# EMPLOYMENT TRIBUNALS

**Claimant:** Ms V Patel

**Respondent:** Social Firms Wales Ltd

**Heard at:** Cardiff Employment Tribunal **On:** 13, 14,15, 16, 17, 20, 21, 22, 23, and 24 April 2026

**Before:** Employment Judge Harfield

**REPRESENTATION:**

**Claimant:** **Ms Patel represented herself (with assistance from her lay support Mr Bhargavan)**

**Respondent:** **Mr Mortin (Counsel)**

# RESERVED JUDGMENT

1. The complaints of "ordinary" unfair dismissal and "automatic" unfair dismissal are not well-founded. The claimant was not unfairly dismissed;
2. The complaints of being subjected to detriment for making a protected disclosure are not well-founded and are dismissed;
3. The complaint of direct race discrimination is not well-founded and is dismissed;
4. The complaint of equal pay like work is not well founded and is dismissed;
5. The complaint of wrongful dismissal is well founded and is upheld. The Claimant was wrongfully dismissed because she was summarily dismissed with pay in lieu of notice when the Respondent did not have the contractual right to do so. The Claimant has, however, been paid the notice pay she is entitled to.

# REASONS

## 1. Introduction

1.1 The Claimant's first tribunal claim was presented on 6 June 2024 following Acas early conciliation between 10 April 2024 and 22 May 2024, bringing complaints of race, sex, religion and belief, marriage or civil partnership discrimination and a claim for "other payments." The Claimant re-entered Acas early conciliation between 3 March 2025 and 14 April 2025 presenting her second claim on 30 April 2025, bringing a complaint of unfair dismissal, wrongful dismissal and an undefined whistleblowing claim. ET3 Response Forms were filed defending the claims.

1.2 The first case management hearing took place before EJ Jenkins on 20 August 2024, which was only about the first tribunal claim. EJ Jenkins attempted to clarify the claims, but it was evident that the Claimant needed to apply to amend her claim, particularly as she was seeking to make complaints about protected disclosure detriments that were not within her ET1 Claim Form and its attachment, and indeed some of her purported complaints postdated the submission of the first claim. Case management orders were made.

1.3 A two day preliminary hearing took place before EJ Povey on 4 and 5 February 2025. EJ Povey made several deposit orders. The Claimant paid one of these to allow a complaint of direct race discrimination to proceed and other complaints subject to the deposit orders were struck out. The complaint of discrimination on grounds of marital status was struck out as having no reasonable prospect of success. EJ Povey allowed the Claimant's amendment application to bring protected disclosure detriment complaints. EJ Povey also issued case management orders to get the remaining complaints ready for a final hearing.

1.4 Following the presentation of the second claim, a further case management hearing took place before EJ Moore on 7 August 2025. EJ Moore relisted the final hearing. EJ Moore noted that on the second claim form the Claimant had ticked the box to bring a whistleblowing claim but had not included any particulars of the complaint, with the Claimant asserting she was bringing an automatic unfair dismissal claim. EJ Moore listed a further public hearing to determine whether the second claim form included the automatic unfair dismissal claim, and if not, to decide an application to amend to include it. EJ Moore also noted: "*The protected disclosure detriment claim which Judge Povey permitted by way of an amendment (see paragraph 1 of the case management order from 4 & 5 February 2025). The order is silent on the issue of time limits. The respondent says and I agree that this means that the issue of whether the detriment claim was presented in time remains live and to be determined at the final hearing. The claimant had understood that by granting the amendment, the claim was proceeding. I explained that whilst the amendment had been granted, the detriment claims may be out of time and as this is a jurisdictional matter, it will need to be determined at the final hearing. The claimant's witness statement should seek to address why the detriment claim as not presented sooner or within the first claim as the Tribunal will need to decide if time should be extended for the detriments claim.*"

1.5 The fourth and final preliminary hearing took place before EJ Cawthray on 18 November 2025. By this time the Claimant had made an application to strike out the Respondent's defence. EJ Cawthray found that the second claim did not include an automatic unfair dismissal complaint because the Claimant had not set the complaint out, but allowed an amendment so that it could proceed, subject to the question of time limits being determined at the final hearing. EJ Cawthray also subjected that complaint to a deposit order, which the Claimant paid. The Claimant's application to strike out parts of the Respondent's response did not succeed. EJ Cawthray also finalised a List of Issues for the final hearing, which is appended to this Judgment. The parties were given 14 days to comment on the List of Issues, otherwise it would stand as being the List of Issues at the final hearing. Neither party commented. The List of Issues makes it clear that the Claimant's equal pay claim is in respect of both "like work" and "work of equal value" but that the hearing before me was only to determine the "like work" complaint. The Claimant will then consider whether she wishes to advance the equal value claim, and if so, it will be separately case managed.

