EMPLOYMENT TRIBUNALS

Claimant: Ms M Urbaityte

Respondent: Collection Pot Limited

Heard at: London South (by video) **On:** 18 to 22 May 2026

Before: Employment Judge Evans

Representation
Claimant: in person
Respondent: Mr Cater, Croner Consultant

JUDGMENT

1. The complaint of unfair dismissal is not well-founded and is dismissed.

2. The complaint of being subjected to detriments for making protected disclosures is not well-founded and is dismissed.

REASONS

Preamble

1. These are my full reasons for my reserved judgment.

2. The claimant's employment with the respondent began on 29 July 2024 and ended on 20 September 2024, some seven and a half weeks later. The claimant presented her claim on 19 September 2024. The claim came before me between 18 and 22 May 2026. I did not have time to deliberate and deliver an oral judgment during the Hearing so I reserved my decision.

3. The parties had agreed a bundle of 470 pages prior to the Hearing to which additional pages 471 and 472 were added by agreement during the Hearing ("the Main Bundle"). All references to page numbers are to the pagination of the Main Bundle unless otherwise stated.

4. I also had before me a supplementary bundle containing 7 pages ("the Supplementary Bundle"), a bundle containing extracts of legislation provided by the claimant ("the Authorities Bundle"), a mitigation bundle provided by the claimant, and a cast list and chronology prepared by the claimant.

5. The claimant gave oral evidence by reference to a witness statement. So too did:

   5.1. Ms I Procino, who had been employed on 15 July 2024 as the respondent's Money Laundering Reporting Officer;

   5.2. Mr R Haynes, who at the time of the events relevant to the case had been the respondent's CEO. By the time of the Hearing he was no longer employed by the respondent;

   5.3. Mr M Smith, who at the time of the events relevant to the case was the respondent's Chief Marketing and Product Officer;

   5.4. Mr C Miriou, who at the time of the events relevant to the case was the respondent's Director of Operations;

   5.5. Mr C Dunston, who at the time of the events relevant to the case was the respondent's Customer Success Manager.

Applications and matters arising during the hearing

Applications

6. A preliminary hearing for case management purposes had taken place on 13 May 2026, that is to say just 5 days before the beginning of the final hearing. The Employment Judge who had conducted that preliminary hearing had dealt with various applications by the claimant. The written record of their decision and the orders made ("the Orders") was sent to the parties on 18 May 2026, that is to say on the first morning of the Hearing.

7. The claimant was dissatisfied with some of the Orders and made an application for me to vary them. The application was that the Orders be varied so that the List of Issues would be varied so that the claimant could argue at the Hearing that she had made two additional protected disclosures and, also, had been subjected to additional detriments.

8. I refused the application for reasons that I gave orally.

Additional time for cross-examination and submissions

9. A timetable had been set out for the Hearing in the case management orders sent to the parties on 21 November 2025 which noted that if the parties thought they needed more time they were required to tell the Tribunal "as soon as possible" (page 114). In broad terms, the timetable gave the claimant the afternoon of the second day and the morning of the third day for cross-examination (less the time required for the Tribunal's questions, re-examination etc). The claimant said at the beginning of the Hearing that this would not be enough time. I did not agree. However, during cross-examination it became clear that, despite my attempts to assist the claimant in relation to relevance, she was unable to cut back the many questions she had planned to ask. She seemed

unable to see the wood for the trees. In the end, having regard to the overriding objective, and the need so far as practicable to ensure that the parties are on an equal footing, I allowed the claimant's cross-examination to continue until the end of the third day. Even then I had in the end to limit the cross-examination of several witnesses to the amount of time that had been agreed before the cross-examination began. Overall, the claimant's cross-examination of the respondent's witnesses lasted six hours and thirty minutes.

10. At the end of the second day the claimant became distressed. I thought that this might have been because I had intervened on the grounds of relevance on a number of occasions. I explained that my interventions on the grounds of relevance were aimed at enabling her to focus in cross-examination on what mattered to her case and to avoid wasting the time available to her. I said that I would, however, refrain from making such interventions on the following day so that she could use the time available for cross-examination as she wished. The claimant returned to this issue at the beginning of the third day. She said that she had became upset not because I had intervened but because of the problem of the time she had available to her (given the number of questions that she had to ask). She asked me to continue to intervene when I thought her questions were not relevant and I did so, but only to a limited extent.

11. The claimant also said during the Hearing that she did not believe that she had sufficient time to prepare submissions after the evidence had finished. The timetable envisaged submissions immediately after the respondent's evidence had finished. In fact, because that happened at the end of day three, the claimant had overnight to prepare her submissions (although I explained that she was not required to provide these in written form or, indeed, to make any at all). I also extended the deadline for the exchange of written submissions on the morning of the fourth day to give the claimant an extra hour and then delayed the beginning of oral submissions by an hour. This was after the claimant had written to the Tribunal at 8.15am saying that she would be unable to exchange at 9am.

<u>The issues</u>

12. The issues arising in this case were set out in a List of Issues appended to the version of the case management orders sent to the parties at 12.30pm on 18 May 2026. The contents of that List of Issues reflected the decisions made by the Employment Judge at the preliminary hearing on 13 May 2026.

13. The formatting of the List of Issues had given rise to some difficulties and, in my view, its numbering meant that it was not a document which could be easily used during the Hearing. I therefore reformatted the List of Issues and had a copy of the reformatted document sent to the parties at the beginning of the second day of the Hearing. At the same time, I suggested to the parties that three minor amendments should be made to that reformatted List of Issues.

14. The three minor amendments I had suggested to the List of Issues appended to the version of the case management order sent to the parties at 12.30pm on 18 May 2026 were agreed and are reflected in the List of Issues in Appendix One. They were:

14.1. The deletion of issue 6.10;

14.2. The deletion of issue 19;

14.3. "2025" being replaced by "2024" in the unnumbered paragraph under 7.1.3.

15. The claimant's agreement to the List of Issues was subject to a possible appeal by her in respect of the case management orders made at the hearing on 13 May 2026.

16. In addition, one further amendment to the List of Issues was agreed in the discussion of the List of Issues that I had had sent to the parties at the beginning of the second day of the Hearing: the words "know your customer" were replaced by the words "treating customers fairly".

17. Finally, it was agreed that only Liability issues plus Polkey (issues 6.4 and 6.5) and contribution (issues 6.8 and 6.9) would be dealt with initially. Remedy issues would be dealt with separately and subsequently if the claimant won all or part of her claim.

The Law

Unfair dismissal

The right

18. Section 94 of the Employment Rights Act 1996 ("the 1996 Act") gives an employee the right not to be unfairly dismissed.

Dismissal

19. In order to bring a claim of unfair dismissal, the employee must show that they have been dismissed. The circumstances in which an employee is dismissed are set out in section 95 of the 1996 Act. The burden of proof to show a dismissal has taken place is on the employee. There is no dispute in this case that the claimant was dismissed, on one week's notice, on 13 September 2024.

The burden of proof in relation to the reason for dismissal

20. Section 103A of the 1996 Act provides that an employee who is dismissed shall be regarded 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. The meaning of "a protected disclosure" is considered further below.

21. The burden of proof to prove the reason for dismissal is normally on the employer even when the claimant asserts that the dismissal is unfair because the reason (or principal reason) for it was that they had made a protected disclosure. (Kuzel v Roche Products Ltd [2008] EWCA Civ 380). However, when the employee does

not – as in this case – have the necessary qualifying service to bring an ordinary unfair dismissal claim, the burden of proof is on the employee (Smith v Hayle Town Council [1978] IRLR 413).

Detriment claims – protected disclosure

The right not to be subjected to detriment for protected disclosure

22. Section 47B(1) of the 1996 Act provides that an employee has the right not to be subjected to a 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".

