EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No. 4103930/2025

Held in Edinburgh on 20, 21 & 22 May 2026

Employment Judge Campbell

Mr R Thompson-Trott	**Claimant** **In Person**
OutForm Consulting Limited	**Respondent** **Represented by** **Mr K Ishaq,** **Litigation Executive**

JUDGMENT OF THE TRIBUNAL

1. The complaint of unfair dismissal under section 103A of the Employment Rights Act 1996 ('ERA') is unsuccessful;
2. The complaint of detriment under section 47 ERA is unsuccessful;
3. The complaint of indirect race discrimination under section 19 of the Equality Act 2010 ('EqA') is successful and the claimant is awarded £2,000 in respect of injury to feelings, which the respondent is ordered to pay with interest at 8% per annum from 18 June 2025 until payment;
4. The complaint of breach of contract is successful and the claimant is awarded the sum of £10,095.52 which the respondent is ordered to pay;
5. The claimant's unsuccessful complaints are dismissed; and
6. The respondent's employer contract complaint is dismissed upon its withdrawal.

WRITTEN REASONS

INTRODUCTION

1. The claimant made a number of complaints arising out of his employment with the respondent. He was initially represented by solicitors but by the time of this hearing was representing himself. The respondent was represented by Mr Ishaq.

2. The respondent had made an employer's contract claim in relation to expense it said it had incurred as a result of having to replace the claimant. Mr Ishaq confirmed that this was no longer being insisted upon and consented to it being dismissed.

3. The hearing took place over three days in Edinburgh. All but one of the respondent's witnesses gave evidence remotely as they were based in Ireland and in some instances had personal circumstances which justified participation in this way. The claimant attended in person. He did not call witnesses.

4. Evidence was therefore heard from the following in this order:
    a. The claimant;
    b. John Carty, Director (in person);
    c. Lisa Doherty, HR Business Partner;
    d. Brian Thompson, Managing Director;
    e. Denise Logan, Operations Director,
    f. Darren Hanniffy, Director.

5. There was a degree of urgency in completing this hearing within its listing as the claimant was scheduled to leave the UK the following week on expiry of his visa authorisation. The parties, and particularly the respondent's witnesses, are thanked for their efforts to allow this to be achieved.

6. Following evidence, each party provided closing submissions orally which were noted and considered, albeit not reproduced in detail. Again, the parties are thanked for the assistance this provided in reaching this judgment.

7. A joint hearing bundle was prepared, and where necessary pages within it are referred to below by the use of numbers in square brackets. The claimant provided a short (12 pages) supplementary bundle. Its pages are referred to below in the same way, preceded by the letter 'S'. One final document was admitted, which was a document prepared alongside Mr Carty's investigation

report, as discussed below. That document is referred to as the 'options table' as it contained a set of the possible ways in which the respondent could engage the claimant to work in Ireland, in table format.

8. References to 'Ireland' below denote the Republic of Ireland. References to 'GB' connote the British Isles and 'UK' signifies the United Kingdom, thus the British Isles and also Northern Ireland.

LEGAL COMPLAINTS AND ISSUES TO BE DETERMINED

Despite a case management order, the parties did not agree a list of issues. The legal complaints pursued by the claimant were as follows:

1. **Detriment on the grounds of having made a protected disclosure** (said to have been on 27 May 2025 by email) – section 47 ERA. The detriments alleged were the commencement of an investigation into his entitlement to work within Ireland, the investigation process itself, and the decision taken at the end of it to treat his contract as terminated;

2. **Automatically unfair dismissal by reason of having made the same protected disclosure** – section 103A ERA;

3. **Indirect race discrimination** under section 19 EqA – the claimant relied on the protected characteristic of race, being of New Zealand nationality. He described the relevant provision, criterion or practice to be the requirements applied by the respondent before it would allow its employees to work in Ireland. He argued that this went further than Irish immigration law required. He identified the group he belonged to as employees who were from neither Ireland nor the UK. Whilst those individuals were entitled to work in Ireland without further immigration permission, he and others in his group had to obtain permission. He suffered the detriment of not being allowed to work in Ireland and having his contract terminated. He argues that others in his group would have been similarly caused detriment.