1.6 I had before me: the final hearing bundle (page references to this are in square brackets [ ] ) to which additional pages were added in the course of the hearing; the witness statement bundle; a cast list/list of people; a chronology; a reading list/list of key documents; opening written submissions/skeletons from both parties; closing written submissions from both parties and I also heard oral closing submissions. For reasons of procedural economy, I do not set out the parties' submissions in this Judgment but they are incorporated at appropriate places below in the Judgment and I took all submissions and evidence fully into account even if they are not specifically mentioned in this Judgment.

1.7 I heard evidence from the Claimant, and her witnesses Mr David Williams (her comparator in her "like work" equal pay claim, and previously a Markets Advisor and then Finance & Markets Advisor for the Respondent) [DW], and Ms Ravinder Vedi (A consultant Business Development Advisor for the Respondent) [RV]. For the Respondent I heard evidence from Dr Martin Price (Chair of the Board of Directors) [MP], Ms Sandra Leonard (Board Director and CEO of the Respondent for part of the timescale of the Claimant's case) [SL], Ms Rosie Cribb (Board Director for part of the period and the incoming CEO) [RC], Ms Kathryn Watkins (Board Director) [KW], Mr Jonathan Gunter (Board Director) [JG], Ms Pam Cannell (HR Consultant for Effective HRM) [PC], and Mr Andrew Baker (External Grievance Appeal Officer) [AB].

1.8 At the start of the hearing I heard an application by the Respondent for two witnesses, PC and AB, to give evidence by video. Permission had already been given for the Respondent's witnesses, SL and KW to give evidence by video. The application was opposed. I granted the application in respect of PC, whose evidence was not central to many of the issues in the case (other than whether the Claimant made protected disclosures to PC, but there is a transcript of their discussions in any event) and who had some distance to travel. I did not grant the application in respect of AB who is local to the tribunal.

## 2. The Legal Principles

### Making a protected disclosure

2.1 Under section 43A Employment Rights Act 1996 (ERA), a worker makes a protected disclosure in certain circumstances. To be a protected disclosure, it must be a qualifying disclosure. A qualifying disclosure must fall within section 43B ERA and also must be made in accordance with any of sections 43C to 43H. Section 43B says:

*"(1) In this Part a 'qualifying disclosure' means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one 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."*

2.2 Section 43C provides a disclosure made to the employer will be a qualifying disclosure.

2.3 There are therefore a number of requirements to be met before a disclosure can be a qualifying disclosure. First, the disclosure must be of information capable of tending to show one or more of the types of wrongdoing set out at Section 43B. In order to be such a disclosure: "*It has to have sufficient factual content and specificity such that it is capable of tending to show one of the matters in subsection (1)"* (Kilraine v London Borough of Wandsworth [2018] ICR 185). Determining that is a matter for evaluative judgment by the Tribunal in light of all of the facts of the case. The question is whether, taking into account the evidence as to context, the information is "capable" of satisfying the other requirements of the section i.e., could a worker reasonably believe that it tended to show one of the specified matters (Twist v DX Limited UKEAT0030/20). It was said in Nicol v World Travel and Tourism Council and others [2024] ICR

893 EAT that "*whistleblowers are intended to be protected because they have raised something of substance which Parliament has decided merits protection. For employers to be fixed with liability, therefore, they ought to know at least something about the substance of [the disclosure that] has been made, that is, they ought to have some knowledge of what the employee is complaining or expressing concerns about.*" For example, in Simpson v Cantor Fitzgerald Europe [2020] ICR 236 a complaint that there had been bullying and harassment and *"since the end of last term, there have been numerous incidents of inappropriate behaviour towards me, including repeated sidelining, and all of which I have documented*" was found not to be a disclosure because it was too vague.

