slack messages from the claimant to the second respondent about information to be contained in the first respondent's insurance renewal form.
137. These messages were at p692. They were sent between the claimant and second respondent and were discussing the answers to be provided to the first respondent's insurer. They establish that on 17 May the claimant stated to the second respondent that *'We do not perform background checks on employees. We can do it, and they are quite inexpensive - about £40 per head ... We can do one of 3 things: State the way things are - we do not perform eg checks. Commit to perform them and state that we are. Something else? I filled them [the forms] accordingly, giving true answers to the best of my belief. If you disagreed or simply did not like the answers you were free to change them. If these answers cause higher premium, it is regrettable, but at least it does not invalidate our professional insurance which is a regulatory requirement. I have also suggested a way to turn those "no" answers to "yes" at reasonable cost/effort. As a director I refuse to fill in untruthful information where it matters.'*
138. We find as a matter of fact that the claimant disclosed that content to the second respondent. We find as a matter of fact that, taken as a whole, the proper construction of the information (in the full context of the exchange) was that it was implied that if the second respondent submitted the form without making changes then this would be sufficiently misleading to put them in breach of their legal duty to correctly answer their insurers questions. Our conclusion is supported by the second respondent's concession, under cross-examination, that as a matter of fact the claimant

was right to make the observations he did about how to report those matters to the insurers.

139. We find as a matter of fact that when making the disclosure the claimant did believe that the disclosure tended to show a breach of a legal obligation. This is because we accept his evidence that this was the case and it is supported by the plain wording used by him at a time. There is no good and evidenced reason, in our judgment, to find otherwise. It was in this case clearly implied by the claimant that the current proposal in terms of reporting to the insurer would be sufficiently misleading to put them in breach of their various legal duties to correctly report to them. We reject the suggestion that the claimant's wording about there being three options is sufficient to find that the claimant did not believe that the disclosure showed wrongdoing. This is because the communication taken as a whole is not just about a way to comply: rather it is an implied communication that the second respondent's proposed answers would be misleading, and incorrect, to the insurers. We consider it obvious from the wording used that the claimant had in mind the contractual obligation to accurately report relevant matters to your insurers.
140. We also find as a matter of fact that the disclosure was in the claimant's belief made at least in part in the public interest. We reject the respondents' contention that any of this disclosure was to undermine the second respondent. This is because this contention is not supported by sufficient evidence: the fact of ongoing disputes between the two is not enough to then find that everything the claimant did was to thwart the working relationship. Rather, we find that the claimant honestly and genuinely believed that making an accurate report to the insurers was at least in the public interest because it was the right thing to do. Correct and accurate reporting to insurers plainly was important to the claimant given it would have wider implications than his purely private interests. The claimant had a long history of working in financially regulated areas and we accept, as a matter of fact, that he had a strong belief in abiding by those principles both to the regulators and in the wider since. This was clear from his oral

evidence and not sufficiently undermined by anything else we heard or were taken to.

PD5 - 22 May 2023

141. This was said to be by the claimant email and a Slack meeting about KYC and screening arrangements at the first respondent.
142. We find as a matter of fact that the claimant disclosed the following to his employer. This was in the context of the claimant's understanding of the KYC and screening arrangements. The claimant said by email sent at 12:50 to the second respondent 'A [sic] *disagree with your decision this morning to remove the required AML screening checks without having alternative arrangements in place. This puts us in breach of our existing obligations, which I urge you to take very seriously...*'
143. There was also a meeting between the claimant and second respondent on that day which lasted 25 minutes at 16:10 (p738). However, the content of that meeting was not recorded. We do not find, the burden being on the claimant, it more likely than not that we can properly make the requested findings of fact about what was said at that meeting. This is because the content of that meeting was disputed by the second respondent and there is no independent evidence about what happened. This is particularly the case where it is important to know the exact words used with sufficient clarity because without that it cannot be possible to necessarily find that the wording amounted to a protected disclosure. We did not consider, overall, that the claimant had sufficient cogent evidence about the conversation such that we could make findings of fact in his favour.
144. However, we do find as a matter of fact that the email above amounted to the claimant disclosing information. This is because the meaning of the wording used plainly is stating to the second respondent that his decision to remove the AML screening checks without having alternative arrangements would put the first respondent in breach of its obligations. It is obvious that

this is a reference to AML obligations and contractual obligations to Currency Cloud (and potentially other providers) given the words used.

145. We find as a matter of fact that when making the disclosure the claimant did believe that the disclosure tended to show a breach of a legal obligation. This is because it is clear from the words used and we accept the claimant's evidence that this was what he believed at the time. This evidence was not meaningfully undermined by anything else. Whether or not the claimant was correct in his belief is not for us to decide: that was plainly a matter of dispute between him and the second respondent. The fact remains, however, that at that time the claimant did believe that he was correct. There is no cogent evidence that, to us, suggests that this was any kind of sham allegation designed to cause trouble.

146. We find as a matter of fact that the disclosure was in the claimant's belief made at least in part in the public interest. This is consistent with the action taken. This is because we accept that the claimant had a strong moral belief in following regulatory regulations and that this in part stemmed from his longstanding career in financial services, much of which was regulated in one way or another. We did not consider that there was any clear evidence to undermine the claimant's position that this disclosure was at least in part made with a belief that there was a public interest element to reporting these concerns to the second respondent. We also do not find that there is a sufficient cogent evidence base from which we could make a finding that the claimant's disclosures were contrived to support his position in any later negotiations or litigation. The fact that the respondents may feel that this is the case is not enough.

PD6 - 22 May 2023

147. This was said by the claimant to be an anonymous disclosure by the claimant to the FCA by email alleging breaches of KYC and AML compliance obligations.

148. The content of that disclosure is not in dispute and was as set out in the bundle. Specifically, it included stating as information to the FCA that there were systematic violations of the first respondent's AML and KYC procedures; that existing internal procedures on KYC were often ignored and AML controls overriding; that for some clients of Currency Cloud no KYC was performed at all, with no identity checks, or sanction/PEP screening; and alleging that fake evidence of KYC was presented, with multiple identity checks being performed only after being prompted by Currency Cloud. Specific details in relation to two particular details were provided. We stress in this decision that we are not making findings – and do not need to make findings – about whether the claimant's disclosure to the FCA was factually correct.
149. We find as a matter of fact that when making the disclosure the claimant did believe that the disclosure tended to show a breach of a legal obligation. This is because we accept the claimant's evidence that this was the case. It is also a plain inference from the wording used in the disclosure.
150. We also find that the claimant believed, accepting his evidence, that the information and allegations were substantially true. We accept that those were his genuinely held beliefs based on his observations and thoughts about of what was happening at the first respondent.
151. We find as a matter of fact that the disclosure was in the claimant's belief made at least in part in the public interest. This is because we accept the claimant's evidence that he held this belief at the relevant time. We also consider the fact that it was a disclosure made to a regulator to be indicative of the claimant believing that, at least in part, his disclosure was in the public interest: it was not limited to a purely private dispute. We reject the suggestion that it was made purely to further the claimant's private interest in any dispute with the respondent as being unsupported by sufficient evidence. The claimant's evidence about this disclosure being made anonymously was that he made it in that way because he felt that it was less likely to result in a harsh outcome for the first respondent (as opposed it had been made openly made by a director, which was more likely to lead

to firmer enforcement action by the FCA). Whilst we consider this to be a slightly optimistic stance for the claimant to have taken, it is correct to note that, as a matter of fact, there were no material consequences to the first respondent as a result of this disclosure. The claimant's evidence that he hoped that it would, in effect, lead to a slap on the wrist from the FCA such that the first respondent would be encouraged to improve its approach to compliance does not indicate that disclosure was made only with a belief in the claimant's private interests, and we are conscious that disclosures can be made with mixed public and private interest beliefs. The claimant's motivation was not sufficient in all the circumstances for us to conclude that he only had private interests in mind when making the disclosure given the wider evidence, including his documented position, was that the claimant wanted to be strict on compliance matters, for all kinds of reasons (including the wider public interest).

152. We equally find as a matter of fact, however, that none of the respondents had any knowledge that the claimant had made this disclosure to the FCA until these proceedings. This is because there is no sufficient cogent evidence that this was the case. It was not in dispute that the disclosure was made to the FCA on an anonymous basis or that there was any documented way in which any respondent could have inferred that the claimant made this disclosure. Rather, the claimant's case was that he had told the second respondent that he would make the disclosure during the meeting of 22 May. This was strongly disputed by the second respondent. The burden is on the claimant to prove this fact. There is no independent corroborating evidence. We do not find, taking everything into account, the claimant's contention that he warned the second respondent that he would make a disclosure to the FCA proven. This is because there is nothing to tip the balance in the claimant's favour. Also, we do not consider the claimant's contention to be more consistent with the other factual circumstances. For example, it had the potential to undermine at least some of the reasons for the claimant making the disclosure anonymously. We also find that there is no other factual reason for the respondents to be aware that the claimant had made any kind of disclosure to the FCA.

153. It follows from the above that, as a matter of fact, this disclosure did not cause any of the alleged treatment by the respondents to the claimant. It was not a cause or material influence on any treatment of the claimant because no relevant actor knew that it had happened or was going to happen or might have happened.

PD7 – 8 June 2023

154. This is said by the claimant to be a report and covering email from the claimant to the second and fifth respondents and Oliver Richards of MMC said to contain allegations about KYC compliance issues.
155. We find as a matter of fact that the claimant disclosed the following as set out in those documents (p798) to, amongst others, his employer.
156. The relevant content, in terms of what is pleaded as a disclosure of information, starts with *‘Worryingly, client A did not complete full KYC/KYB onboarding.’* Client A was the first respondent’s most significant client, responsible for 52% of its profits. It is important to also find that this extract is under the title *‘FX Revenue – Dynamics. FX revenue growth is coming from a few large size transactions and a small handful of clients.’*
157. Further, it states that *‘Crezco’s AML/KYC process is less rigid than that of large banks, which benefits the clients but may have regulatory implications for Crezco.’* This is under the heading *‘FX Revenue – Risks’*.
158. It does include *‘Crezco has an innate aversion to compliance matters, clearly not appreciating that they set rules and order for business development, thus increasing business efficiency.’* This is under the heading *‘Our mistakes’*.
159. Finally, the covering email included *‘Regulatory compliance is based on a “fake it till you make it” motto, which in practice becomes “fake it instead of making it”. There is a toxic anticompliance culture, unacceptable for a*

regulated financial institution.' The presentation and covering email do, as a matter of fact, contain those words.

160. However, the fuller content of the documents includes, in the covering email *'This letter is to alert you to the dire situation in which Crezo finds itself and to seek your approval of a plan of urgent corrective action.....it is my reasoned opinion that, without urgent and decisive action taken by the Board, Crezco will collapse in the very near future.'* Also, the presentation is titled *'Strategy crisis'*. It is plain from this that at least one of the areas of disagreement the claimant was raising was about company strategy. The outline states that the proposal was that *'the Board now takes control of the strategy and its execution.'* It compares an alleged quote from the CEO with the claimant's view. It also includes a product and strategy timeline, the criticism that subscriptions for the product were growing at a glacial rate, that client acquisition and conversion to premium services was failing, that most of the FX transactions were of small size and low revenue, and that most of the FX revenue came from a small handful of transactions. There is also a lot of content about go to market ('GTM') strategies. It also includes a Product Roadmap and a proposed European expansion strategy.
161. It also includes under the heading *'What can be done?'* that a turnaround strategy needed to be agreed within a month, and that: *'Appoint a working group consisting of the CEO, CTO and Head of Partnerships to prepare GTM strategy proposals; Working group to meet weekly and provide written reports to the Board...Full Crezco Board to review the proposals and adopt strategic plan; Impose moratorium on all hiring activities not sanctioned by the Board ... Any strategic decisions – including infrastructure partnerships, etc. – to be taken exclusively by the Board...The Board will clarify its priorities and decide on the allocation of executive responsibilities between the executive directors.'* We find that meaning of this is clear from the wording used: as an issue of fact, this was suggesting that the effective role of the CEO effectively be taken away from the second respondent. Our interpretation of what this meant was also strongly supported by the oral evidence of the fifth respondent and Oliver Richards on this topic (ie. what the claimant was really saying), which we found to be detailed, well-

reasoned and credible. For example, by making all of the relevant areas the responsibility of the Board rather than the second respondent as CEO, this would be taking a very large amount of his responsibilities away from him. The fifth respondent gave particularly useful information on this area, namely to the effect that hiring decisions were a particularly important aspect of the CEO's role, rather than the Board as it would normally operate. Mr Richard's evidence on this, which we accept as honest and credible, was that the 8 June 2023 presentation and email *'was highly unusual, and together with the presentation, appeared to be an attack by the claimant on the strategy behind the Crezco business, and Ralph Rogge personally as CEO. I had never seen anything like this before and was extremely confused by it. I emailed Michael McFadgen to this effect.'* That email was at p846, corroborating this evidence. We also accepted Mr Richards' evidence that the effect of the claimant's actions was as described: *'To me, the 8 June 2023 email and report and the 10 June 2023 email were extremely hostile and unkind acts against Ralph Rogge. The claimant had, it seemed, sought to portray the founder and CEO of Crezco....as a fool who could not be trusted with the company...And I do not believe that the underhand nature of the claimant's communications could be justified, no matter how worried he was about Ralph Rogge's strategy and leadership. He had been so disloyal and disruptive.'*

162. We do not find that the claimant, as a matter of fact, believed that this disclosure contained information that tended to show a breach of a legal obligation. This is because the claimant effectively conceded this himself under cross-examination. There is obviously a lack of detail and specifics to the particular phrases alleged by the claimant to amount to a protected disclosure. When asked about this the claimant's evidence was to the effect that the purpose of the document was for discussion at the meeting and that he intended to give more specific details at the meeting. It was common ground that those details were not later given at the Board meeting on 9 June. The claimant also gave evidence that he did not include the factual detail in part because it was sent to Mr Richards who was not on the Board.

163. We also do not find as a matter of fact that the disclosure was in the claimant's belief made in the public interest, in part or in whole. This is because we find as a matter of fact that, in reality, the claimant's only belief in making the disclosure was to attack the second respondent in his role as CEO. The material was sent only to directors and investors. Given the evidence as a whole, in terms of the wider communications between all the individuals, and the content of the documents itself, we prefer the respondents' position that rather than being a disclosure made with a belief in the public interest, as a matter of fact this was made as part of an attempted coup and an effort to oust the CEO from his role. Strong evidence in support of this finding can be found in the claimant's own covering email stating '*The CEO has isolated himself. He is deaf to dissenting voices.*' The effect of the disclosure was also considered by the respondent's witnesses to be an explicit attack on the second respondent as CEO and whilst the effect of a communication such as this can never be determinative, the fact that it was taken that way is evidence of its effect, and this was an entirely predictable outcome given the words used by the claimant in those documents. It is also sufficiently far removed from the sort of wording that would be expected if the claimant's concerns were not to remove the CEO but rather simply report compliance concerns with at least an element of public interest (as he contended). Rather, we conclude that the claimant's belief was that this disclosure was in fact made purely in the claimant's private interest to effectively oust the functions of CEO and hand them over to the Board as a whole, given the clear difficulties in the working relationship that had arisen by this point and are evidenced by the claimant's own communication.

PD8 – 31 July 2023

164. This is said by the claimant to be an email from the claimant to the second respondent alleging potential concerns about the risk of making fraudulent misrepresentations to a large accounting company that was about to contract with the first respondent (and later did) for making business-to-business payments.

165. We find as a matter of fact that the claimant disclosed the content of the email sent at 9:21 to his employer (p976). It included as content that there was a Slack communication by a particular employee about the disclosures that would made to the accounting company and that these would not include individual payment failures until after the contract was signed. The claimant stated that this specific query had been raised by the accounting company and the claimant stated '*I am concerned that this is deliberate withholding of material information and as such is a fraudulent misrepresentation. This is very likely to expose Crezco to legal claims and can easily ruin us.*' It also included concerns about the culture at the first respondent.
166. The email was sent in the context of there being a dispute about the correct way to measure failure rates when reporting this.
167. We find as a matter of fact that when making the disclosure the claimant did believe that the disclosure tended to show a breach of a legal obligation. This is because we accept the claimant's evidence that this was the case, that evidence not having been meaningfully undermined by anything. It is also well-supported by the clear words used by the claimant in the disclosure itself. The fact that there was a dispute about the correct way of measuring the failure rates does not establish that the claimant was wrong, and knew he was wrong, as a matter of fact.
168. We find as a matter of fact that the disclosure was in the claimant's belief made at least in part in the public interest. This is because we accept the claimant's evidence that this was the case, and that evidence was not meaningfully undermined by anything else. It is consistent with the action taken. Whilst the claimant's working relationship with the second respondent was clearly in significant difficulties at this time, we did not conclude that it was made purely in the claimant's private interests, whether to support negotiations or in litigation, or was effectively contrived in order to pursue late legal claims. This is because there is insufficient cogent evidence on which we could make such a finding. The fact that the claimant

has brushed up his CV (undisputed) and had contacted solicitors by this time is insufficient.

PD9 – 21 August 2023

169. This is said by the claimant to be the claimant's grievance to the first respondent's board, repeating some of the above alleged PDs and also alleging ageist remarks by the second respondent. This is also said (and accepted) to be a protected act for the discrimination claim.
170. We find as a matter of fact that the claimant disclosed the content of the grievance as set out in the hearing bundle at p1025. That content included (but was not limited to): statements about the 3 April and 9 May 2023 spot checks and statements about KYC failures, and the respondent's contractual and AML obligations in respect of them; statements that incorrect information had been disclosed to the FCA; statements that the second respondent had wanted to provide false information to the first respondent's insurers; statements and detail about attempts to streamline the KYC checks and sanctions/PEP screening; and the claimant's concerns as set out in PD8 with the accounting company.
171. The grievance also included allegations of age discrimination. Specifically, the grievance included *'I am writing to set out my concerns in relation to: The remarks that Ralph has made in relation to my age and his approach to age discrimination generally.'* Much later on in the grievance he states *'Although not strictly related to our compliance issues, I do think we need a renewed commitment to treating employees fairly irrespective of age, sex, race etc. There have been a number of occasions where Ralph has made unfavourable comments about my age – (incorrectly) referring to me as a sexagenarian and I am concerned he shows a preference against older candidates for recruitment. We need to make sure these kinds of biases do not creep into our ways of operating. Aside from being unlawful, they may also stand in the way of us recruiting the best talent.'* Also, in the part about KYC checks for persons of significant control the claimant refers to the sexagenarian allegation.

