



# EMPLOYMENT TRIBUNALS

## BETWEEN

**Claimant:** Mr Jose Plata Martinez

**Respondent:** (1) Midasplayer.com Limited  
(2) Mr Christian Wurzinger

**Heard at:** in public, in person

**On:** 16, 17, 20, 21, 22 October 2025  
(deliberations in chambers 15, 16 December 2025)

**Before:** Employment Judge Adkin  
Mr P Secher  
Ms L Jones

## Appearances

For the claimant: Mr P Livingston, Counsel  
For the respondent: Mr T Cordrey, Counsel

# JUDGMENT

- (1) The following complaints are not well founded and are dismissed:
- a. automatic unfair dismissal pursuant to section 103A Employment Rights Act 1996 ("**ERA**");
  - b. protected disclosure detriment, contrary to section 47B ERA;
  - c. victimisation under section 27 of the Equality Act 2010 ("**EqA**").

# REASONS

## The Claim

1. The Claimant presented his claims on 8 April 2024 & 10 July 2024.

## Summary

2. The Claimant had the title Senior Finance Director, King. “King” was the trading name of the First Respondent business, a mobile games development company, which is now part of Microsoft.
3. The Second Respondent was the CFO of King and the Claimant’s line manager.
4. Two complaints of discrimination were withdrawn before the final hearing.
5. The Claimant was dismissed purportedly for redundancy on **6 June 2024**. He alleges that 7-8 protected disclosures and/or protected acts principally, though not exclusively, relating to the Second Respondent are the reason for his treatment.
6. The Respondents contend that the Claimant’s dismissal was one of two local redundancies with the Finance department forming part of a redundancy of 1,900 employees across the global Microsoft Games division which the First Respondent is now part of. Further they contend that the Claimant had been identified as a case of poor performance before the Second Respondent was aware of the proposed redundancy exercise and that his role which was “experimental” within the Finance department simply did not work out. On the Respondents’ case the Second Respondent had already decided to make the Claimant’s role redundant before he was aware of complaints made about him by the Claimant.
7. None of the alleged protected disclosures satisfied each of the elements of the statutory definition in **section 43B of ERA**, meaning that the complaints of protected disclosure detriment and automatically unfair dismissal (commonly called “whistleblowing” complaints) did not succeed.
8. The Tribunal found there were five protected acts established by the Claimant falling under **section 27(2)(d) of EqA**, identified by the numbering used by the parties: 2B (7.12.23); 3B (11.12.23); 4 (30.1.24); 5 (2.2.24) and 6 (8.2.24), a formal grievance). We did not find that any of the six alleged detriments were because of a protected act. The complaint of victimisation did not succeed.
9. As regards causation of detrimental treatment and the dismissal, the Tribunal accepted the evidence of the Second Respondent Mr Wurzinger that in he had been contemplating dismissing the Claimant for poor performance and almost immediately thought of the Claimant’s role once he informed that there was to be a global redundancy exercise. This was in November 2023, before he was

aware of the complaints made internally about him by the Claimant containing protected acts.

10. It follows that none of the Claimant's claims to the Tribunal succeeded.

### **Abbreviations**

11. In these reasons:
  - 11.1. the Claimant are in places abbreviated to **C**, and the Respondents are **R1** and **R2**;
  - 11.2. the seven disclosures are referred to as disclosure 1, disclosure 2A, 2B etc. In the later legal analysis these are analysed as potential protected disclosures (commonly called "whistleblowing") and protected acts (relevant to alleged victimisation).

### **Hearing**

12. Both sides in this dispute were ably represented by counsel who were cooperative with one another and the Tribunal, ran the timetable efficiently and both produced helpful written submissions.
13. The hearing started one day later than originally listed because of lack of judicial availability. From 21 October 2025 one of the members of the panel joined by video as she was suffering from cold symptoms but was well enough to continue to hear evidence and closing submissions.
14. After close of submissions it was not possible to carry out deliberations which instead took place on 15, 16 December which was the first mutually available period.

### **Evidence**

15. We had the benefit of an agreed bundle of 918 pages. Various new documents were added during the hearing including on the last day of evidence.
16. We heard from the Claimant himself and on behalf of the Respondent the following witnesses:
  - 16.1. Cindy Okoronkwo, People Director, who left the First Respondent's employment February 2025;
  - 16.2. Christian Wurzinger, CFO, R2, who left R1's employment December 2024;
  - 16.3. Jim McMullin, Activision Blizzard Marketing Lead for EMEA; who heard the grievance;
  - 16.4. Silvia Aparicio, HR, now employed King Shared Services Spain;

- 16.5. Jola Hollett, Director EMEA Investigations;
- 16.6. Nicola Cook, Counsel EMEA Investigations for Activision Blizzard UK Limited.

## Findings of fact

### History

17. Prior to his employment by the Second Respondent, the Claimant had worked in roles in Finance departments for 15 years, latterly as a CFO for Bayer.

### Employment with R

18. On 19 December 2022 the Claimant commenced employment with ActivisionBlizzard (initially working from home in the Netherlands) on a starting salary of EUR180k + 20K bonus.

### Genesis of culture & management style investigation

19. In Spring 2023, an employee in the Human Resources ('HR') Business Partner, left her role only a few weeks after joining. She raised a complaint about the culture and management style of some of the leadership in Finance, Insights and Strategy ("FIS"), which included the Second Respondent Mr Wurzinger. This was apparently raised through the First Respondent's "Way2Play" process, which fed in to an internal team responsible for investigating allegations of misconduct. The First Respondent hired Lewis Silkin, a firm of solicitors, to conduct an investigation. Various employees within the FIS team were questioned, including the Claimant.

### Early performance concerns re: C

20. An important part of the Claimant's role was to scrutinise the expenditure of the Product Marketing team ("PM"), lead by Mr Baris Aygoren. PM had a very substantial annual marketing budget in excess of £400 million. The Claimant's case was that Mr Aygoren did not like the scrutiny of the work of his team.
21. Mr Aygoren did not give evidence. In contemporaneous documentation he expressed the view that the Claimant did not really understand what his team did and was not adding any "value". On 2 June 2023 Baris Aygoren raised with Silvia Aparicio, Senior People Director a "very negative experience" with the Claimant, specifically

"no support proactively" or on requests, too much inefficient time.  
In a way that having this person is decremental [sic] without any benefit atm"

### Praise for C's team

22. At around this time on 8 June 2023, Mr Wurzinger acknowledged the Claimant's work:

“Great job by JP and his team!”

23. Mr Wurzinger now contends that he gave the Claimant the benefit of the doubt at that time and now believes that it was team members that had really done the work.

#### Relocation

24. On 1 July 2023 the Claimant relocated to London and began to work at the First Respondent’s London Office as Senior Commercial Finance Director.

#### Background to Protected Disclosure 1 / Protected Act 1

25. On 21 July 2023 the Claimant met with Frances Simm (“FS”), an external investigator, who was investigating the complaints about culture and management style of the FIS leadership team. The Claimant was one of 10 witnesses. He was interviewed by FS in a private interview with a note taker present.
26. He told FS that the Second Respondent would deliberately interrupt people in meetings and show a lack of empathy, and that female staff felt the impact the most. The interview contained the following exchange

FS: When you see that behaviour in public, is it more directed to more junior people, or men or women, or is it indiscriminate, anybody could be subject to it?

JP: Anybody. Yeah, I’ve seen it across the board. Female talents feel the impact the most. We had a few resignations in the past few weeks of female talent and that’s part of the explanation, I would expect.

27. In his oral evidence to the Tribunal, the Claimant made the following comment:
- “I don’t think he was targeting women particularly, but there was a wave of female resignations.”
28. The Claimant clarified that the “wave” was something in the region of 3-5 resignations.

#### R2’s disciplinary outcome discrepancy

29. There was in this case a somewhat puzzling discrepancy between the documented outcome of the culture and management style investigation for Mr Wurzinger and his recollection of it.
30. Mr Wurzinger says that at some time in or around July 2023 he was given a verbal warning by Ian Mattingly, Chief Legal Officer & Chief Corporate officer. He says that this was for swearing and that he did not know that the Claimant was the person who complained.
31. Mr Wurzinger cannot explain the two page letter which appears to show that he was given a Final Written Warning for this matter in October 2023. He

claims never to have seen it. Mr Mattingly is still an employee of the First Respondent, but was not called to give evidence, nor was a covering email disclosed. the First Respondent apparently has the ability to check the WorkDay HR system to see whether this report was issued. We were not provided with any clarity on this by the First Respondent.

32. We found that Mr Wurzinger's recollection was somewhat hazy and he did minimise the outcome of the report, which went further than simply a finding that he was swearing (see below). He must have been aware at the time, that the outcome of the investigation was somewhat more serious than merely swearing. We accepted his evidence however that he was not aware that the Claimant in particular had complained. In the context of 10 or so individual witnesses there is no reason we can see based on the evidence why he would have identified the Claimant in particular as being the source of the content of the findings of the report.

#### Confidential conversation

33. On 17 August 2023 the Claimant and Mr Wurzinger had a conversation about Employee 1, who had left the organisation, and the circumstances and terms of the settlement agreement, which the Claimant alleged in a complaint made in December 2023 was in breach of that agreement.

#### Further performance concerns re: C

34. On 14 September 2023 Cindy Okoronkwo ("CO"), formerly People Director, Activision Blizzard King, EMEA, prompted Mr Wurzinger by slack to have a conversation with the Claimant and to ensure that this conversation was documented.
35. Following on from this, on 16 September 2023 Mr Wurzinger told Mr Aygoren to have a "frank but kind talk" with the Claimant following frustrations raised by Mr Aygoren:

"I did think about this. Can you please have a frank but kind talk with JP and tell him what you need to see from him to be comfortable? After that I will talk to him as well. Happy to agree message upfront!"

#### The Claimant's positive feedback

36. On 11 October 2023 the Claimant received positive upward feedback from both of his direct reports.
37. Mr Wurzinger suggests that the Claimant only had two direct reports so they would be bound to give positive feedback since they could be easily identified.

Acquisition by Microsoft

38. On or around 13 October 2023 Microsoft completed a purchase of Activision Blizzard and King became a subsidiary of Microsoft Gaming (formerly “Xbox”).

Negative comments from the Claimant’s finance peers

39. On 12 October 2023 there was a slack exchange between a couple of the Claimant’s peers. They were both upset with him.

40. Anthea Williams, Vice President, Finance, direct report of Mr Wurzinger, and direct peer of the Claimant appears to have had a slack chat in which she is chatted in real time about a meeting going on:

AW: I find JP's response to me SHOCKING

Jan Wedekind [VP Data]: What was he saying? Sorry. I am also annoyed by some thing with him, particularly the forecasto nagging. It's been months that we asked to fix and improve PM reporting and I don't think we've progressed. Meanwhile I never committed to do PMs job in redoing how it's forecasted.

41. This was a rather gossipy exchange and was being conducted, perhaps unfairly, behind the Claimant’s back. This exchange does lend support to the Respondents’ case however that a number of the senior people within the team were unhappy about their interactions with the Claimant.

Disciplinary outcome R2

42. By way of an outcome of the investigation into culture management style in the FIS, on 19 October 2023, Mr Wurzinger delivered an apology to the team, as part of the outcome to the investigation into his conduct using an agreed script.