23. A worker also has the right under section 47B(1A) of the 1996 Act not to be subjected to a detriment by any act, or any deliberate failure to act, by a co-worker done on the ground that the worker has made a "protected disclosure". Section 47B(1B) provides that the employer will be vicariously liable for the acts of the co-worker.

What is a protected disclosure?

24. A "protected disclosure" is defined by section 43A of the 1996 Act as a "qualifying disclosure" made in accordance with any of sections 43C to H. Section 43C states that a qualifying disclosure is made in accordance with it if the worker makes the disclosure to their employer.

25. A "qualifying disclosure" is defined in section 43B of the 1996 Act as follows:

…any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—

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

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

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

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

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

26. An employee wanting to rely on the whistleblowing protection bears the burden of proof of establishing the relevant failure referred to in 43B(1)(b). In Boulding v Land Securities Trillium (Media Services) Ltd UKEAT/0023/06 Judge McMullen said:

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

(a) there was in fact and as a matter of law, a legal obligation (or other relevant obligation) on the employer (or other relevant person) in each of the circumstances relied on.

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

27. Several communications may when taken together amount to a qualifying disclosure even though each individual communication itself is not (Simpson v Cantor Fitzgerald [2020] EWCA Civ 1601.

The approach of the Tribunal to deciding whether there has been a protected disclosure

28. The approach that a Tribunal should take when deciding whether there has been a protected disclosure was set out by the EAT in Williams v Michelle Brown AM UKEAT/00/44/19:

    28.1. Is there a disclosure of information?

    28.2. Does the worker believe the disclosure to have been made in the public interest?

    28.3. If so, is that belief reasonably held?

    28.4. Does the worker believe that the disclosure tends to show one of the six specified matters in s.43B of the 1996 Act?

    28.5. If the worker holds such a belief, is it reasonably held?

29. The Court of Appeal considered when there has been a disclosure of information in Kilraine v London Borough of Wandsworth [2018] IRLR 846. It concluded that there was no “rigid dichotomy” between “information” and an “allegation” (at [32]). It went on to state at [35]: “In order for a statement or disclosure to be 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 sub-section [43B](1)”. Then at [36] “Whether an identified statement or disclosure in any particular case does meet that standard will be a matter for evaluative judgment by a tribunal in the light of all the facts of the case”.

30. In Chesterton Global v Nurmohamed (PCAW Intervening) [2017] All ER 947 the Court of Appeal considered the second and third questions. The following principles were identified:

30.1. Did the worker believe at the time they made the disclosure that making it was in the public interest (at [27])?

30.2. If so, was that belief reasonable? The Tribunal is required to recognise that there may be more than one reasonable view as to whether a particular disclosure was in the public interest (at [28]);

30.3. 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 (at [29]);

30.4. While the worker must have a genuine and reasonable belief that the disclosure is in the public interest, that does not have to be the predominant motive in making it (at [30]);

30.5. Parliament chose not to define the phrase "in the public interest" and so the intention was to leave it to employments tribunals to "apply it as a matter of educated impression". The essential distinction is between disclosures which serve the private or personal interest of the worker making the disclosure and those that serve a wider interest.

31. The EAT considered the fourth and fifth questions posed by Williams in Twist DX Limited v Armes UKEAT/0030/20/JOJ. It stated that:

31.1. The fourth question is a subjective question to be decided on the evidence as to the claimant's beliefs at the time of the alleged disclosure [64]. The belief must be as to what the information "tends to show", which is a lower hurdle than having to believe that it "does show" [66].

31.2. The fifth question has both a subjective element and an objective element. Importing the test from Chesterton Global, the subjective element is that the worker must believe that the information disclosed tends to show one of the six matters listed. The objective element is that that belief must be reasonable". The worker's view may be wrong but nevertheless reasonable ([67] to [70] of Twist DX).

31.3. Insider knowledge is relevant to the reasonableness of the belief in what the disclosure "tends to show" (Simpson v Cantor Fitzgerald Europe [2020] EWCA Civ 1601 and Korashi v Abertawe Bro Morgannwg University Local Health Board [2012] IRLR.

32. An employer's belief that a disclosure is not protected is not relevant to the assessment of whether it is (Beatt v Croydon Health Services NHS Trust [2017] IRLR 748).

Detriment under section 48 – what is a detriment?

33. The 1996 Act does not define "detriment" but "detriment" is a familiar concept in discrimination law. In Jesudason v Alder Hay Children's NHS Foundation Trust IRLR 374 the Court of Appeal confirmed that it should be construed in a similar

fashion in the context of whistleblowing. A detriment will be established if a reasonable worker would or might take the view that the treatment accorded to them had in all the circumstances been to their detriment.

Detriment under section 48 – the burden of proof

34. Section 48(2) of the 1996 Act provides that:

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

35. In a claim that a worker has been subject to a detriment in breach of section 47B, the worker must prove on the balance of probabilities that they made a protected disclosure and suffered a detriment. Under section 48(2) it is then for the employer to show the ground on which the detriment was done. If the employer does not, the Tribunal may (but is not required to) infer that the detriment was on the ground that the worker made a protected disclosure (Ibekwe v Sussex Partnership NHS Foundation Trust UKEAT/0072/14/MC the EAT).

Detriment claims - Causation

36. The question of causation requires an analysis of the mental processes (conscious or unconscious) which caused the employer to act as it did and the test is not a "but for" test (Harrow London Borough v Knight [2003] IRLR 140 EAT).There will be a breach of section 47B if the protected disclosure materially influenced (in the sense of being more than a trivial influence) the employer's treatment of the whistleblower (NHS Manchester v Fecitt [2012] IRLR CA).

Knowledge of disclosures

37. In Nicol v World Travel and Tourism Council and others [2024] EAT 42 the EAT considered the question of what level of detail of knowledge is required of a protected disclosure by person B when the actual disclosure is made to person A. Is it sufficient that person B merely knows that a disclosure has been made to person A, or does person B have to know at least some of the content of the disclosure that has been made? At [82] the EAT concluded that: "For employers to be fixed with liability, therefore, they ought to know at least something about the substance of what has been made [sic]: that is, they ought to have some knowledge of what the employee is complaining or expressing concerns about". It is not enough that person B simply knows that the worker has made a disclosure to person A.

Multiple disclosures

38. If multiple protected disclosures have been made and the Tribunal finds that they operated cumulatively, the Tribunal should in an unfair dismissal claim consider whether cumulatively they were the principal reason for the dismissal (El-Megrisi v Aza University (IR) in Oxford UKEAT/0448/08 at [19]).

Submissions

39. The respondent produced written submissions running to 18 pages and the claimant produced written submissions running to 17 pages. The respondent made oral submissions lasting just under half an hour and the claimant made oral submissions lasting just under 45 minutes. I have taken careful account of the written and oral submissions made by each party but I do not set them out or summarise them here.

Findings of fact

40. These findings of fact do not of necessity refer to all of the evidence that was before me. As in many cases, the Main Bundle was of excessive length and contained irrelevant documents. I made plain at the beginning of the Hearing that I would not necessarily read pages contained in it that were not referred to in the witness statements or during the course of the Hearing.

General background findings

41. The claimant was employed as the respondent's Product Manager from 29 July 2024. The "product" of the respondent is an online platform which enables an individual (a "pot organiser") to arrange a collection in situations such as when a colleague is leaving work or a friend has a birthday. The intention is that it makes such collections easier to set up and administer.

42. The claimant was given one week's notice of dismissal on 13 September 2024 but was not required to attend work after that date. Her employment ended on 20 September 2024. As such, she performed work for the respondent for around six and a half weeks.