172. The grievance also made allegations about retaliation for having made the disclosures above.
173. The grievance also included that the claimant understood that the appropriate course of action, strictly speaking, was for the first respondent to investigate the grievance, have a formal meeting with the claimant, and provide a written outcome. However, the claimant felt that they should focus on the future, and *'the steps necessary to return our working relationship to its previous good form In the first instance I suggest that we hold a Board meeting to discuss next steps in good faith and see what we can agree among ourselves. In due course, a discussion facilitated by a third party mediator might be helpful and I would certainly be prepared to participate in that. If I may be frank, from my point of view I would be looking for: Ralph to recognise that he and I are both directors of the company, on equal terms, and that I am not a subordinate to whom he can issue "commands"....'*
174. We find as a matter of fact that when making the disclosure the claimant did believe that the information tended to show breach of legal obligations. We make this finding because we accept his evidence of this that was not meaningfully undermined by anything. Also, it is well-evidenced on the face of the words used.
175. We also find as a matter of fact that the disclosures about compliance-type matters was in the claimant's belief made at least in part in the public interest. This is because we accept his evidence of this that was not meaningfully undermined by anything. It is consistent with the action taken. We contrast the content of this message with that of PD 7: given the differing content, we consider that a different conclusion can be reached about this particular disclosure. Overall, this disclosure contained, as a matter of fact, very different content and allegations to PD7. We also reject the respondent's contention that this was made purely with private interests in mind. This is because we accept the claimant's strongly held belief in adhering to a strict adherence regulations, something which was clear in his own evidence and consistent with and supported by the documentary position more generally. Someone who did not consider the public interest

element would be less likely to be having the communication the claimant had with the second respondent, or on the terms that he did.

176. However, we do not find that the claimant, as a matter of fact, held a belief that his disclosures about alleged age discrimination were made in the public interest, in whole or in part. Whilst we accept that on the face of the words used the claimant could have wider issues in mind. However, we do not accept that this was in fact his belief when he was making that allegation. Rather, we find as a matter of fact that this part was included purely with the claimant's private interests in mind because they were included only in the context of the claimant's dispute with the company and his belief that he was going to be forced out. By this time the claimant's attempted coup had failed.
177. Overall, we did not find as a matter of fact that the claimant's disclosures which we later concluded were protected were made in bad faith. This is because there was an absence of cogent evidence on which we could make such a finding.

(v) Detriments

178. We make the following findings of fact in respect of the alleged detriments.

Alleged detriment 1

179. This was responding in an aggressive and demeaning way to PD1, namely the second responding stating '*I do not want compliance, regulatory, or board reporting advice. I am quite confident in this department*'. We find as a matter of fact that the messages on p563-4 were sent by the second respondent to the claimant. However, we accepted the credible evidence of the second respondent that the explanation for these messages were that they were about branding. This is supported by the documentary position: at 8:44 the claimant suggests using respondent-branded presentation templates; the second respondent replies '*This is the least important stuff*

ever *I do not care about this at all....*' The claimant says *'Well, I am not saying this is the key decision, but equally I see no reason not to do things correctly, especially if it takes zero extra effort'*. The second respondent replies *'We need you to focus on what is important. We are coming into this area once again where duties are not clear. I do not want compliance, regulatory, board reporting advice. I am quite confident in this department.'* The claimant replied: *I do not [sic] this is the most productive approach. I think we must support each other wherever possible. I think you will find that I am focussing on what is important 24/7/365.'* The discussion soon moves on to talk about access to Currency Cloud.

Alleged detriment 2

180. This was responding in an aggressive and demeaning way to PD2. The claimant has morphed this detriment to a degree on the basis of the chronology. The claimant now relies on the emails sent later on 9 May 2023 at p683. We find as a matter of fact that these were sent. In particular, they included at 10:01pm *'I do not have time to argue. I have tried to call to save time from these tiresome and unsustainable emails. I would like some confirmation please...'*
181. Later at 22:58: *'You are too good to help with spelling corrections? I help correct all work at Crezco [in response to the claimant previously stating 'I don't think you should be asking me to do spelling corrections.]] ... I do not have the time or energy to deal with this poor and opaque communication anymore. You are a good person, I know this, but recently your behaviour has been incredibly distracting and disruptive. It is quite clear you are upset with what I said about Victoria's work and my unwillingness to give your wife a job. I tried to be gentlemanly and support where possible, short of further financial costs to Crezco, but I received only further protestations, and personal insults towards my character and capability to run this company from you both. Business has become personal to you, but I do not have time to make this personal. To me, it seems like you: a) do not want to work with me; and b) do not trust me to lead Crezco. Please think carefully about*

what you want. Take a week off if you like, but this cannot and will not continue.'

182. However, we do not find as a matter of fact that this treatment was because of or materially influenced by any of the disclosures in alleged PD2 (or elsewhere). This is because the best inferences can be drawn from the actual wording used by the parties. Alleged PD2 was about specific information reporting to the FCA. However, it is plain that the parties then ended up in disagreement about (a) communication style (b) the claimant being asked about spelling corrections and (c) the issues about the claimant's wife working for the first respondent. We are satisfied that the respondent has shown the factual reasons for that treatment (ie. the fact of disagreement alone), which were not materially influenced by the alleged disclosures made.

Alleged detriment 3

183. This is responding in an aggressive and demeaning way to PD4. These were Slack messages sent by the second respondent to the claimant on 17 May. The content of the messages is as set out on pp.695-696. These included, after the dispute (earlier) about the correct responses to the first respondent's insurers, the second respondent stating *'If you cannot move quickly, I will have to find someone else to do this work. Just tick 'yes' and don't raise questions or increase our premiums. this is how we got here.....I will do it, yes. Forget it. Clearly we cannot work together. It is 100% division of responsibilities.....I will not try to do this again. If I need help, I will find someone else to help.'* We also find as a matter of fact that these messages were sent in response to PD4. This is plain: they are sent as a direct consequence of the claimant's earlier messages which amounted to PD4. The second respondent's reaction to those messages was such that he was (as an issue of fact) materially influenced by the claimant's disclosure 4.
184. It was not in dispute that by around the time of 31 July 2023 the claimant was receiving legal advice in respect of his employment situation.

Alleged detriment 4

185. This is the stripping of the claimant of his responsibilities as CTO and appointing other employees to undertake them. We find this not proven as a matter of fact for the following reasons, focussing on the ways in which this is said to have happened by the claimant. Firstly, we do not find that the second respondent took over the IT team by arranging meetings with the claimant's subordinates to discuss strategic development directions and not inviting him. This is not supported by clear and cogent evidence. The claimant relies on emails sent by the second respondent on 15-16 May 2023 (pp1632-1633). However, we consider the fact that the second respondent had a meeting with some of the IT employees is not sufficient to prove the alleged element of the detriment. This is because a CEO is perfectly entitled to have meetings with the employees, and the claimant was copied into the various emails. It follows that he cannot be properly considered to have been excluded. We also accept the second respondent's credible evidence, consistent with the emails, that he was simply trying to reach out to employees to have a discussion.
186. The second way in which this detriment is said by the claimant to have occurred is in the second respondent appointing another employee to undertake the production of data reports for marketing meetings and Board reports. We accept and find that at least one point another employee was asked to prepare such a chart. However, this was in the context of a growing company and the claimant accepted under cross-examination that in a growing company tasks would change over time. This was also not a task that in our judgment, as a question of fact, went to the heart of the claimant's role. Also, the claimant still had a role in this task because he was asked to provide the data.
187. Thirdly, the claimant says that the request by the second respondent on 10 August 2023 for information about the company's IT systems (and bringing in a consultant) proves the alleged detriment. It is right, and we find, that a request for IT keys, passwords etc was made of the claimant on 10 August. However, we consider (as a question of fact) that this request was not

actually stripping the claimant of responsibilities and appointing others. This was (as an issue of fact) a management instruction and nothing more than the management of key man risk (accepting the second respondent's evidence of this, consistent with the request documented at p993). This was triggered by both the potential of the claimant leaving the company one way or another, but also using an IT consultant to ensure business continuity was not usurping the claimant's role (as a question of fact), it not being evidenced as being expressly the claimant's role to hold sole and absolute authority of the first respondent's IT systems.

188. In any event, we do not find that those things that did happen were because of, caused by or materially influenced (as a question of fact) by any of the claimant's disclosures, protected or otherwise. This is because these events were routine for a growing business, and the increased risk to the business which was the reason for the 10 August 2023 requests was a result of the fact that the claimant could leave at any time, whether by dismissal, resignation or by agreement. Those things were not materially influenced by any of the disclosures, in our judgment. The risk of the claimant leaving was because of the demonstrable breakdown in the working relationship between him and the second respondent, and not in any way because of his disclosures.

Alleged detriment 5

189. This is said to be stripping the claimant of financial and operational responsibilities he had been undertaking. We find this not proven as a matter of fact. Addressing the points raised by the claimant to support this allegation, it is correct that at p797 on 13 June 2023 the second respondent sent the claimant a Slack message stating '*Igor, following your question from last Friday, I will now take over finance....*' However, we accept the credible oral evidence of the second respondent under cross-examination (supported by and consistent with this message) that the allocation of those tasks from the claimant to him was by agreement and reflected the deterioration of their working relationship. In effect what had happened was that the claimant had stated that he would limit himself to CTO tasks only

with the consequence that anything outside of that role would fall to the second respondent. In any event, we find as a matter of fact that ultimately the task of allocating financial and operational duties was a matter for the CEO. The documents about the working relationship between the CTO and CEO expressly stated that the CEO had the final say in the event of any disagreement. We also do not find as a matter of fact that this was because of, caused by or was materially influenced by any of the claimant's disclosures. This is because there is an absence of cogent evidence that this was the case. Rather, this treatment was a consequence of the deteriorating relationship between the claimant and the second respondent and the claimant's own decision to limit himself to CTO matters.

Alleged detriment 6

190. This was said to be making offensive comments about the claimant's age on 22 May 2023. We find this not proven as a question of fact. This is because there is insufficient evidence in all the circumstances. The allegations are effectively one person's word against another and are disputed by the second respondent. We specifically find that the sexagenarian comment was not made, accepting the second respondent's clear and credible evidence that he would not have used that word because he had to look it up when the allegation was first raised. Similarly, due to a lack of cogent evidence, we do not find that comments that the claimant was old and chubby were made. We accept, because the second respondent accepted in cross-examination, that a single reference to the claimant as 'Dad' may well have been made, as an off-the-cuff comment in the office. Whilst it was not in dispute that the claimant and second respondent had differing views as to how strict they should be on compliance, on the evidence we do not find that those views were age-related. They were simply different attitudes. In any event, we find that the single reference to the claimant as 'Dad' was not because of, caused by, or materially influenced by any of the claimant's disclosures, protected or otherwise. This is because of a lack of cogent evidence that this was the case. It was unclear when any such comment might have actually been made and so could have predated the disclosures. Also, it was plainly on the evidence an

informal remark that did not have anything to do with the attitudinal differences between the claimant and second respondent.

191. Although not strictly relevant to alleged detriment 6, we do find that the second respondent made isolated references to the claimant and his father as 'just a bunch of old men' (not disputed) and 'grumpy old men' (clear on the documents: p1131). This was not enough, however, to prove the other matters alleged by the claimant in all the circumstances. These comments were sufficiently isolated to not indicate a broader pattern.

Alleged detriment 7

192. This was said to be demanding that the claimant not share any further regulatory concerns with the team. We find that this happened to the extent it was documented: at p739 by email on 23 May the second respondent said to the claimant '*Please do not publicly share your regulatory fears with the team.*' We also accept, as a matter of fact, the second respondent's evidence about this because it is credible and supported by the email as a whole. Accordingly, we find that this was a management instruction made because the claimant's regulatory concerns were proving confusing to the team given the genuine disagreement between the claimant and second respondent about the correct regulatory approach. We also find as a matter of fact that this instruction did not prevent the claimant from raising regulatory matters with the Board or the FCA. We also accept that the purpose of the instruction, as a matter of fact, was to achieve a cohesive team, given the context of the instruction.

Alleged detriment 8

193. This was said to be falsely accusing the claimant of slowing down product development. We find this not proven as a matter of fact. It is correct that the email dated 23 May at p739 includes '*Your unwarranted fears are slowing down both Ben, Lee and product development, potentially catastrophically.*' However, we also accept the credible witness evidence

(supported by this email) of the second respondent that the disagreement between the claimant and the second respondent about compliance issues was having this effect. This is because the claimant had been asking the wider team not to work on particular functions until the regulatory permissions he thought were required had been received. In those circumstances, this was not a false allegation.

Alleged detriment 9

194. This was said to be asking the claimant to step down as a director and reduce his salary in the same email on 23 May. We find this not proven as a question of fact. It is correct that in the email the second respondent stated *'Finally, you are constantly reminding me you are a director in Crezco. From my perspective, you are too risk-adverse and are overly worried about being personally liable (as a director), which slows down productivity. You do not need to be a company director to do your job or be a co-founder. If you wish to resign as a director for liability concerns, and for constantly disagreeing with me, please do. Resigning as a director will not affect your job or rights in Crezco.'* However, the wording of this email does not support the alleged detriment. This is because we consider the proper construction of the email to be a genuine attempt by the second respondent to give the claimant a way of addressing his liability concerns but retain all of the benefits of his role. It was worded *'If you wish to resign'* and was not, in all the circumstances, the implied push the claimant alleges.
195. In any event, we find as a matter of fact that this communication was not because of, caused by, or materially influenced by any of the claimant's disclosures, protected or otherwise. This is because there is an absence of cogent evidence that this is the case. This communication arose from the fact of the deteriorating working relationship between the claimant and the second respondent, which we consider to be sufficiently separable from the fact of the claimant's disclosures (protected or otherwise).

Alleged detriment 10

196. This was said to be making untruthful and derogatory statements about the claimant to Oliver Richards on 9 June 2023. The email is at p874 and we find that the content of that email was communicated. We find the allegation unproven as a matter of fact. The content of that email is neither derogatory nor established by the claimant to be untruthful (the burden is on the claimant to establish this). The alleged untruths were about the extent of the claimant's wife's role, that the claimant had split up with his wife, and that the claimant was furious with the second respondent. It is correct that there was a dispute between the parties about the extent of the claimant's wife's role. This arose in part because her role was not well-defined and she undertook some tasks that, in the second respondent's view, were outside of her role. However, the claimant has failed to establish in evidence that the content of this email, to the extent it stated that '*Igor's wife helped us a little in the past with payroll and etc.*' was untruthful. In fact, the wording used is not on its face untruthful because it is not particularly specific, and the use of the word 'etc.' clearly entails things other than payroll. The fact that it potentially undervalued the claimant's wife's work does not make the communication untruthful. Also, there was a dispute of fact between the parties about whether or not the claimant had split up with his wife at that point. The claimant says this was not the case. The second respondent said he formed that view on the basis of what the claimant had told him. However, in order for this detriment to be proven, the claimant must establish that what the second respondent says in this email was untruthful, ie. he must prove a lie. We do not find that the claimant has adduced sufficient evidence that this was the case in all the circumstances. This is particularly so given the potential for unclear comments to be misinterpreted: the scenario where the claimant and his wife were briefly apart such that the second respondent might reasonably form that impression from what the claimant had said to him is entirely plausible in all the circumstances. Taken as a whole, we did not consider that this email was in fact derogatory about the claimant (as a question of fact) in all the

circumstances, and instead just reflected the second respondent's genuinely held views. This was also not an email sent to the claimant.

197. In any event, we find (as a matter of fact) that the communication was not sent because of, or was caused by, or was materially influenced by any of the claimant's protected disclosures. This is because it was clearly, on the face of the words used, simply a reaction to the claimant's report and email on 8 June, which was not a protected disclosure. It amounted to nothing more than the second respondent's reaction to the claimant's clear documentary attack on him, and it was also sent as a result of the historic and entirely separate disagreement between the claimant and second respondent about the role played by the claimant's wife. This is clear from the content of the email.

Alleged detriment 11

198. This was said to be encouraging the fifth respondent and Mr Richards to support a plan to dismiss the claimant. We find this not proven because of a lack of sufficiently cogent evidence that this was the case. Whilst the claimant relies on an email from the second respondent sent on 12 June 2023 (p909) and emails sent 15 June 2023 (p907-8), which also include about the claimant leaving, we consider that this only expresses the second respondent's hope about what will happen as opposed to, as a question of fact, encouraging others to support a plan to dismiss. The 15 June 2023 email also makes reference to the possibility of buying the claimant's shares for £1 rather than encouraging the others into a plan to dismiss, on our fair reading of the email. Also, these were individuals who on the evidence were plainly able to make up their own mind about what to do about the situation, and they did make their own enquiries with the claimant after the 8 June 2023 disclosure.
199. In any event, we do not find (as a matter of fact) that these communications were because of, caused by or materially influenced by the claimant's disclosures, protected or otherwise. This is because they were in all the circumstances arising from the deteriorated state of the claimant's working

relationship with the claimant and we consider this to be sufficiently separable as a question of fact to the claimant's disclosures (protected or otherwise). These emails arise from the deteriorated relationship and not the claimant raising concerns about compliance and similar matters.