43. This “team” apology by him led the Tribunal to conclude that the outcome was more serious than simply being ticked off for some swearing which is the way that Mr Wurzinger had characterised the outcome.

44. Also on 19 October 2023 there was a letter which refers to a disciplinary meeting on 10 October 2023. The outcome documented in the letter was a Final Written Warning for bullying towards some members of the team, using an inappropriately direct, aggressive and forceful tone in communication and offensive language; raising his voice in heated discussions and interrupting or speaking over team members and giving overly negative feedback on work in public.

45. The letter stated

“Having discussed the findings of the investigation with you, the decision was taken to give you a final written warning”

46. The letter is not explicit as to whether that decision was communicated to Mr Wurzinger in the meeting on 10 October. It is possible that the sanction followed later. We have concluded however that it is more likely on balance

that the sanction was communicated to Mr Wurzinger, especially given that there was also a discussion within the meeting about the steps needed to rebuild trust, relationships and culture within the team.

47. We have not received evidence to contradict what Mr Wurzinger says which is that he did not see this letter until the Tribunal hearing. He says he was surprised to see it. We have not received any email covering and sending this. We note that Ian Mattingly is still an employee of the First Respondent. He was not called to give evidence.
48. The First Respondent could perhaps have resolved or clarified matters with Mr Mattingly as to whether or not this was sent. This did not happen, with the result that the question of what if anything Mr Wurzinger was sent in October was something of a loose end. We are reluctant to express a concluded position in this. There are various possibilities. It is possible that the letter was never sent. It is possible that the letter was sent but never accessed by Mr Wurzinger. It is possible that he saw it and forgot. Although this seems a little unlikely, no doubt the business of delivering the team apology might have preoccupied him more than correspondence received on that day. In short there are various possibilities. It is difficult for us to say which one of them it was.
49. To reiterate however in respect of both July and October 2023 communications with Mr Wurzinger, we did not conclude on balance that the Claimant's specific contribution (given that there were also 10 witnesses interviewed as part of the investigation) was communicated to him.

#### Baris Aygoren's detailed feedback on the Claimant

50. On 28 October 2023 Baris Aygoren's provided feedback on the Claimant to Silvia Aparicio in HR. An email sent Saturday, October 28, 2023 at 12:03 am contained a very lengthy critique of over 4 pages of close type, including comments from Mr Aygoren's direct reports Richard N, Jose, Anisha, Sian, Alicia). Comments suggested that colleagues had found the Claimant bossy, inefficient, very rude in manner, and not collaborative; that he made mistakes and that his messages were confusing. Mr Aygoren criticised the Claimant for a lack of knowledge of PM's work, a lack of interest in strategy and for reducing rather than increasing efficiency.
51. While there are several positive points noted, it is very clear overall that Mr Aygoren was quite deliberately documenting a damning set of comments about the Claimant.

#### R2's first awareness of redundancy

52. Mr Wurzinger says he became aware that there was going to be a large-scale redundancy exercise with global scope, codenamed "**Project Polygon**" from his manager Armin Zerza, Activision Blizzard King Chief Financial Officer in early November 2023. This was not publicly announced until 25 January 2024.
53. Mr Zerza was based in San Francisco.

Negative feedback on the Claimant

54. On 7 November 2023 Mr Wurzinger emailed Steve Collins (“**SC**”), Chief Technology Officer, Head of the Shared Technology Team (“**ST**”) worried about the Claimant’s performance, asking for feedback. He did however acknowledge that the ST work was amazing but wondered how much of that was his work. ST was the other main area that the Claimant was tasked with supporting.
55. The exchange is as follows:

CW: could I ask you to please provide feedback on JP? I am very worried about his performance. He received very poor feedback from Baris and his team. I see **way too little business impact** as well.

On the other hand, the Shared Tech work is amazing and I wonder how much of that was his work.

Steve Collins replies

This is difficult. We have found Chris to be amazing but have **not seen any real impact from JP to be honest**. Day to day our interactions are with Chris who has driven all the input from finance to the operating model and is an outstanding partner. I’m not sure what JP does and had assumed he was more active on PM side than shared tech side.

**JP’s input tends to be high level and abstract and often repeating the obvious TBH**. His Comms style is very formal despite our attempts to bring him on as a real team member. He does keep us informed but it’s really hard to attribute any of our great progress lately to him - but I do want to be careful that I’m not seeing something in how he manages or supports Chris which might be invisible to us. If his success can be in part measured by Chris’ success then that is to be taken into account.

[emphasis in bold added]

C meets senior HR

56. The Claimant had two meetings in November with Sylvia Aparicio (“**SA**”), Senior People Director, who was based in Barcelona, and was Ms Okoronkwo’s line manager. According to her internal calendar, consulted during an internal investigation, those meetings took place on 13 and 22 November 2023.
57. The Claimant says that he shared with Ms Aparicio his concern about Mr Wurzinger breaching the confidentiality of the settlement agreement with Employee 1, and was disappointed that this did not lead to an investigation. It seems most likely that this conversation happened at one of the meetings in November.

R2 “tented” on Polygon

58. On 14 November 2023 Mr Wurzinger was included on the “Project Polygon” “tent” list.
59. “Tenting” is a procedure used by the the First Respondent’s parent company for a redundancy, in which various individuals are drawn into the “tent”, which is the list of employees who are aware of a confidential project. The process started with the most senior people across various functions (e.g. finance and HR) and gradually less senior people were brought in.

R2 “almost immediately” thought that C’s role should be made redundant

60. Mr Wurzinger’s evidence was that he intended to dismiss the Claimant from November 2023 onward, having “almost immediately” thought of the Claimant’s role once he understood that redundancies were required.
61. This was challenged by the Claimant on the basis that the only documented evidence of Mr Wurzinger’s decision to make the Claimant’s role part of the redundancy exercise occurred in December.
62. We accepted Mr Wurzinger’s evidence. By this stage it is clear from contemporaneous documentation that Mr Wurzinger had formed the view that the Claimant was not performing in this fairly highly paid role, based on emails from the Claimant’s two key stakeholders. Mr Aygoren had been absolutely explicit that he thought that the Claimant was poorly performing and a problem. Mr Collins’ criticism was more muted and in milder terms but he felt that the Claimant was not producing any real impact.

C approaches second line manager

63. On 15 November 2023 the Claimant directly approached Armin Zerza (“AZ”), CFO Activision Blizzard, Mr Wurzinger’s line manager based in California in an email:

I just jumped off a call with Silvia Aparicio who serves as HRBP at King and she mentioned that you are aware of an investigation that took place earlier this year that led to sanctions of 2 of the leaders in the finance team.

While asking for confidentiality, I would appreciate if you have 15 minutes to share insights of the conversation we are having with Silvia and to share my case with you.

64. Silvia Aparicio in her oral evidence denied the content of this contemporaneous email from the Claimant to which she was not party. She appeared to interpret the email as critical of her, which is not the way that the Tribunal read it.
65. On the balance of probabilities, this email indicates that the Claimant was looking to escalate some sort of complaint to Mr Wurzinger’s line manager.

BA feedback direct

66. On 29 November 2023 Mr Wurzinger thanked Mr Aygoren for feedback and asked him to provide feedback directly to the Claimant about his performance.

Building narrative for redundancy

67. On 30 November 2023 Emma Hoyle, the First Respondent's Chief People Officer wrote an email to her direct report Ms Aparicio, who learned on this day about Project Polygon.

68. Ms Hoyle dissuaded Ms Aparicio from sharing the news further and wrote as follows:

"I's [sic] a bit more nuanced as we have made some reductions and we are closing some open headcount. I'm building the narrative with Christian at the moment."

69. This email does not explicitly identify the Claimant's role or any role in particular. This was naturally a confidential process but evidently reductions had already been identified by Ms Hoyle and Mr Wurzinger and they were working on a justification for it. On the balance of probabilities we accept what Mr Wurzinger told the Tribunal which is that he had decided to make the Claimant's role redundant rather than dismissing him as a case of poor performance, which had previously been his plan.

Protected Disclosure 2A / Protected Act 2A

70. Rather than pursuing his complaint about Mr Wurzinger with Mr Zerza, the Claimant chose a different approach to escalate it.

71. On 1 December 2023 at 9:37am the Claimant used the EthicsPoint Incident Management system to register an anonymous complaint against Mr Wurzinger. The category of complaint is "Misappropriation of Confidential Information" and the content relates to a conversation which occurred three months earlier [373]:

Christian and I were having our regular 1:1 at the terrace on the 4th floor of the Ampersand Building in London on August 17 2023.

Christian disclosed that he was told by King not to disclose any of the terms of the exit agreement of **employee E1**. From finance and said "I'm not allowed to tell you this" "it was part of the agreement with **employee E1**. that her exit agreement will not be disclosed with third parties but I don't care"

Christian proceeded to reflect that he had limited interactions with her and she was knowledgeable and capable to perform her duties but she went mad, behaving insane, bullying other women in the team and in his words abusing the protections the company and law provide to pregnant women, he also mentioned she has 3 kids.

He mentioned she hired lawyers to defend her case and there was an agreement with King to proceed with her exit. He also mentioned that the feedback he received from legal was “you cannot fire a woman with 3 kids that just came back from maternity leave, we will lose this case no matter what”

R2 discussion with line manager

72. Mr Wurzinger’s oral evidence was that his line manager Armin Zerza (“AZ”) never put anything of consequence in emails, despite the fact the two of them were working in different time zones and on different continents. Various emails setting up zoom meetings and the like were disclosed and provided to the Tribunal on the last day of evidence at the request of the Tribunal.
73. On 5 December 2023 Mr Wurzinger confirmed to AZ that New Games (a team of people) would be included in Polygon. It is clear that the two of them were working on Polygon at this time.

Protected Disclosure 2B / Protected Act 2B

74. On 7 December 2023 at 3:41pm GMT, the Claimant used the EthicsPoint Incident Management system to register another anonymous complaint against Mr Wurzinger. The category of complaint is “Lack of Professionalism” and the content was:

“I was informed by Richard Allan, Dr Director Finance, that Christian Wurzinger and Anthea Williams pressed him without a case to exit the **employee E6** who currently is on maternity leave.

It is my understanding that Richard reached out to HR to discuss the case and HR rejected the case.”

75. On 7 December 2023 at 3:49pm GMT, the Claimant used the EthicsPoint Incident Management system to register an anonymous complaint against Anthea Williams, Vice President, Finance, a direct report of R2. The category of complaint is “Lack of Professionalism” and the content was:

“In a conversation with Richard Allan it got to my attention that Anthea had approached Ian Simson from the Planning and Reporting team disrespectfully and knowing Anthea's long history of improper behaviour, raising the voice to employees, specially when she is stressed, I believe this should be brought to the attention of Way to Play as similar actions were investigated and sanctioned earlier this year and the employee keep on engaging in this behaviour” [379-380]

Red flag

76. These complaints were “triaged” and given a red flag given Mr Wurzinger’s seniority.

Protected Disclosure / Protected Act 3A, 3B, 3C

77. On 11 December 2023 Ms Jona Hollett met with the Claimant via Zoom to discuss his complaint.

3A

78. In his discussion with Ms Hollett, the Claimant reiterated orally the content of the written disclosure 2A. He described the conversation between himself and the Second Respondent Christian Wurzinger on 17 August 2023 as follows:

“It was outside, on the balcony/terrace. He disclosed to me information related to the exit of [Employee 1], I can’t pronounce her last name. She’s an employee I didn’t meet. I never had any conversation with her or exchange with her. I don’t know who she is. Christian disclosed information about her exit agreement, that King entered into with her that was happening at that time, or about that time. He mentioned that he was not supposed to disclose the terms of the agreement with anybody but that he didn’t care and that he wanted to share that she had lawyers involved and that she had three kids and was coming back from maternity leave and was abusing her maternity legal protection to her advantage. Christian said that he wanted to exit her but that King legal mentioned that because she was coming back from maternity leave, any litigation may not have an a good outcome for King so they landed on an agreement for her to separate from the company.”