2.4 Second, the worker must believe the disclosure tends to show one of more of the listed wrongdoings. Third, if the worker does hold such a belief, the belief must be reasonably held. Here, the worker does not have to show that the information did in fact disclose wrongdoing of the particular kind relied upon. It is enough if the worker reasonably believes that the information tends to show this to be the case. A belief may be reasonable even if it is ultimately wrong. It was said in Kilraine that this assessment is closely aligned with the first condition and that: "*if the worker subjectively believes that the information he discloses does tend to show one of the listed matters and the statement or disclosure he makes has a sufficient factual content and specificity such that it is capable to tending to show that listed matter, it is likely that his belief will be a reasonable belief."*

2.5 Fourth the worker must believe that the disclosure is made in the public interest. Fifth, if the worker does hold such a belief, it must be reasonably held. The focus is on whether the worker believes the disclosure is in the public interest (not the reasons why the worker believes that to be so). The worker must have a genuine and reasonable belief that the disclosure is in the public interest but that does not have to be the worker's predominant motive for making disclosures: Chesterton Global Ltd v Nurmohammed [2018 ICR 731. In particular it was said: "*I am inclined to think that the belief does not in fact have to form any part of the worker's motivation – the phrase "in the belief" is not the same as "motivated by the belief"; but it is hard to see that the point will arise in practice, since where a worker believes that a disclosure is in the public interest it would be odd if that did not form at least some part of their motivation in making it."*

2.6 In Chesterton it was also said that there was no value in seeking to provide a general gloss on the phrase "in the public interest", but that the legislative history behind the introduction of the condition establishes that 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. The question is to be answered by the Tribunal on a consideration of all the circumstances of the particular case, but relevant factors may include:

(a) the numbers in the group whose interests the disclosure served
(b) the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed;
(c) the nature of the wrongdoing disclosed;
(d) the identity of the alleged wrongdoer.

2.7 It was also said that the broad intent behind the legislation is that workers making disclosures in the context of private workplace disputes should not attract the statutory protection accorded to whistleblowers. However, there may also be cases where the disclosure is of a matter that relates to an interest that is personal in character but there are nevertheless features of the case that make it reasonable to regard the disclosure as being in the public interest as well as in the personal interest of the worker. The question is to be answered by the Tribunal on a consideration of all the circumstances of the particular case. It was said in Dobbie v Paula Felton t/a Feltons Solicitors UKEAT/0130/20/OO that: "*Generally, workers blow the whistle to draw attention to wrongdoing. That is often an important component of why in making the disclosure they are acting in the public interest.*" In Simpson v Cantor Fitzgerald Europe [2020] EWCA Civ 1601 Bean LJ drew a distinction between the claimant making disclosures about being deprived of commission he thought was rightfully his (not a protected disclosure) as opposed to making a disclosure about commission containing information which in the individual's actual and reasonable belief tended to show malpractice such as the commission of a regulatory offence (which if established was likely to have met the public interest test). The Tribunal should be careful not to substitute its own view of whether the disclosure was in the public interest for that of the worker. The Tribunal must recognise that there may be more than one reasonable view as to whether a particular disclosure was in the public interest.

2.8 Sixth, the disclosure has to be made to an appropriate person (such as the employer).

**Protected Disclosure detriment**

2.9 Under Section 47B(1) a worker has the right not to be subjected to any detriment by any act, or deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure. Under section 47B(2) the section does not apply where the detriment in question amounts to a dismissal within the meaning of Part X (because dismissals are governed by Section 103A within Part X ERA).

2.10 There is a detriment if a reasonable employee might consider the relevant treatment to constitute a detriment (see Jesudason v Alder Hey Children's NHS Foundation Trust [2020] EWCA Civ 713 applying Derbyshire v St Helens MBC [2007] UKHL 16 and Shamoon v Chief Constable of Ulster Constabulary [2003] ICR 33.)