200. The claimant also relies on an email from the second respondent to the fifth respondent sent on 31 July 2023 (p967) referring to receiving difficult emails from the claimant attacking the second respondent and members of the team. However, we do not find that this supports the alleged detriment. Rather it is just the second respondent stating his view that the difficulties with the working relationship had become urgent as opposed to actual encouragement to support a plan to dismiss.

Alleged detriment 12

201. This was issuing the claimant with a formal warning on 28 June. This happened by email as set out on p932. The email is headed '*Formal Warning*' and includes '*today you made another unannounced presentation to the team during our offsite further questioning our strategy. I cannot have you here if you risk making similar accusations above. It is disruptive and discouraging.*' This warning was sent in circumstances where at an offsite meeting on 28 June the claimant made an unscheduled presentation. This was expressly not at the request of the second respondent. Although the claimant asked the facilitator, an external HR advisor used by the first respondent on an ad hoc basis, if he could say a few words during a break in the day, we accept the HR advisor's clear and cogent evidence that the claimant's lengthy presentation disrupted the schedule for the day. The presentation was also clearly planned – and not just a few words – because of the slides used by the claimant which were in evidence. We accept the clear evidence from the HR advisor and the second respondent that this was highly disruptive and resulted in a heated verbal argument between the claimant and the second respondent. The presentation included effective criticisms of the company's strategy.

202. In any event, we find that the formal warning was not (as a question of fact) issued because of, caused by or materially influenced by the claimant's disclosures (protected or otherwise). This is because we find as a matter of fact that this warning was as a result of the claimant's disruptive and unscheduled presentation during a team away day and that alone. This is clear from the email itself: the formal warning was because of the unscheduled presentation questioning the company's strategy during the offsite. It was not materially influenced by the claimant's disclosures. This is because the reference to the 8 June email and presentation was simply noting the background and preceding event as opposed to being a material influence on the warning. Also, the wording of the email clearly suggests that the second respondent is concerned about the claimant criticising strategy as opposed to compliance issues. This is supported by the email stating '*You were not brought in for your strategic input and questioning it to the board is one thing but questioning it publicly in front of the whole company is unacceptable.*'

Alleged detriment 13

203. This was removing the claimant's access to the FCA regulatory site on 19 July 2023. It was not in dispute that this was removed. However, we find that it was removed in context (as demonstrated by emails sent around 20 July p946) where there was a strongly held difference in views between the claimant and the second respondent about how that data should be correctly reported to the FCA.
204. We also find (as a matter of fact) that the reason for the removal was the fact of this disagreement (given the context, above), and that ultimately the second respondent as CEO had the final say in this matter. In those circumstances, the removal was not because of, caused by, or materially influenced by any of the claimant's disclosures (protected or otherwise). It was solely because of the disagreement about the correct reporting of fraudulent payments, where the second respondent's view was that the claimant was wrongly categorising payments as fraudulent (for example, where in fact payments were blocked for other reasons). It was not

materially influenced by any of the claimant's disclosures, as an issue of fact.

Alleged detriment 14

205. This was the second respondent issuing the claimant with 'commands' in circumstances where the claimant reported to the Board. We find that this language was used by the second respondent, for example by email on 24 July 2023 (p948).
206. It was also correct to find as a matter of fact, based on the documentary evidence (these findings also being relevant to our other decisions): the claimant's service contract stated that his role was to act as the CTO; his appointment letter dated 6 April 2020 stated that his responsibilities would include leading the infrastructure, information security and IT development (and this was accurate); on the basis of the first respondent's Payment Services Provider Regulatory Business plan dated 2 August 2022, the second respondent was the CEO and head of all business functions until appointment of a separate MLRO and COO, and '*All decisions ultimate [sic] rest with Ralph*'. The decision making process rested upon the views of the claimant and second respondent '*In the event [they] cannot agree, the ultimate decision rest [sic] with the CEO*' (p328). We consider that the business plan was accurate on this point: the claimant accepted under cross-examination that everyone's understanding was that the second respondent had the ultimate say and the casting vote. The claimant also accepted under cross-examination that the second respondent was responsible for operational compliance (notwithstanding the claimant's interest in compliance matters, as CTO and director).
207. In any event, we find as a matter of fact that the command was not (as a question of fact) issued because of, caused by or materially influenced by the claimant's disclosures (protected or otherwise). This is because a lack of cogent evidence that this was the case. The command followed an exchange of emails where there is a disagreement about the hiring process between the claimant and second respondent: the second respondent

wanted to hire someone but the claimant felt that as CTO he should have the first interview. It is plain from the email conversation that the reason for the command was the disagreement between them about who was responsible for hiring and how much they could dictate the process, as opposed to having anything to do with the claimant's disclosures. More specifically, the second respondent had asked the claimant to organise a second stage interview and the claimant refused to do this, asserting that the candidate should do a first round interview with him. The emails are intransigent in nature and demonstrate, as a question of fact, the deteriorated working relationship between the claimant and second respondent.

Alleged detriment 15

208. This was falsely telling Mr Daly (a prospective hire) that the claimant had already left the company. This did happen: it is demonstrated by email sent by the second respondent on 1 August (p970-1). This includes '*I'm keen to continue our discussion regarding our open CTO role*'. This was plainly false: the claimant had not yet agreed to leave the company. That was simply the second respondent's hope at that stage.
209. However, we do not find as a matter of fact that this treatment was because of, caused by or materially influenced by any of the claimant's disclosures (protected or otherwise). This is because the treatment was only because there was a planned meeting the following day at which a settlement involving the claimant's agreed exit from the company would be offered. This is plain as a matter of logic. It was not in any way affected by the claimant's disclosures, on the evidence. The claimant's planned exit settlement meeting (the fact of which was agreed by the parties to be admissible in evidence, any relevant privilege or protection having been waived) was also in all the circumstances because of the deteriorated relationship between the claimant and the second respondent, and was not materially influenced by the claimant's disclosures.

Alleged detriment 16

210. This was demanding that the claimant hand over his responsibilities as CTO (including handing over administrative access) long before his employment had been terminated. The claimant relies on various communications which were sent on 11 August (p994), a Slack message on 15 August (p1011), an email on 5 September (p1082), emails on 6 September (p1087), 7 and 8 September (p1084), 11 September (p1100), and 12 September (p1098), 6 September (p1087), and Slack messages on 20 September (p646 and 1293). It is correct that over those messages the claimant was asked to provide administrator access before his employment was terminated. However, they do not amount to demands that he hand over his responsibilities as CTO. It was not inherent in the CTO role (on the evidence overall) that he had absolute and sole control over all IT access and the CEO had ultimate authority in the company. In the circumstances, we find as a matter of fact what was sought by the second respondent was mitigation of key person risk and normal business continuity planning. This was also at a time when the working relationship had clearly deteriorated to a very great extent and, as a matter of fact, the claimant could have resigned at any time.
211. We also do not find as a matter of fact that this treatment was because of, caused by or materially influenced by any of the claimant's disclosures (protected or otherwise). This is because the requests were clearly made for the reasons set out above and were nothing to do with the claimant's disclosures. They arose from the fact that the claimant could resign at any moment and equally there was an ongoing process by which he could leave the company. In those circumstances continuity planning was the natural reason for the treatment. The fact that the claimant may leave the company was sufficiently separable (as a question of fact) from the claimant's disclosures given that the fact of his leaving was to do with the deteriorated working relationship, not the disclosures themselves.

Alleged detriment 17

212. This was responding aggressively to the claimant's grievance and accusing the claimant of making racist comments. We find that this did happen: it is proven on the documents. By Slack message on 21 August the second respondent quoted from the claimant's grievance: *'I do think we need a renewed commitment to treating employees fairly irrespective of age, sex, race etc.'* The second respondent then stated *'I have received so many complaints about your racist comments towards others'* and then included a screenshot from the claimant's offsite presentation which makes has a potentially offensive drawing of an Eskimo and generic 'tribespersion'. It then states *'You claimed in the office, overheard by others, that the Nigerians are nasty people who invented slavery We do this either way or hard way...'*
213. This is further evidence of the deteriorated relationship between the claimant and second respondent.
214. However, we do not find as a matter of fact that this treatment was because of, caused by or materially influenced by any of the claimant's protected disclosures (our conclusions on which disclosures were protected are below). This is because whilst it is plainly a result of a particular section of the claimant's grievance, it is not on its face a response to the relevant information (nor can that be implied, in all the circumstances) about compliance-type issues. Rather we find that it was a response to the section about age discrimination. This is because the Slack message was on its face a direct response to that particular part of the grievance and not a response to the compliance issues, given that the message itself quotes the relevant part of the grievance. For the reasons below, we found that this part of the grievance (that alleged detriment 17 was a direct response to) was not a protected disclosure. We note that this detriment was not alleged to be a victimisation detriment.

Alleged detriment 18

215. This was said to be falsely accusing the claimant of producing incorrect data reports to MMC (an investor) and the claimant directly. These allegations were on pages 1034 and 1023 (the claimant including a Slack message from the second respondent which states that '*seemingly the data we have been reporting to investors...when you were preparing your board presentation, was incorrect....Apparently you are wrongly subtracting...A data inconsistency which makes us look worse and I need to now explain to external parties It's like you are trying to kill the company*' on 20 August 2023). We find this not proven as a question of fact. This is because, as a point of fact, for this allegation to be proven the claimant must establish that the allegation was false. The claimant has failed to adduce sufficient evidence to show that this was in fact a false allegation. We accept the second respondent's clear evidence that, on reflection, he wasn't sure whose error it was. However, this does not establish that the second respondent made a false allegation. This has connotations of him knowing that the allegation he was making was false (as opposed to simply alleging that he made an incorrect allegation). This detriment was expressly alleged in the Grounds of Claim at paragraph 62 as a false (rather than simply incorrect) allegation.

216. In any event, we do not find as a matter of fact that this treatment was because of, caused by or materially influenced by any of the claimant's disclosures (protected or otherwise). This is because it was plainly on the evidence (given the exchange) just the second respondent's reaction to how he saw the figures, and not anything to do with the claimant's disclosures.

Alleged detriment 19

217. This was said to be falsely accusing the claimant of unilaterally increasing his own salary. This allegation is not proven as a matter of fact. It was pleaded as a false allegation. However, the evidence falls short of establishing this. The relevant page was at p1053: on 25 August the second respondent sent the claimant a Slack message and the claimant responded

by email. However, the content of the Slack message clearly falls short of making an allegation of unilaterally increasing salary. Rather it states: *'I'm doing payroll, but the problem is you've seemingly been paid £150k all year. However, given the data search you've required, I cannot find any signed agreements to confirm this. In fact, your employment contract reads £110k year.'* This does not amount (as an issue of fact) to the alleged detriment.

218. In any event, we do not find as a matter of fact that this treatment was because of, caused by or materially influenced by any of the claimant's disclosures (protected or otherwise). This is because it was clearly just a query arising from the second respondent doing payroll and not having the relevant paperwork to hand, and not because of anything else. There is no good evidence or reason to find otherwise.

Alleged detriment 20

219. This was said to be falsely accusing the claimant of deleting the former Finance Director's emails. It was expressly pleaded as a false allegation. It is not proven, however, as a matter of fact. There is insufficient evidence to support it. The relevant emails were on p1064 on 25 August 2023. The second respondent and claimant are emailing about the claimant's wife's emails. The second respondent asked for them, he is provided with an archive file, and he prefers to access them in a different way. Whilst it is correct that the second respondent states *'I believe your delay in response clearly shows you have been able to curate and delete the emails.'*, we accept that this honestly reflected the second respondent's belief at the time, and it was made in circumstances where the claimant was asked about he could access the emails at 10:43, and by 14:30 he still is not able to access them.

220. In any event, we do not find as a matter of fact that this treatment was because of, caused by or materially influenced by any of the claimant's disclosures (protected or otherwise). This is because it was plainly just the second respondent's reaction to the deteriorated working relationship, accepting his evidence of a complete lack of trust in the claimant (supported

by remarks in emails he made to others around this time). This also happened the day after the claimant was on suspension.

Alleged detriment 21

221. This was demanding that the claimant send a GPS location marker to the second respondent to prove his location whilst on suspension. We find this proven by the Slack message at p1056 (25 August 2023).
222. However, do not find as a matter of fact that this treatment was because of, caused by or materially influenced by any of the claimant's disclosures (protected or otherwise). This is because, reading the correspondence between the claimant and second respondent as whole, and taking into account their evidence, it was plain that what had occurred was a complete breakdown in trust between the second respondent and claimant, the claimant was on suspension, the second respondent had formed the belief that the claimant was or may have been altering emails, and the second respondent became highly suspicious of the claimant more generally given the deterioration of the working relationship. None of this was, however, to do with the claimant's disclosures: it was influenced only by the claimant's conduct whilst on suspension.

Alleged detriment 22

223. This was said to be falsely accusing the claimant of unauthorised access and changes to the company's computer systems. This was pleaded as both unfounded (paragraph 72 Grounds of Complaint) and false (paragraph 89(v)). We find it not proven as a matter of fact. This is because, for this allegation, the claimant must establish as a matter of fact that the allegation was unfounded or false (as opposed to simply incorrect). There is insufficient evidence to make such findings, the burden being on the claimant. The allegation itself is in a letter dated 19 September 2023 (p1715) from the first respondent's solicitors. This in fact simply states '*your client continues to access and to exercise control over Company IT*

systems...over the weekend of 16/17 September, your client has not just continued to access Company systems, but has seemingly run processes, which have had a negative effect on the operation of the Company's website....there is no basis whatsoever on which your client should be undertaking any activity or accessing in any way Company systems, operations, or information...'

224. However, these were not, on the facts, unfounded allegations. Whilst there was a dispute between the parties about exactly what was and was not permitted in terms of the claimant's activities on suspension, it was not disputed that the claimant did have access and did run a process on the system (albeit adverse effects of that process were not admitted). In circumstances where the claimant in fact was doing at least some of the things alleged, the letter cannot be considered unfounded. It also has also not shown to be false by the claimant: whilst it is correct as a matter of fact that the claimant was in effect required by the second respondent to maintain access to at least some systems (because he was asked to do some tasks whilst on suspension, and to respond to messages which required system access to reply), this falls short of showing that the allegations in the solicitor's letter were false. At best, it demonstrates that there was a reasonable dispute about what was permitted and what was not permitted.
225. In any event, we do not find as a matter of fact that this treatment was because of, caused by or materially influenced by any of the claimant's disclosures (protected or otherwise). This is because we accept the second respondent's evidence (consistent with his emails to the claimant around the time) that he had genuine concerns about the claimant's conduct whilst on and around the time of suspension, in terms of email and system access. There was no good evidence to undermine this.

Alleged detriments 23, 24, 25, and 26

226. We find that these all happened as a matter of fact. A meeting was convened on 2 August 2023 during which the claimant was encouraged to

leave the company and forfeit a significant proportion of his shares. This was hoped to be a settlement meeting, and we consider the evidence as a whole, including the proposed script, is sufficient to prove this detriment to the extent above. Also, it was not in dispute that the claimant was suspended (by email dated 24 August 2023, p1051), he was dismissed, and his appeal was not upheld by vote of the Board.

227. The suspension email dated 14 August 2025 indicated that the suspension was made in accordance with the claimant's service contract. It stated that the basis for the suspension was *'we believe that relations have broken down and that there are grounds to consider that there has been gross misconduct on your part, and these warrant suspension. You should not therefore attend the office or carry out any work on behalf of the Company until further notice.'* The claimant was paid in full during the period of suspension.
228. However, we do not find as a matter of fact that this treatment was because of, caused by or materially influenced by any of the claimant's disclosures (protected or otherwise). This is because of an absence of cogent evidence that this was the case. Rather, we find that this treatment happened because of the deteriorated working relationship between the claimant and the second respondent, accepting the second respondent's evidence as to the reasons for those things. We are satisfied that the deteriorated working relationship was sufficiently separable as an issue of fact from the claimant's disclosures, protected or otherwise. This is because they were not a material influence on what happened: it was the fact that the claimant and second respondent had completely fallen out and were unable to work together that was the reason for the suspension and dismissal. We also find that the claimant's disclosures had no influence on the appeal, accepting Mr Wood's credible evidence that this was the case. There was no good reason to doubt that evidence. We refer to our broader findings below as to the reason for the dismissal.
229. We also consider that the documented reasoning for the suspension (ie. as set out in the email at p1051) was consistent with non-discriminatory/non-

retaliatory reasons for that treatment. There was no good reason to doubt this contemporaneous documentary evidence.

(vi) The claimant's dismissal

230. We make the following findings of fact about the claimant's dismissal.
231. We find as a matter of fact, that the reason for the claimant's dismissal was the complete breakdown in the working relationship between the claimant and the second respondent. We accept the second respondent's clear evidence (corroborated, to a degree, by the other respondent witnesses' evidence) that this was the case. This evidence is entirely consistent with the documentary position. It is clear from the communications between the claimant and the second respondent – and other wider communications between the claimant and others – that the working relationship deteriorated over time and that it reached a point which amounted to a complete breakdown. Many of our facts outlined above support this conclusion.
232. We find as a matter of fact, it not really being in dispute, that there was a background of disputes (illustrated by the facts in the alleged detriments sections above) which included disputes about compliance issues and the work done by the claimant's wife. However, we did not consider that, on the facts, the evidence had showed that the working relationship was completely broken by 7 June 2023. However, subsequent to that date there were several key events which demonstrate a working relationship which was, as a matter of fact, broken and dysfunctional. This was in the context of the claimant being the second most senior employee in a team with around 20 employees.
233. The claimant and second respondent's disputes included that around 6 March 2023 the claimant was proposing involvement in a particular area of work (ie the relationship with Yapily), however, this was not accepted by the second respondent in communications suggesting that this was an ongoing issue. Specifically, by Slack message (p539) the second respondent states

'We can discuss tomorrow, but this is my area of focus You're the CTO and we need to focus on the product and getting it work I've been here before, this is super early and I will bring you in when it matters.....' This exchange was typical of an early and ongoing dispute as to the extent to which the claimant should have been involved in strategic matters. We agree with the respondents' submission as a matter of fact that the existing disagreements between the claimant and the second respondent undermine the claimant's allegation that there was a sudden change of tone from the second respondent after the alleged protected disclosures were made: this is not made out on the facts taken as a whole.