79. By way of context the Claimant explained that this conversation had arisen following on from a presentation relating to diversity and inclusion. Finance had suffered from poor results in a “Glint” survey of employee engagement and Mr Wurzinger was offering this information which was relevant to some of the topics. Although the Claimant says at paragraph 13 of his witness statement that he did not know if anything said might have been overheard by other colleagues because they were in a public space, when he was asked about this in the meeting in December whether there are any witnesses he said “I don’t think so”.

80. That meeting contained the following exchange:

JH Why did you not raise this at the time?

JP [C] I didn’t analyse that conversation from an ethical perspective. I took it like another conversation, but now that I have more awareness and information about the code of conduct, I realise that was an improper conversation

JH Do you have any further detail about Anthea’s behaviour?

JP I don’t have any more detail as I was not in that meeting, and I did not ask for any more detail from Ian or Anthea as I am not an investigator. That is not my role. My role is to report it.

3B

81. In his discussion with Ms Hollett, the Claimant reiterated orally the content of the written disclosure 2B as follows:

I said that [Employee 6] is on maternity leave and has been on leave a few months and I asked when she is coming back as she can help him. He said that Christian and Anthea don't like [Employee 6] and asked him to put her in package and HR did not like that and rejected the case. I asked him whether there was a case they presented, and he said there was no case. That was the context of the conversation.

I don't have information as to when this took place. I don't know when the exchange happened, but it is unacceptable that senior leaders go around encouraging other leaders to put colleagues in a package, especially during maternity leave because of the implications it could have on the individual and the company. It raised a lot of alarms.

3C

82. As to the allegation raised regarding treatment of Ian Simson, the Claimant explained to Ms Hollett:

"... there was an incident between Anthea and Ian where Ian was asked to produce P&L's per franchise and Anthea [Williams] was upset as she didn't get the P&Ls with the conditions she was expecting and she had a disrespectful reaction towards him"

83. The Claimant explained that the incident had occurred on 17 November and been recounted to him on 21 November 2023. He further elaborated:

"I felt he was a bit shocked it happened again. He was a witness in the case. He is aware of this history of wrongdoing. I felt he had a need to tell me, to share with someone"

Alleged performance concern conversation with C

84. On 11 December 2023 Ms Okoronkwo chased Mr Aygoren about a feedback meeting with the Claimant:

I believe you discussed with Christian to deliver directly to JP by end of last week?

This piece is critical to a follow up conversation we need to have this week with JP.

85. Ms Okoronkwo's oral evidence was that this was intended to be a without prejudice conversation.

BA's negative feedback to the Claimant

86. The following day, on 12 December 2023 there was a meeting between Mr Aygoren and the Claimant, for the former to provide "feedback" to the latter at the request of R2. Mr Aygoren confirmed as follows:

Overall it didn't go very well as he wasn't very open to feedback, below you can find some details."

3 senior directors have informed me that he was very rude against Alicia & Sera, in a way that both were about to cry.

\* He believes the way we communicate is not important as long as we are right. I mentioned again our company values and that we all should be fun&friendly and humble&open

\* As the feedback suggests, he kept his bossy tone by using words like "we do this like that", "this has to be done like that". When I ask him what he means by "we", he couldn't answer. And I told him that only way that things has to be done is King values way and he will still need to be fun & friendly and humble & open

ST team feedback

87. Also on 12 December 2023, a feedback email was supplied directly to the Claimant by Steve Collins, CTO and head of the Shared Technology Team ("ST"), which is mixture of positive and some less than positive messages:

Calm under pressure, knowledgeable and always friendly and helpful. I'm confident topics that are raised for finance will get communicated / relayed, and I generally get quick answers to queries and support for initiatives that need to be driven in Shared Tech. You participate in our Shared Tech Leadership meetings and represent the inputs from finance effectively.

88. On the less positive side there is a suggestion that the Claimant did not know the ST team that well, that his role was "policing" rather than the desired and more collaborative "facilitating"; he was repeating things already known by the ST leadership team and Mr Collins felt there was a lack of transparency on what the Claimant was trying to achieve.

Polygon zoom call

89. Also 12 December 2023 a senior management meeting took place by Zoom re: Polygon including Tjodolf Sommestad, Mr Wurzinger; Armin Zerza; Humam Sakhnini; Ismet Kartal.

E6 exit complaint outcome

90. On 14 December 2023 Ms Hollett produced a concise two page report rejecting the Claimant's complaint about the Employee 6 exit discussion. The allegations that Christian Wurzinger and/or Anthea Williams lack professionalism in the workplace and that they inappropriately used company authority were found to be unsubstantiated. Ms Hollett reached that conclusion without interviewing either respondent to the allegations (i.e. R2 or Ms Williams).
91. This outcome did not come to the Claimant's attention until mid-January 2024.

30% reduction in corporate areas (HR discussion)

92. On 14 December 2023 Ms Aparicio met Emma Hoyle, who told her that the planned reduction was a "30% reduction especially in corporate areas".

More complaints about the Claimant

93. In a contemporaneous exchange on "slack", early on 15 December 2023 Rob Hamilton complained to Anthea Williams that the Claimant had not read the deck and Ms Williams complained by way of response that he had not read her email. Ms Williams stated that she would use these points for a discussion with Mr Wurzinger.

Disclosure revealed to R2

94. Also on 15 December 2023 Ms Hollett met with Mr Wurzinger at 10:00am by zoom.
95. Ms Hollett says she did not talk to Mr Wurzinger about the complaint about the treatment of Employee 6 (i.e. Protected Disclosure 2B). She had already produced a file note the previous day 14 December 2023 in which she had dismissed that complaint in a two page memo. We accepted this evidence.
96. Ms Hollett did however talk to Mr Wurzinger about the alleged breach of confidence of the settlement agreement of Employee 1 on 17 August 2023 raised in writing by the claimant on 1 December 2023 (alleged PD 2A) and in the zoom meeting on 11 December (alleged PD 3A).
97. During this conversation Mr Wurzinger referred to a notebook (which he says was a work iPad which he no longer has access to), which was not disclosed to the Claimant or produced to the Tribunal. He accepted that it was not appropriate to share the confidential information with the Claimant. He also raised that it was strange that an allegation like this was being raised 5 months after the event. He was evidently querying the Claimant's motivation in raising this matter now.

30% reduction communicated to R2

98. Also on Friday 15 December 2023, Ms Aparicio met with Mr Wurzinger at their regular 121. The Tribunal has not received any disclosure of notes taken by either of them at this meeting, nor anything about the timing of this meeting.
99. Details of this regular 121 meeting does not appear to be in either Ms Aparicio's or Mr Wurzinger's witness statement, but it is referred to in a side note made by Ms Aparicio to the notes of an interview of her as part of an internal investigation. We find that on balance it is most likely that this meeting took place after the 10:00am discussion with Ms Hollett, later on the same day.
100. Ms Aparicio relayed to Mr Wurzinger the information she had received the previous day about a proposed 30% reduction. She said that is when Mr Wurzinger said that because of the structure of the team there was one of the roles he could potentially make redundant as there were other people who were doing the work and could absorb the role. This was the Claimant's role.

Further information about the discussion in August 2023

101. Mr Wurzinger mulled over the disclosure made by the Claimant over the weekend. He sent an email to Jola Hollett on 10:53am on Monday 18 December 2023 re: investigation in which he had tried to reconstruct based on old messages what it was that he had told the Claimant in August. He recollected a conversation with another employee E2, who had told him that there had been a medical history of E1 leading to extended leaves and situation where she left that employment. He also recalled that E1 wanted to write a book or article about her negative experiences returning from maternity leave. He suggested that this was not confidential information.
102. Mr Wurzinger said that he had thought a lot about the Claimant's motivation to escalate the conversation and put it in a light that implied a violation of confidentiality. He said that he would in a separate email forward unvarnished feedback from his most important business partner Baris Aygoren, which indicated that the Claimant failed to understand relevant business topics and was not delivering on minimum expectations for the role. He stated that the Claimant also display behaviour which was not welcome by counterparts leading to frequent irritation. He speculated that this had led the Claimant's unease and had triggered this action.

The Claimant's role first documented as potential for redundancy

103. Approximately 75 minutes later on 18 December 2023, at 12:10 Mr Wurzinger confirmed by email to Emma Hoyle and Silvia Aparicio with Cindy Okoronkwo in copy that the Claimant and another employee MW were the only people whose roles he was planning to make redundant within his FIS department. He hoped that not need to make any more people redundant and hoped that reducing communication chains would make the organisation more effective.
104. The Tribunal accepted Mr Wurzinger's evidence that by this stage he had already planned to make the Claimant's role redundant. Polygon which was

not due to be announced generally until January. We find that his decision to confirm this in writing and document it on Monday 18 December was precipitated by the information he had received about the Claimant's complaint about his breach of confidentiality (disclosure 2A) on Friday 15 December. This had been in train however since November.

105. Ms Aparicio responded thanking Mr Wurzinger, asking him for detail to justify why these roles were impacted.

106. That evening Mr Wurzinger provided detail of the impact:

J. Plata Role: consists of 2 parts, each business partnering:

a. Shared Tech has been managed very independently by Chris Cole. He will report to Lumi. The next stage of developing Shared Tech will require strategic thinking and hands-on leadership that she will be able to provide very well. It will also increase her span of control from currently only 3 direct reports to 4. Is a great move for Chris who will benefit greatly from the intellectual stimulus.

b. PM will be integrated into the game teams Candy, Soda, Farm. This will eliminate a source of friction - the handover between these two teams. The risk is minimal since JP has very little understanding of the business and taking him out of the loop will add to better communication. The details of this integration will need to be worked with Anthea once I can speak to her about JP

107. Ms Aparicio replied the following day saying "will need of course to work on building robust rationales but we could have a case here". The matter then was referred to other colleagues to calculate exit costs.

108. The other named individual MW subsequently left on an agreed basis.

Outcome report – confidential information

109. On 10 January 2024 Ms Hollett produced a concluded report that the claim Mr Wurzinger had disclosed confidential information about Employee 1's settlement was unsubstantiated, but that Mr Wurzinger had lacked professionalism in discussing Employee 1's exit, although she did not find that he disclosed confidential information.