43. In fact, the claimant's application for the role of Product Manager had initially been rejected on 15 May 2024 (page 174). However, there were then further discussions, including discussions about salary. This was after Mr Haynes had sent her a message on 21 June 2024 (page 471), presumably in response to the claimant asking why she had not been offered the role, saying:

    Hi Melita,

    Apologies for the delay – we felt the amount of relevant payments experience you had was not enough, and although we were/are willing to train you – the salary expectation was not aligned with that.

44. The claimant had replied that "I am still interested in the role", clearly implying that she would reduce her salary expectations, and it was after this that her employment was agreed.

Terms of employment

45. The claimant's statement of particulars (page 379) provided that her employment was subject to a probation period of "3 months commencing on your start date".

The statement provided that there would be a “probationary review meeting” if the claimant failed to meet any of certain specified criteria during her probationary period and “your employment may be terminated”. The relevant clause in the statement of particulars is set out and considered in more detail below.

The termination of the claimant’s employment

46. The claimant was given oral notice of dismissal in a Teams call at 9am on 13 September 2024 (page 292) by Mr Rowan Ling, her line manager and the respondent’s Chief Product Officer. Her dismissal was confirmed by an email of the same date (page 294) from Mr Ling attaching a letter from Mr Haynes, the CEO. The letter from Mr Haynes did not give any reason for the dismissal. It just said “following conversations between your manager and myself we have decided not to continue your employment”.

Findings re claimed protected disclosures.

PD at 7.1.1: 1 August 2024 face-to-face meeting with Mr Ling re data protection (the “ alleged New Product Feature disclosure”)

47. The respondent accepts that the claimant raised concerns about whether there were data protection breaches in a potential new product feature allowing users to invite others (using their email address) to contribute to a collection via the respondent’s platform (“the New Product Feature”). The New Product Feature would, if implemented, have resulted in the email addresses of those other people being invited to contribute being stored on the respondent’s computer systems.

48. The respondent also accepts that this amounted to a disclosure of information (grounds of resistance [23], page 45). It does not, however, accept that any of the other component parts of a qualifying disclosure are made out.

49. The respondent’s position at the Hearing was that the development of the New Product Feature had not reached an advanced stage but its witnesses’ statement, which were short, contained very little information about the issue. Mr Dunstan said there had been a conversation “engaging ideas” but provided no significant details. Ms Procino’s statement was similarly undetailed. Mr Smith gave a little bit more detail about the New Product Feature itself (paragraphs 7 and 8 of his witness statement). Mr Haynes did not comment at all.

50. Overall, the respondent’s position was that the New Product Feature had never been implemented: rather there was simply an email template which would open in a pot organiser’s own email client to enable the pot owner to email others inviting them to contribute and which would not result in any data relating to those others being stored on the respondent’s systems.

51. The claimant’s witness statement, by contrast, included a lot more detail about this issue.

52. I find that there was a clear proposal to incorporate the New Product Feature into the respondent's product which would have resulted in the respondent collecting and storing the email addresses of individuals identified by the pot organiser as potential donors to the collection in question. I find that the claimant reasonably believed in August 2024, when she raised her concerns, that the New Product Feature was to be launched in the near future.

53. To the extent that these findings require me to prefer the evidence of the claimant to the evidence of the respondents' witnesses I do so because her witness statement dealt precisely and in detail with this matter, cross-referring to various supporting documents, whereas the evidence of the respondent's witnesses was generally less detailed.

PD at 7.1.2: 1 August 2024 conversation with Ms Procino re data protection (again, the alleged New Product Feature disclosure)

54. The respondent accepts that the claimant raised the same issues with Ms Procino, the money laundering officer.

55. I find that the claimant disclosed what was to all intents and purposes the same information to Ms Procino on 1 August 2024 as she had disclosed to Mr Ling.

56. To the extent that these findings require me to prefer the evidence of the claimant to the evidence of the respondents' witnesses I do so because her witness statement dealt precisely and in detail with these issues, cross-referring to various supportive documents, whereas the evidence of the respondent's witnesses was generally less detailed.

PD at 7.1.3: 28 and 29 August 2024, 3 and 10 September 2024 face-to-face meetings with Ms Procino and Mr Ling

57. I refer to the following alleged disclosures collectively as "the alleged Identity Document disclosure".

58. The claimant worked on the respondent's customer support desk for a week or so towards the end of August 2024. She noticed that a number of customers were complaining that they had to produce an identity document when they sought to withdraw the funds collected in the "pot" they had organised. Some complained that they had not been told about this earlier.

59. I find that at the time of the events this claim is about a substantial number of the respondent's customers had not been given notice of the need to produce an identity document at the point they had signed up to the respondent's service.

60. Whether meetings on those dates: the respondent accepts that there were meetings/conversations on the first three of the specified dates. The respondent does not accept that there was a face-to-face meeting on 10 September 2024. In fact the claimant's case as set out in her witness statement was not really that there had been a meeting on 10 September 2024 but rather that she had spoken to Mr Ling on that date (see my findings of fact at [65] below).

61. **What was said at those meetings:** the respondent does not accept that the claimant raised concerns, as she alleges, on the above dates regarding breaches of the FCA know your customer requirements through a lack of transparency at an early stage in the customer's process which did not inform the customer that, when they wanted to remove money from their account, they would have to show ID.

62. **28 August 2024:** I find that on 28 August 2024 the claimant raised a concern with Mr Ling, when Ms Procino was present, about a customer, CT, who had said that they were unable to produce a satisfactory identity document. I find that the claimant said that it was unfair to require CT to provide one of the limited number of documents accepted by the respondent when he had not been informed of any such requirement on sign up. I find that the claimant did not refer at this point to this being a breach of any FCA principle or any specific law (and nor did she claim to have done so in her witness statement (paragraphs 61 to 65)).

63. **29 August 2024:** I find that on 29 August 2024 the claimant said to Ms Procino in the presence of Mr Ling that the respondent's FAQs and its terms and conditions did not refer to the need to produce a satisfactory identity document before funds could be removed from an account. I also accept that the claimant showed further ID notification requirement designs to Mr Ling on that date (paragraph 66 of her witness statement, but doing so was clearly not a qualifying disclosure and I do not analyse that aspect of her evidence further.

64. **3 September 2024:** I find that on 3 September 2024 the claimant said to Ms Procino that the respondent's website did not refer to the need to produce a satisfactory identity document before funds could be removed from an account.

65. **10 September 2024:** I find that on 10 September 2024 the claimant created a ticket to assist users whose accounts had been marked "fraud" that was in broad terms similar to that at page 276. I find that the claimant told Mr Ling that she was working on ID notification transparency and created a ticket in Jira about this. I find that Mr Ling assigned the tickets. I also find that on that date Ms Procino said words to the effect of "we need to show the ID notification somewhere on the website" and Mr Ling said words to the effect of "we need to be careful about that".

66. In making the findings set out above in respect of 28 and 29 August and 3 September 2024, I have accepted the evidence of the claimant. I note that Mr Ling did not appear as a witness. The witness evidence of Ms Procino, including her oral evidence, was not in any significant way at odds with that of the claimant in relation to what was said on those dates, although the recollections of Ms Procino were less precise. She could not be clear about exactly what she had said or when. However, she accepted that she had indicated that it would be preferable to communicate ID requirements earlier in the "user journey".

Findings re claimed detriments

<u>Detriment at 8.1 – Mr Haynes describing a meeting with the claimant as weird in</u>

message to Mr Ling and asking "is she doing better?"

67. The respondent accepts that such a message was sent. The message was at page 260.

Detriment at 8.2: 10 September 2024 – Mr Ling discouraging claimant's point about ID verification

68. This is a reference to Mr Ling saying, as I have found at [65] above "we need to be careful about that".

Detriment at 8.3: 11 September 2024 - whether the respondent secretly removed the claimant's access to an internal system which the claimant needed to complete a task

69. The claimant dealt with this matter at [101] to [106] of her witness statement. I find that the claimant has failed to prove that her access was "removed". This is for the following reasons:

    69.1. First, the contemporaneous evidence shows that the claimant herself had doubts about whether she was using the Retool system correctly (page 306, her messages with Mr Collins, which do not refer to her access having been "removed").