234. The key events which establish the fact of the broken working relationship include the claimant's email to the board of directors and main investor Oliver Richards dated 8 June 2023 and the accompanying presentation. The content of that is described in part above. The ultimate conclusions of the claimant's report were that the answer to the claimant's concerns were, in effect, to effectively remove the second respondent's role as CEO (this is clear from p832 and the other evidence we heard from the respondents' witnesses about what this in effect meant). In particular, we accept the credible and clear evidence from Mr McFadgen that the effect of the claimant's proposal would have been to remove the second respondent as CEO
235. Also, on 10 June 2023 the claimant emailed the two main investors, Mr McFadgen and Oliver Richards, including private messages between the claimant and the second respondent's father about the second respondent (p877). The claimant's email included stating that the second respondent's father was very concerned. The claimant's email included *'4. From the very start of the meeting Ralph wanted to reduce the discussion to the personal matters, which makes me believe that Ralph has performed my character assassination prior to it. This is very much like Ralph and, unfortunately, I have witnessed this before and know how he acts. 5. There was a fall-out between the two of us since the last board meeting. ... 11. I am sure it is not the first fall-out of the partners that you are dealing with, and it is not the first time that slander wins over truth. 12. I was just hoping that such*

experienced and mature investors as you would not be so easily deceived by the CEO full of sounds and fury. 13. I urge you to have a dedicated board meeting to thoroughly review Crezco's product strategy and endeavour to turn the company round while it is still possible.'

236. On 10 June 2023 the claimant sent a WhatsApp message to the second respondent's father (p536) describing the second respondent in highly derogatory terms. This is indicative of the broken working relationship.
237. Further, we repeat our findings above about the claimant having made an unscheduled intervention in the team offsite which included his views on the company's position and the subsequent heated exchange of views in sight of other employees. The presentation was done without the knowledge or agreement of the second respondent and indicated, as a matter of fact, that the claimant was prepared to act unilaterally in presenting a negative report about the company to employees. Subsequent to this the second respondent sent a warning email to the claimant on 28 June 2023 (p932): *However, today you made another unannounced presentation to the team during our offsite further questioning our strategy. I cannot have you here if you risk making similar accusations above. It is disruptive and discouraging. You were brought into Crezco by me to act as CTO. You were not brought in for your strategic input and questioning it to the board is one thing but questioning it publicly in front of the whole company is unacceptable...*
238. The claimant and second respondent also exchanged angry emails.
239. We repeat our finding above about that the claimant's intent behind the 8 June 2023 email and report namely that it was his attempt to effectively oust the functions of the CEO and have them over to the Board as a whole. This was on its face a direct attack on the second respondent.
240. Given all of the facts above, the only sensible factual conclusion that can be drawn was that the working relationship between the claimant and the respondent had entirely broken down before he was dismissed. We equally

consider that this amounted to a breakdown in trust and confidence between the claimant and the first respondent given the respective positions of all involved. We do not, however, find that the cause of the breakdown was the claimant's disclosures, as the claimant also submitted. This is because we considered that there was a lack of cogent evidence that this was the case and it was rejected by the second respondent. Rather, the real cause of the breakdown was the claimant's reaction to the various events happening and it the breaking point of the relationship was, in our judgment, the attempted coup by the claimant.

241. We reject as a matter of fact the suggestion that a reason for the claimant's dismissal included any desire on the part of the second respondent to have a younger workforce. The claimant relies on a reference by him to '*we must be a younger, faster moving company*' (by email dated 15 June 2023) from the second respondent. However, we accept the second respondent's clear and credible evidence that in fact he meant a younger company and it was not a reference to the average age of the employees, rather it was part of his strategy to be 'fast moving'. This was type of phrase was used by the second respondent in his communications generally and so we consider this to be supportive of his evidence.
242. Ultimately, we found the evidence of the second respondent to be, overall, consistent, honest and credible, and generally consistent with the documentary position. He also made concessions (such as about some of the alleged protected disclosures set out above) which was to his credit. These more general findings about his evidence were not determinative of our findings about his evidence for the reasons for why the claimant was treated as he was, but they were supportive of his position generally.
243. We also considered that when the second respondent gave evidence to the effect that he was not particularly concerned by the claimant's disclosures about compliance (him being confident of his position about what was required from a compliance perspective) this was particularly credible. In that scenario, although this was not determinative, he was less likely to subject the claimant to a detriment for making those disclosures.

244. We also accepted Oliver Richard's clear and compelling evidence that there was nothing to do with the shares that motivated the dismissal of the claimant. The fact that if the claimant was dismissed then shares could be made available as an incentive for new employees amounted to nothing more than usual business practice for a start up and did not provide a reason for the claimant to be dismissed. The fact that those involved were conscious of the share position upon dismissal did not mean that this amounted to a motivation in the circumstances as they were.
245. However, we also find that the decision to dismiss was (as a fact) predetermined. Evidence of the decision being predetermined included the following.
246. By email dated 9 June from the second respondent to Oliver Richards it was stated that *'Igor probably realises he is not the long-term CEO of Crezco. I want to hire someone who has built Wise, Revolut, Airwallex, etc., before and knows all the problems we will face.'*
247. By email dated 15 June to the fifth respondent, Mr Richards and other at Element Ventures the second respondent stated *'My plan next would be the following....Igor is not a CTO....so I would make Ben Page interim-CTO....It should not have come here, but the Rubicon has been crossed. Culture matters and I cannot work with someone who is quietly collating incriminating fragments of my emails or secrete presentations while I drive forward to complete projects...I would be crazy to trust him again and we must be a younger, faster moving company.'*
248. On 12 June (p909) the second respondent emailed the fifth respondent, a member of Element Ventures and Mr Richards stating *'Need to find an interim hire (ideally a CTO) to manage Igor's transition, get hold of access information and etc.'* There were plainly steps being taken to prepare for the claimant's departure before the decision was announced, and these went beyond just contingency planning in all the circumstances.

249. Also, on 19 June to the same people the second respondent stated (p907) *'Replacing his duties, I am quietly talking to the engineering team. Not about Igor, but about how things run....We will not have a CTO for the short-term until someone awesome comes along....I do feel bad for Igor, and I'm not angry, but this must be done. He can no longer be trusted and could potentially go nuclear with clients and / or key partnerships....he is not the person to take us to the next-level and beyond.'*
250. On 22 August 2023 WhatsApp messages between the second respondent and Mr McFadgen included the second respondent stating *'it would be good to know you agree that Igor coming back would destroy value....We need to work on him accepting that settlement agreement and moving.'* The reply from Mr McFadgen was *'...Agree Igor should not come back, the relationship seems irreparable to me.'*
251. On 5 September 2023 the second respondent stated in a message to the HR advisor *'...we will have to book a meeting with Igor next week to discuss the orderly exit – intermediate leave – breakdown in partnership.'* He also stated in a later exchange *'I just can't believe that it is so difficult to get Igor to leave'.*
252. On 17 September the second respondent stated in a WhatsApp message with Mr McFadgen *'I expect Jo [the HR advisor] will provide a report early this week...we have a board meeting in 24 hours after receiving the report, and formally dismiss Igor as an Intermediate Leaver. It will be the worst deal he gets. If he goes to tribunal, it will take months by which time I will have got back control of our systems, been able to do forensic [sic] analysis on activity and he will [sic] be found guilty of misconduct.'*
253. We also find that the claimant's dismissal was materially affected (as an issue of fact) by the involvement of the HR advisor. As was clear on the documents, she was providing HR advice on the dismissal to the second respondent. However, she equally was meant to have been commissioned to produce an independent report on whether the state of the working relationship. However, we do not find on the facts that she operated in an

independent manner in producing her report. That report was plainly relied on in part by the board in making the decision to dismiss. There was significant evidence that, as a fact, the HR advisor was closely aligned to the second respondent's position. For example, there was a use by a laughing emoji about the claimant and she expressed words to the effect of frustration and anger as to the claimant's conduct. The HR advisor's report was also provided without checking with the claimant whether he was going to send in further evidence and there was no warning to the claimant that the report was about to be finished. This was indicative of a lack of interest in the claimant's position. Although the HR advisor carried out a consultative meeting with the claimant to inform her report she did not carry out one with the second respondent. Rather, she relied only on her WhatsApps with the second respondent to inform her position. However, as a matter of fact, this did not involve any meaningful discussion or testing of the second respondent's position.

254. We also find that the HR advisor was, in her oral evidence, confused about the extent to which she had taken into her WhatsApps with the second respondent. Given that this was the source of information she had about the working relationship from the second respondent she must have taken them into account. However, she also stated in evidence that she did not take those WhatsApps into account.
255. We equally do find, as a matter of fact, having heard the HR oral advisor's evidence and reflections on the process, that she did act in good faith and would have done somethings differently with hindsight. She was also not experienced in this type of process.
256. Taking the oral evidence and content WhatsApp messages between the second respondent and the HR advisor as a whole, we find as a matter of fact that the lines between giving HR advice and preparing an independent report had become blurred and she was unable to act with true independence in writing her report about the state of the relationship between the claimant and the second respondent. The evidence of the HR advisor was that she didn't seek a consultative meeting with the respondent

because he was stressed, but she recognised that with hindsight she should have held one with him.

257. Mediation was, on the facts, raised by the claimant. We considered that there was evidential ambiguity about the exact process by which it did not go ahead. However, ultimately, we find that the second respondent, on his evidence, did reach a genuine conclusion that mediation would have been futile on the basis that the damage that had already been done, and he believed the claimant's proposed course of action did not suggest any meaningful compromise: *'from my perspective they were just words, psychologically, he didn't feel open at all'* (in oral evidence). This was also in the context, set out above, of the claimant not accepting an alternative option where he simply resigned as director but retained his other benefits.
258. The claimant was offered a chance to appeal which he exercised. The appeal was handled by Mr Woods. However, we reject as a matter of fact that Mr Woods in reality had meaningful authority to overturn the previous decision made by the board. This is because he was less senior to those whose decision he would be overturning. Also, his employment was still in his probationary period.
259. It is correct as a matter of fact that the claimant's grievance remained outstanding at the time of dismissal.
260. It was not in dispute that there were earlier disputes between the claimant and the second respondent about the scope of his role or the second respondent's authority. However, we do not find that any of that dispute contributed to the dismissal. Those disputes were too far removed from the breakdown in the relationship for causation to be properly established, and we considered to a degree where better analysed as part and parcel of disputes between senior employees rather than something which went to the heart of the working relationship.

261. We find as a matter of fact that there was a degree of close working between the claimant and his wife at various times. However, overall, we considered that this amounted to nothing more than a background element of the disputes between the claimant and the second respondent and it did not, on the evidence, cause or contribute to the claimant's dismissal. This is because it is too far removed, factually, from the deterioration in the working relationship such that it became untenable.
262. We do find that the claimant was, to a degree, obstructive in the period leading up to his dismissal. This is because he was, on the documents, clearly reluctant to give up access to matters such as the IT systems and provide relevant passwords. It was necessary for him to be asked to provide this information several times to the second respondent, as is clear from the documented conversations. However, we do not consider that this caused or contributed to the dismissal. This is because the working relationship had become untenable before that time, on the chronology.
263. Another element of alleged conduct said by the respondent to contribute to the dismissal was the claimant accessing the systems whilst he was on suspension. The fact of the claimant accessing the systems whilst he was on suspension was not in dispute. However, we do not find as a matter of fact that this was breaching the terms of suspension. This is because the respondent had clearly required the claimant to retain access to the systems because it was required for communication. The suspension notice (p1051) dated 24 August 2023 by email also did not clearly prohibit the things that the claimant later did. This is because he was only instructed '*not therefore attend the office or carry out any work on behalf of the Company until further notice*'. The claimant replied to that email confirming that '*I will of course maintain access to the company's systems and, indeed, you have sent me messages today which have required me to access them to respond.*'
264. Although it was not in dispute that the claimant did thereafter carry out some working-type tasks after he was suspended, we find as a matter of fact that this was in circumstances where the terms of the suspension were unclear and the first/second respondents were aware of what the claimant was

doing, on the evidence. Whilst the claimant did download documents, we were not satisfied on the evidence that they were misused. This is because there was no cogent evidence of this.

(vii) Findings in respect of the aiding contraventions allegations

265. We do not find as a matter of fact that the third respondent through the fifth respondent participated in a plan by the second respondent to dismiss the claimant 'ostensibly' on the basis of a breakdown in relationships. This is because this allegation is not supported by cogent evidence. Rather, the evidence in fact suggested that there was no plan as such, or an intention to rely on only 'ostensible' grounds. In fact, we are satisfied that (having heard oral evidence, consistent with the documentary position generally), the fifth respondent acted with genuine and intentions and was simply reacting to the breakdown in the claimant's working relationship as it happened. It is correct that Mr McFadgen – the fifth respondent - voted for the relevant matters as a board member. However, it was not established in evidence that this was, in reality, the third respondent acting 'through' him. We accepted Mr McFadgen's credible and consistent evidence that he was acting at that time only as a director of the first respondent and was not acting as Element Ventures LLP. We accepted that he had undertaken relevant training on avoiding conflicts and interest and he was able to separate out the roles in practice such that this was not in any way, as a question of fact, him acting on behalf of the third respondent. Although the claimant's submissions suggest that Mr McFadgen's witness evidence was that this was the case, we reject that submission. Rather, his evidence taken as a whole, including oral evidence, was sufficient to for us to find that there was a true separation in the roles. The fact that someone other individuals had assisted, for example, in terms of scheduling board meetings did not demonstrate a blurring of the roles.

(viii) Holiday pay

266. It was not in dispute that there were 9.5 days of potential unpaid holiday pay. However, by the end of the hearing the issue to be determined was

whether that was payable as a matter of contract. We find that the wording of the contract was as set out in the bundle. The specific clause relied on by the claimant reads (at 15.1, p298):

In the event of either the Company or the Employee serving notice, the Company may, in its sole and absolute discretion elect (but is not obliged) to terminate the Employment immediately or on less notice than that required by clause 3.1 by notifying the he Employee that the Company is exercising its right under this clause 15.1 and that it will make within twenty-eight (28) days a payment in lieu of notice ("Payment in Lieu") to the Employee. The Payment in Lieu will be equal to the Salary in respect of that part of the period of notice in clause 3.1 which the Company has not given to the Employee (the "Outstanding Notice Period") less any appropriate tax and other statutory deductions. For the avoidance of doubt, any Payment in Lieu shall include a pro rata amount in respect of any bonus, benefits, or holiday entitlement that might otherwise have been due during the Outstanding Notice Period.

267. The claimant was paid in lieu of notice on 25 September 2023.

Conclusions

Alleged protected disclosures

268. We have reached the conclusions necessary in order to fairly determine whether each of the alleged disclosures fulfils the statutory criteria such that they are qualifying disclosures.

269. In light of our factual conclusions above, alleged PD1 was not a protected disclosure. We do not conclude on the facts that the claimant made a disclosure of information tending to show a breach of a legal obligation or other wrongdoing.

270. We do not conclude that alleged PD 2 was a protected disclosure. Firstly, this is because we do not conclude that the words conveyed were sufficient

to amount to information tending to show a breach of a legal obligation or other wrongdoing. We conclude that, at best, this was the claimant's opinion on how the FCA submissions could be improved. This is supported by the claimant's own words used at the time that this was feedback. We conclude that although the claimant had earlier stated that he would object to the provision of incorrect information, the claimant then only went on to provide his perspective on some of the factual matters. However, it was in the claimant's own words mere feedback. We conclude that this falls short, for example, of a clear and specific provision of information to the effect that the submission, if submitted unamended, would be misleading. We do not consider that the words used are enough to fairly imply that meaning into the communications. This disclosure falls short of the factual specificity required. Secondly, given our findings of fact, we do not find that the closure was made with the required belief of the claimant that the information tended to show any relevant wrongdoing.

271. In light of our factual conclusions, alleged PD3 was not a protected disclosure. We did not conclude as an issue of fact that the claimant made a disclosure of information tending to show a breach of a legal obligation or other wrongdoing.
272. In light of our factual findings, and further conclusions below, we conclude that alleged PD4 was a qualifying (ie. protected) disclosure. This is because we are satisfied that that, as a matter of fact, what was disclosed was information. This is because of the plain wording used and our factual conclusion that it amounted to factual information. We are satisfied that it contains sufficient factual elements that it amounts to information for the purposes of the statutory test. We also concluded that it was in the claimant's reasonable belief that the information tended to show a breach of a legal obligation, namely the duty to correctly report matters to insurers, in particular the contractual obligations between the first respondent and its insurer. Further, given our findings above, the claimant did make the disclosure with the belief that it was made at least in part in the public interest. We also conclude that the claimant's beliefs about the information tending to show a breach of a legal obligation, and it being at least in part

in the public interest, were reasonable in all the circumstances. This is because we find that on the face of the information provided to the claimant in terms of the second respondent's proposed responses to the insurer (on the forms), the claimant reasonably concluded that they would be misleading (or false). This is plain from the wording used. Also, it was reasonable for the claimant to believe that this disclosure was in the public interest. This is because the correct reporting to the insurer had a moral as well as regulatory element, and that this was of concern to the claimant, the other shareholders, and the insurers. Given those elements, it was reasonable to believe that this disclosure was made at least (and sufficiently) in the public interest.