4. **Breach of contract at common law** – he resigned on 12 June 2025 by giving three months' notice, which he said was the amount both he and the respondent contractually had to provide. His contract was then terminated by the respondent on 18 June 2025. He was paid up to 5 August 2025. He seeks the balance of the notice period as pay, namely salary and the value of monetary benefits from 6 August to 12 September 2025.

FINDINGS OF FACT

The following facts were established on the balance of probability based on the evidence the parties led. Only facts necessary to determine the issues are recorded.

1. The claimant was employed by the respondent between 21 October 2024 and 18 June 2025. On the latter date the respondent treated his contract as at an end. It argued that the contract had been frustrated, or alternatively that the claimant was dismissed on that date for a fair substantial reason. For reasons explained below, it is found that the claimant was dismissed.

2. The claimant has expertise as a management consultant and project advisor to various types of business, specialising in the construction and infrastructure sectors. The respondent is a company which provides such services to clients across a variety of business types. It is based in Dublin and has offices in Belfast and Edinburgh. The majority of its clients are based in Ireland, but some are in Northern Ireland and others are in GB.

3. The respondent approached the claimant to join its organisation around October 2024. Denise Logan, Operations Director made initial contact and then arranged for the claimant to meet Mr Carty in Edinburgh. A panel interview in Dublin followed which involved Mr Thompson and Mr Hanniffy. It was explained that the claimant could be asked to work on projects in the UK or in Ireland. He could however be based in Edinburgh where he lived, although some travel would be inevitable. The claimant explained that he was a New Zealand national and was working in the UK under the 'Youth Mobility Visa' scheme.

4. On 18 October 2024 Ms Logan sent the claimant a formal job offer, stating that the role would be Principal Consultant, his office would be the respondent's Belfast office and that his starting date would be 21 October. It also said that a combination of office work, homeworking and working at client sites was offered.

5. The respondent provided the claimant with a detailed employment contract which was signed by Ms Logan on 21 October 2024, although given to the claimant a short time after, by which time he had begun working. He signed it on 4 November 2024.

6. Particularly relevant aspects of the contract given the current claim are:
    a. The claimant was asked to warrant that he was entitled to work in the UK 'without any additional approvals and will notify the [respondent] immediately if you cease to be so entitled during the Appointment';
    b. No such warranty in relation to working in Ireland was sought or given;

c. His duties were to be as advised by his manager and could be modified from time to time to suit the needs of the business;
d. His place of work was described as ‘from home, client sites and any of the [respondent’s] locations.’ Travel was said to be required ‘throughout Ireland and the United Kingdom to/from client sites and [respondent] office locations.’ He could be required occasionally to work further afield;
e. He was subject to a six-month probationary period, after which if he was retained he was entitled to receive and obliged to give three calendar months’ notice of termination of his employment.

7. The claimant did not have a single designated line manager, but reported most frequently to Mr Hanniffy because of the projects he worked on. He completed his probationary period without any notable issues, save that Mr Hanniffy had expressed that he would expect the claimant to travel to Ireland and Northern Ireland more frequently. The claimant had made two trips to Ireland by that point. He found the logistics of travelling time consuming and unproductive compared to conducting meetings from Edinburgh online by Teams. However, the respondent generally, and Mr Hanniffy in particular, believed that internal and client relationships were strengthened by regular meetings in person.

27 May 2025

8. The claimant and Mr Hanniffy had a frank discussion by Teams about the claimant’s performance on 27 May 2025. Towards the beginning of the conversation Mr Hanniffy swore and used unprofessional language during a heated exchange. The discussion continued, tempers cooled and by the end Mr Hanniffy apologised for the way he had spoken, which the claimant accepted. The conversation ended amicably.

9. The same day the claimant sent an email to Ms Logan and copied to Ms Doherty [90]. In it he described the Teams call with Mr Hanniffy whose conduct he said ‘fell below the line’. He summarised what had been said and explained that the two had agreed to schedule further catch-up meetings as a way forward.

10. The email also contained a paragraph in which the claimant said this was not the first time Mr Hanniffy had used such language towards him or others in the team. He added that ‘I’m also aware that I’m not the only person who has had to endure his behaviour. From my perspective, it seems very little has been done about it.’ He signed off by saying ‘No action is required. I have

told Darren how I feel – he has apologised for swearing at me. Thanks, Reade.'