2.11 There must be a link between the protected disclosure or disclosures and the act (or failure to act) which results in the detriment. Section 47B requires that the act should be "on the ground that" the worker has made the protected disclosure. In Manchester NHS Trust v Fecitt [2011] EWCA 1190 it was said that: "*section 47B will be infringed if the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's treatment of the whistle-blower.*" This is a "reason why" test. Ordinarily, the Tribunal has to look at why (consciously or unconsciously) the decision maker acted as he or she did. It was said in Jesudason that:

*"Liability is not, therefore, established by the claimant showing that but for the protected disclosure, the employer would not have committed the relevant act which gives rise to a detriment. If the employer can show that the reason he took the action which caused the detriment had nothing to do with the making of the protected disclosures, or that this was only a trivial factor in his reasoning, he will not be liable under Section 47B."*

2.12 There is a difficult body of case law addressing the scenario when a person knows about a protected disclosure and causes a whistleblower to be subject to a detriment for that reason by an another, unwitting individual. In Royal Mail Group Limited v Jhuti [2020] ICR 731 the Supreme Court was concerned with an automatic unfair dismissal case and not a detriment case. The Supreme Court there said that in looking for the reason for a dismissal the tribunals need generally look no further than the reasons given by the appointed decision-maker. But the Supreme Court also said that if on the facts of a particular case a manager in the hierarchy above the employee determines that an employee should be dismissed because of protected disclosures but hides that behind an invented reason, which the decision-maker adopts, the reason for the dismissal would be the hidden reason rather than the invented reason. The manipulator's state of mind would be attributed to the dismissing employer, rather than the deceived decision maker.

2.13 But a body of other cases including Malik v Cenkos Securities Plc UKEAT/0100/17, CLFIS (UK) Ltd v Reynolds [2015] EWCA Civ 439 and William v Lewisham and Greenwich NHS Trust [2024] EAT 58 say that in a detriment case the situation is different. One person's knowledge and motivation cannot be imputed to another person in a detriment claim (and therefore different to a dismissal claim). It was said that the person who subjects the whistleblower to a detriment must be personally motivated by the protected disclosure. If there has been, for example, improper influence then that influencing activity should be challenged as being its own separate detrimental act. It protects an individual respondent from being made personally liable for a detriment when they were unaware of the underlying improper influence.

2.14 In First Great Western Ltd v Moussa [2024] EAT 82 a differently constituted EAT took a more nuanced approach and upheld the tribunal's decision that an employer (but not two individual managers) had subjected the employee to a detriment on the ground he had made protected disclosures 6 years previously; finding there had been a collective memory within the employer which had its origins in the protected disclosures and was prejudicial to the claimant. The EAT doubted the Malik line of reasoning, but in any event distinguished the case on its own facts. It was said on the particular facts of Moussa, it was the employer itself that was being found directly liable and not liable through vicarious liability for the acts of an employee (where, as I have just stated, there can be unfairness to an individual employee as a named respondent, who may otherwise be found personally liable for protected disclosure detriment, and yet knew nothing about the protected disclosures or that they were being inappropriately influenced).

**Protected disclosure dismissal**

2.15 Section 103A ERA provides:

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

2.16 When asking what was the reason or principal reason for a dismissal it is again a "reason why" question. As already mentioned, in Jhuti the Supreme Court held that in general a tribunal need look no further than the reasons given by the decision maker. But where the real reason for dismissal is hidden from the decision maker behind an invented reason, it is the tribunal's duty to look behind the invention. Provided the invented reason belongs to a person higher up in the management chain it is possible to attribute the manipulator's state of mind to the employer, rather than that of the deceived decision-maker.

**Protected disclosure - burden of proof**

2.17 Where a claimant has established that there has been a protected disclosure and they have suffered a detriment, it is for the employer to show that the detriment was not because of the disclosure; that is, that the disclosure did not materially influence - in the sense of being more than a trivial influence - the employer's treatment of the Claimant (see Fecitt).