    69.2. Secondly, her own messages do not suggest that her access was "removed" but that Retool was not working properly for her ("iam trying to find this one in retool so i can close it, but i don't seem to be able to locate it", page 286 [lower case spelling and errors reproduced from the original]).

70. In summary, there is no clear and significant evidence that her access was "removed" and I find that it was not. Overall, I do not accept the claimant's wider case that she was being deliberately denied access to systems in order to undermine her performance.

Detriment at 8.4: 13 September 2024 – complaint of Mr Ling that the claimant had not provided him with an update when in fact she had via JIRA

71. The respondent accepts that Mr Ling made such a complaint but does not accept that the claimant submitted a JIRA ticket to Mr Ling on or around 13 September 2024.

72. The string of messages giving rise to this alleged detriment is at page 290. At 08.24 the claimant asks if she can work from home and the following messages ensue:

> ***Ling:*** *sure – what's the status of the urgent bug with card redemption?*
> *hello?*

> ***Claimant:*** *thanks, we tested it yesterday around 5pm and the safari frame bug seemed to be fixed but we did not release due to the lateness, the plan was to release this morning.*
>
> ***Ling:*** *released?*
> *i asked for that to be released yesterday*
> *I'm disappointed that it wasn't*
> *also there was no update to say this*

73. There is no dispute that Mr Ling wanted the bug relating to card redemptions to be fixed urgently. At 16.22 on 12 September 2024 the claimant sent the following message to Mr Collins on teams

> *Rowan [i.e. Mr Ling] mentioned that he'd like the safari frame fix to go live asap, and not to wait for the 2fa*
> *he's left for today*

74. There is also no dispute that the claimant had not updated Mr Ling by sending him a Teams message. I find that she did, however, update the relevant Jira ticket.

75. Taking the evidence in the round, I find that Mr Ling could have checked the status of the bug fix by looking at Jira. However, I also find that updating the Jira ticket did not amount to updating Mr Ling in the circumstances. The circumstances were that Mr Ling wanted the bug to be fixed urgently: he had, as the claimant noted at paragraph 111 of her statement, asked her (1) "to tell a developer to release code urgently" and (2) to "make developer stop working on another task".

<u>Detriment at 8.5: 30 August 2024 – complaint that Mr Ling failed to progress the claimant's access to customer live data</u>

76. The respondent denies that this happened and states that in any event if the claimant had wanted access to such data she should have contacted Costa, the Head of Operations.

77. The claimant's complaint depends to a significant extent on a particular reading of the email sent to her on 18 July 2024 by Mr Haynes, after she had accepted the job offer. In that email Mr Haynes wrote (page 175):

> *Scott will be in touch with details of the company the does our referencing and background checks - he will probably start this next week and it takes 2-3 weeks. It is ok to start before this finishes - but you will obviously not be able to access live customer systems until it is complete*

78. The claimant took this to mean that once satisfactory references had been received and customer background check had been completed she would have access to all live customer systems. This is not what the email says: rather it states that there will be no access to live customer systems until that point. It

does not say *what* live customer systems she would have access to after that point.

79. Mr Miriou explained in his oral evidence, which I accepted, that practically no employee had access to *all* live customer data. He described himself (in effect) as a point of contact for tools and organisational matters.

80. Mr Ling provided the claimant with a link to give her access to certain data on 27 August (page 221).

81. Overall, whilst accepting that there were issues with the claimant's ability to use Retool as set out above, I find that the claimant has failed to prove that Mr Ling failed to progress her access to customer live data in the manner alleged.

Detriment at 8.6: alleged failure to arrange any probationary review meetings during the claimant's employment, as noted in the contract

82. The claimant's contract of employment (that is to say her statement of particular of terms and conditions of employment, page 379) provided as follows in relation to the claimant's probationary period:

> *Your employment with the Company is subject to a probation period of 3 months commencing on your start date with the Company, during which time you will be required to demonstrate your suitability for the position in which you are employed. To this end, your progress and conduct will be assessed, and the Company reserves the right to terminate your employment before or at the expiry of the probation period.*
>
> *During or at the end of your probation period your employment may be terminated with one week's written notice by the Company.*
>
> *The Company may extend the probationary period for a further period or periods as the Company in its sole discretion may determine in order for it to further monitor your performance and conduct. The probationary period will be deemed to be continuing and extended unless the fact that you have successfully completed the probationary period has been confirmed in writing to you.*
>
> *The first three months of your employment are probationary, and confirmation of your employment is dependent on:*
>
> *Evidence of achievement of any required qualifications for your role*
> *Satisfactory performance*
> *Satisfactory attendance*
> *Satisfactory conduct*
>
> *The Company's full disciplinary process doesn't apply to you when you're in probation. If you fail to meet any of the criteria above during probation, you'll be invited to a probationary review meeting and your employment contract may be terminated.*

Should you wish to terminate your employment during your probationary period you are required to give the Company a minimum of one week's written notice.

In the event that your employment terminates during or at the end of your probationary period, you shall have no entitlement to any payment from the Company other than with respect to accrued salary and accrued but untaken holiday entitlement up to the date of termination. For avoidance of doubt benefits such as Pension, Car Allowance and PMI will cease on date of termination.

83. The respondent says that it held a probationary review meeting on 13 September 2024 and that the claimant was dismissed at it. This is a reference to the five minute teams call between the claimant and Mr Ling (page 292).

84. The claimant prepared brief notes of what was said during that meeting (page 293). They suggest that Mr Ling raised issues in relation to (1) her design skills (2) her communication skills (3) her failure to deliver (4) a comment she had made to the CEO (5) the tools she used when working on design ideas (6) his view that she wrote confusing tickets with spelling mistakes.

85. However, I accept the claimant's evidence that Mr Ling began the meeting by telling her that she was to be dismissed. I find that he only raised the issues set out in the previous paragraph when the claimant pressed him for a reason for her dismissal.

86. Returning to the wording contained in the statement of particulars, the clause quoted in full above states:

If you fail to meet any of the criteria above during probation, you'll be invited to a probationary review meeting and your employment contract may be terminated.

87. I find that this clause envisages the purpose of a "probationary review meeting" as being to review a claimant's performance (because they have not met one or more relevant criteria) before a decision is taken in relation to whether their employment will be terminated. I make this finding because:

    87.1. It is in implicit in the name given to the meeting;

    87.2. There is a suggestion that various outcomes to such a meeting are possible, not just dismissal ("**may** be terminated" [emphasis added]).

88. I find that a meeting at which an employee's employment is terminated with no prior review of their possible failure to meet the criteria set out in the clause set out above is not a probationary review meeting.

89. I therefore find that the respondent did not carry out a probationary review meeting.

Detriment at 8.6: The CEO failing to respond to the claimant contacting them on 30 September 2024 and asking for a chat

90. The respondent accepts that the claimant messaged Mr Haynes, the respondent's CEO, on 13 September 2024 (page 297) asking for a chat and that the CEO failed to respond.

Findings re the dismissal of the claimant

91. The claimant was dismissed on 13 September 2024 in a Teams meeting with Mr Ling. I find that, when pressed, the reasons given by Mr Ling for the claimant's dismissal were as summarised in [84] above.

92. The dismissal was confirmed the same day by a letter from Mr Haynes sent to the claimant by an email from Mr Ling (pages 294 & 295). The email and letter contained no information about the reasons for the claimant's dismissal. The letter simply stated:

    Your employment with Collection Pot is subject to successfully completing a 3 month probation period, and following conversations between your manager and myself we have decided not to continue your employment.