110. The allegation that Mr Wurzinger misappropriated confidential information was found to be unsubstantiated.

111. Ms Hollett's conclusion was:

"The investigator did not find Jose to be credible in his explanations as, although he was asked by the investigator whether he had discussed these issues with anyone else at the Company, he did not disclose that he had raised this and two separate concerns 2 to HR, Silvia Aparicio (Senior People

Director, King, Spain). Furthermore, Jose had the opportunity to raise this concern on multiple at least four occasions:

after the incident, after he completed the Workplace Integrity Training on 12 September 2023, to the external investigators looking into King leadership and with whom Jose had previously spoken regarding Christian in summer 2023, and, finally, after a lengthy scheduled conversation with Adam Kretz (Senior Director, Global Compliance, US) on 17 October 2023, during which conversation Jose was asked specifically whether he had any further concerns regarding Christian or other senior King Finance leaders that he had not previously raised with the external investigators.

112. Ms Hollett's conclusions were communicated to Mr Wurzinger in a "close out" discussion on 19 January 2024 in which she reminded him that there was a "strict non-retaliation policy". The outcome was also provided to the Claimant by email.

#### Performance review

113. In his 2023 Annual Performance Review on 22 January 2024, the Claimant's performance was rated as "Below Target".

#### Public announcement of redundancy

114. On 25 January 2024 there was Group Wide announcement of 1,900 redundancies across Microsoft Gaming and King, which was also mentioned externally.

#### Redundancy process for the Claimant

115. Also on that day the Claimant met with Mr Wurzinger who advised him that his role was at risk of redundancy. As was documented in a letter dated 25 January, it was explained that the structure was "adding complexity and inefficiency". He was given detail of the next step in the redundancy consultation process, which would be an individual meeting on 2 February 2024.

#### Alleged protected disclosure 4

116. On 30 January 2024, the Claimant made a complaint using the Ethics Point Incident Management system as follows:

I have served as a witness linked to misconduct cases conducted by Christian Wurzinger and Anthea Williams

I have also served as a whistleblower for misconduct conducted by Christian Wurzinger breaching an NDA with an employee who

is currently and until March 2024 on leave before departing from King (she has been in garden leave for over 9 months)

On 25 January I was approached by the Christian Wurzinger and HR where I was communicated of a redundancy impacting my role despite having all financial, projects, and talent development plans in place according to the goals established for my position. Half of my position is proposed to be absorbed by Anthea's organisation (this is how it was set up when I joined in December 2022 and it was chaos as reflected in the Glint survey applied in December 2022) and the other half of my job is planned to be absorbed by the head of strategy that has no financial background when the role is mostly financial and resource allocation oriented.

Christian also explained that "business support functions remain under pressure to ensure that they are running in the optimal and most efficient way", this is a lie, I received (forwarded by a colleague) an email from the President showing no changes in the FIS headcount for 2024 and Christian and Anthea mentioned in the FISLT meeting that took place on January 22 that "we are thinking on hiring 1 to 2 senior leaders for finance".

**This is a direct retaliation creating an artificial redundancy to impact my role and my continuation in the company"**

[emphasis added]

#### Impact list

117. On 30 January 2024 there was a discussion on slack between Lara Golden and Adam Kretz

LG: hi, take a look at the hotline case we just got, 6826

Jose Plata wasn't on the impact list that we've been vetting for weeks

AK: he still shows Slack here

so it's weird

a non-Polygon redundancy at the same time?

118. There was a slack exchange between Adam Kretz and Jola Hollett on 31 January 2024, in which they were discussing the Claimant's allegation that the decision to make him redundant was retaliatory action. Mr Kretz explained:

"he alleges that the redundancy was a farce because Christian and Anthea had previously noted they weren't making reductions on the team"

119. These exchanges were put to Mr Wurzinger put to him that this suggested that the Claimant's redundancy was not part of Project Polygon at all. He denied this, but admitted that the underlying reason for the Claimant's role being made redundant was, in effect, an opportunistic decision by him to avoid having to deal with a poor performance situation. He also maintained that the creation of the Claimant's role had been something of an experiment and that he had come to the conclusion that it did not work.

First redundancy consultation meeting

120. On 2 February 2024 the first redundancy consultation meeting took place in which the Claimant met with Mr Wurzinger and Ms Okoronkwo. During that meeting the Claimant explicitly stated that he saw a connection between his disclosures and the decision to make him redundant:

"I insist this was retaliatory."

Protected Disclosure 5 / Protected Act 5

121. On 8 February 2024 the second redundancy consultation meeting took place. Again the Claimant met Mr Wurzinger and Ms Okoronkwo.
122. Also on this day Nicola Cook met with the Claimant as part of Way2Play investigation.

Protected Disclosure 6 / Protected Act 6

123. The Claimant raised a grievance with Tim Stuart, CFO of Microsoft Gaming on 8 February 2024. This included allegations of retaliation and of discrimination against him as an LGBT Latin employee and provided information about the Second Respondent having breached confidentiality provisions of a settlement agreement with Employee 1. He wrote:

"I have reported this situation to the Way2Play line, and wanted to raise a grievance as well given the apparent intention to dismiss me for alleged redundancy, to protect my position in case of future legal proceedings."

"Breaching NDAs puts King at legal risk and is a breach of what I understand to be the usual terms of a settlement or severance agreement."

"I am an LGBT Latin employee and I also feel that my characteristics are another cause of the way I am being treated."

124. This, it is admitted, was a protected act.

Third consultation meeting

125. On 15 February 2024 the third redundancy consultation meeting took place between, the Claimant, Mr Wurzinger and Ms Okoronkwo.

126. During that meeting, the Claimant asked for the redundancy process to be paused to allow for his grievance to be considered.

R2 interview

127. On 29 February 2024 Mr Wurzinger was interviewed by Nicola Cook about some of the Claimant's complaints. He rejected the Claimant's allegation that an email from the President (discussed in the meeting) showed no changes in headcount were expected. As to the Claimant's contention that Mr Wurzinger and Anthea Williams had discussed that there would be no reduction, his recollection was that at meeting on 22 January 2024 it was discussed was that there were two junior vacancies and it was the Claimant himself suggesting that there should be an increase in senior roles.
128. That interview contains the following exchange (amended after the interview by Mr Wurzinger as detailed below):

NC Can you provide the date on which the first discussion around JPs role being at risk, took place?

CW This is the problem, [REDACTED] I looked at it already.

NC If you were aware (of any or some) - did you consider whether it was appropriate for you to be the decision maker regarding whether his role was put at redundancy?

CW I thought that he did this on purpose because he must have seen that he was at High Risk. I think he has abused the system. I think he is **significantly abusing the system and I do not accept that I should be under continuous threat by him, making allegations.**

He is also on the continuous lookout and on zoomn calls he stopped switching on his camera. Actively looking out for incriminating evidence. He has been doing that systematically – he told me in the Summer that he was documenting every discussion he has in the company because people are so unprofessional and chatty and gossipy, and it makes him so uncomfortable. I repeatedly told him that if there is anything that would trigger a complaint or a red flag, to tell me or make me a complaint. And he told me there was nothing. I also put in writing that I encouraged him to make a complaint if there is anything.

NC Did you take any measures to mitigate against the risk your decision could be considered retaliatory? If so, what were they?

CW No because I was very surprised by the investigation against me and **learned about it on Dec. 15, after I had made up my mind. didn't know what to do.** I mentioned it to Suzanna because I knew it would be good to document what I had thought before, but I don't have that and can't back date.

NC Was the decision to place JP's role at risk of redundancy in any way linked to him raising concerns to Way2Play and/or being a witness in an investigation?

CW Of course not. I hope it is abundantly clear.

NC Are you aware of JP's sexual orientation?

CW Yes.

NC Could the decision to place his role at risk of redundancy have been linked to his sexual orientation?

CW No, of course not because I knew that before I hired him.

[emphasis **in bold** added]

[section underlined above was inserted by Mr Wurzinger as an addition; and the section struck out was deleted by him]

129. It is clear from this exchange that Mr Wurzinger found out that the Claimant made allegations against him in December. It must have been clear to him that the context of the current investigation in which he was answering questions was the result of a complaint by the Claimant.
130. Mr Wurzinger says that this demonstrates that he did not have the full detail of the Claimant's complaints.

#### Dismissal

131. On 5 March 2024 Mr Wurzinger met the Claimant with Ms Okoronkwo in attendance. He confirmed to the Claimant that he was to be dismissed. That was followed up by a letter confirming the outcome.
132. During the course of that meeting Ms Okoronkwo made express reference to the Claimant's allegation that the decision to place his role at risk of redundancy was retaliatory. She nevertheless immediately went on to confirm that his role has been made redundant, although this is subject to the outcome of the Workplace Integrity Investigation (I.E. the Grievance). She said:

I appreciate that you have raised a concern that the redundancy is retaliatory. As you know, this is being investigated by the Workplace Integrity team.

As explained to you previously, the Workplace Integrity investigation is separate to the redundancy consultation. Notwithstanding this, there is a business need to reduce headcount and move forward with the redundancy proposals. We have now concluded the redundancy consultation and your role is therefore confirmed as redundant. However, this is subject to the outcome of the Workplace Integrity investigation.

This means that you are being issued with notice of termination by reason of redundancy and you will be placed on garden leave for the period of your notice (3 months).

133. In the Tribunal hearing Ms Okoronkwo was challenged over the decision to allow Mr Wurzinger to deal with the redundancy process relating to the Claimant given the complaint. Her evidence was to the effect that Mr Wurzinger had the mandate to make the decision, it was his business area and his decision and he would need to live without the roles proposed in the redundancy.

Garden leave

134. On 6 March 2024 the Claimant's garden leave commenced.
135. On 14 March 2024 the Claimant was signed off sick with depression until 31 May 2024.

Bonus

136. On 26 March 2024 the Claimant was informed his bonus would be based on 50% multiplier. The Claimant contends that it should have been 100%.

Grievance meeting

137. On 26 April 2024 there was a grievance meeting with the Claimant and Jim McMullin, MD ActivisionBlizzard.

Termination

138. On 6 June 2024 the termination of the Claimant's employment took effect.

Further grievance meeting

139. On 24 June 2024 a further grievance meeting with the Claimant and Mr McMullin took place.

No appeal against redundancy

140. On 9 July 2024 Ms Okoronkwo notified the Claimant in response to his appeal against redundancy that the First Respondent did not conduct appeals against redundancy decisions. She explained to the Tribunal that the First Respondent "wouldn't typically do an appeal".

Grievance outcome

141. By a letter dated 24 July 2024 Mr McMullin provided an outcome to the grievance, dismissing the grievance.
142. Although the grievance not dismissed there were two matters he referred onward for further investigation. First was to make sure that some incidents raised by the Claimant had been dealt with by the earlier unprofessional

conduct FIS investigation. Second was to look at what appeared to be a “gap” in the Claimant’s understanding of performance issues.

143. Mr McMullin accepted that Mr Wurzinger had already made a decision on redundancies in November 2023 before the interview on 15 December 2023.

#### Grievance appeal

144. On 31 July 2024 the Claimant submitted a grievance appeal as follows:

I would like to appeal the outcome of the grievance. This investigation was performed by the Way2Play team which conducts inconsistent investigations reflected in Ian's testimony.