11. The claimant argued that this email constituted a protected disclosure and so it is referred to below as his 'disclosure email'.

12. Ms Logan replied to the email two days later. This was not reproduced in full, although Ms Doherty quoted from it in an email she sent to the claimant the following week. Ms Logan thanked the claimant for contacting her and noted that he was not requesting any further action. She invited him to contact her again if there was anything further to discuss. The exchange ended there.

Email exchange on 3 June 2025

13. On the morning of 3 June 2025 the claimant sent a message to Mr Hanniffy by Teams, saying that he needed to apply for an extension to his visa that evening, that there was normally a wait of around eight weeks before a decision was issued, and that in the meantime he would be unable to leave the UK. He added that there was an option to pay £500 for an expedited service which issued a decision within five days. Later that day Mr Hanniffy replied to say 'That sounds like an issue. Let's discuss tomorrow and figure it out.'

14. Mr Hanniffy was travelling between client meetings and did not have expertise in relation to Irish working rights. He asked Ms Doherty to look into the matter. She asked the claimant for more information. He provided a share code to allow her to access his profile on the 'Gov.uk' website, although it appears she could not get the code to work. The next morning she repeated her request for information. The claimant replied, 'Hi Lisa, I don't have a right to work in the ROI'. This led to her asking him to step down from work relating to Ireland pending a review of his visa position.

15. On 5 June 2025 the claimant was notified by email that Mr Hanniffy was to conduct an investigation into his working rights. A meeting was proposed for 9 June 2025. He replied that day to Ms Doherty, to state his position and request information. He separately raised that he had lodged a grievance the week before which was attached – this was the disclosure email. He said that given the proximity in timing he was sure the respondent would 'wish to avoid any appearance of overlap or retaliation'. Ms Doherty issued a response that evening. In relation to what had been described as a grievance, she said that it had not initially been treated as a formal grievance, but rather a record of informal resolution between two senior colleagues. However, she said that she had now put a more formal process in motion and that Mr Carty would

deal with it. In the meantime, the investigation into his visa status would be paused.

16. At some stage shortly after, a decision was made that Mr Carty would conduct the working rights investigation as well as investigating the grievance. He met with the claimant and others, preparing a report of his findings in both matters on 13 June 2025 [99-125]. Not all matters covered by him are relevant to this claim. He found that there was no evidence of Mr Hanniffy retaliating against the claimant for the disclosure email and that it was more likely that the visa investigation was instead initiated as a result of the claimant himself declaring that he had no right to work in Ireland. He interviewed one person whom the claimant suggested would corroborate the allegation that Mr Hanniffy could speak unprofessionally at times to colleagues. That person did not give a corroborating account. In any event, Mr Hanniffy accepted he had spoken unprofessionally to the claimant. Corroboration by another relating to a different situation would have served no purpose.

17. The claimant tendered his resignation on 12 June 2025 by email. He gave notice of three months as his contract required. He had decided to leave the respondent's service regardless of the outcome of the process now underway. He had found the role not to meet his expectations and had secured an interview with another employer.

18. Based on Mr Carty's findings, Ms Logan was identified to chair a disciplinary hearing on 17 June 2025 and a letter of invitation was sent to the claimant [126-127]. There were five allegations or concerns, itemised in bullet points.

19. The meeting took place as scheduled. Ms Logan dealt with the claimant's grievance, i.e. the concerns raised in his email of 17 May 2025, as well as the allegations. She confirmed her decision the next day in writing and in detail [128-134]. She concluded that the claimant's contract of employment had been frustrated and that the respondent would therefore treat it as having ceased with immediate effect and without the requirement for either party to give notice. She added however that the respondent would pay the claimant up to 6 July 2025 as a gesture of goodwill. A right of appeal was offered.

20. The claimant exercised his right of appeal, submitting written grounds on 24 June 2025 [135]. He argued that the contract had not ben frustrated and that performance had not been rendered impossible. He asserted that he could have continued working for the remainder of his notice period in the same way as he had previously.