273. In light of our factual findings, and conclusions below, we conclude that alleged PD5 was a qualifying (ie. protected) disclosure. This is because we are satisfied that, as a matter of fact, the relevant disclosure was information. We conclude that the wording used was with sufficient factual specificity on a narrow point to be sufficient: the second respondent is being told that a proposed course of action will put the first respondent in breach of its legal obligations. We also found as a matter of fact that it was in the claimant's belief that the information tended to show a breach of legal obligations both in terms of AML regulations and contractual obligations to providers such as Currency Cloud. We also concluded that the claimant's belief was reasonable given that there was a dispute between him and the second respondent about whether or not alternative screening processes were in place: it is not the case that the claimant obviously knew enough about the regulatory obligations and had sufficient factual information about the operations of the first respondent such that he could only reasonably conclude that what was happening was sufficient. Rather, the claimant had clearly heard about the second respondent's decision and he disagreed with it, and he had good enough reason to do so given how he understood the company to be operating and his own financial background. We also found as a matter of fact that the claimant believed that he was making the disclosure at least in part (and sufficiently) in the public interest for effectively the same reasons as for PD4. This is because of the claimant's demonstrable strongly held belief not just in abiding by the AML regulations

and contractual obligations with eg. Currency Cloud, but also the morally correct stance, and also the regulatory obligations were plainly engaging the public interest. We consider this belief to be reasonable in all the circumstances: the claimant had proper grounds to belief that what he was reporting to the second respondent was in the public interest, even if he may not have been correct.

274. In light of our factual findings and conclusions below, alleged PD6 was a protected disclosure. We conclude that the claimant did disclose information and that the content of the email clearly contains enough factual specificity for it to amount to information for the purposes of the legal test. This is plain from the words used. We found that the claimant as a matter of fact believed that it tended to show a breach of a legal obligation, namely the AML regulations applicable to the first respondent and the first respondent's contractual obligations to Currency Cloud. We also conclude that the claimant's belief that this was the case was reasonable. This is because he had sufficient knowledge and experience of the first respondent's operations to have a reasonable belief in what he was saying. It is not necessary for us to conclude whether his allegations were correct, only that there were sufficient circumstances for the claimant to hold a reasonable belief that the information tended to show the relevant wrongdoing. There is no good reason for us not to in this case. We have also already found as a matter of fact that the claimant's belief was that this disclosure was made in the public interest. We also conclude that the plain content of the disclosure is sufficient to show that this belief was reasonably held given what was alleged. It was not in dispute that the FCA was a prescribed person (s.43F ERA 1996). We also found as a matter of fact, above, that the claimant believed that the information and allegation was substantially true. We also conclude that these beliefs were reasonable in all the circumstances: the fact that they were disputed by the second respondent did not in of itself establish that they were otherwise. However, the disclosure did not cause (and was not a material influence of) any of the treatment of the claimant because no one other than the FCA was aware of it, given our other findings on knowledge and what was said on 22 May 2023.

275. In light of our factual conclusions and conclusions below, alleged PD7 was not a protected disclosure. Firstly, we did not conclude that the factual content of the document was sufficient to amount to information tending to show a wrongdoing. This is because the words used are too vague and lacking in detail and specifics to be sufficient in all the circumstances. In our judgment they may, at best, amount to an opinion or allegation, but not one with sufficient particularity to fulfil the test such that the tended to show a wrongdoing. In particular, we conclude that the reference to a client not completing full KYC onboarding is insufficient: this could mean lots of things, and not achieving 'full' KYC does not in of itself necessitate a breach of AML regulations and or a breach of the respondent's obligations towards Currency Clouds. It is too vague and speculative to elevate these words to what the claimant may have thought was the case more generally. Further, stating that the first respondent's processes were less rigid than other banks, and the possibility of regulatory implications (unspecified) was, in our judgment, too vague. The information that banks were stricter than the first respondent did not imply that the first respondent was breaching any legal obligation. Also, referring to an innate aversion to compliance is nothing more than a bare allegation or opinion at most: it lacked sufficient factual detail to amount to information tending to show a wrongdoing. Finally, the comments about culture were again, in our judgment, lacking in detail such that they could be elevated to information that met the statutory test. In the alternative, the claimant did not, as a matter of fact, hold the required belief as to what the information tended to show. This is for the reasons set out above. If this is wrong, then any such belief would not have been reasonable. This is because the information was, objectively, too vague for any such belief to have any reasonable basis. Finally, we did not find that the claimant made the disclosure with the required belief (in whole or in part) in the public interest. This is because of our findings of fact on this issue above.
276. In light of our factual conclusions and conclusions below, alleged PD8 was a protected disclosure. We conclude that the content of the disclosure was sufficient to amount to information tending to show a breach of a legal obligation, namely contractual obligations and the potential for a future

fraudulent misrepresentation claim. This is plain from the wording used which we consider has sufficient factual content to fulfil the statutory test. We also found that the claimant believed that the information tended to show a breach of a legal obligation, given our findings of fact above. We also conclude that this belief was reasonably held. This is because it is not obviously wrong and it was rooted, as set out in the email, in a documented Slack message. Whilst there was a dispute about whether or not the claimant's fears were well-founded, this was not so clearly going to be resolved against the claimant such that we could conclude that his belief was unreasonable. We also found that the disclosure of information was made with a sufficient belief that it was made in the public interest. This is for the reasons outlined above. This belief was also reasonably held: for a regulated company to potentially face a fraudulent misrepresentation claim was something that could include a public interest element, as well as the fact that other shareholders and the accountancy company also had interests in the reporting to them being accurate.

277. In light of our factual conclusions and our conclusions below, alleged PD9 was a protected disclosure but only in respect of the compliance-type issues. We conclude that the document did include sufficient factual information which on its face did tend to show breach of various legal obligations, including AML regulations and contractual obligations the first respondent had with Currency Cloud. In light of our conclusions above, the claimant did believe that this was the case. We consider that this belief was held on reasonable grounds: whilst we do not need to rule on whether the claimant's allegations were right (or what was said to have happened) it was plain from his role that he would have sufficient knowledge of what was happening that he could reasonably reach the conclusions that he did. They were not on their face groundless or speculative. We also found, for the reasons set out above, that the claimant made his disclosure with a sufficient belief in the public interest element of his disclosures. We conclude that this belief was also reasonably held given the wider circumstances: the obligations engaged were serious, they had wider implications in terms of the regulator (the FCA), the other shareholders and the first respondent's accountancy customer.

278. However, we did not find that the parts of alleged PD9 about age discrimination were protected disclosures. Whilst we accepted that the claimant held a belief at the time that there had been age discrimination, we do not find that this belief was reasonably held in all the circumstances. In particular, we found that the alleged sexagenarian comment was not made. This therefore did not give a factual basis for the allegation. We did not conclude that the (proven) single reference to the claimant being referred to as 'Dad' was sufficient for him to reasonably believe that his information as contained in the grievance tended to show a breach of a legal obligation. There was simply insufficient proven factual context for this information for the claimant's belief that there had been discrimination to have been reasonable. Also, we did not find as a matter of fact that the claimant held the requisite belief that this particular information was disclosed in whole or in part in the public interest for the reasons set out above.
279. We considered that, taken as a whole, those parts of the grievance could be sensibly and properly separated. They were not inextricably linked and different information is provided: it follows that it is open to us to reach different conclusions about which disclosures within that document were protected and which were not.
280. In summary, we found that disclosures 4, 5, 6, 8 and 9 (save as above) were protected. However, protected disclosure 6 cannot have caused or materially contributed to any of the treatment of the claimant on the basis of lack of knowledge or awareness.

Detriment for making a protected disclosure

281. We did not find that alleged PD1 was a protected disclosure – or in fact took place. It follows that alleged detriment 1 (said to have been caused by PD1) cannot have been caused by PD1 and the treatment was not materially influenced by PD1. However, we equally found that the words used in alleged detriment 1 were not, in any event, about any disclosure the claimant had made. This is because we accept that they were in response to a communication about branding. In the alternative, we did not conclude

that these words amounted to a detriment in all the circumstances. This is because these were messages between two senior individuals and amounted to no more than a reasonable management instruction by the CEO. It was not of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment. We felt that, given the respective seniority of the parties to this communication, both should be able to expect a firmly worded exchange of words where they disagreed, and this was a case where they disagreed. We did not feel that the claimant's words in response evidenced a feeling of disadvantage, also: he suggested that this was not the most productive approach.

282. In terms of alleged detriment 2, we repeat our findings of fact above as to what happened. We conclude that in all the circumstances it was not of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment. This is because it did not amount to more than a reasonably neutral description of the status quo from the second respondent's viewpoint and how he felt. It stated nothing more than the claimant already knew about their working relationship at that time, and how things appeared to the second respondent. In any event, given our findings about alleged PD2, a claim about this detriment cannot succeed. However, even if those conclusions are wrong, in light of our findings of fact, it was not caused by or materially influenced of the claimant's disclosures. The claim in respect of detriment 2 fails for that reason also.

283. In terms of alleged detriment 3, we repeat our findings of fact above. We conclude that the treatment did amount to a detriment. In contrast with the other exchanges, which were more of a robust exchange of words between senior individuals at the company, this was a situation where the claimant had raised genuine concerns about a legal issue, and the second respondent's reaction to that was to state to the effect that if the claimant could not 'move quickly' then the second respondent would find someone else to do the work, and that they could not work together. In all the circumstances, this was an aggressive and demeaning response of such a kind that a reasonable worker would or might take a view that it was to his detriment. We also conclude that it was on the ground that the claimant had

made PD4, for the reasons explained in our findings of fact above. The first respondent will be liable for this act of the second respondent pursuant to s.47B(1B) ERA 1996: it was plainly done in the course of employment. However, this otherwise successful element of the claim is subject to our decision on time limits below.

284. Alleged detriment 4 was not proven as a matter of fact. In any event, those relevant facts proven were not of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment. This is because no reasonable worker in the claimant's position might consider it to be a disadvantage to be absent from a simple meeting of which he was aware and copied into the relevant emails. It is similarly the case with a single task of data reports where the claimant still maintained a role. Finally, we consider that the instruction on 10 August 2023 was nothing more than a reasonable management instruction and in fact was something that should have been in place from the outset as part of normal business continuity planning and key man risk. Even if we are wrong about this, the facts we have found in relation to detriment 4 were not on the grounds of any of the claimant's disclosures (protected or otherwise) for the reasons set out in our findings of fact.
285. Alleged detriment 5 was not proven as a matter of fact. In any event, those relevant facts proven were not of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment. This is because the allocation of tasks fell reasonably to the CEO and in any event arose from the claimant's own decision to limit his role. In any event, the things that did happen were not on the grounds of any of the claimant's disclosures (protected or otherwise) for the reasons set out in our findings of fact.
286. Alleged detriment 6 was not proven as a matter of fact. If we are wrong about this, however, any comments made about the claimant's age were not on the grounds of any of the claimant's disclosures (protected or otherwise) for the reasons set out in our findings of fact.

287. Alleged detriment 7 was found proven to the extent set out above in our findings of fact. However, we conclude that it was not of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment. This is because any reasonable employee would take it as a reasonable management instruction. This is because of our findings of fact about the purpose and effect of the instruction above. We also take into account that the claimant's concerns about insurance were not for the wider team, that being a management level issue, and that with regards to the correct approach to KYC, there was genuine disagreement between the CTO and CEO about this, and the documented position was that the CEO ultimately had a final say. In those circumstances, no reasonable employee could see that instruction as being to his detriment, particularly in the absence of an objective and independent authority on whose approach to KYC was correct. The claimant was still free to raise compliance concerns with the Board and FCA.
288. Alleged detriment 8 was found not proven as a matter of fact and no further conclusions are required.
289. Alleged detriment 9 was found not proven as a matter of fact. In any event, we do not find that the communication that was made was of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment. This is because we consider it to be a genuine and reasonable offer made by the second respondent as a way of resolving the deterioration in their working relationship. It was not an implied push for the claimant to lose anything, rather it amounted to a benefit because the claimant would retain his job and rights if accepted. In any event, the communication was not on the grounds of any of the claimant's disclosures (protected or otherwise) for the reasons set out in our findings of fact.
290. Alleged detriment 10 was found not proven as a matter of fact. In the alternative, it was not of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment. This is because it was not sent to the claimant and we found above that it

reflected the second respondent's genuinely held view in circumstances where the working relationship had reached a crisis point following the claimant's 8 June disclosure. Whilst it was sent to a shareholder in the first respondent (Oliver Richards), the claimant had also equally sent that shareholder his own direct criticisms of the second respondent, to which this was in part a response. In any event, the communication was not on the grounds of any of the claimant's protected disclosures for the reasons set out in our findings of fact.

291. Alleged detriment 11 was found not proven as a matter of fact. In any event, the communications were not on the grounds of any of the claimant's disclosures (protected or otherwise) for the reasons set out in our findings of fact.
292. Alleged detriment 12 took place as set out above in our findings of fact. However, we concluded that it was not of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment. This is because we consider, in light of our other findings of fact about the offsite, that it was nothing more than an accurate statement by the company CEO about the claimant's behaviour. In those circumstances, no reasonable worker could or might consider the warning to be to their detriment. In any event, the communication was not on the grounds of any of the claimant's disclosures (protected or otherwise) for the reasons set out in our findings of fact.
293. Alleged detriment 13 did happen, as set out in our findings of fact. We conclude that it was of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment. This is because access to the FCA regulatory data site was within the claimant's remit – him previously having access and using it - and its removal would naturally be considered a disadvantage. However, the removal was not on the grounds of any of the claimant's disclosures (protected or otherwise) for the reasons set out in our findings of fact.

294. Alleged detriment 14 did happen, as set out in our findings of fact. We conclude that it was of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment. This is because it was demeaning in tone. However, the treatment was not on the grounds (or materially influenced by) of any of the claimant's disclosures (protected or otherwise) for the reasons set out in our findings of fact.
295. Alleged detriment 15 did happen, as set out in our findings of fact. We conclude that it was of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment. This is because any worker would consider this to be disadvantageous: it suggests to others that the claimant has already ceased employment and prejudices the outcome of any formal process. However, the treatment was not on the grounds of any of the claimant's disclosures (protected or otherwise) for the reasons set out in our findings of fact.
296. Alleged detriment 16 only happened to the extent set out in our findings of fact. We conclude that it was not of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment. This is because it amounted to nothing more than a reasonable management instruction from the Company CEO where there was a high degree of risk of the claimant leaving the company by whatever means, and the need for business continuity planning and managing key man risk. No reasonable employee in those circumstances might consider this to be disadvantageous. It did not, in effect, mean that the claimant was handing over responsibilities. In any event, the treatment was not on the grounds of any of the claimant's disclosures (protected or otherwise) for the reasons set out in our findings of fact.
297. Alleged detriment 17 was proven to the extent found above. The responses were of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment. This is plain from the wording used and it was accepted by the second respondent under cross-examination that they were inappropriate. However, this treatment was not

on the grounds of the claimant's protected disclosures for the reasons set out in our findings of fact.

298. Alleged detriment 18 was not proven as a matter of fact. In any event, the comments which were made were not of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment. This is because the second respondent was simply pointing out an error: this was not disadvantageous to the claimant. In any event, the treatment was not on the grounds of any of the claimant's disclosures (protected or otherwise) for the reasons set out in our findings of fact.
299. Alleged detriment 19 was not proven as a matter of fact. In any event, the comments made were not of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment. This is because it was nothing more than the second respondent asking for paperwork and confirmation to establish the correct position: there was no such implied allegation as the claimant now says. In any event, the treatment was not on the grounds of any of the claimant's disclosures (protected or otherwise) for the reasons set out in our findings of fact.
300. Alleged detriment 20 was not proven as a matter of fact. In any event, the comments which were made were not of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment. This is because the comment was nothing more than the second respondent honestly stating how things appeared to him on reasonable grounds, given the circumstances and complete content of the email chain. It also may well have been correct: there is nothing to suggest that the claimant, a skilled technician, did not have the ability to delete emails from his wife's inbox. No reasonable worker might consider it disadvantageous to have the CEO's reaction to the circumstances as they were. In any event, the treatment was not on the grounds of any of the claimant's disclosures (protected or otherwise) for the reasons set out in our findings of fact.

301. Alleged detriment 21 was proven as a matter of fact. We conclude that it was of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment. This is because, notwithstanding the reasonable grounds for the second respondent becoming suspicious of the claimant, we consider that demanding a GPS location went to far. However, the treatment was not on the grounds of any of the claimant's disclosures (protected or otherwise) for the reasons set out in our findings of fact.
302. Alleged detriment 22 was not proven as a matter of fact. We also conclude that what did happen was not of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment. This is because no worker might reasonably conclude that this allegation was to his detriment when it represented the reasonably held concerns of the respondents which were held on genuine grounds. This is particularly the case when the claimant was aware that he had in fact retained access to systems and processes, regardless of whether he had a defence to using them. In any event, the treatment was not on the grounds of any of the claimant's disclosures (protected or otherwise) for the reasons set out in our findings of fact.
303. We found above that alleged detriments 23, 24, 25 and 26 proven as a matter of fact. We conclude that these were all detriments by their inherent nature. However, we equally concluded that the treatment was not on the grounds of any of the claimant's disclosures (protected or otherwise) for the reasons set out in our findings of fact.
304. The only potentially successful part of the claim was detriment 3 on grounds of protected disclosure 4. However, this detriment occurred on 17 May 2023. It was not, we conclude, part of a series of similar acts or failures. It was plainly isolated, give the circumstances as we have found them to be. Given the dates of ACAS conciliation, the claimant was not presented within the period of three months plus any applicable extension for ACAS conciliation. It was also, in all the circumstances, reasonably practicable for the claimant to have started a claim within that period: there was no clear

evidence to suggest otherwise. He also had legal advice by at least 31 July 2023. We therefore conclude that it was reasonably practicable for him to have brought the claim in time in respect of this detriment and he did not do so. In those circumstances, the otherwise potentially successful element of the claim is out of time and there is no basis for extending time.

305. For the above reasons the claim of detriment for making a protected disclosure was not well-founded and is dismissed.

Automatic unfair dismissal for making a protected disclosure

306. We did not conclude that the reason or principal reason for the claimant's dismissal was the fact that the claimant had made protected disclosures. This is because we find that the reason for the dismissal was as set out above in our findings of fact. The reason for the dismissal was the complete and irretrievable breakdown in the working relationship between the claimant and the second respondent and breakdown in trust and confidence.