- I was the only non-British and LGBT made redundant from the FIS community.
- I made protected disclosures of additional misconduct cases done by my manager and the VP of finance, who also harassed the FIS team in the 2022/2023 time frame according to the outcome of the investigation done by Lewis Silkin
- The decision to place my position at risk of redundancy was retaliatory and taken after the events previously mentioned

#### New job

145. On 1 November 2024, happily, the Claimant started a new job in the Netherlands.

#### Appeal outcome

146. On 6 November 2024 the Grievance Appeal Outcome was provided. The appeal dismissed by Suzie Carr, Chief People Officer, King & EMEA.

#### R2 leaves R1

147. In January 2025 Mr Wurzinger left the First Respondent’s employment.

### **Proceedings**

148. On 8 April 2024 the Claimant presented his first claim to the Tribunal.

149. On 10 July 2024 the Claimant presented his second claim.

### **Law**

#### Legislation

150. The Equality Act 2010 contains the following provisions:

27 Victimisation

(1) 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.

(2) Each of the following is a protected act— ...

(d) making an allegation (whether or not express) that A or another person has contravened this Act.

136 Burden of proof

(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 other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.

Protected acts

151. Context is important, including the level of articulacy and ability to phrase allegations in a legally clear and express manner: **Chalmers v Airpoint Ltd** EAT 0031/19.
152. Qualifications within a statement are relevant to interpretation as to whether an allegation is or is not being made: **Chalmers** (“may” in that case indicated sufficient uncertainty).
153. The Tribunal has had reference to the decision of Langstaff P in **Durrani v London Borough of Ealing** UKEAT/0454/2012 and HHJ McMullen QC in **Fullah v Medical Research Council** UKEAT 0586/2012.
154. To fall within section 27 a protected act does not necessary require an employee to go as far stating in terms that there is contravention of the Equality Act, nor expressly that discrimination relating to a protected act has occurred. If not express it would need to be implied. Nevertheless a person on the receiving end of a complaint of victimisation ought to be able to identify what protected characteristic it is in respect of (**Fullah**).
155. As set out by the EAT recently in **Kokomane v Boots Management Services Ltd** [2025] EAT 38 (per HHJ Beard) at ¶23:

For a complaint to be a protected act, it must be about something which, if proven would be a contravention of the EA 2010.

The allegation need not state explicitly that an act of discrimination has occurred – *“All that is required are that facts should be asserted which are capable in law of amounting to an act of discrimination”*.

### Causation

156. Something is done ‘because’ of a protected act for the purposes of s.27 if the protected act was a “significant influence” on the employer’s decision-making: **Nagarajan v London Regional Transport** 1999 ICR 877, HL.
157. ‘Significant’ will be an influence that is more than trivial: **Igen Ltd (formerly Leeds Careers Guidance) and ors v Wong and other cases** [2005] ICR 931, CA 2005 ICR 931, CA.

### Burden of proof

158. We have considered **Nagarajan v London Regional Transport** [1999] IRLR 572, **Madarassy v Nomura International plc** [2007] IRLR 246 CA, **Ayodele v Citylink Ltd** [2017] EWCA Civ 1913. In **Hewage v Grampian Health Board** [2012] ICR 1054, SC in which Lord Hope endorsed the following guidance given by Underhill P in **Martin v Devonshires Solicitors** 2011 ICR 352, EAT:

“the burden of proof provisions in discrimination cases... are important in circumstances where there is room for doubt as to the facts necessary to establish discrimination — generally, that is, facts about the respondent’s motivation... they have no bearing where the tribunal is in a position to make positive findings on the evidence one way or the other, and still less where there is no real dispute about the respondent’s motivation and what is in issue is its correct characterisation in law’.

159. In **Madarassy** CA Lord Justice Mummery held as follows:

“The court in *Igen v. Wong* expressly rejected the argument that it was sufficient for the complainant simply to prove facts from which the tribunal could conclude that the respondent “could have” committed an unlawful act of discrimination. The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal “could conclude” that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination.” (para 56)

Protected disclosure detriment ("whistleblowing")

160. The Employment Rights Act 1996 contains the following provisions:

**43B** Disclosures qualifying for protection.

(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 or more of the following-

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

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

**47B** Protected disclosures.

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.

**48.—** Complaints to employment tribunals

(1A) A worker may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of section 47B.

On a complaint under subsection ... (1A) ... it is for the employer to show the ground on which any act, or deliberate failure to act, was done.

(3) An employment tribunal shall not consider a complaint under this section unless it is presented—

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

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

**103A** Protected disclosure.

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.

161. The burden of proving each of the elements of a protected disclosure is on a claimant (**Western Union Payment Services UK Ltd v Anastasiou**, 13 February 2014 per HHJ Eady QC at [44]).
162. Guidance given by the Court of Appeal in the case of **Croydon Health Services NHS Trust v Beatt** [2017] ICR 1240 per Underhill LJ is as follows at paragraph 94:

“... it is all too easy for an employer to allow its view of a whistleblower as a difficult colleague or an awkward personality (as whistleblowers sometimes are) to cloud its judgment about whether the disclosures in question do in fact have a reasonable basis or are made (under the old law) in good faith or (under the new law) in the public interest. Those questions will ultimately be judged by a tribunal, and if the employer proceeds to dismiss it takes the risk that the tribunal will take a different view about them. I appreciate that this state of affairs might be thought to place a heavy burden on employers; but Parliament has quite deliberately, and for understandable policy reasons, conferred a high level of protection on whistleblowers. ...”

#### Tends to show

163. “Tends to show” imposes a relatively light burden on a Claimant (**Babula v Waltham Forest College** [2007] ICR 1026 per Wall LJ at para 79; **Arjomand-Sissan v East Sussex Healthcare NHS Trust** UKEAT/0122/17/BA per Soole J para 26).

#### Disclosure

164. In **Kilraine v London Borough of Wandsworth** [2018] ICR 1850 the Court of Appeal held that a sharp distinction between “allegations” and “disclosures” which appeared to have been identified in earlier authorities was a false dichotomy, given that an allegation might also contain information tending to show, in the reasonable belief of the maker, a relevant failure. At [35], Sales LJ said:

“In order for a statement or disclosure to be a qualifying disclosure according to this language, it has to have a **sufficient factual content and specificity** such as is capable of tending to show one of the matters listed in subsection (1).”

[emphasis added]

Reasonable belief in relevant failure

165. Whether a belief is reasonable is to be assessed by reference to “what a person in their position would reasonably believe to be wrongdoing”: **Korashi v Abertawe Bro Morgannwg University Local Health Board** [2012] IRLR 4 per Judge McMullen QC at [62]. In that case Mr Korashi was a specialist medical consultant and an assessment of what was reasonable needed to be by reference to what someone in that position would reasonably believe. HHJ McMullen QC said this:

“61 There seems to be no dispute in this case that the material for the purposes of s.43B(1)(a)–(e) would as a matter of content satisfy the section. In our view it is a fairly low threshold. The words 'tend to show' and the absence of a requirement as to naming the person against whom a matter is alleged put it in a more general context. What is required is a belief. Belief seems to us to be entirely centred upon a subjective consideration of what was in the mind of the discloser. That again seems to be a fairly low threshold. No doubt because of that Parliament inserted a filter which is the word 'reasonable'.

62 This filter appears in many areas of the law. It requires consideration of the personal circumstances facing the relevant person at the time. Bringing it into our own case, it requires consideration of what a staff grade O&G doctor knows and ought to know about the circumstances of the matters disclosed. To take a simple example: a healthy young man who is taken into hospital for an orthopaedic athletic injury should not die on the operating table. A whistleblower who says that that tends to show a breach of duty is required to demonstrate that such belief is reasonable. On the other hand, a surgeon who knows the risk of such procedure and possibly the results of meta-analysis of such procedure is in a good position to evaluate whether there has been such a breach. While it might be reasonable for our lay observer to believe that such death from a simple procedure was the product of a breach of duty, an experienced surgeon might take an entirely different view of what was reasonable given what further information he or she knows about what happened at the table. So in our judgment what is reasonable in s.43B involves of course an objective standard – that is the whole point of the use of the adjective reasonable – and its application to the personal circumstances of the discloser. It works both ways. Our lay observer must expect to be tested on the reasonableness of his belief that some surgical procedure has gone wrong is a breach of duty. Our consultant surgeon is entitled to respect for his view, knowing what he does from his experience and training, but **is expected to look at all the material including the records before making such a disclosure**. To bring this back to our own case, many whistleblowers are insiders. That means that they are so much more informed about the goings-on of the organisation of which they make complaint than outsiders, and that that insight

entitles their views to respect. **Since the test is their 'reasonable' belief, that belief must be subject to what a person in their position would reasonably believe to be wrong-doing.**"

#### Burden of proof causation

166. There is an initial burden of proof on a claimant to show (in effect) a *prima facie* case that he has been subject to a detriment on the grounds that he made a protected disclosure. If so, the burden passes to a respondent to prove that any alleged protected disclosure played no part whatever in the claimant's alleged treatment, but rather what was the reason for that alleged treatment. Simply because the respondent fails to prove the reason does not act as a default mechanism so that the claimant succeeds. The tribunal is concerned with the reason for the treatment and not a quasi-reversal of proof and deemed finding of discrimination i.e. there is no mandatory adverse inference mechanism (**Dahou v Serco Ltd** [2017] IRLR 81, CA).

#### Public interest

167. The Court of Appeal in **Chesterton Global Ltd & Anor v Nurmohamed & Anor** [2017] EWCA Civ 979 confirmed that public interest does not need to relate to the population at large, but might relate to a subset, in that case a category of managers whose bonus calculation was negatively affected. It seems that it cannot relate solely to the interest of the person making the disclosure. The following guidance was given on that case as to reasonable belief in the public interest, per Underhill LJ:

"27. First, and at the risk of stating the obvious, the words added by the 2013 Act fit into the structure of section 43B as expounded in Babula (see para. 8 above). The tribunal thus has to ask (a) whether the worker believed, at the time that he was making it, that the disclosure was in the public interest and (b) whether, if so, that belief was reasonable.

28. Second, and hardly moving much further from the obvious, element (b) in that 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; and that is perhaps particularly so given that that question is of its nature so broad-textured. The parties in their oral submissions referred both to the "range of reasonable responses" approach applied in considering whether a dismissal is unfair under Part X of the 1996 Act and to "the Wednesbury approach" employed in (some) public law cases. Of course we are in essentially the same territory, but I do not believe that resort to tests formulated in different contexts is helpful. **All that matters is that the Tribunal should be careful not to substitute its own view of whether the disclosure was in the public interest for that of the worker. That does not mean that it is illegitimate for the tribunal to form its own view**

**on that question, as part of its thinking – that is indeed often difficult to avoid – but only that that view is not as such determinative.**

29. Third, the necessary belief is simply that the disclosure is in the public interest. The particular reasons why the worker believes that to be so are not of the essence. That means that a disclosure does not cease to qualify simply because the worker seeks, as not uncommonly happens, to justify it after the event by reference to specific matters which the tribunal finds were not in his head at the time he made it. Of course, if he cannot give credible reasons for why he thought at the time that the disclosure was in the public interest, that may cast doubt on whether he really thought so at all; but the significance is evidential not substantive. Likewise, **in principle a tribunal might find that the particular reasons why the worker believed the disclosure to be in the public interest did not reasonably justify his belief, but nevertheless find it to have been reasonable for different reasons which he had not articulated to himself at the time: all that matters is that his (subjective) belief was (objectively) reasonable.**

30. Fourth, 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: otherwise, as pointed out at para. 17 above, the new sections 49 (6A) and 103 (6A) would have no role. I am inclined to think that the belief does not in fact have to form any part of the worker's motivation – the phrase "in the belief" is not the same as "motivated by the belief"; but it is hard to see that the point will arise in practice, since where a worker believes that a disclosure is in the public interest it would be odd if that did not form at least some part of their motivation in making it.**

...