21. The claimant attended an appeal hearing with Mr Thompson on 10 July 2026. Mr Thompson instructed an external HR consultant to review the papers and provide a set of recommendations. He opted not to follow a suggestion to allow the claimant to work for the balance of his notice period. He believed that the consultant had not fully appreciated the constraints and consequences of doing so. His decision was therefore to uphold Ms Logan's previous conclusions. He gave his reasons by letter of 1 August 2025 [S3-4]. He agreed however to extend the claimant's pay to 12 August 2025. By way of an apparent error the claimant was only paid up to 5 August 2025 as his final payslip confirmed [S7]. The claimant had no further right of appeal and this represented the end of the process.

DISCUSSION AND DECISION

Was a protected disclosure made?

22. An employee has a right not to suffer a detriment on the ground that they made one of more protected disclosures - section 47(B) of ERA.

23. An employee is separately protected against being dismissed for the sole or principal reason that they made one or more protected disclosures - section 103A of ERA.

24. A protected disclosure must first be a 'qualifying disclosure' – section 43B:

"***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—*
>
> > *(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, is being or is likely to be deliberately concealed.*
>
> *(2) For the purposes of subsection (1), it is immaterial whether the relevant failure occurred, occurs or would occur in the United Kingdom or elsewhere, and whether the law applying to it is that of the United Kingdom or of any other country or territory.*
>
> *(3) A disclosure of information is not a qualifying disclosure if the person making the disclosure commits an offence by making it.*"

25. A qualifying disclosure will be protected if it is made in the way permitted within section 43(C) to (H) of ERA.

26. A qualifying disclosure must be all of the following:

    a. A disclosure of information,
    b. Reasonably believed to be made in the public interest, and
    c. Reasonably believed to show the existence of one or more circumstances within section 43(B)(1)(a) to (f).

27. Unless all of the above apply, there will not be a qualifying disclosure – see for example the judgment of the Employment Appeal Tribunal in ***Williams v Brown UKEAT/0044/19***.

28. The requirement to disclose 'information' means that there must be some specific factual detail - ***Cavendish Munro Professional Risks Management Ltd v Geduld UKEAT/0195/09***. Whether that has occurred will depend on the individual features of each case, including the context in which a statement is made. Reference to a hypothetical situation, expression of an opinion or the mere suggestion that a law or legal obligation has been breached without further specification may not be enough.

29. There must be a belief that the disclosure of the information in question is in the public interest, and that belief must be objectively reasonable - ***Chesterton Global Ltd (t/a Chestertons) v Nurmohamed [2017] EWCA Civ 979***. What is in the 'public interest' is not further defined. It need not apply to all of the public at large, and can involve a smaller group such as all employees, customers or service users of an organisation, or even potentially a sub-group within one of those categories. If the matter raised only relates to the person raising it there will be a greater risk that it is not in the public

interest (or that any belief that it is would not be reasonably held when objectively assessed). It is however possible that a disclosure could be made (or reasonably believed to be made) both for personal reasons and in the public interest at the same time. Who is affected, in what way and whether the alleged conduct was intentional could all be factors.

30. There must also be a reasonable belief that at least one of the circumstances in section 43(B)(1) has arisen. The complainer therefore need not know for sure that the relevant situation exists but they must believe that it does. That belief must then be assessed in order to understand whether it is reasonable. It may be reasonable even if later proved ‘wrong’, for example by evidence which the individual did not know about at the time of the disclosure. Of more relevance is what the individual knew, or ought to have known, at the time of the disclosure. Because the requirement is that the information disclosed ‘tends to show’ that a relevant scenario exists, the individual making the disclosure does not have to provide absolute proof of it or have gone through an extensive process of weighing up the evidence for and against before their belief is formed – see for example ***Durey v South Central Ambulance Service NHS Foundation Trust and Protect (Intervenor) [2024] EAT 173***.

‘*Protected’ disclosure*’

31. A qualifying disclosure can be protected by being made in various ways or to certain parties. A disclosure by a worker to their employer will qualify under section 43C(1)(a). Normally, a report by them to a more senior colleague will be to their ‘employer’. A report to someone equally or less senior is less likely to be, although the recipient’s role and specific responsibilities may be relevant, as may be the worker’s intention in choosing the recipient and the contents of any specific policy which the employer has put in place.