2.18 In a protected disclosure automatic unfair dismissal claim, the employer bears the burden of proof of showing the reason for the dismissal. Where an employee disputes the reason given by the employer, an evidential burden arises to cast some doubt on the employer's reason. The employee has to demonstrate some evidential basis for questioning the employer's reason. The stages as explained by the Court of Appeal in Kuzel v Roche Products Ltd are: (a) has the claimant shown that there is a real issue as to whether the reason put forward by the respondent was not the true reason? (b) if so, has the employer proved the reason for dismissal? (c) If not, has the employer disproved the section 103A reason advanced by the claimant? (d) if not, dismissal is for the section 103A reason. However, if the employer does not show to the satisfaction of the tribunal their asserted reason, it does not follow that the tribunal is obliged to find the reason is as put forward by the claimant. That said, the EAT also endorsed the proposition that in practice in many cases the tribunal can make findings of fact about what was operating in the mind of the decision makers and therefore, in practice, only a small number of cases will ultimately turn upon a burden of proof analysis.

**Equality Act - Direct discrimination**

2.19 Section 13(1) of the Equality Act provides:

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

2.20 Section 23(1) says that when comparing cases for the purposes of section 13 there must be no material difference between the circumstances relating to each case.

2.21 Section 13 requires that two matters be established. The first is that there has been treatment of the particular claimant which is less favourable than the treatment that was meted out, or would have been meted out, to a comparator. The second is that the less favourable treatment was because of a protected characteristic.

2.22 In Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11, the then House of Lords said it is often helpful to concentrate on the "reason why" question when considering a complaint of direct discrimination. Why did the alleged discriminator act as he did? What, consciously or unconsciously, was the alleged discriminator's reason? This question is sometimes less legally complex than the task of identifying a comparator whose circumstances are materially the same, for the purposes of section 23, and the answer to it will often determine the claim.

2.23 In other cases it can be helpful to consider the "comparator" question. An actual comparator exists when there is a known, identified individual who does not have the protected characteristic, and there is no material difference between the circumstances relating to the claimant's case and the comparator's case. A tribunal may also consider how a hypothetical comparator in a similar (i.e. not materially different) position to the claimant, but who does not have the protected characteristic, would have been treated. A tribunal may also take account of the way in which the respondent treated other individuals who may be in more different situations but still have some similarities; often referred to as evidential (rather than statutory) comparators. The purpose is to use such comparators as an evidential tool to see whether an inference of discrimination is justified.

2.24 In order to satisfy the “because of” test, it is not necessary for the protected characteristic to be the whole of the reason, or even the principal reason, for the treatment. In Nagarajan v London Regional Transport [1999] ICR 877 it was said:

“*Decisions are frequently reached for more than one reason. Discrimination may be on racial grounds even though it is not the sole ground for the decision. A variety of phrases, with different shades of meaning, have been used to explain how the legislation applies in such cases: discrimination requires that racial grounds were a cause, the activating cause, a substantial and effective cause, a substantial reason, an important factor. No one phrase is obviously preferable to all others…If racial grounds…had a significant influence on the outcome, discrimination was made out.”*

**Equal Pay: Like Work**

2.25 Section 66 of the Equality Act 2010 provides for a sex equality clause and says:

(1) If the terms of A's work do not (by whatever means) include a sex equality clause, they are to be treated as including one.
(2) A sex equality clause is a provision that has the following effect— (a) if a term of A's is less favourable to A than a corresponding term of B's is to B, A's term is modified so as not to be less favourable; (b) If A does not have a term which corresponds to a term of B's that benefits B, A's terms are modified so as to include such a term.

2.26 Under section 64 such a sex equality clause shall apply where A is employed on work that is equal to that of a comparator of the opposite sex. Under section 65:

(1) A's work is equal to that of B if it is (a) like B's work,

(2) A's work is like B's work if

(a) A's work and B's work are the same or broadly similar, and

(b) such differences as there are between their work are not of practical importance in relation to the terms of their work.

(3) So on a comparison of one person's work with another's for the purposes of subsection (2), it is necessary to have regard to— (a) the frequency with which differences between their work occur in practice, and (b) the nature and extent of the differences.

2.27 Under section 64(2), the references to B’s work are not limited to work done contemporaneously with the work done by A.