36. ... The statutory criterion of what is "in the public interest" does not lend itself to absolute rules, still less when the decisive question is not what is in fact in the public interest but what could reasonably be believed to be. I am not prepared to rule out the possibility that the disclosure of a breach of a worker's contract of the Parkins v Sodexo kind may nevertheless be in the public interest, or reasonably be so regarded, if a sufficiently large number of other employees share the same interest. I would certainly expect employment tribunals to be cautious about reaching such a conclusion, because **the broad intent behind the amendment of section 43B (1) is that workers making disclosures in the context of private workplace disputes should not attract the enhanced statutory protection accorded to whistleblowers – even, as I have held, where more than one worker is involved. But I am not prepared to**

**say never.** In practice, however, the question may not often arise in that stark form. The larger the number of persons whose interests are engaged by a breach of the contract of employment, the more likely it is that there will be other features of the situation which will engage the public interest.”

[emphasis added]

168. Also in **Chesterton**, Underhill LJ suggested that some assistance might be derived from counsel’s suggested “**four factors**” in trying to identify public interest (paragraphs 34 & 37):

(a) the numbers in the group whose interests the disclosure served [noting that some organisations e.g. NHS or Royal mail have very large workforces];

(b) the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed - a disclosure of wrongdoing directly affecting a very important interest is more likely to be in the public interest than a disclosure of trivial wrongdoing affecting the same number of people, and all the more so if the effect is marginal or indirect;

(c) the nature of the wrongdoing disclosed - disclosure of deliberate wrongdoing is more likely to be in the public interest than the disclosure of inadvertent wrongdoing affecting the same number of people;

(d) the identity of the alleged wrongdoer

169. HHJ Tayler provided a summary of the **Chesterton** principles and some further guidance on the topic of public interest in **Dobbie v Felton t/a Feltons Solicitors** [2021] IRLR 679 EAT at paragraphs 27-28.

Legal obligation, breach of (section 43B(1)(b))

170. In **Blackbay Ventures Ltd v Gahir** [2014] IRLR 416 in which HH Judge Serota QC, sitting with members, held at paragraph 98 that in considering whether there had been a protected disclosure:

'Save in obvious cases if a breach of a legal obligation is asserted, the source of the obligation should be identified and capable of verification by reference for example to statute or regulation. ...'

171. This approach was cited and approved by Slade J in **Eiger Securities LLP v Korshunova** [2017] IRLR 115 (EAT). In that case the Employment Appeal Tribunal also considered what amounted to a legal obligation. In **Eiger** the communication held by the ET to be a protected disclosure occurred when Ms Korshunova challenged a managing director (who was a compliance officer and registered with the FCA) about using her computer screen in using an online chat with an external trader without identifying himself as not being her. Both

K and the third party trader were angry and considered this 'deception'. Slade J held that it was not enough for the Tribunal to find that K had a reasonable belief in how a client should be treated, or that what she was saying was true and applicable in this industry. She held [46]:

"In my judgment it is not obvious that not informing a client of the identity of the person whom they are dealing if the employee is trading from another person's computer is, as in Bolton, plainly a breach of a legal obligation. That being so, in order to fall within ERA s.43B(1)(b), as explained in Blackbay the ET should have identified the source of the legal obligation to which the claimant believed Mr Ashton or the respondent were subject and how they had failed to comply with it. **The identification of the obligation does not have to be detailed or precise but it must be more than a belief that certain actions are wrong. Actions may be considered to be wrong because they are immoral, undesirable or in breach of guidance without being in breach of a legal obligation. However, in my judgment the ET failed to decide whether and if so what legal obligation the claimant believed to have been breached**

[emphasis added]

172. This approach to identification of the legal obligation may be somewhat stricter than the less legalistic approach taken in earlier cases such as **Bolton School v Evans** [2006] IRLR 500, EAT. The learned editors of *Harvey on Industrial Relations and Employment Law* suggest that what appears to be a difference in approach might be reconciled as follows:
173. This apparent conflict (or at least difference in approach) was resolved in **Arjomand-Sissan v East Sussex Healthcare NHS Trust** UKEAT/0122/17 (17 April 2019, unreported) where Soole J held that it depends on the stage of the complaint/action that is involved. The approach in Bolton School and Anastasiou was adopted at the stage of the original disclosure to the employer, which must be viewed in a commonsense way, not requiring citation of legal chapter and verse, but rather just enough for the employer to understand the complaint. On the other hand, Blackbay and Eiger concerned the specificity required at the stage of any eventual ET complaint, where it is reasonable to expect the claimant to make clear just what the infringed legal obligation was (especially as Eiger affirms that it must have been a legal obligation, not just a moral or professional one).

#### Causation

174. The causation test for *detriment* is whether the alleged protected disclosure played more than a trivial part in the Claimant's treatment (**Fecitt v NHS Manchester (Public Concern at Work intervening)** [2012] ICR 372, CA).

## CONCLUSIONS

### Disclosure of documentation

175. There were some aspects of the Respondents' disclosure of documents that were slightly unsatisfactory, for example the content of Mr Wurzinger's iPad (which we did not receive) and his contemporaneous communications with Mr Zerza (which we only received after prompting from the Tribunal). There was the odd loose end of Mr Wurzinger's final written warning and whether or not it was actually received by him. We felt that the criticisms made by Mr Livingston in cross examination about disclosure of documents were appropriate and fair and not merely "mischievous" as Mr Cordrey suggested.
176. It was open to us to draw negative inferences in relation to disclosure or to find that the Respondents had failed to evidence their case.
177. Ultimately we did not come to this conclusion. We did not find that there had been deliberate suppression of the disclosure of relevant documents. We did not find that there had been a significant or substantial failure of disclosure.
178. We were satisfied that we were in a position to make findings of fact on the balance probabilities based on the totality of the evidence received and did not draw adverse inferences in relation to disclosure.

### PROTECTED DISCLOSURES (Whistleblowing) (43B ERA)

179. [Issue 3.1] Did the Claimant make one or more qualifying disclosures as defined in section 43B of the ERA?
180. It has been convenient to deal with each of the alleged protected disclosures under a series of short questions. The correct legal test is set out below under issues 3.2-3.6.
181. The Claimant alleges that the following amount to qualifying disclosures (see paragraph 45 of the particulars of claim of the Claimant's first claim issued on 8 April 2024 (particulars of claim)):

#### [Issue 3.1 (a)] Protected Disclosure 1:

an allegation on 21 July 2023 that the Second Respondent would deliberately interrupt people in meetings and show a lack of empathy, and that female staff felt the impact the most

182. Was there information? The Claimant disclosed information that Mr Wurzinger interrupted people.
183. Belief? We find that the Claimant did believe that the disclosure tended to show a breach of legal obligation in relation to impact on female employees. We did not find that he had a belief in relation to a breach of health and safety.
184. Was it reasonable to believe that this tended to show a breach of legal obligation? We bear in mind that a belief may be wrong and yet still reasonable.

The Claimant accepted that Mr Wurzinger was not targeting female employees and that lack of empathy is not illegality.

185. We have born in mind guidance (**Kilraine**) that a sharp distinction between allegations and disclosures is a false dichotomy. The point interrupting people might have been an observation, although whether this is deliberate is probably closer to an opinion. The lack of empathy and suggestion about female staff feeling the impact appears to be an opinion. This appears to be based on an assumption about several female colleagues' motivations for resigning and how female colleagues would feel about Mr Wurzinger's style of management and communication. None of this is a criticism of the Claimant, who was asked a question during an interview and gave his view in response.
186. We find that there was neither information nor a proper legal basis on the basis of the information disclosed to make it reasonable to believe that there was discriminatory treatment against women.
187. Whether this was discrimination is discussed further when this disclosure is considered as a protected act in the context of the complaint of victimisation below.
188. Raised in the public interest? It was put forward on behalf of the Claimant that Mr Wurzinger was a "public figure" and that the culture would be important to the public and their customers. We were not persuaded that these matters were in the Claimant's mind at the time that he answered questions in this interview. He was an interviewee, one amongst many as part of an internal investigation. Our impression is that he was simply responding to questions in an interview. We did not find that the Claimant's belief was these matters were being raised in the public interest.
189. In case we are wrong about the Claimant's belief, we would not have found that it was reasonable to think that this was in the public interest. It is not for the Tribunal to substitute its own view. Was it reasonable for the Claimant believe that this was in the public interest? The Claimant was participating in an internal investigation which went broader than his own immediate personal interests. It did potentially have an implication for some other people within the finance function. In the terms of the "four factors" in *Chesterton*, the disclosure of the Claimant interrupting people did not affect the interests of a large number of people, nor a very important interest, nor deliberate wrongdoing. We did not find that the Claimant reasonably believed Mr Wurzinger to be a "public figure", nor was it reasonable to conclude that this "disclosure" about him interrupting, served to protect the interests of 2,000 employees as well as customers as has been submitted. All of this was in the view of the Tribunal significantly overstated. We preferred the Respondents' characterisation of this as merely concerning the management style of the CFO of part of a company which affected a relatively small number of employees who worked with the Second Respondent.
190. In conclusion this was not a protected disclosure.

[Issue 3.1 (b)] Protected Disclosure 2A

raising concerns with the Way2Play/Ethics & Compliance Team on 1 & 7 December 2023, including (2A) alleging that the Second Respondent disclosed confidential information relating to a settlement agreement with [Employee 1]

191. Information? The information disclosed was that Mr Wurzinger was talking about the circumstances of the termination and terms of settlement relating to Employee 1.
192. Belief? We find that the Claimant did believe that this tended to show a breach of the legal obligations to confidentiality that were likely in the terms of the settlement agreement. We did not find that the Claimant had any relevant belief relating to health and safety.
193. Reasonable? We find that it was reasonable to believe that this was a breach of the terms of the settlement agreement. It was a reasonable assumption by him that the settlement agreement contained terms of confidentiality, which would be a routine part of such an agreement. According to the Claimant, Mr Wurzinger made a comment to the effect that the agreement was confidential. Based on the information disclosed we find that the Claimant was reasonable in his belief that this tended to show Mr Wurzinger was in breach.
194. Public interest? It is suggested that the Claimant's believed that Mr Wurzinger was the type of individual who, given his seniority, had the potential to cause harm to large number individuals if he was breaking confidentiality at every opportunity. Beyond this specific instance we have not been shown evidence that Mr Wurzinger was breaking confidentially generally. We do not find that this was the Claimant's thought process at the time. In August Mr Wurzinger was explaining a poor employee engagement score to the Claimant (an audience of one) and who went into what appears to have been something of a rant about the circumstances of the historic exit of an employee and how he had felt pressured to enter into a settlement agreement for reasons to do with her maternity leave. The Claimant did not know the individual. The context was Mr Wurzinger explaining some issues the organisation had faced. There substantial delay in time between the conversation with Mr Wurzinger on 17 August and the making of the disclosures in December 2023. While we recognise that employees may be nervous about calling out wrong doing at the time and may prevaricate about doing so, we did not find that this was such a case. The Tribunal finds that the Claimant did not see this as being a matter of public interest at the time he raised it.
195. Was it reasonable to believe that this was in the public interest? In the alternative, if we are wrong that the Claimant did believe that this was in the public interest, we would not have found that he was reasonable to do so. We accepted the Respondents' characterisation of this as at worst an indiscretion in a discussion with another senior manager and we do not find that it would be reasonably thought to be a matter of public interest, even though the threshold is low. This was not a case as has been intimated by the Claimant's side, where the Claimant had a reason to believe Mr Wurzinger was breaching

confidentiality at every opportunity. While a single instance of wrongdoing might engage the public interest (per **Dobbie**), we did not find that this was such a case, akin to medical malpractice, that might reasonably have been thought to require escalation.