32. The claimant conveyed information to his employer in his disclosure email of 27 May 2025. However, at the time the disclosure was made he did not genuinely and reasonably believe that he was conveying information tending to show that the health or safety of any individual had been, was being or was likely to be endangered. The specific risk he relied on was a threat to the psychological health and wellbeing of those who worked with Mr Hanniffy. The email when read as a whole does not bear that interpretation. It was a deliberately measured report of a brief moment where Mr Hanniffy lost composure, before regaining it and apologising. It reads as laying down a marker in the event that future issues arose between the two individuals over the claimant’s performance. Although the claimant correctly argued that he need not have said at the time of sending his email that it was a ‘protected disclosure’ or similar, and nor need a whistleblower ask their employer to take

any particular steps in order for their disclosure to be protected, the language he used gives context to his state of mind. It strongly suggests that he was not sufficiently concerned, for himself or others, to say that he legitimately feared for anyone's health or safety. If he did, such concern was not reasonable. There was inadequate evidence if any to support a credible fear of Mr Hanniffy causing anyone psychological harm. The putative disclosure must be judged at the time it was sent. The claimant's view of it appeared to have changed following the initiation of the visa investigation, demonstrated by him then referring to it as a 'grievance', a term he had not used before.

33. The same analysis applies had the claimant relied on subsection 43B1(b) of ERA – i.e. that Mr Hanniffy had breached or would breach a legal obligation, such as the obligation to maintain mutual trust and confidence. The claimant did not make this argument but the issue was considered.

34. Nor was any disclosure of information made in the public interest. The claimant suggested that when he said it was not the first time Mr Hanniffy had spoken to him or others in the team unprofessionally, he was signalling a motive going beyond his own interests and extending to concern for his colleagues. By reference to ***Chesterton Global*** (cited above) he said in submissions that this was sufficient to meet the public interest requirement. Again, if he held that belief at the time he sent the email it was not reasonable to do so, and the email does not convey it. It reads as describing a matter solely between the two, with the reference to others having the intention of corroborating what he is saying rather than suggesting a wider risk.

35. The claimant therefore did not make a protected disclosure. It follows that his complaints under section 47 and 103A fell away. For completeness, it was very clear to the tribunal that the sending of the email had negligible influence over the matters alleged to be detriments during employment and the decision to dismiss the claimant. The motive for those matters is discussed below, but essentially amounted to the conclusion reached that the claimant could not lawfully perform work physically in Ireland.

Breach of contract – notice

36. The claimant gave three months' notice on 12 June 2025, intending it to run therefore to 12 September 2025. By virtue of her letter of 18 June 2025, Ms Logan said that his employment was being treated as terminated on that day by operation of the legal concept of frustration, failing which the respondent was actively terminating the contract for some other substantial reason, being the legal and reputational risk of continuing to employ him.

37. The respondent's primary position therefore was that the contract was frustrated and that both parties were immediately released from their obligations under it. This included the obligation to give notice. As the contract became a nullity, it argued, the remainder of the notice period given by the claimant likewise ceased to exist and he was not entitled to be paid as an employee for it.

38. The doctrine of frustration has existed for centuries in the constituent legal systems of the UK. It has not been codified in legislation. Various case law authorities are cited, although care must be taken in seeking to apply a decision in one jurisdiction to another, particularly as the law of contract itself is not the same in each home nation.

39. Despite this, common themes and principles have emerged. The claimant touched on those in his submissions. They include the following:

    a. There is a supervening event – an unexpected occurrence or change in circumstances - which the parties had not contemplated or provided for when forming the contract;
    b. The nature of the rights and obligations under the contract is significantly changed as a result;
    c. Neither party is at fault for the change in circumstances;
    d. It becomes unjust to hold one or more parties to their obligations.

40. There is no single test or element which will determine whether or not frustration has occurred. The test is more composite in nature and should be applied to each particular set of circumstances.

41. The bar is set relatively high as regards showing frustration has occurred. The doctrine of sanctity of contract applies by default, so that the parties will be held to make good on what they promised, or pay damages if they cannot. A party cannot simply walk away from their obligations because they become more difficult or less desirable to perform.