2.28 The Equality and Human Rights Commission’s Statutory Code of Practice on Equal Pay (which is based on many of the key domestic and EU case authorities in the field) explains that there are two questions to ask when determining “like work”. The first question is whether the female and her male comparator are employed in work that is the same or of a broadly similar nature. This involves a general consideration of the work and the knowledge and skills needed to do it. If the female shows that the work is broadly similar, the second question is whether any differences between her work and that done by her comparator are of practical importance in relation to the terms and conditions of employment, and having regard to the frequency with which any differences occur in practice, and the nature and extent of those differences. It is for the employer to show that there are differences of practical importance in the work actually performed. Differences such as additional duties, level of responsibility, skills, the time at which work is done, qualifications, training and physical effort could be of practical importance. The Code says that a difference in workload does not itself preclude a like work comparison, unless the increased workload represents a difference in responsibility or other difference of practical importance. A detailed examination of the nature and extent of the differences and how often they arise in practice is required. It is said that a contractual obligation on a man to do additional duties is not sufficient, it is what happens in practice that counts.

2.29 That said, the Court of Appeal has very recently confirmed in **Tesco Stores Ltd v Element and others [2026] EWCA Civ 580** it is not the case that the content of the contract of employment is irrelevant. The content may in fact be very relevant if it is part of the wage/work bargain and sets out lawful instructions that can be given to an employee. The focus is on looking at what is the work that the worker is paid to do or the requirements of the job, and it may well be that there is not in fact a divergence between what the worker does and what the worker is required to do. The Court of Appeal clarified that case law authorities which focused on the importance of the day to day work, were cases where the contract was said not to reflect the reality of the work required, and that where a contractual obligation is merely notional and never arises in practice should be disregarded. Similarly, a written contract may fail to recognise significant aspects of the work done if the worker is doing work activities beyond the requirement of the written contract. But otherwise the written contract may still be relevant.

2.30 In determining whether the work is the same or of a broadly similar nature, the comparison of jobs must take into account the whole job. Any duties that the man and woman do not have in common cannot generally be excluded from consideration; **Maidment and Hardacre v Cooper and Co (Birmingham) Ltd [1978] ICR 1094, EAT.**

2.31 Under section 69 the sex equality clause will have no effect in relation to a difference between A's terms and B's terms if the employer shows that the difference is because of a material factor reliance on which (a) does not involve treating A less favourably because of her sex than B is treated; and (b) if the factor is indirectly discriminatory because of sex, that it is a proportionate means of achieving a legitimate aim.

**Burden of Proof under the Equality Act 2010**

2.32 The Equality Act 2010 provides for a shifting burden of proof. Section 136 so far as material provides:

*"(2) if there are facts from which the Court (which includes a Tribunal) could decide in the absence of any other explanation that a person (A) contravened the provision concerned, the Court must hold that the contravention occurred.*

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

2.33 Consequently, it is for a claimant to prove facts from which the tribunal could infer (absent explanation from the respondent) that discrimination has taken place. If such facts have been made out to the tribunal's satisfaction, applying the balance of probabilities, the second stage is engaged. At the second stage the burden shifts to the respondent to prove, again on the balance of probabilities, that the treatment in question was "in *no sense whatsoever"* because of the prohibited reason / that the protected characteristic was not a ground for the treatment in question. A tribunal would normally expect cogent evidence to discharge that burden of proof.

2.34 In Hewage v Grampian Health Board [2012] IRLR 870 the Supreme Court approved guidance previously given by the Court of Appeal on how the burden of proof provisions should apply. That guidance appears in Igen Limited v Wong [2005] ICR 931, as supplemented in Madarassy v Nomura International Plc [2007] ICR 867. Here it is important to note that although the concept of the shifting burden of proof involves that two-stage process, the analysis should only be conducted once the tribunal has heard all the evidence.

2.35 Further, as to what is required to discharge the burden at the first stage; it must be something more than a difference in protected characteristic and a difference in treatment. It was said that the bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination. It is not necessarily an error of law for a tribunal to effectively assume the burden has shifted and look to the respondent to provide an explanation for the treatment in question. It was said in Hewage that the burden of proof provision may have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or another. But the burden of proof provisions do require careful attention where there is room for doubt as to the facts necessary to establish discrimination; see Field v Steve Pye & Co [2022] EAT 68 and the important guidance there at paragraph 41 onwards.