Protected Disclosure (2B)

7 December 2023 that the Second Respondent and Anthea Williams had pressed Richard Allan to 'exit' [Employee 6] whilst she was on maternity leave;

196. The information disclosed was that Richard Allan had been pressured to dismiss an employee on maternity leave without cause.
197. Belief? We accepted that the Claimant did believe that this information disclosed tended to show a breach of maternity rights, although not a matter of health and safety.
198. Reasonable? We bear in mind that “tended to show” is a low threshold. Based on the information provided, it was reasonable for him to believe that disclosure tended to show such a breach of legal obligation.
199. Did the Claimant believe that this was being raised in the public interest? Given the full content of the Claimant’s disclosure which is that Richard Allan spoke to HR who *declined* to entertain the possibility of putting a package together for Employee 6, we were not convinced that the Claimant did believe that it was in the public interest to raise this. There had been no adverse outcome for the employee in question, Employee 6.
200. Was it reasonable to believe that this was in the public interest? In the alternative, if we are wrong that the Claimant did believe that this is in the public interest, we would not have found that he was reasonable to do so. This related to the case of a single employee. Based on the information the Claimant had disclosed, the approach of HR in this matter was to reject any suggestion of offering a departure package to this employee. We did not accept that it would have reasonable to believe that it was in the public interest to raise this.

[Issue 3.1 (c)] Protected Disclosure 3:

201. For the purposes of submissions the Respondents broke this into three strands: 3A, 3B, 3C. [Allegations “B” and “C” are labelled the other way around in paragraph 22 of the Claimant’s witness statement.]

3A

202. The substance of PD3A was PD2A repeated on 11 December 2025 in an interview with Jola Hollett.
203. The same considerations apply as for PD2A above. This was not a protected disclosure.

3B

[labelled Allegation C at paragraph 22 of the Claimant's witness statement]

204. The substance of PD3B was PD2B repeated on 11 December 2025 in an interview with Jola Hollett.
205. The same considerations apply as for PD2B above. For reasons given above, this was not a protected disclosure.

3C

[labelled Allegation B at paragraph 22 of the Claimant's witness statement]

206. PD3C was the allegation of "Lack of Professionalism" made on 7 December and repeated on 11 December 2025 in an interview with Jola Hollett.
207. The information disclosed was that Richard Allen told the Claimant that Anthea Williams had approached Ian Simson disrespectfully. In the meeting the Claimant elaborated that it was a "disrespectful reaction" by Ms Williams who was upset regarding some P&Ls.
208. Belief? The Claimant's evidence was that he was increasingly worried about the number of concerning incidents, the lack of action and he was aware that there were harassment cases ongoing in different jurisdictions within the group companies. His evidence was that this appeared to him to be contrary to the First Respondent's policies, which the Tribunal accepted. The Claimant did not explicitly identify a particular legal obligation that the First Respondent was in breach of.
209. Reasonable? The Respondents submit that there was no explicit or implicit reference to a legal obligation. We have considered the guidance of the EAT in **Eiger** that actions may be considered to be wrong because they are immoral, undesirable or in breach of guidance without being in breach of a legal obligation. It seems to the Tribunal that the present case is analogous to the circumstances in **Eiger**. The Tribunal was not satisfied that it was reasonable for the Claimant to believe that the information about Ms Williams approaching Mr Simson "disrespectfully" tended to show a breach of legal obligation nor that the health and safety of a person was endangered. While we accept that it is not a requirement for an employee to identify a specific legal provision at the time of making the disclosure, however, following **Eiger** and **Blackbay**, by the time of the Employment Tribunal claim the source of the obligation should be capable of verification.
210. Public interest? As whether the Claimant believed that this was raised in the public interest, he maintained that he considered that there was a toxic work culture and he was concerned that Ms Williams had already been coached about this kind of behaviour earlier in the year. This was not about the Claimant himself. The Claimant did consider that this was a wider problem than this single interaction with Mr Simson and this followed on from the investigation

which was supposed to address these behaviours. The Tribunal accepted that this was his belief.

211. Reasonable? As to whether it would be reasonable to believe that this was raised in the public interest, we have considered that the scheme of the statutory protection is to protect responsible whistleblowing. That may, following **Korashi** (paragraph 62) require some basic check before making the disclosure. In this case the information was *third hand*. The Claimant was relating something Mr Allan had said that Mr Simson had said to him about Ms Williams. When Mr Simson was asked about this matter he said that he could let go of the interaction easily and noted that Ms Williams had written to thank him for his work the next morning. The matter had blown over as far as Mr Simson was concerned.
212. We have considered the four factors mentioned in *Chesterton*. First, the numbers in whose the interests the disclosure served. We did not accept that this related to the interests of a large number of people. This was not a large number and certainly not the figure of 2,000 mentioned in submissions. Second, as to the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed: this was a situation in which Ms Williams had apparently been upset and “disrespectful”. It is difficult to see this as being a very important interest affecting a large number of people. Third, the nature of the wrongdoing disclosed. This was not a situation of “deliberate wrongdoing”, but rather a question of management style and communication. Fourth, the entity of the alleged wrongdoer. Ms Williams was by no means a public figure. She was a relatively senior person within the finance function of a small part of the organisation viewed overall. Looking at the matter in round, based on what the Claimant knew, we did not find that it would be reasonable to believe that this matter was being raised in the public interest.

[Issue 3.1 (c)] Protected Disclosure 4:

213. Disclosure: the Claimant’s disclosed that he had been placed at risk of redundancy and some circumstances which had led him to the conclusion that this was an act of retaliation.
214. Belief in breach? The Tribunal accepted that the Claimant believed that this information tended to show that he had been subject to detriment as a whistleblower and also potentially suffered victimisation. By contrast, we were not satisfied that he believed this at the time to be a breach of implied legal obligation under his contract not to subject employees to retaliation.
215. Reasonable? It is not relevant whether or not the Claimant was correct. It was reasonable of him in the circumstances to believe this. He explained that there were some circumstances suggesting that he had believed that there were not going to be redundancies in his team and then an apparent change of position by management. He had raised various concerns about Mr Wurzinger and Ms Williams. A protected disclosure detriment or victimisation would be a breach of legal obligation.

216. Raised in public interest? Did the Claimant believe that this was in the public interest? The reality is that we find that the Claimant was putting these matters forward in response to being placed at risk of redundancy. He was raising this to try to protect his own position. This was a private dispute.
217. Reasonable? For the same reasons, we find that this was about the Claimant's personal situation and it was not reasonable to believe that this was in the public interest.

[Issue 3.1 (e)] Protected Disclosure 5:

218. This disclosure, in a meeting on 2 February 2024, was no more than the verbal reiteration of Protected Disclosure 4. The same considerations apply.

[Issue 3.1 (f)] Protected Disclosure 6:

219. The grievance on 8 February 2024 included allegations of retaliation and of discrimination against him as an LGBT Latin employee and allegedly provided information about the Second Respondent having breached confidentiality provisions of a settlement agreement.
220. There were multiple disclosures of information which were substantially combinations of matters raised in earlier disclosures considered in detail above. The Claimant reiterated that he was being retaliated against. He alleged that because he was a "LGBT Latin employee" was another cause of the way that he was been treated.
221. For similar reasons to those given above, the Tribunal did not find that this was a protected disclosure.
222. The additional element of discrimination relating to the Claimant's sexuality and Latin culture or background only related to him. This was however a protected act (see below).

Statutory framework

223. In each case the Tribunal has considered the following:

[Issue 3.2] Were the above disclosures of "information"?

[3.3] If so, did the Claimant believe the disclosures of information were made in the public interest?

[3.4] Was that belief reasonable?

[3.5] Did the Claimant believe that the disclosures tended to show that (see paragraphs 46(c)(i) and (ii) of the particulars of claim):

[3.5(a)] a person had failed, was failing or was likely to fail to comply with any legal obligation?

[3.5(b)] the health or safety of any individual had been, was being or was likely to be endangered?

[3.6] Was that belief reasonable?

[3.7] If so, it is accepted by the Respondent that these qualifying disclosures were made to the Claimant's employer.

### **Detriment (section 47B ERA)**

224. [Issue 4] In view of our findings above, the complaint of protected disclosure does not succeed.
225. We do not propose to deal with causation of each detriment individually under this head of claim. This is dealt with as part of the complaint of victimisation below.
226. We reiterate our finding that Mr Wurzinger had decided to make the Claimant's role redundant in November 2023 at a point in time before he was aware of any of the Claimant's disclosures.

### **Automatic Unfair Dismissal (s.103A ERA)**

227. [Issue 5.1] Was the principal reason for the Claimant's dismissal on 6 June 2024 that he had made one or more of the alleged protected disclosures as set out at paragraph 3.1 above?
228. In view of our findings above, the complaint of automatic dismissal because of protected disclosure does not succeed.
229. In any event we found that the principal reason for the Claimant's dismissal was that the Second Respondent Mr Wurzinger saw the global redundancy exercise as an opportunity to dismiss the Claimant without going through a full performance management process. The background to this was that the Claimant's colleagues, in particular Mr Aygoren and to a lesser extent Mr Collins gave negative feedback about the Claimant's performance, which in each case had pre-dated the protected disclosures. Mr Aygoren had been strongly critical of the Claimant from June 2023 onward.
230. While this approach (i.e. performance as the real reason for redundancy) might have been unfair under the ordinary principles of unfair dismissal under section 98 of the Employment Rights Act, the Claimant did not have sufficient continuous employment to bring such a complaint.

### **Victimisation (section 27 of the EqA)**

231. The same numbering has been used for the protected acts in the victimisation complaint as for the protected disclosures in the protected disclosure complaints.