307. For completeness, we find that this was entirely separate (and separable) from his disclosures (generally) and those disclosures we have found to be protected. This is because whilst some of the disclosures did form part of the narrative of events cumulating in the breakdown in the working relationship, they were not the (or a principal reason for) the dismissal or the breakdown in the working relationship, on the evidence. We were content that the first respondent has satisfied the legal and evidential burdens placed on it in establishing the reason for the dismissal.

308. The reason for the dismissal was not, on the evidence taken as a whole, the claimant's disclosures (protected or otherwise).

309. For those reasons, the claim of automatic unfair dismissal for making a protected disclosure is not well-founded and is dismissed.

Unfair dismissal

310. We find that the reason for the dismissal was some other substantial reason, namely the breakdown in relationship between the second respondent and the breakdown in trust and confidence. This is for the reasons set out in our findings of fact above.
311. We reject the claimant's contentions for the reasons of the dismissal for the reasons set out in our findings of fact above.
312. We conclude that the reasons for dismissal did constitute substantial reasons of a kind as to justify the dismissal of an employee holding the position the claimant held. This is because the situation had plainly on the evidence reached a stage where there was no trust and confidence and the working relationship had completely broken down between the claimant and the second respondent. This was substantial and sufficient as a reason given the extent of the problem and the position of the claimant.
313. We next considered whether the first respondent acted reasonably or unreasonably in all the circumstances, including the first respondent's size and administrative resources, in treating it as a sufficient reason to dismiss the claimant, in accordance with equity and the substantial merits of the case.
314. Having given the matter very careful consideration, we conclude that the dismissal was procedurally unfair and this fell outside of the band of reasonable responses for a fair dismissal of this type. We were careful not to substitute our own view and we were cautious about the fact that there is no minimum or set procedure for a dismissal in these circumstances. However, we ultimately concluded (as set out above) that the dismissal was pre-determined. There was an abundance of documentary evidence to suggest that this was the case. This tainted the subsequent process of the claimant's dismissal. Whilst the majority of evidence of pre-determination was on the part of the second respondent, and we accept that he was not

the only decision maker, we did not consider that the votes by other members of the board were sufficient to mitigate this. This is because the second respondent's position carried significant weight as CEO. Also, the second respondent's position plainly was significant in terms of the HR advisor's report which was at least in part relied on by the rest of the board. We did not consider that the board process, given the findings of fact, was such that there could properly be considered a reasonable and independent decision making process quite separate from any views or desires of the second respondent, given the circumstances as a whole.

315. Secondly, we conclude that the dismissal was procedurally unfair because of the process carried out by the HR advisor. Firstly, for the reasons outlined above, she was too close to the second respondent to fairly and objectively produce a report about the state of the working relationship. Her WhatsApp messages suggested that she was not assessing the matter fairly and objectively. Secondly, the process fell out of the band of reasonable responses to the extent that the consultative meeting was held with the claimant but no such meeting was held with the second respondent, the HR advisor simply relying on WhatsApps without any meaningful challenge or testing of the second respondent's position. This was, applying the Tribunal's experience, wholly inadequate in all the circumstances such that it took the dismissal outside of the range of reasonable responses.
316. Thirdly, we conclude that the dismissal was procedurally unfair because there was no meaningful appeal route. We considered that the appeal process by someone junior to the original decision makers and whilst still on their probation as an employee did not amount to a meaningful and effective appeal route by which any of the previous issues could be mitigated. Whilst an effective appeal mechanism is not essential to a fair dismissal, and this factor taken in isolation may not have been sufficient to render the dismissal unfair, this was another factor suggesting that the process was, overall, sufficiently inadequate that it fell outside the band of reasonable responses.

317. Whilst we do accept that there are rare occasions when an employer can dismiss without following any real procedure, as outlined in the authorities above, we did not conclude that this was one of those cases. At the very least, this employer had sought to apply a process of sorts. In those circumstances we concluded that it should then carry out that process in a manner that was within a reasonable range of fairness. This was not to hold the respondent to a higher standard than might otherwise have been the case. Rather, we have to assess the circumstances as they were, and whether what ultimately happened was within the range of reasonable responses.
318. We do not find, however, that the lack of mediation rendered the dismissal unfair. This is because mediation is not an essential process and we accept that it was not undertaken on the genuine and reasonably held belief of the second respondent. We consider that it was reasonable for him to believe that mediation would have been futile given the level of animosity from the claimant (as demonstrated by the documentary attacks the claimant made on the second respondent, above) and also the fact that the claimant was effectively proposing the second respondent's ousting, and the claimant had rejected the lesser option of him just resigning as director.
319. We also reject the claimant's contention that the commercial relationship between the HR advisor and the first respondent (ie. she was paid) rendered the process unfair. This is because there was nothing to suggest that this was, in reality, any different to an employee who is paid to give HR or legal advice, and there was no evidence that this had tainted the process.
320. We also reject the claimant's contention that the fact that the grievance was outstanding at the time of dismissal rendered the dismissal unfair. This is because the question as to whether his grievance was upheld was sufficiently separate to the question as to whether the working relationship had broken down such as to justify a dismissal. These were separate processes and, in our judgment, to have waited for the grievance to have been resolved would only have drawn out matters in circumstances where the working relationship had already become broken.

321. For those reasons, the claim of unfair dismissal succeeds.
322. However, given our findings of fact, we do make a determination that there was a 100% chance that the claimant would have been fairly dismissed and that this would have taken two weeks later than he was. This is because the evidence as set out in our findings of fact overwhelmingly demonstrated that the working relationship had irretrievably broken down. In those circumstances, a fair dismissal would have very soon taken place and no other outcome was possible, on the facts. The authorities above provide that this can be a fair reason for dismissal. We accept that the second respondent genuinely felt that the working relationship was irretrievable. This was not a case where, for example, there was an evidenced basis for mediation being likely to result in any other outcome. We conclude that two weeks would have been sufficient for the claimant to have been fairly dismissed because this was sufficient time for a fair process to be carried out, namely requisite meetings with the claimant, the second respondent, and for the board to reach exactly the same conclusion as it did.
323. We also find that there was conduct of the claimant which contributed to his dismissal. This conduct was the claimant's sending of the 8 June 2023 presentation and messages between him and the second respondent's father. We are entirely satisfied that that this conduct was culpable and blameworthy. It was by its nature an attack on the second respondent personally and part of an effective leadership coup, albeit an ineffective one. We are also satisfied that it contributed heavily to the dismissal. This is because the 8 June 2023 presentation was a crucial element of the breakdown in the working relationship and trust and confidence from the employer.
324. For the reasons set out in our findings of fact, we do not find that the dispute about the scope of the claimant's role caused or contributed to his dismissal. For the same reasons, we make no reduction in respect of the degree of close working between the claimant and his wife, or in respect of the claimant's obstructive attitude to providing IT access in the period leading up to his dismissal.

325. We also do not find that the issues that the respondent takes with the claimant's conduct (ie. alleged breach of the terms of suspension) were proven to be culpable or blameworthy. This is because we did not consider that the conduct of the claimant was sufficiently clearly in breach of the terms of suspension, given the terms imposed. As such, no deduction should be made for this element.
326. We are also satisfied that that it would be just and equitable in all the circumstances for the awards to be reduced for the above identified culpable and blameworthy conduct which contributed to the dismissal. This is because although the dismissal was procedurally unfair the circumstances which meant that continued employment were untenable were as a result of the claimant's conduct. In those circumstances it is entirely appropriate to reduce the award. We consider that a 50% reduction to both the basic and compensatory award is appropriate in all the circumstances. This reflects the claimant's culpability but also balances the fact that there should be some award in light of the procedural unfairness of the dismissal. We also took into account the fact and amount of the Polkey reduction when making this determination to reflect an overall equitable outcome.
327. We did not consider it appropriate to reduce the compensation under the principle in Devis v Atkins (subsequently discovered misconduct). This is because we found above that the respondent was aware of the extent of things the claimant did whilst on suspension, the terms of the suspension were unclear, and the respondent had required the claimant to maintain at least a degree of access to respond to message. The documents downloaded were not misused. In those circumstances this fell short of what was required to properly make the determinations needed before a reduction of this type could be made.
328. In light of our findings about the reason for the dismissal the ACAS Code of Practice on Disciplinary and Grievance Procedures did not apply and no such uplift is applicable in the circumstances of this case.

Age discrimination

329. As set out above, we found that the relevant detriments did happen: this was not really in dispute. It is plain that these detriments would be reasonably considered disadvantageous by an employee by their nature.
330. We do not find that the claimant has established any facts from which we could properly conclude, however, that the treatment was in any way to do with the claimant's age. We considered that at best what was proven were only a very small number of isolated comments that touched on the issue of age. However, the context of the detriments was dispute between the claimant and the second respondent where the documentary position clearly establishes the objective disagreements between them which were not age-related. We also have rejected as a matter of fact the sexagenarian allegation and found that the reference to the second respondent wanting a younger company to be a reference to the nature of the company and not the average age of employee. We also did not consider that a single reference to 'Dad' or other isolated comments were sufficient to shift the burden in all the circumstances.
331. Even if we are wrong about the above, we are entirely satisfied that the respondent has shown that the relevant things happened for reasons wholly unrelated to the claimant's age. Our findings for why they happened are set out in our findings of fact. Specifically, the circumstances of the claimant's exit proposal, suspension, dismissal, and appeal, were all because of the demonstrable breakdown in the working relationship and this had nothing to do with the claimant's age. There is no cogent evidence from which we could infer that age played a role or that any other person of a younger age would have been treated differently.
332. Given our conclusions above, it was not necessary for us to make separate conclusions on time limits in respect of this claim.

Victimisation

333. The respondent accepted that the grievance was a protected act.
334. For the reasons outlined above, the suspension, dismissal and not upholding of the claimant's appeal clearly happened as a matter of fact. These are plainly detriments by their nature: a reasonable employee would clearly feel and be disadvantaged by these things.
335. We do not conclude that the claimant has established facts from which we could properly conclude that the reason for those things was the protected act. This is because there is a lack of cogent evidence that this was the case. The fact of a slightly childish exchange about the discrimination allegations afterwards triggered by the grievance was not something we considered to be such that it suggested that the more serious steps of suspension, dismissal or the appeal would be affected by the grievance. Moreover, the working relationship had clearly already deteriorated well before the grievance was filed.
336. Even if we are wrong about the above, we are entirely satisfied that the reason for the treatment had nothing to do with the claimant's grievance. We have already set out in our findings of fact above the reasons for each of the treatment, and the respondents have amply demonstrated the reason for that treatment.
337. For those reasons, the claim of victimisation is not well-founded and is dismissed.
338. Given our conclusions above, it was not necessary for us to make separate conclusions on time limits in respect of this claim.

Aiding contraventions

339. In light of our conclusions above, no claim in respect of aiding contraventions can be successful.
340. However, in the alternative, we reject this allegation on the facts in any event. This is because the facts did not establish the third respondent acting through the fifth respondent as part of a plan: we accepted that the fifth respondent acted with sufficient independence that his actions cannot be properly attributed to the third respondent. Also, we rejected the notion of a 'plan' involving the relevant parties to the extent that was advanced as the claim.
341. For those reasons, the claim aiding contraventions is not well-founded and is dismissed.
342. Given our conclusions above, it was not necessary for us to make separate conclusions on time limits in respect of this claim.

Holiday pay

343. We accept that this claim was brought in time. This is because the payment was due 28 days of the exercise of the payment in lieu of notice on 25 September 2025 (applying clause 15.1 of the contract of employment, p1298). It was due to be paid by 23 October 2023. ACAS conciliation took place between 3 October and 14 November 2023 and time is therefore extended for ACAS conciliation. We calculate on that basis that the last day to issue the claim was 13 February 2024. The holiday pay claim was brought on 1 February 2024. Accordingly, the claim was brought in time.
344. The only dispute between the parties was whether or not the claimant was entitled to pay in respect of 9.5 days holiday pay. The issue was whether it was payable in accordance with the claimant's contract. We find it is. This is because of the plain wording used. This on a natural reading of the words

was such that any holiday pay outstanding on termination would be paid on top of contractual period. We reject the respondent's submission that it was included in the notice pay payment. This is because if that was right then pay in respect of notice would be insufficient, depending on the amount of holiday outstanding.

345. For those reasons, the respondent made unauthorised deductions from the claimant's wages in respect of 9.5 days holiday pay.
346. We reject that this amounted to an abuse of process applying the authorities above. The holiday pay claim was made only a relatively short time after the original claim. It has caused no prejudice to the respondent for it to have been brought in the manner that it did. It falls well short of abusive or harassment type conduct. The delay was also during a period when the claimant was awaiting resolution of the issue through solicitors' correspondence.

Jurisdiction

347. In light of our conclusions above it was only necessary for us to determine jurisdiction and time limits in a limited manner as set out above.

Approved by:
Employment Judge B Smith
18 December 2025

SENT TO THE PARTIES ON

22 December 2025

.....
FOR THE TRIBUNAL OFFICE

Appendix A

List of Issues

References to the trial bundle are in the form [1.55].

ORDINARY UNFAIR DISMISSAL

1. What was the reason or the principal reason for the Claimant's dismissal? In relation to this:
 - 1.1. The Respondent relies on some other substantial reason, namely the breakdown in relationship with the Second Respondent, or alternatively a breakdown in trust and confidence (¶120 of the Grounds of Resistance "**GoR**");
 - 1.2. The Claimant's case is that the reasons for the Claimant's dismissal included: (a) the Claimant's protected disclosures; (b) the Second Respondent's desire for a younger workforce; and (c) the Second Respondent's desire to convert the Claimant's shares into deferred shares so these could be made available for purchase by investors and/or made available to the employee option pool (¶86 of the Ground of Claim ("**GoC**").
2. Was the Claimant's dismissal fair within the meaning of section 98(4) of the Employment Rights Act 1996 ("**ERA**"), given the matters in paragraphs 3?
3. The First Respondent asserts that the Claimant's dismissal was for some other substantial reason. In this respect:
 - 3.1. Was the reason for the Claimant's dismissal: (a) the breakdown in relationship with the Second Respondent, or alternatively (b) a breakdown in trust and confidence?
 - 3.2. If these were the reasons for dismissal, did they (or either of them) constitute substantial reasons of a kind as to justify the dismissal of an employee holding the position the Claimant held?
 - 3.3. If they did, did the First Respondent act reasonably or unreasonably in all the circumstances, including the First Respondent's size and administrative resources, in treating that as a sufficient reason to dismiss the Claimant? The Tribunal's determination whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case.

PROTECTED DISCLOSURES

4. Did the Claimant make the disclosures described in the GoC as PD1 to PD9 (the "**Disclosures**")? Specifically:
 - 4.1. PD1: **GOC**:¹

The claim is as follows. On 3 April 2023, an issue arose concerning KYC checks and the Company's relationship with Currency Cloud. Currency Cloud is a foreign exchange broker which provides the Company with currency conversion services and "e-wallets" infrastructure. In this regard, the Company acts as Currency Cloud's agent and as an "outsourced KYC provider". It is the Company's contractual obligation to perform adequate KYC checks on Currency Cloud's

¹ ¶21 of the GoC [1.23-24]).

behalf. A failure to do so is a breach of the AML regulations and the Company's legal obligations to Currency Cloud. On 3 April 2023, Currency Cloud carried out a spot-check in relation to one particular client. It transpired that the Company had not performed all of the required KYC checks for the directors of the client prior to enabling them to transact foreign exchange business through the Company. This was a breach of the Company's obligations to Currency Cloud and under the AML regulations. Mr Pikovsky informed Mr Rogge that this was unlawful and that the correct approach would be to undertake the necessary KYC checks and inform Currency Cloud that the Company had not done so previously.

. **FBP**² On 3 April 2023 did the Claimant orally disclose the following to the Second Respondent: *"C objected to the fact that KYC for the customer audited under the CurrencyCloud spot check was not performed but the customer was allowed to perform FX payments via the R1. C told R2 that it was unlawful to enable FX business through the Company before all the required KYC checks were performed and that R1 was in breach of its obligations to CurrencyCloud and of the AML regulations. C told R2 that the correct course of action was to undertake the necessary KYC steps and inform CurrencyCloud that R1 had not done so previously."*

- 4.2. PD2 **GOC**³ on 9 May 2023, did the Claimant disclose to the Second Respondent that the First Respondent's proposed submission to the FCA in connection with a Variation of Permission application was untruthful and that the Company would be breaching its legal and regulatory obligations by submitting it to the FCA. **FBP**⁴ On 9 May 2023 did the Claimant disclose the following to the Second Respondent: (1) at 08:21 *"I do however object to the inclusion of any factually untrue information."*; (2) at 20:34, *"1. Policies must be phrased using only job titles, rather than names of specific people. This means that when a particular position gets filled by a new person, the policy does not immediately become obsolete. The only place where we mention specific names is on the front page – policy owner/approver. 2. Incident reporting policy (as it now became) is a domain of the MLRO. I am not an MLRO and I do not own it. I do own the incident response policy, - the policy that has been actually implemented and followed, but not this reporting one. 3. For AML policy the owner can only be an MLRO. 4. FCA reporting template – this is a standard document. We should not submit it. It is included into our policy by reference. This is a standard legal method, which means that when they decide to change the template, our policy does not become obsolete. 5. Governance. a. We do not have a Management Board. We have a Board of Directors. b. We may indeed put together a Management Committee, but a committee of 7 for the company of 23 people is rather ridiculous. c. The committee – if we are to have one – should consist of specific job titles (e.g., CEO), rather than specific people. d. David most obviously is not responsible for Operations e. Responsibilities listed under Management Board fall squarely under the Board of Directors – including, most notably, the overall business strategy. f. We do not have any of the other committees mentioned – therefore they can't "continue to meet quarterly"."*

- 4.3. PD3: **GOC**⁵

The claim is as follows. On 9 May 2023, Currency Cloud carried out another spot-check in relation to a client undertaking several foreign exchange payments for more than £1 million. Again, the Company had not undertaken all of the required KYC checks and had breached the AML regulations and its legal and contractual obligations to Currency Cloud as a result. Mr Rogge informed Currency Cloud that such checks had been carried out. [On 10 May]⁶ Mr Pikovsky made a further protected disclosure by telling Mr Rogge that submitting this false and misleading information was a breach of the Company's legal obligations.