93. As such, the respondent said very little indeed (and put nothing in writing) at the time about its reasons for dismissing the claimant.

94. I make the following findings relevant to the question of the reason (or if more than one the principal reason) for the claimant's dismissal:

    94.1. The decision to dismiss the claimant was taken by Mr Haynes, after speaking to Mr Ling.

    94.2. Mr Haynes was not aware (that is to say he did not have the knowledge required by Nicol v World Travel and Tourism Council) of either the alleged New Product Feature disclosure or the alleged Identity Document disclosure at the time he made the decision to dismiss. I so find because:

        94.2.1. I have not been pointed to any documentary evidence of significance which directly support the contention of the claimant that he was so aware;

        94.2.2. Mr Haynes was the CEO. I find that neither of the alleged disclosures was of such significance to the business that one would expect them to have been automatically escalated to him;

        94.2.3. Mr Haynes denied that he was aware of either of the alleged disclosures. I place some weight on his denial because I found his oral evidence to be internally consistent, consistent with the documentation, and consistent with his written witness statement.

94.2.4. The context for the dismissal of the claimant was that he was not as CEO invested in her continued employment to any significant degree: her employment had only lasted a few weeks; she had only been employed at all after a change in heart; she had little experience in the respondent's specific area of activity.

94.3. The factual reasons for Mr Haynes deciding to dismiss the claimant after discussing the matter with Mr Ling were:

94.3.1. Mr Haynes felt that she had spoken to him inappropriately on 7 August 2024, perhaps particularly given that that was only her second week of employment. (In making this finding I note that there is a difference in the recollections of Mr Haynes and the claimant: he remembers her asking him not to speak at all in a particular part of a meeting; she remembers asking him to speak last. I do not find it necessary to decide between these recollections because either would have been something to which Mr Haynes *might* take exception);

94.3.2. He took the view that her ticket writing skills were poor;

94.3.3. He had been very unimpressed by her informal presentation to him on 3 September 2024;

94.3.4. He felt that she had been dismissive of his view after she had sought it in relation to possible button design options on 11 September 2024;

94.3.5. Mr Ling had felt that the claimant had not communicated appropriately with him about the urgent bug fix considered at [71] to [75] above;

94.3.6. Although Mr Ling had been "defensive" of the claimant when they had discussed her, he had not in the end suggested that her performance was satisfactory.

95. There were relatively few direct factual conflicts directly relevant to these findings where I had to decide whether I preferred the evidence of the claimant to that of Mr Haynes. However, where necessary, I preferred the evidence of Mr Haynes to that of the claimant for the following reasons:

95.1. I found Mr Haynes to be a credible witness for the reasons set out at [94.2.3] above;

95.2. By contrast, I found the claimant's credibility to have been damaged by her being intent on incorporating every scrap of available evidence into a very detailed theory of what had happened. This resulted in her mischaracterising events or evidence. For example:

95.2.1. She complained that, whilst she had been dismissed in part because of the failure to release the bug fix, the designer who had "refused" to release it had suffered no consequences. In fact, to say that the designer had "refused" to release it was inconsistent with the contemporaneous documentary evidence in the Teams messages drawn to my attention. Those messages did not show the claimant saying that the designer *had to* release the fix on the relevant day or him *refusing* to do so (see, for example, the messages at page 328 to 329);

95.2.2. Mr Dunstan had said in his witness statement that "On one occasion, [the claimant] asked me to complete a survey she had created. I found the survey difficult to understand due to how it was worded and advised her that I was unable to complete it as I did not understand what was being asked". The claimant was dismissive of this criticism and said that in any event Mr Dunstan had not made it. However it is clearly a reasonable criticism of the survey (page 461) because neither of the possible responses offered ("Copy and share the link below via any channel" or "Invite others with a ready-to-go email") relates on the face of it to the question: "You are creating a digital pot to collect money from your colleagues for a special occasion. Where would you click if you wanted to be able to monitor your pot's status throughout the pot's existence?"

95.2.3. The claimant expressed a view that Mr Haynes had decided to dismiss her by the time he met her on 3 September but had then changed his mind. This view was supportive of her belief in relation to when access had been suspended, and why she had been dismissed, but appeared fanciful when the evidence as a whole was reviewed. In particular, this is the case given Mr Haynes' view of her poor performance on 3 September 2024.

96. In making the findings of fact above I have taken into account all of the evidence put before me. However, given the complexity of the factual case put forward by the claimant it is appropriate to make the following additional specific findings:

96.1. The claimant said that at the point she was dismissed on 13 September 2024 she was unaware of the possibility of bringing a claim on the basis that she had been dismissed for whistleblowing. Assuming that this is the case, whilst noting that the claimant clear was aware of the possibility of such a claim by 19 September 2024 when she presented her claim, she would have nevertheless had the necessary factual information to hand to conclude – as she did just six days later – that she had been dismissed for raising concerns. However, her immediate response to her dismissal (her email of 13 September 2024 at page 298 to Mr Haynes) referred in an apologetic way to the message she had sent on 11 September 2024 (when he had felt that she had been dismissive of his view when she had sought it in relation to possible button design options) and expressly apologised for what she had said to him on 7 August 2024. The letter suggests that her immediate reaction was not that it was the raising of concerns that had caused her dismissal. I find that if she had felt at that time as a result of her discussion with Mr Ling that the reason for the dismissal was raising concerns then she would have been unlikely to write in these terms.

96.2. Similarly, her email to Ms Procino of 13.53 on the same date does not suggest that her immediate reaction was that she had been dismissed for raising concerns ("I am fine with their decision").

96.3. Together these documents point to the respondent's reasons for dismissal being those they have put forward, although it is of course possible that the claimant's immediate reaction to her dismissal, being just that, was uninformed by careful reflection on what had happened.

96.4. It is clearly arguable that Mr Haynes was being thin-skinned and self-important by taking into account, when deciding to dismiss the claimant, her response to his view on the button design options on 11 September 2024 and how she had spoken to him on 7 August 2024. However, equally, the reality is that both these incidents took place within a very short time of her employment beginning. What a well-regarded long-standing employee can reasonably say to a CEO without offence being taken is inevitably different to what an inexperienced employee whose employment has lasted just a few weeks can say without raising questions about their judgment. Consequently, I have discounted my initial impression that Mr Haynes', in taking into account the events of 7 August 2024 and 11 September 2024 in reaching a decision to dismiss, was being surprisingly thin-skinned.

96.5. So far as the claimant's suggestion that being asked to obtain Mr Haynes' feedback on button design options was not a "genuine task/concern", I do not accept that this is the case. It was only the claimant's response to Mr Haynes' feedback which turned this into a significant factual matter, and neither his feedback nor her reaction to it could have been predicted in advance.

96.6. The claimant invited me to draw inferences from the fact that Mr Ling did not appear to give evidence and I have considered myself what I should make of the very brief statement provided by Mr Haynes (as noted above it was the short statement prepared for the interim relief hearing). However, I have concluded that it would not be appropriate for me to draw adverse inferences from either of these matters. Neither Mr Ling nor Mr Haynes remain employees of the respondent. The respondent is represented by unsophisticated legal advisers. There could be many reasons for the absence of Mr Ling (for example, an unwillingness to attend voluntarily and an understandable reluctance to obtain a witness order) and the brevity of Mr Haynes' witness statement (for example, a reluctance on his part to commit significant time to the preparation of a statement, particularly when he now resides in Australia) and so I decline to conclude that their evidence is non-existent/limited because, if set out more extensively, it would not have supported the respondent's case. Further, I note that Mr Haynes' oral evidence, which was more extensive than his very brief witness statement, was, as I have found at [94.2.3] above, internally consistent, consistent with the documentation, and consistent with his written witness statement.