42. On analysis of the facts in this case, it is found that frustration did not occur. There are three particular reasons why. Firstly, the situation relied on by the respondent as a supervening event – the claimant's inability to work in Ireland – existed when the contract was entered into. It was therefore not 'supervening', in the sense that it did not arise after the contract was formed.

43. Secondly, the respondent had the option to provide for the situation in the contract, or not to enter into it at all. By its own omission it omitted to carry out a full set of checks, a matter it has since remedied. It is notable that the

contract stipulated as an essential term that the claimant must have visa authorisation to work in the UK, which he did. The respondent was capable of extending that to Ireland, given that it knew the claimant would have to work there, however briefly. It could not therefore be said that neither party was at fault. Depending on one's view, either the claimant was at fault for not being more explicit about his immigration rights or the respondent was at fault as it did not make sufficient enquiries into a matter so important to it, or both.

44. Thirdly, the claimant's performance of the contract was not rendered impossible and nor did it have to become radically different. He had worked for seven months and visited Ireland briefly twice. He had given three months' notice. He could have performed his duties as he had done, save for any visits to Ireland properly categorised as work. He could serve clients via Teams, or meet UK-based clients, or visit Northern Ireland to see them or his colleagues face to face there.

45. As the contract was not frustrated, the respondent breached it by bringing it to an end on 18 June 2025 and not paying him the equivalent of his salary to the end of the notice period he had initiated, as it was contractually entitled to do. He is entitled to damages covering the period between 19 June and 12 September 2025. The claimant calculated this to be £9,461.52 salary in net terms which the respondent did not challenge. He is also entitled to the value of employer pension contributions for the same period, calculated as £634.00. He is not however entitled to be compensated for loss of health insurance benefits, as he did not personally pay to put in place alternative cover and suffered no events which would have required him to rely on that insurance – see ***Knapton v ECC Card Clothing Limited [2006] ICR 1084***. His total compensation for this complaint is therefore £10,095.52.

Indirect race discrimination – section 19 EqA

46. The relevant part of section 19 of EqA reads as follows:

"***19 Indirect discrimination***"
(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—

> *(a) A applies, or would apply, it to persons with whom B does not share the characteristic,*

(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,

(c) it puts, or would put, B at that disadvantage, and

(d) A cannot show it to be a proportionate means of achieving a legitimate aim."

47. Judicially, the term 'provision, criterion or practice' has been interpreted widely. For example, it can refer to something less formal than a written policy such as a general expectation, if clear and sufficiently consistently applied. In certain cases a one-off decision can qualify as a 'provision' even if not a 'practice', which implies a degree of repeated application. Some individual decisions may not be provisions, for example when taken quicky, in isolation or without ongoing consequences.

48. For the claimant to go on to show indirect discrimination had occurred, he needed to prove that the PCP:
    a. Was or would be applied to employees who shared his protected characteristic and those who did not;
    b. Put or would put persons sharing his protected characteristic at a particular disadvantage compared to others not sharing it – i.e. a 'group' disadvantage; and
    c. Put or would put the claimant himself to that disadvantage – i.e. a 'personal' or 'individual' disadvantage.

49. What is a 'disadvantage' is not defined in EqA but has been held to be similar to a detriment – ***Williams v Trustees of Swansea University Pension and Assurance Scheme [2018] UKSC 65***. Therefore, it is largely objectively tested but the individual circumstances of the employee should be taken into account so far as relevant, and an unjustified sense of grievance will not qualify.

50. A group disadvantage need not affect everyone with the claimant's protected characteristic. It should 'disproportionately' affect that group.

51. The claimant took care to describe what he said was the PCP applied to him. This was the respondent's approach or set of rules regarding its employees being legally able to carry out work in Ireland. He described it as such because he did not agree with the respondent's view that he could not have carried out any work at all lawfully in Ireland. He believed that he could make use of 'Irish Short-stay Business Visitor' rules which permitted brief stints working in Ireland. The respondent's understanding as a result of the

enquiries made primarily by Ms Doherty, which went to make up the options table, was that this permitted only visits to seek work, such as by attending job interviews, and not to carry it out.