² See C's FBPs at ¶1 [1.52].

³ ¶25 of the GoC [1.24-25]

⁴ See C's FBPs at ¶2 [1.54]

⁵ ¶26 of the GoC [1.25]

⁶ The Claimant states in a letter of 17 February 2025 [1.69] that this date is to the best of his recollection.

, **FBP:**⁷ On 10 May 2023 did the Claimant disclose the following: “C raised concerns that R1 had not undertaken all of the required KYC checks and had breached the antimoney laundering regulations and its legal and contractual obligations to Currency Cloud as a result. C informed R2 that this customer was by far the biggest by the size of FX transactions and that R1 had to be extra prudent in meeting all its obligations as a regulated PI and the outsourced KYC provider.”

- 4.4. PD4: **GOC:**⁸ on 17 May 2023,⁹ did the Claimant inform Mr Rogge that an assertion contained in the First Respondent’s insurance renewal form that the First Respondent performed background checks on employees was false and that the true position was that the First Respondent performed no such checks. **FBP:**¹⁰ On 17 May 2023, did the Claimant disclose the following to the Second Respondent on Slack: (1) “We do not perform background checks on employees. We can do it, and they are quite inexpensive - about £40 per head.”; (2) “We can do one of 3 things: State the way things are - we do not perform bg checks. Commit to perform them and state that we are. Something else?” (3) “I filled them (the forms) accordingly, giving true answers to the best of my belief. If you disagreed or simply did not like the answers you were free to change them. If these answers cause higher premium, it is regrettable, but at least it does not invalidate our professional insurance which is a regulatory requirement. I have also suggested a way to turn those “no” answers to “yes” at reasonable cost/effort. As a director I refuse to fill in untruthful information where it matters.”
- 4.5. PD5: **GOC:**¹¹ on 22 May 2023, did the Claimant inform the Second Respondent that undertaking full KYC on up to two persons with significant control was insufficient and would be a breach of the First Respondent’s legal obligations in relation to KYC/AML checks. **FBP:**¹² did the Claimant disclose the following to the Second Respondent: (1) at 12:50pm by email, “A disagree with your decision this morning to remove the required AML screening checks without having alternative arrangements in place. o This puts us in breach of our existing obligations, which I urge you to take very seriously. o I am happy to discuss further any alternative arrangements, at which point the KYC experience could be streamlined without compromising its integrity.”; (2) at 15.10pm in a Slack meeting “C objected to the removal of the required AML checks, warned R2 about a possible breach of the regulatory obligations to perform full PEP checks and sanctions screening on all the persons having significant control and UBO’s of the corporate clients, and warned R2 that he would raise this matter with the Board of Directors and the FCA.”
- 4.6. PD6: **GOC:**¹³ On 22 May 2023, did the Claimant make a disclosure to the FCA concerning KYC and AML compliance. **FBP:**¹⁴ On 22 May 2023, did the Claimant disclose to the Financial Conduct Authority (“FCA”): (1) on the FCA’s online form “Re: Crezco Limited registration number 11752182, FCA reference 925173 • The existing internal procedures on KYC are often ignored and AML controls overridden. • The customer-facing staff who perform on-boarding are not trained or even briefed on AML/KYC. • Crezco is using CurrencyCloud to perform FX payments and must perform outsourced KYC. For some clients no KYC/KYB was performed at all– no identity checks, no sanction or pep list screening. • If queried by The Currency Cloud compliance team, fake evidence of KYC is presented. On multiple occasions identity checks were performed only after having been prompted by The Currency Cloud. • For example, on 03/04/2023 The Currency Cloud compliance team requested proof of KYC for a company/client. There was

⁷ See C’s FBPs at ¶3 [1.56].

⁸ ¶27 of the GoC [1.25]

⁹ The date of PD4 was given as 15 May 2023 in C’s FBPs at ¶4 [1.56] (and ¶27 of the GoC [1.25]). Following disclosure, C’s witness statement now states this took place on 17 May 2023.

¹⁰ C’s FBPs at ¶4 [1.56]

¹¹ ¶30 of the GoC [1.26]

¹² See C’s FBPs at ¶5 (erroneously stated to be 2013 in the FBPs) .

¹³ ¶27 of the GoC [1.25]

¹⁴ See C’s FBPs at ¶6 [1.57]. Bullet points inserted in place of new paragraphs.

no KYC done on this client by Crezco. The KYC status for this client was manually reset to "completed" by the head of sales in front of the whole sales team. • There is further evidence of KYC noncompliance." (2) by email to the FCA "Re: Crezco Limited registration number 11752182, FCA reference 925173 • This is to report systematic violations of the AML & KYC procedures at Crezco Limited. • The customer facing staff who perform on-boarding are not trained or even briefed on AML and KYC. • The AML policy itself is superficial and does not cover all the clients of Crezco. • The existing internal procedures on KYC are often ignored and AML controls overridden. • This behaviour is authorised by the CEO (who is also an MLRO) and the head of sales, who encourage the team to onboard as many clients as possible in violation of the established procedures. • Crezco is using CurrencyCloud to perform FX payments and must perform outsourced KYC. For some clients no KYC/KYB was performed at all– no identity checks, no sanction or pep list screening. • If queried by The Currency Cloud compliance team, fake evidence of KYC is presented. On multiple occasions identity checks were performed only after having been prompted by The Currency Cloud. • For example, on 03/04/2023 The Currency Cloud compliance team requested proof of KYC for a company/client. There was no KYC done on this client by Crezco. The KYC status for this client was manually reset to "completed" by the head of sales in front of the whole sales team. • On 04/04/2023 further screening evidence was requested by The Currency Cloud. A fake screenshot was generated and sent back as proof. This action was approved by the CEO of the company. Moreover, he falsely confirmed to CurrencyCloud that all the screenings were successfully done. It is evident from the screenshot submitted that the screening session expired and that there was no screening done at all. • Many of the high-volume clients onboarded by Crezco for FX did not undergo sanctions or pep screening. • There is further evidence of KYC noncompliance."

- 4.7. PD7: **GOC & FBP:**¹⁵ on 8 June 2023, did the Claimant send to the Second Respondent, the Fifth Respondent and Oliver Richards of MMC a report in which he disclosed the following: (1) The Company's most significant client, responsible for 52% of its profit, had not properly completed KYC checks - "Worryingly, client A did not complete full KYC/KYB onboarding." (P.14); (2) The Company was exposed to risk in relation to AML/KYC requirements through deficiencies in its AML/KYC process which may have regulatory implications for the Company - "Crezco's AML/KYC process is less rigid than that of large banks, which benefits the clients but may have regulatory implications for Crezco." (P.15); (3) The Company had an innate aversion to compliance matters which impacted, among other matters, the Company's legal obligations to third parties - "Crezco has an innate aversion to compliance matters, clearly not appreciating that they set rules and order for business development, thus increasing business efficiency." (P.31); (4) "Regulatory compliance is based on a "fake it till you make it" motto, which in practice becomes "fake it instead of making it". There is a toxic anticompliance culture, unacceptable for a regulated financial institution" (covering email).
- 4.8. PD8: **GOC:**¹⁶ on 31 July 2023 did the Claimant raise concerns with the Second Respondent by email that data provided by the Second Respondent to Xero would constitute a fraudulent misrepresentation. **BBP:**¹⁷ At 09.21am on 31 July 2023, did the Claimant email the Second Respondent and disclose the following: "As a fellow director of the company, I would like to raise with you the following concern about the Slack communication on 28/7/23. • DS declared on a public slack channel that we will not disclose information about the individual payment failures within "successful" batches until the contract with Xero is signed. • We have been specifically asked about this by Xero. They obviously want to know about it in order to evaluate whether to enter into the contract with Crezco. I am not a lawyer, but I am concerned that this is deliberate withholding of material information and as such is a fraudulent misrepresentation. This is very likely to expose Crezco to legal claims and can easily ruin us. • It is my opinion that if we carefully explain the nature of the failures to Xero there should be no reasons for Xero not to proceed with a

¹⁵ See C's FBPs at ¶7 [1.61] (and ¶38 of the GoC [1.27]).

¹⁶ ¶55 of the GoC [1.30]).

¹⁷ See C's FBPs at ¶8 [1.62]. Bullet points inserted in place of new paragraphs.

contract, especially because the issue we disclose is outside of our control. If we withhold the information with a view to getting the contract signed, they could subsequently use the misrepresentation to back out of the contract anyway. And, as I say, the subsequent legal fall out could be very costly for the company and its investors. • It is better that we properly manage their expectations rather than letting them discover the problem by themselves, which they certainly will. • I urge you to address this matter and make the proper disclosures to Xero without delay. • Aside from the specific contract with Xero, DS's conduct raises broader questions about the culture we are fostering. We are a regulated financial services business, and we should conduct ourselves with the utmost honesty and integrity in our dealings with third parties. The fact DS thinks this approach is ok, is really troubling. No one wants the contract with Xero to succeed more than me and I fully appreciate how significant it would be for us, but there is an ethical line that we shouldn't cross, no matter how great the financial prize."

- 4.9. PD9: **GOC**: on 21 August 2023¹⁸ Mr Pikovsky submitted a formal grievance (the "Grievance") to the Company's Board concerning the protected disclosures he had made and the retaliation he had received from the Company, and Mr Rogge in particular, as a result. The Grievance also raised concerns about Mr Rogge's ageist remarks. The Grievance therefore contained further protected disclosures. . **FBP**:¹⁹ Did the Claimant's grievance repeat PDs 1 to 8, list retaliation C had suffered as result of PDs 1 to 8 and give details of age discrimination against C by the Second Respondent.

1. Did each of the Disclosures entail the disclosure of information within the meaning of section 43B ERA?
2. Were the Disclosures qualifying disclosures within the meaning of section 43B ERA? In particular, did the Claimant reasonably believe that (GoC ¶87):
 - 2.1. the Disclosures tended to show a breach of a legal obligation as set out in paragraph 8; and,
 - 2.2. the Disclosures were in the public interest as set out in paragraph 9?
3. The legal obligations the Claimant relies upon in each case is as follows:
 - 3.1. PD1:²⁰
 - 3.1.1. The obligations under Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the "**MLR 2017**") to identify customers (using the system specified in Paragraph 11 Schedule 2 of the The Payment Services Regulations 2017 (the "**PSR 2017**").
 - 3.1.2. The obligations to perform enhanced due diligence ("**EDD**") (FATF recommendation 13).
 - 3.1.3. The obligations to perform Customer Due Diligence ("**CDD**") as a CurrencyCloud Outsourced Know Your Client ("**KYC**") provider (including in contractual obligations to CurrencyCloud): (a) identity checks of Company Directors and Ultimate Beneficial Owners (a "**UBO**" or "**UBOs**"), (b) Politically Exposed Persons (a "**PEP**" or "**PEPs**"), sanctions and adverse media checks for all persons with significant control, including all directors and all UBOs.

¹⁸ ¶63 of the GoC [1.32]

¹⁹ See C's FBPs at ¶9 [1.64]

²⁰ See C's FBPs at ¶1 [1.52] (and ¶87(a)(i) of the GoC [1.37]).

- 3.1.4. Legal requirements for the Payment Service Providers (“PSPs”) under PSRs 2017 to deter and detect financial crime, which includes money laundering and terrorist financing.
- 3.1.5. The conditions for Payment Institution’s (“PI”) governance arrangements, internal control mechanisms and risk management procedures under Regulation 6(6) and paragraphs 5 to 11, Schedule 2 of the PSRs 2017.
- 3.1.6. Requirement that the beneficial owner (the natural person) be identified, and that the financial institution understand the purpose and intended nature of the business relationship (FATF Recommendation 10, FCG (FCA financial crime guide) and Money Laundering Regulations for Payment Institutions).
- 3.1.7. The Requirement for the firms to update their records relating to the beneficial ownership of corporate clients, and to understand the ownership and control structure of their corporate customers, and record any difficulties encountered in identifying beneficial ownership (Amendments to Regulation 28 of MLRs 2017).
- 3.2. PD2:²¹
 - 3.2.1. Regulation 6(6) and paragraphs 5 to 11, Schedule 2 of the PSRs 2017, which set the conditions that PI’s governance arrangements, internal control mechanisms and risk management procedures must meet.
 - 3.2.2. Regulation 34 of the PSRs 2017, which sets conditions for fit and proper requirements for directors and persons responsible for the management of the PI.
 - 3.2.3. FCA conduct rule 1 – to act with integrity.
 - 3.2.4. FCA conduct rule 3 – to be open and cooperative with the FCA etc.
- 3.3. PD3:²² as per PD1.
- 3.4. PD4:²³
 - 3.4.1. The regulatory requirement to hold professional indemnity insurance - regulation 6(7)(e) and (f) and paragraph 19, Schedule 2 of the PSR 2017.
 - 3.4.2. The contractual obligation between R1 and the insurer to give a fair representation by disclosing all information and circumstances material to the risk it wants to cover.
 - 3.4.3. FCA Conduct Rule 1 – to act with integrity.
- 3.5. PD5:²⁴ as per PD1.
- 3.6. PD6:²⁵ as per PD1.
- 3.7. PD7:²⁶ as per PD1 and PD2.
- 3.8. PD8:²⁷

²¹ See C’s FBP’s at ¶2 [1.54] (and ¶87(a)(i) of the GoC [1.37]).

²² See C’s FBP’s at ¶3 [1.56] (and ¶87(a)(i) of the GoC [1.37]).

²³ See C’s FBP’s at ¶3 [1.56] (and ¶87(a)(i) of the GoC [1.37]).

²⁴ See C’s FBP’s at ¶5 [1.57] (and ¶87(a)(i) of the GoC [1.37]).

²⁵ See C’s FBP’s at ¶6 [1.58] (and ¶87(a)(i) of the GoC [1.37]).

²⁶ See C’s FBP’s at ¶7 [1.61] (and ¶87(a)(i) of the GoC [1.37]).

²⁷ See C’s FBP’s at ¶8 [1.62] (and ¶87(a)(i) of the GoC [1.37]).

- 3.8.1. Schedule 2 to the PSRs 2017 'suitability' regulation 6 of the PSRs 2017 'fitness and propriety' of a director of PI.
- 3.8.2. FCA conduct rule 1 – to act with integrity.
- 3.8.3. Common law obligations not to make misrepresentations to a proposed counter party to induce them to enter into a contract.
- 3.9. PD9:²⁸
 - 3.9.1. As per PD1 to PD8.
 - 3.9.2. s. 47B Employment Rights Act 1996 re whistleblowing detriment.
 - 3.9.3. Equality Act 2010.
- 4. The public interest the Claimant relies upon in each case is as follows:
 - 4.1. PD1:²⁹ "It is axiomatically in the public interest and hence a legal requirement for a PSP to deter and detect financial crime, which includes money laundering and terrorist financing. C considered that failing to perform adequate KYC while allowing a customer to perform transactions was a breach of MLR 2017 and risked R1 facilitating money laundering and/or terrorist financing and/or other criminal activity." / "such disclosures were in the public interest because they concerned breaches by an FCA payment services institution of its obligations to its regulator, and/or its legal obligations to prevent money laundering and other criminal activity, and/or, in the case of PD4, a breach of contract which could leave third parties with a claim against the Company without a remedy".
 - 4.2. PD2:³⁰ "The FCA acts as a watchdog for the conduct of all regulated and authorised firms and individuals. Providing factually incorrect information to the FCA undermines its ability to function effectively. The FCA's role in granting permissions is to protect society as a whole by ensuring that only firms meeting certain criteria and standards are allowed to undertake regulated activities. Providing false information to the FCA in connection with a permission application may lead to a firm which is not suitable being granted permission to undertake regulated activity which endangers consumers and society."
 - 4.3. PD3:³¹ as per PD1.
 - 4.4. PD4:³² *"One of the purposes of the requirement to hold professional indemnity insurance is to ensure that third parties (i.e., the public) who have a claim against R1 are not left without a remedy in the event the R1 is unable to satisfy a judgment in their claim. Invalidating that cover through giving untruthful answers may leave those third parties without a remedy."*
 - 4.5. PD5:³³ as per PD1.
 - 4.6. PD6:³⁴ as per PD1.
 - 4.7. PD7:³⁵ as per PD1 and PD2, and: *"Further, the Board of Directors is ultimately responsible for antimoney laundering, KYC and counterterrorism compliance. Not having factual information undermines the Board's ability to effectively mitigate risk*

²⁸ See C's FBP's at ¶9 [1.64] (and ¶87(a)(i) of the GoC [1.37]).

²⁹ See C's FBP's at ¶1 [1.52] (and ¶87(a)(ii) of the GoC [1.37]).

³⁰ See C's FBP's at ¶2 [1.54] (and ¶87(a)(ii) of the GoC [1.37]).

³¹ See C's FBP's at ¶3 [1.56] (and ¶87(a)(ii) of the GoC [1.37]).

³² See C's FBP's at ¶4 [1.56] (and ¶87(a)(ii) of the GoC [1.37]).

³³ See C's FBP's at ¶5 [1.57] (and ¶87(a)(ii) of the GoC [1.37]).

³⁴ See C's FBP's at ¶6 [1.58] (and ¶87(a)(ii) of the GoC [1.37]).

³⁵ See C's FBP's at ¶7 [1.61] (and ¶87(a)(ii) of the GoC [1.37]).

and take adequate measures to prevent money laundering and terrorist financing, as well as failing to comply with the UK's financial sanctions regime."