96.7. The claimant also invited me to draw inferences from the fact that certain documents had not been provided, particularly certain Jira tickets. However, I am not satisfied that the missing material really goes to the heart of the claimant's case and I decline to draw inferences from the fact that it has not been provided.

96.8. The claimant alleged that on 3 September 2024 when she had met with Mr Haynes he had said that he had dismissed the Head of Compliance because he "found many things not possible legally, while Imma found them "possible", or words to that effect" (paragraph 78 of her witness statement). Mr Haynes denied in cross-examination that he had made this comment and I prefer his evidence in this respect for the following reasons:

96.8.1. First, I found him to be a more credible witness than the claimant for the reasons I have given above.

96.8.2. Secondly, I find it improbable that Mr Haynes would have made such a comment to a significantly more junior employee in the first few weeks of her employment, and by whom he had not been impressed.

96.9. The claimant submitted that the two protected disclosures contained matters which were of great significance to the respondent, and that is why they dismissed her. I do not accept that that was or is the case.

<u>Conclusions</u>

Protected disclosure

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

1.1. What did the claimant say or write? When? To whom? The claimant says they made disclosures on these occasions:

1.1.1. [alleged New Product Feature disclosure] On 1 Aug 2024, during a face to face meeting with her line manager, Mr Ling, the claimant raised concerns about whether there were data protection breaches in a new product feature allowing users to invite others (using their email addresses) via the platform. The respondent accepts that this conversation took place.

1.1.2. [alleged New Product Feature disclosure] On 1 Aug 2024, the claimant raised the same issue with Ms Procino, the money laundering officer. The respondent accepts that this conversation took place.

97. In light of my findings of fact above, and the respondent's admissions, I conclude that these conversations took place as set out in the List of Issues.

1.1.3. [alleged Identity Document disclosure] On 28 and 29 Aug 2024 and on 3 & 10 Sep 2024, the claimant during face to face meetings with Ms Procino and Mr Ling raised concerns regarding breaches of the FCA treating customers fairly requirement, through a lack of transparency at an early stage in the customer's process which did not inform the customer that, when they wanted to remove money from their account, they would have to show ID.

98. In light of my findings of fact above, I conclude that:

98.1. **On 28 August 2024** the claimant raised concerns with Ms Procino and Mr Ling that it was unfair to a customer, CT, to require him to provide one of the limited number of identity documents accepted by the respondent when he had not been informed of any such requirement on sign up.

98.2. **On 29 August 2024** the claimant said to Ms Procino in the presence of Mr Ling that the respondent's FAQs and its terms and conditions did not refer to the need to produce a satisfactory identify document before funds could be removed from an account;

98.3. **On 3 September 2024** the claimant said to Ms Procino that the respondent's website did not refer to the need to produce a satisfactory identity document before funds could be removed from an account;

98.4. **On 10 September 2024** the claimant told Mr Ling that she was working on ID notification transparency.

1.2. Did they disclose information?

99. [**alleged New Product Feature disclosure**]: the respondent accepted that there was a disclosure of information to Mr Ling on 1 August 2024. I conclude, in light of my findings of fact above and this concession, that there was also a disclosure of information to Ms Procino on 1 August 2024.

100. **[alleged Identity Document disclosure]:** in light of my conclusions above, I find that there was a disclosure of information on 28 August 2024, 29 August 2024, 3 September 2024 and 10 September 2024. On the first date this concerned in particular the position of CT. On 29 August and 3 September 2024 they related to the respondent's website. On 10 September it was about the work the claimant was doing on that day.

1.3. Did they believe the disclosure of information was made in the public interest?

1.4. Was that belief reasonable?

101. **[alleged New Product Feature disclosure]:** I conclude that the claimant did believe the disclosure was in the public interest and I also conclude that such belief was reasonable.

102. This is because (1) she reasonably believed at the time she made the two disclosures on 1 August 2024 that the New Product Feature would be released in the near future and would result in data relating to many people being stored on the respondent's system without their consent, and so the data protection rights of a potentially large group of people being infringed. To disclose such a matter is self-evidently in the public interest having regard to the factors identified in Chesterton Global; (2) because such disclosure was self-evidently in the public interest it was reasonable for her to believe it was in the public interest.

103. [alleged Identity Document disclosure]: I conclude that the disclosures made by the claimant on 28 August, 29 August and 3 September 2024 were believed by her to be in the public interest and that it was reasonable for her to believe that. Those disclosures were all about her concern that customers had been and were being signed up to the respondent's service without being told *at the sign up stage* that they would need, in most cases, to produce an identity document before funds could be removed from their account. The claimant believed this was unfair because some clients (for example, CT) would have chosen not to sign up to the respondent's service if they had been notified of this at the outset.

104. I conclude she believed that it was in the public interest to make those disclosures because it drew the respondent's attention to an unfairness which potentially affected a large group of people (both actual and potential customers). I conclude it was obviously reasonable for her to have that belief given the number of customers potentially involved and the unfairness identified. I conclude that she did not believe the disclosure made on 10 September 2024 was in the public interest, given that was simply about the work she was doing on that day.

1.5. Did they believe it tended to show that a person had failed, was failing or was likely to fail to comply with any legal obligation. The legal obligations relating to the disclosures relied on are as follows:

1.5.1. 1st August 2024: GDPR articles 5(1), 6, 7; and 14, Data Protection Act 2018 section 170.

1.5.2. 28th, 29th August 2024 and 3rd and 10th September 2024: Consumer Protection Act 2015 sections 62, 64 and 68; FCA Consumer Duty: Principle 12: Outcome 3; GDPR articles 5(1A), 6 and 13

1.6. Was that belief reasonable?

105. [alleged New Product Feature disclosure]: The claimant was clearly raising the New Product Feature disclosure as a breach of data protection law at the time. I conclude that she did believe that the New Product Feature would result in a breach of data protection law and so the respondent was likely to fail to comply with a legal obligation. I find that it was reasonable for her to believe this because an email address is personal data, to hold an email address is to process personal data, and it would have been highly arguable that none of the possible conditions for lawful processing contained in Article 6 of the GDPR would have been satisfied.

106. [**alleged Identity Document disclosure]:** The most realistic way to view the alleged identity document disclosure is to take the disclosures of 28 and 29 August and 3 September 2024 together (which is permissible – Simpson v Cantor Fitzgerald). I conclude that the claimant did believe at the time the respondent had failed to comply with a legal obligation by failing to disclose the identity document requirement earlier than it did because she considered that the respondent was not treating customers fairly. It is clear that the claimant was alive to FCA related obligations at the point in time she made the disclosures (see the training materials of 26 July 2024 at page 179).

107. I make these findings despite my finding at [62] that the claimant did not when speaking to the respondent refer to there being a breach of any FCA principle or any specific law.

108. Specifically, the claimant relies on principle 12 ("A firm must act to deliver good outcomes for retail customers" (page 1 of the Authorities Bundle) outcome 3 ("consumer understanding"). Consumer understanding is explained as follows by the FCA (pages 3 and 4 of the Authorities Bundle):

> ***Outcome we want***
> *We want consumers to understand the information they are given and make timely and informed decisions. To do this, information should be clear, timely, and accessible – without jargon or misleading terms.*
>
> ***What we expect***
> *We see harm occur when consumers do not understand the information they are given, or are not provided with it at the right time to make an informed decision. Firms should support their customers by giving them the information they need, at the right time, and presented in a way they can understand. This includes tailoring communications to their customer's level of financial literacy. This ought to be coupled with testing, to ensure consumers have understood key information.*

109. I conclude that principle 12 was a legal obligation to which the respondent was subject. I conclude that it was reasonable for the claimant to believe that the respondent was failing to comply with legal obligations in light of principle 12 outcome 3 when she reasonably believed that clients had not been given the information about the need to produce an identity document at the right time – when they initially signed up.