52. The respondent did apply such a PCP to the claimant. He identified as a New Zealand national for the purpose of this claim, and more particularly a person from a country which did not convey an automatic right to work in Ireland under Irish law, as Irish and UK citizens do. The respondent also applied that PCP to those people, who were not in the group he identified with. It did apply, or would apply, the PCP to others in his group, i.e. other non-UK or non-Irish citizens. He was put to a clear disadvantage by the PCP by not being allowed to work in the immediate term, and then by having his contract terminated shortly after. Others in his group would be put to the same disadvantage by the application of the PCP.

53. As such, all of the elements required for a provisional finding of indirect discrimination were made out. However, an employer in such circumstances has the opportunity to argue that the discrimination is 'justified' – i.e. that it is a proportionate means of achieving a legitimate aim.

54. The tribunal was satisfied that the respondent identified a legitimate aim, namely to comply with immigration law and by extension protect its business reputation and those of its clients with whom its employees worked closely. The respondent demonstrated in evidence that there was a large degree of close interpersonal work between its employees and its clients, that at least some of them work in regulated industries and that others are in the public sector or are otherwise high profile. The tribunal accepted the evidence from the respondent's witnesses such as Ms Logan and Mr Thompson, to the effect that the discovery of an employee having worked with a client without the necessary immigration permission to do so would cause significant reputational harm and relationship damage. It could also attract a financial penalty.

55. The claimant argued that the respondent's interpretation of Irish immigration requirements was too narrow. However, the respondent made reasonable efforts to understand what the requirements were, including by direct contact to the Irish immigration authorities for advice. It was entitled to rely on the findings it made.

56. The final question therefore was whether the legitimate aim was proportionately pursued by the action the respondent took. It took two steps. First, it asked the claimant not to carry out any further work in Ireland. This was clearly proportionate as it was the least impactful step required to

achieve the aim. At the time the claimant was given the direction it was an initial precautionary measure, as the respondent's intention was to carry out an investigation and then make an informed decision.

57. The second step the respondent took was to treat the contract as being at an end. As found above, it actively ended the contract which was not frustrated. The respondent did so on 18 June 2025 at a time when, had it done nothing, the notice which the claimant had already given would have expired on 12 September 2025.

58. In these circumstances, to end the contract was not a proportionate means of achieving the legitimate aim. Proportionate equates to what is 'reasonably necessary' – ***Barry v Midland Bank [1999] ICR 859 (HL)***. The business needs must be balanced against the impact of the PCP on the protected group and the claimant in particular – ***Hampson v Department for Education and Science [1989] ICR 179***.

59. Consistent with the reasoning above in relation to the breach of contract claim, the respondent could have let the claimant continue working, undertaking all other aspects of his role but travelling to Ireland. Had there been no work for him to do, he could have been placed on garden leave, or released early with pay in lieu of notice.

60. The respondent therefore unjustifiably indirectly discriminated against the claimant by terminating his contract on 18 June 2025 rather than letting his notice period run its course. He has been compensated financially under the breach of contract claim and cannot recover the same loss twice. However, a finding of discrimination should lead to an award for injury to feelings.

61. The seriousness of the act of discrimination is relatively minor in terms of injury to the claimant's feelings. By his own evidence he was caused a degree of general upset and stress but led no medical evidence in relation to anything more extensive. He had already mentally prepared himself for leaving the respondent's business, having explored an alternative role and hence tendered his notice. The impact on him was restricted to finding out at short notice that he would be leaving sooner than he had planned. An award within the lower ***Vento*** band is appropriate, which at the time of the presentation of the claim was between £1,200 and £12,100. The claimant is a robust individual. Given the relatively minor and short-term effect of the respondent's single act, and weighing up all relevant factors, an award of £2,000 is made. This will be subject to simple interest at the judicial rate of 8% per annum from the date of the offending act, namely 18 June 2025.

CONCLUSIONS

62. For the reasons above the complaints based on whistleblowing are unsuccessful and must therefore be dismissed.

63. The complaints based on the respondent mistakenly treating the contract as frustrated, namely breach of contract and indirect race discrimination, are successful to the extent explained above and compensation is calculated accordingly.

Date sent to Parties **12 June 2026**