- 4.8. PD8:³⁶ *"It is axiomatically in the public interest that a director of a PI comply with obligations relating to fitness and propriety and the FCA conduct rules. Further, the C reasonably believed that implementation of substandard payment functionality on the basis of incomplete or distorted information would cause detriment to thousands of Xero customers, majority of them being SMEs. R1's product was about to roll out to as many as 350,000 clients of Xero for making bill payments. Having payment failure rates at least 10 times higher than reasonably expected could've severely undermined those clients. On average every fourth payment was expected to fail unbeknown to Xero and its customers. This belief was subsequently confirmed through a large number of sharply negative Xero customer reviews."*
- 4.9. PD9:³⁷ (1) as per PD1 to PD8; (2) *"As regards ERA 1996 and EA 2010, C considered it was in the public interest for an FCA regulated PI to comply with these obligations, which have a broader social purpose than regulating the relationship with individual employees. In relation to ERA 1996 in particular, C considered it important that a regulated firm deal appropriately with protected disclosures, and not subject employees to detriment as a result."*
5. Were the Disclosures protected disclosures within the meaning of section 43A ERA (¶87 GoC)? In particular, was:
- 5.1. PD1 to PD5 and PD7 to PD9 made to the First Respondent in accordance with section 43C ERA?
- 5.2. PD6 made to the Financial Conduct Authority, a prescribed person, in accordance with section 43F ERA?

WHISTLEBLOWING UNFAIR DISMISSAL

6. Was the reason or principal reason for the Claimant's dismissal the fact he had made protected disclosures (pursuant to section 103A ERA)?

WHISTLEBLOWING DETRIMENT

7. Was the Claimant subject to the following treatment by the First Respondent and/or the Second Respondent (¶89 GoC) contrary to section 47B ERA:
- 7.1. (a) responding in an aggressive and demeaning way to PD1 ("D1") (¶22, 89 GoC);
- 7.2. (b) responding in an aggressive and demeaning way to PD2 ("D2") (¶89 GoC);
- 7.3. (c) responding in an aggressive and demeaning way to PD4 ("D3") (¶27, 89 GoC);
- 7.4. (d) stripping the Claimant of his responsibilities as CTO and appointing other employees to undertake them ("D4") (¶28, 35, 59 and 89 GoC);
- 7.5. (e) stripping the Claimant of the financial and operational responsibilities he had been undertaking ("D5") (¶41, 89 GoC);
- 7.6. (f) making offensive comments about the Claimant's age on 22 May 2023 ("D6") (¶31, 89 GoC);
- 7.7. (g) demanding that the Claimant not share any further regulatory concerns with the team ("D7") (¶33(a), 89 GoC);
- 7.8. (h) falsely accusing the Claimant of slowing down product development ("D8") (¶33(b), 89 GoC);
- 7.9. (i) asking the Claimant to step down as a director and reduce his salary on 23 May 2023 ("D9") (¶33(c)-(d), 89 GoC);
- 7.10. (j) making untruthful and derogatory statements about the Claimant to Oliver Richards on 9 June 2023 ("D10") (¶40, 89 GoC);

³⁶ See C's FBPs at ¶8 [1.62] (and ¶87(a)(ii) of the GoC [1.37]).

³⁷ See C's FBPs at ¶9 [1.64] (and ¶87(a)(ii) of the GoC [1.37]).

- 7.11. (k) encouraging Mr McFadgen and Mr Richards to support a plan to dismiss the Claimant (“**D11**”) (43, 44, 47, 55, 89 GoC);
- 7.12. (l) issuing the Claimant with a “formal warning” (“**D12**”) (¶48, 89 GoC);
- 7.13. (m) removing the Claimant’s access to the FCA regulatory data site (“**D13**”) (¶51, 89 GoC);
- 7.14. (n) issuing the Claimant with “commands” despite the fact the Claimant reported directly to the Board (“**D14**”) (¶52, 89 GoC);
- 7.15. (o) falsely telling Mr Daly that the Claimant had already left the Company (“**D15**”) (¶54, 89 GoC);
- 7.16. (p) demanding that the Claimant hand over his responsibilities as CTO (including handing over administrator access to the Company’s systems) long before his employment had been terminated (“**D16**”) (¶73, 89 GoC);
- 7.17. (q) responding aggressively to the Grievance and accusing the Claimant of making racist comments (“**D17**”) (¶64, 89 GoC);
- 7.18. (r) falsely accusing the Claimant of producing incorrect data reports both to MMC and the Claimant directly (“**D18**”) (¶62, 89 GoC);
- 7.19. (s) falsely accusing the Claimant of unilaterally increasing his own salary (“**D19**”) (¶66, 89 GoC);
- 7.20. (t) falsely accusing the Claimant of deleting the former Finance Director’s emails (“**D20**”) (¶89 GoC);
- 7.21. (u) demanding that the Claimant send a GPS location marker to prove his location while on suspension (“**D21**”) (¶66, 89 GoC); and/or
- 7.22. (v) falsely accusing the Claimant of unauthorised access and changes to the Company’s computer systems (“**D22**”) (¶72, 89 GoC).
8. Was the Claimant subject to the following treatment by the First Respondent and/or the Second Respondent and/or the Fifth Respondent (¶90 GoC) contrary to section 47B ERA:
 - 8.1. convening the meeting on 2 August 2023 and encouraging the Claimant to leave the Company and forfeit a significant proportion of his shares (“**D23**”) (¶56, 58 and 90 GoC);
 - 8.2. suspending the Claimant (“**D24**”) (¶65, 90 GoC);
 - 8.3. deciding to dismiss the Claimant (“**D25**”) (¶77, 90 GoC); and/or
 - 8.4. deciding not to uphold the Claimant’s appeal against his dismissal (“**D26**”) (¶85, 90 GoC).
9. The Claimants case as to which disclosures were causative of which detriment is as follows:³⁸
 - 9.1. PD1: D1, D7, D9-D11, D23-D26.
 - 9.2. PD2: D2, D7, D9-D11, D14, D23-D26.
 - 9.3. PD3: D7, D9-D11, D23-D26.
 - 9.4. PD4: D3, D4, D7, D9-D11, D23-D26.
 - 9.5. PD5: D4-11, D13, D23-D26.
 - 9.6. PD6: D4-11, D13, D23-D26.
 - 9.7. PD7: D4-D5, D10-D26.
 - 9.8. PD8: D4, D14-16, D18-D26.
 - 9.9. PD9: D4, D14-D26.
10. If so, in each case, did the alleged treatment amount to a detriment?
11. If so, in each case, did the relevant Respondent subject the Claimant to the alleged detriment on the ground that the Claimant had made the relevant protected disclosure?
12. Is the First Respondent vicariously liable for the act(s) of the Second Respondent and/or Fifth Respondent pursuant to section 47B(1B) ERA 1996?

AGE DISCRIMINATION

³⁸ See C’s FBP’s at ¶1-9 in the fourth column [1.52-1.65].

13. The Claimant relies on the protected characteristic of age. Did the First Respondent and/or the Second Respondent and/or the Fifth Respondent subject the Claimant to the following treatment:
 - 13.1. convening the meeting on 2 August 2023 and encouraging the Claimant to leave the First Respondent and forfeit a significant proportion of his shares;
 - 13.2. suspending the Claimant;
 - 13.3. deciding to dismiss the Claimant; and/or
 - 13.4. deciding not to uphold the Claimant's appeal against his dismissal.
14. Was that treatment less favourable treatment than the following hypothetical comparators received or would receive:
 - 14.1. a person younger than the Claimant;³⁹
 - 14.2. a person younger than 50 years of age;⁴⁰
 - 14.3. a person younger than 40 years of age?
15. Was the reason for that less favourable treatment the Claimant's age, contrary to section 13 of the Equality Act 2010 (the "**Equality Act**")?

VICTIMISATION

16. The Respondent admits that the Claimant's grievance was a protected act (¶159 GoR).
17. Did the First Respondent and/or the Second Respondent and/or the Fifth Respondent subject the Claimant to the following treatment:
 - 17.1. suspending the Claimant;
 - 17.2. deciding to dismiss the Claimant; and/or
 - 17.3. deciding not to uphold the Claimant's appeal against his dismissal.
18. Did that treatment amount to a detriment within the meaning of s.27 of the Equality Act?
19. Was the Claimant subject to that treatment because he had done a protected act?

AIDING CONTRAVENTIONS

20. Did the Third Respondent (through the Fifth Respondent) knowingly assist the First Respondent in committing direct age discrimination and victimisation (as set out above) against the Claimant contrary to section 112(1) of the Equality Act by:
 - 20.1. participating in the Second Respondent's plan to dismiss the Claimant, ostensibly on the basis of a breakdown in relationships;
 - 20.2. using their position on the Board to decide to dismiss the Claimant; and/or,
 - 20.3. using their position on the Board to decide not to uphold the Claimant's appeal against his dismissal.
21. Did the Third Respondent have the requisite knowledge under section 112(1) of the Equality Act by virtue of the fact that the Fifth Respondent was an "investor director" of the First Respondent, such that the knowledge of the Fifth Respondent is to be imputed to the Third Respondent?⁴¹

HOLIDAY PAY

³⁹ See C's FBPs at ¶52 [1.66].

⁴⁰ The Preliminary Hearing Judgment following the hearing on 10 January 2025 at ¶47-50.

⁴¹ See ¶55 of the FBPs [1.67].

22. How much accrued but untaken holiday pay did the Claimant have when his employment with the First Respondent ended (if any)? The Claimant says he had 9.5 days accrued but untaken annual leave.
23. Is the Claimant entitled to a payment for his accrued but untaken holiday pursuant to regulation 14 of the Working Time Regulations 1998/1833?
24. Did the Claimant suffer an unlawful deduction from his wages contrary to section 13 ERA 1996 in respect of his accrued but untaken holiday pay?
25. Has the holiday pay claim been brought within the time limit prescribed at s. 23 (2) ERA 1996? If not, was it not reasonably practicable for the Claimant to do so, such that time should be extended under s. 23 (4)?
26. Is the holiday pay claim liable to be struck out as abuse of process under the principle in *Henderson v. Henderson*?
27. The First Respondent did not file a response to this claim, but avers that the Employment Tribunal does not have jurisdiction to hear it because it is out of time. In disposing of the Claim, the Employment Tribunal must consider the appropriate way to proceed in accordance with Employment Tribunal Rules 2024. In particular, it must be confident that it has jurisdiction to hear the claim and that the claim is not an abuse of process.

JURISDICTION

28. Was each detriment claim brought before the end of the period of three months (plus any extension for early conciliation) 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 (s.48(3)(a) ERA)?
29. Were any of the Claimant's claims for discrimination, victimisation or aiding contraventions brought after the end of the period of 3 months starting with the date of the act to which the complaint relates (plus any extension for early conciliation)? If so:
 - 29.1. Was the conduct complained part of conduct extending over a period (such that the end of the period falls within the relevant time limit) for the purposes of section 123(3) of the Equality Act?
 - 29.2. Should the period be extended to another period which the Tribunal consider just and equitable (s.123(1) of the Equality Act)?

REMEDY – UNFAIR DISMISSAL AND WHISTLEBLOWING UNFAIR DISMISSAL

30. Should a declaration be made that the Claimant has been unfairly dismissed?
31. What compensation would it be just and equitable to award the Claimant, if any?
32. Should the Claimant's compensation be reduced because the Claimant, and if so by how much (the Respondents say 100%):
 - 32.1. contributed to his dismissal;
 - 32.2. would have been dismissed in any event (Polkey);
 - 32.3. has failed to adequately mitigate his loss; or,
 - 32.4. (in relation to whistleblowing unfair dismissal only) the Disclosures were not made in good faith?

33. Should the compensation awarded to the Claimant be reduced, and if so by what extent, under the principle in *Devis v. Atkins* (subsequently discovered misconduct) as set out at §173 of the GOC?

REMEDY – WHISTLEBLOWING DETRIMENT

34. Should declarations be made that the Claimant has been subject to whistleblowing detriments?
35. What award of compensation should be made, if any, including any award for injury to feelings?
36. Should any compensation payable to the Claimant be reduced because the Disclosures were not made in good faith?

REMEDY – EQUALITY ACT CLAIMS

37. Should a declaration be made that the Claimant has been subject to: (a) direct age discrimination; and/or (b) victimisation?
38. Should a declaration be made that the Third Respondent aided those contraventions?
39. Should the Tribunal make any recommendations?
40. What compensation would it be just and equitable to award to the Claimant, including any injury to feelings award?

REMEDY – HOLIDAY PAY

41. Is the Claimant entitled to payment in respect of unlawful deduction of wages or a payment pursuant to regulation 14 of the Working Time Regulations 1998? If so, in what amount?

INTEREST

42. Should the Claimant receive an award of interest on any of the sum awarded to him?

REMEDY – ACAS CODE

43. Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply to the dismissal of the Claimant?
44. If so:
- 44.1. Should any applicable compensation payable to the Claimant be subject to an uplift of up to 25% on account of any unreasonable failure by the Respondent to comply with that Code (as the Claimant alleges in ¶97 GoC)? Or:
- 44.2. Should any applicable compensation payable to the Claimant be subject to a reduction of up to 25% on account of any unreasonable failure by the Claimant to comply with that Code (as the Respondents allege at §170 GOR)?

Appendix B

348. These are the Tribunal's reasons for refusing the respondent's application for specific disclosure.
349. We fully took into account the parties' oral and written submissions. By agreement, the determination was made after the claimant's oral evidence was completed because this would not affect the progress of the hearing and it was possible that the claimant's oral evidence would affect the determination on disclosure.
350. The respondent's application was dated 4 July 2025. This was, in summary, for specific disclosure of correspondence between the claimant and his wife between 1 January 2023 and 25 September 2023, alternatively, the respondents sought an order that the claimant provide a disclosure statement to the effect that there was nothing to disclose and the steps taken in reaching that determination such as the extent of searches undertaken.
351. We applied the law as set out in the parties submissions even if not expressly mentioned below.
352. The starting point is Rule 31 Employment Tribunals Rules of Procedure (2013) ('the Rules') as applicable at the time of the application. This says that:

The Tribunal may order any person in Great Britain to disclose documents or information to a party (by providing copies or otherwise) or to allow a party to inspect such material as might be ordered by a county court [...].

353. In order to make an order for specific disclosure the document or class of documents must be relevant in the sense of it being disclosable under the rule 31.6 Civil Procedure Rules 1999 ('CPR'), ie. documents which a party

relies, adversely affect their own case, adversely affect another party's case, and or support another party's case, and disclosure must be necessary for the fair disposal of the proceedings: Santander UK Limited v Bharaj [2021] ICR 580. The threshold is whether the document is likely to support or adversely the case of one or the other party (at Bharaj at paragraph [26]). The assessment of relevance is an evaluative judgment about whether the information is likely to be relevant to any of the issues arising on the pleaded cases of the parties: Virgin Atlantic Airways Ltd v Loverseed and others [2024] EAT 79.

354. Applications for specific disclosure should normally be supported by evidence to support the case for an order, and the burden is on the applicant to put materials before the tribunal which establish the case for an order (Bharaj at [27]). 'Fishing expeditions' are not permitted: Bharaj at [24].

355. At [28] of Tesco v Stores Limited v Element & Ors UKEAT/0228/20/AT ('Element') the tribunal's powers as to disclosure are summarised as:

'(a) the Tribunal's powers under Rule 31 of the ET Rules are coterminous with those of the Court under CPR 31;

(b) as such, the guiding principle is not relevance but whether the documents are relied on by a party, or are likely to support or be adverse to a party's case. A document falling within that description will be relevant;

(c) if relevance in that sense is established, the test for making an order for disclosure is whether it is necessary for the fair disposal of the proceedings; and

(d) the Tribunal has a discretion as to whether to order disclosure. Such discretion must be exercised in accordance with the overriding objective.'

356. Applying Rule 31, CPR 18 is applicable for requests for information (Element at [29]). The principles to be applied are similar to those applicable

to disclosure and include necessity and proportionality (Element at [31]). An order for information will not be made if the request amounts to a 'fishing expedition'. Fishing expeditions are defined in Element at [33] as '*invariably involve the seeking of information about a matter that is not yet in dispute in proceedings, in that it does not form part of the pleaded case*' and at [69] as '*The prohibition on 'fishing expeditions' is uncontroversial. It involves any request for disclosure that is made in order to enable the requester to find a claim, rather than to inform a claim already made.*' For disclosure, the ultimate test is (at [82]): '*assuming the documents are relevant in the sense of being likely to support or be adverse to a party's case, the well-established one of whether the order for disclosure is necessary for the fair disposal of proceedings.*'

357. We accepted the evidence contained in the third witness statement of the claimant. This is because there was no good reason not to. It was not meaningfully undermined by any other evidence nor was there any effective challenged to it in cross-examination. Equally, whilst we understood that the respondents did not accept the claimant's position that there was nothing to disclose, we did not consider that there was anything from the evidence as a whole, or in particular the pieces of evidence relied on by the respondent in their application, which suggested that in fact there was undisclosed disclosable material. We reject the respondents' submission that the claimant's manual searches were insufficient: given the amount of material involved it was not necessarily wrong to do a manual search of eg. emails and messages between the claimant and his wife to see if anything was disclosable. Not was it necessary to have the entire exercise conducted by the claimant's solicitors: unrepresented parties routinely undertake their own disclosure exercises in employment tribunal proceedings. This was also a case where the claimant's solicitors had undertaken a check of the claimant's work for the most relevant period.

358. In all the circumstances, whilst we accepted that in principle the category of documents sought by the respondent were likely to be disclosable in the CPR sense, we also did not consider that any such disclosure order was necessary for the fair disposal of the proceedings. This is because we had

no good reason to find that the existing disclosure exercise was inadequate or that further searches would produce anything disclosable. The claimant had already undertaken an adequate and reasonable search and we had no good reason to go behind his evidence that this was the case. In those circumstances, no such order was necessary for the fair disposal of proceedings.