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

111. Overall, therefore, I conclude that:

111.1. The alleged New Product Feature disclosures set out at issue 7.1.1 and 7.1.2 was a protected disclosure made on two occasions on 1 August 2024 (to Mr Ling and then to Ms Procino);

111.2. The alleged Identity Document disclosure at issue 7.1.3 was a protected disclosure made to Mr Ling and Ms Procino cumulatively on 28 and 29 August 2024 and 3 September 2024.

Detriment (Employment Rights Act 1996 section 48)

2. Did the respondent do the following things:

2.1. On 3 Sep 2024, the CEO, Mr Haynes, sent a message to Mr Ling describing a meeting with the claimant as 'weird' and asking Mr Ling of the claimant 'Is she doing better'?

112. The respondent agrees this message was sent. The factual allegation is therefore made out.

2.2. On 10 Sep 2024, Mr Ling was discouraging of the claimant's point regarding ID verification, by standing up and saying 'we need to be careful when doing that' or words to that effect.

113. In light of my findings of fact above, in particular those at [65] above, I conclude that Mr Ling said the words attributed to him in response to Ms Procino's comments that the ID notification requirement should be shown on the website which was itself a response to the claimant saying that she was working on a ticket concerning this matter in Jira.

114. However, I conclude that to say this was not to be "discouraging" of the claimant's point. Indicating that a careful approach was necessary was sensible, not discouraging. It was obviously the case that the respondent would wish to approach the issue carefully to avoid addressing it in a way that would unnecessarily discourage potential customers from signing up.

115. The factual allegation is not therefore made out.

2.3. On 11 Sep 2024, it secretly removed the claimant's access to an internal system which the claimant needed to complete a task.

116. In light of my findings of fact above, I conclude that the claimant has failed to prove that this occurred. The factual allegation is not therefore made out.

2.4. **On 13 Sep 2024, the claimant's manager, Mr Ling, complained to the claimant that he had not received an update from her, when she had in fact provided it by the usual method IE 'JIRA', a shared online ticketing board.**

117. In light of my findings of fact above, I conclude that the factual allegation is not made out because updating the relevant Jira ticket did not in the circumstances amount to updating Mr Ling.

2.5. On 30 Aug 2024, Mr Ling failed to progress the claimant's access to customer live data, saying that he would help the following week (when the claimant knew he would be working remotely) or that she could get help from a colleague in Romania.

118. In light of my findings of fact above, I conclude that the claimant has failed to prove that this occurred. The factual allegation is not therefore made out.

2.6. The respondent failed to arrange any probationary review meetings during the claimant's employment, as noted in the contract.

119. In light of my findings of fact above, I find that the respondent should have organised a single probationary review meeting and did not do so. The factual allegation is therefore made out.

2.7. After the claimant's dismissal, the claimant contacted the CEO on 30 Sep 2024 asking for a chat and the CEO failed to respond.

120. The reference to 30 September 2024 is a clear and obvious error: the parties have proceeded on the basis that the date in question was 13 September 2024 and I have approached the issue on this basis.

121. There is no dispute that the CEO did not respond. The factual allegation is therefore made out.

3. By doing so, did it subject the claimant to detriment?

122. I consider this and the following issues only in relation to the factual allegations which were made out:

122.1. **Describing meeting as weird and asking Mr Ling of the claimant 'is she doing better?'** For the CEO of an organisation to write to the manager of an employee in this way is clearly to subject the employee to a detriment.

122.2. **Failing to arrange any probationary review meeting:** the claimant's terms and conditions entitled her to a probationary review meeting before she was dismissed. If such a meeting had been held, it would have given the claimant an opportunity to put forward a case for why she should not be dismissed half-way through her probationary period. To fail to arrange any probationary review meeting was therefore clearly to subject the claimant to a detriment.

122.3. **The failure of the CEO to respond when the claimant contacted him:** this failure took place throughout the last week of the claimant's employment (13 to 20 September 2024). The claimant had been dismissed without the CEO having given her any reason in his dismissal letter. She had only received an explanation from Mr Ling when she had pressed for one. In these circumstances, the failure of Mr Haynes to respond to the claimant was clearly to subject her to a detriment.

4. **If so, was it done on the ground that they made a protected disclosure / other prohibited reason?**

123. The claimant has proved that she made protected disclosures and that she was subjected to three detriments. The burden of proof has therefore passed to the respondent to demonstrate that the reason for the detriments was not the protected disclosures. I conclude:

123.1. **Describing meeting as weird and asking Mr Ling of the claimant 'is she doing better?'** I conclude that the reason Mr Haynes, the CEO, wrote the message containing these words to Mr Ling was that they reflected his experience of the claimant. I conclude that it was not on the ground that she had made a protected disclosure, not least because I have found at [94.2] that Mr Haynes was not aware that she had done so.

123.2. **Failing to arrange any probationary review meeting:** I conclude that the reason Mr Haynes told Mr Ling to dismiss the claimant without holding any probationary review meeting was that he had made a definite decision to dismiss her in light of his experience of her performance, and what Mr Ling had said. I conclude that it was not on the ground that she had made a protected disclosure, not least because I have found at [94.2] that Mr Haynes was not aware that she had done so.

123.3. **The failure of the CEO to respond when the claimant contacted him:** I conclude that because Mr Haynes had made his mind up about the claimant's employment, he simply did not wish to have a follow-up conversation with her. I conclude that it was not on the ground that she had made a protected disclosure, not least because I have found at [94.2] that Mr Haynes was not aware that she had done so.

Automatic Unfair Dismissal

5. **Was the reason or principal reason for dismissal that the claimant made a protected disclosure?**

124. In light of my conclusions above about the factual reason for the dismissal, I conclude that the reason or principal reason for the claimant's dismissal was not that she made a protected disclosure (or more than one protected disclosures, if the protected disclosures I have dealt with are considered cumulatively). I find the respondent has proved the reason for dismissal was as set out at [94] above.

125. Given this conclusion, I have not dealt with issues 6.4 and 6.5 (Polkey) and 6.8 and 6.9 (contribution) because it is not necessary to do so.

126. However, notwithstanding the fact that the claimant's claim has failed, I observe that there is no doubt that the respondent treated her shoddily in dismissing her as it did before the end of her probationary period and without giving her any structured opportunity to improve her performance.

APPENDIX ONE – LIST OF ISSUES

Automatic Unfair Dismissal

6. Was the reason or principal reason for dismissal that the claimant made a protected disclosure?

   6.1. The respondent says that the reason for the dismissal was concern over the claimant's performance, conduct and suitability for her role.

   6.2. The respondent denies that the claimant made a protected disclosure.

Remedy for unfair dismissal

7. The claimant wishes to be re-instated to her previous employment or re-engaged in comparable employment or other suitable employment by the respondent. The claimant's preference is for a part-time and remote role with the respondent.

8. Should the Tribunal order reinstatement? The Tribunal will consider in particular whether reinstatement is practicable and, if the claimant caused or contributed to dismissal, whether it would be just.

9. Should the Tribunal order re-engagement? The Tribunal will consider in particular whether re-engagement is practicable and, if the claimant caused or contributed to dismissal, whether it would be just.

10. What should the terms of the re-engagement order be?

11. If there is a compensatory award, how much should it be? The Tribunal will decide:

    11.1. What financial losses has the dismissal caused the claimant?

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

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

    11.4. Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason? (See the following cases: <u>Polkey v AE Dayton Services Ltd</u> [1987] UKHL 8; paragraph 54 of <u>Software 2000 Ltd v Andrews</u> [2007] ICR 825; <u>W Devis & Sons Ltd v Atkins</u> [1977] 3 All ER 40; <u>Crédit Agricole Corporate and Investment Bank v Wardle</u> [2011] IRLR 604). The respondent says yes because despite Mr Ling's attempts to identify areas the claimant may excel in, her performance did not improve.