[Issue 7.1(a)] Protected Act 1:

232. The Tribunal has considered whether facts have been asserted which were capable in law of amounting to an act of discrimination (per **Kokomane**). The Claimant admitted that Mr Wurzinger was not “targeting” women. This was not an allegation of direct discrimination.
233. It has been put forward on behalf of the Claimant that the alleged conduct amounted to indirect sex discrimination. The definition of indirect discrimination is at section 19 of the Equality Act 2010. It requires that a “provision, criterion or practice” (“**PCP**”) be applied which is discriminatory in relation to a protected characteristic and that this puts an employee and the group sharing their protected characteristic at a particular disadvantage.
234. The EHRC Employment code provides the following at paragraph 4.5 is:

4.5

The first stage in establishing indirect discrimination is to identify the relevant provision, criterion or practice. The phrase ‘provision, criterion or practice’ is not defined by the Act but it should be construed widely so as to include, for example, any **formal or informal policies, rules, practices, arrangements, criteria, conditions, prerequisites, qualifications or provisions**.

A provision, criterion or practice may also include decisions to do something in the future – such as a policy or criterion that has not yet been applied – as well as a ‘one-off’ or discretionary decision.

[Emphasis added]

235. While it is clear from guidance and decided case law that PCP should be construed widely and may include things not written down, it does not seem that this is so broad as to include a habit of interrupting people. That is in reality matter of an individual’s interpersonal communication style rather than a PCP operated by an employer.
236. We did not find that this was a protected act.

[Issue 7.1(b)] Protected Act 2A:

237. The Claimant rightly conceded that 2A (disclosure of confidential settlement agreement) was not a protected act.

(2B)

238. Issue 2B, the allegation raised on 7 December 2023 **was a protected act**.
239. This was an allegation of maternity discrimination which fell within the definition at section 27(2)(d) of the Equality Act 2010.

[Issue 7.1(c)] Protected Act 3:

240. Issue 3B (Claimant's allegation C), the allegation reiterated on 11 December 2023 **was a protected act**.
241. This was an allegation of maternity discrimination which fell within the definition at section 27(2)(d) of the Equality Act 2010.
242. By contract, we did not find issues 3A and 3C were protected acts. Issue 3A related to a breach of contract rather than discrimination. Issue 3C (Claimant's allegation B) was about disrespectful treatment and was not alleged to be discrimination.

[Issue 7.1(d)] Protected Act 4:

At the end of January 2024, raised a Way2Play complaint which included information about him being retaliated against by the Second Respondent for having raised concerns about him;

243. It is submitted on behalf of the Claimant (paragraph 129) that he was alleging victimisation. Looking carefully at the text of page 483 – the complaint of 30 January 2024 is of “retaliation”, there is no explicit complaint of victimisation. Given that the “Way2Play” complaints included an allegation of maternity discrimination, however by implication he was alleging facts which would make out an allegation of victimisation.
244. This therefore **was a protected act**.

[Issue 7.1(e)] Protected Act 5:

245. On 2 February 2024, the Claimant alleged “retaliation” due to the previous “Way2Play” disclosures, which had included an allegation of maternity discrimination. The Claimant thereby alleged facts which would make out an allegation of victimisation.
246. The Claimant is alleged retaliation due to the previous “Way2Play” disclosures [497], which includes an allegation of maternity discrimination. The Claimant alleged facts which would make out an allegation of victimisation.
247. This **was a protected act**.

[Issue 7.1(f)] Protected Act 6:

248. On 8 February 2024, the Claimant raised a grievance which included allegations of retaliation and of discrimination against him as an LGBT Latin employee.
249. This was a clear allegation of discrimination which the Respondents rightly conceded **was a protected act**.

[Issue 7.2] Did these acts amount to protected acts?

250. This is dealt with in relation to each protected act above.

ALLEGED DETRIMENTAL TREATMENT

R2's knowledge of protected acts

251. We have considered what Mr Wurzinger knew of the four protected acts.
252. Protected acts 2B (7.12.23) and 3B (11.12.23) were dismissed by Jola Hollett without being discussed with Mr Wurzinger.
253. Protected act 4 (30.1.24) was raised as a "Way2Play" complaint. In the interview on 29 February 2024 Nicola Cook told Mr Wurzinger that the Claimant had raised concerns about the fairness of the decision to place his role at risk of redundancy. Mr Wurzinger was asked about whether he took any measures to mitigate against the risk that this decision could be considered retaliatory, which was an allusion to the content of protected act 4, but without being explicitly told that this had been raised as a separate complaint. We concluded that Mr Wurzinger would have been aware that a further complaint had been brought against him by the Claimant, specifically the allegation about breach of a confidential settlement agreement (2A & 3A).
254. Protected act 5 (2.2.24) was raised directly by the Claimant to Mr Wurzinger in a meeting. Accordingly he was aware of it immediately at that point.
255. As to protected act 6 (8.2.24) Mr Wurzinger says that he discovered this during the fourth redundancy consultation meeting on 5 March 2024. Mr Wurzinger had been asked questions about the Claimant's allegation a few days on 29 February 2024. Although confidentiality was maintained as to the precise detail of who had raised the grievance and exactly what they were alleging, it must have been obvious to Mr Wurzinger from the nature of the questions that the Claimant was complaining about the timing and basis for being placed at risk of redundancy, including whether this was linked to his sexual orientation. In other words, as an intelligent person, he would have inferred that an allegation of discrimination had been made against him purely from the content of those questions on 29 February 2024.

Alleged detrimental treatment

256. The Respondent accepts that the following treatment took place (see paragraph 52 of the particulars of claim and paragraph 25 of the second particulars of claim):

[Issue 7.3(a)] – detriment 1 – redundancy pool of 1

On 25 January 2024 placed the Claimant at risk of redundancy in a pool of one;

257. At the time of this detrimental treatment Mr Wurzinger, who took the decision to place the Claimant's role at risk of redundancy, was unaware of the two

protected acts 2B and 3B, since neither had been communicated to him. We find that these protected acts did not influence this decision.

258. This detriment pre-dated protected acts 4, 5 and 6.
259. Being placed at risk of redundancy was a consequence of Mr Wurzinger's decision to make the Claimant's role redundant in November 2023.

[Issue 7.3(b)] – detriment 2 – failed to pause redundancy for complaints & grievance

continued the redundancy process rather than pausing it while the investigation and resolution of the Claimant's Way2Play complaint and his grievance were ongoing;

260. The Claimant has criticised the evidence of Ms Okoronkwo as being "vague and cagey" and the submission made that Mr Wurzinger must have been involved in the decision not to pause the redundancy process. Ms Okoronkwo's oral evidence was that she consulted with the legal team and Mr Wurzinger was not involved. Her written evidence was that there was pressure to conclude the redundancy process on time and (given that there were 1,900 across the group), that the Claimant would be in garden leave and could be reinstated if the grievance was upheld, and finally given that the dismissal was for redundancy the grievance would make limited difference, since the business case for redundancy was an objective question. She contrasted this situation with for example pending a PIP (i.e. a performance process) pending resolution of the grievance.
261. Was the decision not to pause the redundancy consultation to a significant extent (meaning more than trivial) caused by the making of the protected acts?
262. The Tribunal accepted that Mr Wurzinger was not involved in the decision not to pause the redundancy consultation process. We accept that when Ms Okoronkwo referred to "we" in the interview in relation to this decision she was referring to herself in consultation with the legal team rather than herself and Mr Wurzinger. We also accepted the explanation put forward by her for not pausing the process, although we noted that the grievance and grievance appeal process in fact took so long that it did fall outside of the garden leave period.
263. We have considered from our experience that it is not a foregone conclusion or an expectation that a large-scale redundancy process would be paused to allow an individual's grievance to be dealt with. In other words the fact of this not happening in the Claimant's case we do not find particularly surprising or unusual. An expected sequence of events was for there to be a series of consultation meetings and, absent a reason for the redundancy not to be made, a final meeting and notification of termination. Ultimately we conclude that the decision to continue to follow that process was not *caused* to any significant extent by the making of the protected act. It was simply the natural progression of the process and would have happened whether or not a grievance was raised.

[Issue 7.3(c)] – detriment 3 – notice of termination/garden leave

On 5 March 2024 gave notice of the termination of the Claimant's employment to him, placing him on garden leave and providing him with a date confirming the termination of his employment;

264. The evidence of Cindy Okoronkwo was that the Claimant did not complain about being placed on garden leave, and that it was “very normal” for the organisation to do this in a redundancy situation, given that there was very limited work to do. Specifically in the case of the Claimant, she stated that given the performance concerns about him from senior colleagues and his poor relationship with Baris Ayogen and Anthea Williams there would not have been any desire for him to work his notice. (Those points are echoed by Mr Wurzinger). She notes that it gave him opportunity to find a new role in the UK while he was still under a sponsored visa.
265. Silvia Aparicio’s evidence was that garden leave was “not an usual process” if a handover is not required. Both she and Mr Okoronkwo suggested that garden leave and the provision of a termination date was standard practice.
266. The Tribunal accepted the Respondents’ evidence on this point and found that placing the Claimant on garden leave with a notified termination date was not a surprising or unusual outcome. We found this was explained by the circumstances at the conclusion of the redundancy process generally rather than the making of protected acts by the Claimant. The Claimant was a comparatively senior employee and there was no need for a handover of this role given that it was going to cease to exist. Both of these facts pointed to garden leave being an unremarkable development.

[Issue 7.3(d)] – detriment 4 – 50% not 100% profit share

On 26 April 2024, gave the Claimant a profit sharing award based on a 50% rather than a 100% multiplier;

267. The evaluation leading to the 50% assessment of the profit sharing took place on 22 January 2024 which pre-dates protected acts 4, 5 and 6 and could not in logic have been caused by them. Mr Wurzinger who took the decision on the profit share was, not aware of the earlier protected acts 2B and 3B since these were dismissed by Jola Hollett without communicating them to him.
268. This allegation does not succeed.
269. In any event there was evidence of poor performance over a period of time. In that context 50% bonus was unsurprising.

[Issue 7.3(e)] – detriment 5 – terminated employment

The termination the Claimant’s employment on 6 June 2024 was detrimental treatment.

270. As to the reasons for it, the considerations for this detriment are similar to those for detriment number 3 above. The genesis of the decision to terminate employment was in November 2023.

271. This allegation does not succeed.

[Issue 7.3(f)] – detriment 6 – no redundancy appeal

The Claimant was notified by an email on 11 July 2024 that he did not have a right to appeal as his employment had been termination by reason of redundancy.

272. It is submitted on behalf of the Claimant that Ms Okoronkwo explicitly wrote that the fact that the Claimant had raised a grievance was a reason for not allowing him to appeal. We do not read the relevant email in this way. We read it that the Claimant was being told that he did not have a right to appeal, but in any event, he was reminded that he had an opportunity to raise concerns in his grievance.

273. Given that there is no policy document setting out a right to appeal from a decision to make someone redundant, nor was there a practice of doing this at the First Respondent, nor does the ACAS code of conduct set out an expectation that there should be an appeal from a redundancy, this is not a situation in which absence of an appeal particularly calls for an explanation. We did not find that it was the making of protected disclosures was the reason for the absence of appeal.

Detriment because of protected acts

274. The following are dealt with in each allegation above.

[Issue 7.4] Did any of these acts amount to a detriment?

[Issue 7.5] If so, was the above treatment because the Claimant had done one or more of the alleged protected acts referred to at paragraph 7.1 above?

**Remedy**

275. Given our findings, no remedy hearing was necessary.

Approved by Employment Judge Adkin

Date 27 January 2026

WRITTEN REASONS SENT TO THE PARTIES ON

9 February 2026

FOR THE TRIBUNAL OFFICE