11.5. If so, should the claimant's compensation be reduced? By how much?

11.6. Did the respondent unreasonably fail to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures by not following the below parts of the Code:

11.6.1. Establish the facts of each case?

11.6.2. Inform the employee of the problem?

11.6.3. Allow the employee to be accompanied at the meeting?

11.6.4. Decide on appropriate action?

11.6.5. Provide employees with an opportunity to appeal?

The respondent says it established the claimant's poor performance through her work and communication. The respondent says Mr Ling gave the claimant feedback as to how to improve her communication, and sought to find areas where the claimant could excel but her performance did not improve. The respondent accepts the claimant wasn't accompanied during the call terminating her employment, and did not provide her an opportunity to appeal, as it was terminating her employment within the probationary period.

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

11.8. If the claimant was unfairly dismissed, did they cause or contribute to dismissal by blameworthy conduct?

11.9. If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?

Protected disclosure

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

12.1. What did the claimant say or write? When? To whom? The claimant says they made disclosures on these occasions:

12.1.1. On 1 Aug 2024, during a face to face meeting with her line manager, Mr Ling, the claimant raised concerns about whether there were data protection breaches in a new product feature allowing users to invite others (using their email addresses) via the platform. The respondent accepts that this conversation took place.

12.1.2. On 1 Aug 2024, the claimant raised the same issue with Ms Procino, the money laundering officer. The respondent accepts that this conversation took place.

12.1.3. On 28 and 29 Aug 2024 and on 3 & 10 Sep 2024, the claimant during face to face meetings with Ms Procino and Mr Ling raised concerns regarding breaches of the FCA treating customers fairly requirement, through a lack of transparency at an early stage in the customer's process which did not inform the customer that, when they wanted to remove money from their account, they would have to show ID.

The respondent accepts conversations took place on 28, & 29 Aug and 3 Sep 2024. However, the Respondent denies that they happened as described by the Claimant and that it was the Respondent discussing concerns about compliance. The Respondent denies the 10 Sep 2024 conversation took place and has no record of this.

12.2. Did they disclose information?

12.3. Did they believe the disclosure of information was made in the public interest?

12.4. Was that belief reasonable?

12.5. Did they believe it tended to show that a person had failed, was failing or was likely to fail to comply with any legal obligation. The legal obligations relating to the disclosures relied on are as follows:

12.5.1. 1st August 2024: GDPR articles 5(1), 6, 7; and 14, Data Protection Act 2018 section 170.

12.5.2. 28th, 29th August 2024 and 3rd and 10th September 2024: Consumer Protection Act 2015 sections 62, 64 and 68; FCA Consumer Duty: Principle 12: Outcome 3; GDPR articles 5(1A), 6 and 13

12.6. Was that belief reasonable?

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

Detriment (Employment Rights Act 1996 section 48)

13. Did the respondent do the following things:

13.1. On 3 Sep 2024, the CEO, Mr Haynes, sent a message to Mr Ling describing a meeting with the claimant as 'weird' and asking Mr Ling of the claimant 'Is she doing better'?

13.1.1. The respondent agrees this message was sent.

13.1.2. The respondent says the reference to the conversation being "weird" was regarding a 1:1 conversation where the claimant did not handle herself very well and appeared unable to communicate her ideas and the basis behind them. The conversation was not a professional one and was as such "weird".

13.1.3. The respondent says the reference to the question "is she doing better" was because the Claimant's performance in her role as a product manager was in question as she did not seem to have the basic skills required to drive the product direction and it had previously been reported to Robert Haynes that she was not doing well in her position. Mr Haynes' question "is she doing better" was asking if that situation had improved.

13.1.4. The Respondent says this does not amount to a detriment and instead appears to be something the Claimant is simply aggrieved about or didn't like.

13.2. On 10 Sep 2024, Mr Ling was discouraging of the claimant's point regarding ID verification, by standing up and saying 'we need to be careful when doing that' or words to that effect.

13.2.1. The respondent agrees Mr Ling said this however says this was because the Claimant was pushing the Respondent to accept an adoption certificate, which was not compliant in their practice, following which came Mr Ling's comment.

13.2.2. The respondent says this does not amount to a detriment because there is no consequence suffered by the Claimant.

13.3. On 11 Sep 2024, it secretly removed the claimant's access to an internal system which the claimant needed to complete a task.

13.3.1. The respondent denies this.

13.3.2. In the event the Tribunal found the respondent did this, it accepts it would likely be considered a detriment because it would likely find the removal of the Claimant's access meant she was unable to complete work.

13.4. **On 13 Sep 2024, the claimant's manager, Mr Ling, complained to the claimant that he had not received an update from her, when she had in fact provided it by the usual method IE 'JIRA', a shared online ticketing board.**

13.4.1. The respondent accepts that Mr Ling considered he had not received an update from the claimant and accepts that Mr Ling informed the claimant of this.

13.4.2. The respondent denies that the claimant submitted a JIRA ticket on or around 13 September 2024 to Mr Ling and says this would therefore be why Mr Ling would have asked the claimant for an update.

13.4.3. The respondent says this does not amount to a detriment, it is merely the respondent enquiring as to an update.

13.5. On 30 Aug 2024, Mr Ling failed to progress the claimant's access to customer live data, saying that he would help the following week (when the claimant knew he would be working remotely) or that she could get help from a colleague in Romania.

13.5.1. The respondent denies this. It says its operations regarding this are (and were at the relevant time) done remotely. An employee, Costa, is Head of Operations, and remotely based in Romania. Costa was the appropriate person to speak to about the access to the customer live data.

13.5.2. The respondent says this does not amount to a detriment, this was the solution to her query and if anything, helpful to her.

13.6. The respondent failed to arrange any probationary review meetings during the claimant's employment, as noted in the contract.

13.6.1. The respondent denies this and says the Claimant had a probationary review meeting and at that meeting, was dismissed due to performance issues.

13.6.2. In the event the Tribunal found the respondent failed to arrange any probationary review meetings during the claimant's employment, it accepts it would likely be considered a detriment in that such conversations allow employer and employee to discuss employment matters that could change the way an employee's employment progresses.

13.7. After the claimant's dismissal, the claimant contacted the CEO on 30 Sep 2024 asking for a chat and the CEO failed to respond.

13.7.1. The respondent denies the Claimant messaged the CEO on 30 September 2024, but says the CEO had a message on 13th September 2024.

13.7.2. The respondent says the CEO ignored the request to catch up sent on 13th September 2024 because he had nothing to add to the conversation than Mr Ling had conveyed to the Claimant. The CEO was not her line manager and Mr Ling had taken the responsibility to terminate the Claimant's employment. At the time the CEO was particularly busy.

13.7.3. The respondent says this does not amount to a detriment because the Claimant's employment had ended, she knew the Respondent didn't have a reason to engage with her any longer about her employment, and is more of a mere grievance on the Claimant's part.

14. By doing so, did it subject the claimant to detriment?

15. If so, was it done on the ground that they made a protected disclosure / other prohibited reason?

Remedy for Protected Disclosure Detriment

16. What financial losses has the detrimental treatment caused the claimant?

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

18. Has the detrimental treatment caused the claimant personal injury and how much compensation should be awarded for that? At the time of providing the amended list of issues, the respondent is not in receipt of any evidence to support, and therefore denies, any injury to the claimant's feelings or personal injury caused by the respondent's alleged protected disclosure detriments.

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

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

21. Was the protected disclosure made in good faith?

22. If not, is it just and equitable to reduce the claimant's compensation?

23. By what proportion, up to 25%?

Approved by:
Employment Judge Evans
Date: 26 May 2026

Sent to the parties on:
Date: 4 June 2026