2.36 In an equal pay claim the burden of proof is on the claimant to establish the work is the same or broadly similar but it is for the respondent to show that any differences are sufficiently significant that the work is not like work. If like work is established there is a rebuttable presumption of sex discrimination, and the burden passes to the employer to show that the explanation for the variation is not tainted with sex. The employer has to satisfy the tribunal that the explanation is genuine and not a sham or pretence; that the less favourable treatment is due to this reason and it causes the disparity in pay; and the factor must be a significant and relevant one. The employer must also satisfy the tribunal that the reason is not the difference of sex. The burden of establishing particular disadvantage or disparate impact necessary to raise a prima facie case of indirect discrimination then passes back to the claimant. If so, the burden passes back again to the employer to show that the difference in treatment was not attributable to a difference in gender, or that there was nonetheless an objective justification for the difference between the woman's and man's contracts.

**"Ordinary" Unfair Dismissal**

2.37 In an "ordinary" unfair dismissal claim, section 98(1) places the burden on the employer to show the reason or principal reason for the dismissal and that it is one of the potentially fair reasons identified within Section 98(2), or failing that some other substantial reason.

2.38 The potentially fair reasons in Section 98(2) include a reason which:- *"relates to the capability or qualifications of the employee for performing work of a kind which he was employed by the employer to do".*

2.39 Section 98(3) goes on to provide that "capability" means capability assessed by reference to skill, aptitude, health or any other physical or mental quality.

2.40 Where the respondent shows that dismissal was for a potentially fair reason, the general test of fairness appears in Section 98(4): **"…***the determination of the question whether the dismissal is fair or unfair (having regard to the reasons shown by the employer) –*
*(a)depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and*
*(b) shall be determined in accordance with equity and the substantial merits of the case".*

2.41 It has been clear since the decision of the EAT in Iceland Frozen Foods Limited -v- Jones [1982] IRLR 439 that the starting point should be always the wording of Section 98(4), and that in judging the reasonableness of the employer's conduct a tribunal must not substitute its decision as to what was the right course to adopt for that of the employer. In most cases there is a band of reasonable responses open in a situation, and a tribunal must ask itself whether the employer's decision falls within or without that band.

2.42 The application of this test in cases of dismissal due to ill health and absence was considered by the EAT in Spencer –v- Paragon Wallpapers Limited [1976] IRLR 373 and in East Lindsey District Council –v- Daubney [1977] IRLR 181. The Spencer case establishes that the basic question to be determined when looking at the fairness of the dismissal is whether, in all the circumstances, the employer can be expected to wait any longer, and, if so, how much longer. Matters to be taken into account include the nature of the illness, the likely length of the continuing absence, and the overall circumstances of the case. In Daubney, the EAT made clear that unless there were wholly exceptional circumstances, it is necessary to consult the employee and to take steps to discover the true medical position before a decision on whether to dismiss can properly be taken. However, in general terms where an employer has taken steps to ascertain the true medical position and to consult the employee before a decision is taken, a dismissal is likely to be fair.

2.43 More recently the EAT considered this area of law in DB Schenker Rail (UK) Limited –v- Doolan [UKEATS/0053/09/BI). In that case the EAT indicated that the three stage analysis appropriate in cases of misconduct dismissals (which is derived from British Home Stores Limited –v- Burchell [1978] IRLR 379) is applicable in these cases (hold a genuine belief the employee is incapable, based on reasonable grounds, reached after a reasonable investigation). An overview was also offered by the Court of Session in BS v Dundee City Council [2014] IRLR 131 at paragraph 27:

*"Three important themes emerge from the decisions in Spencer and Daubney. First, in a case where an employee has been absent from work for some time owing to sickness, it is essential to consider the question of whether the employer can be expected to wait longer. Secondly, there is a need to consult the employee and take his views into account. We would emphasize, however, that this is a factor that can operate both for and against dismissal. If the employee states that he is anxious to return to work as soon as he can and hopes that he will be able to do so in the near future, that operates in his favour; if, on the other hand he states that he is no better and does not know when he can return to work, that is a significant factor operating against him. Thirdly, there is a need to take steps to discover the employee's medical condition and his likely prognosis, but this merely requires the obtaining of proper medical advice; it does not require the employer to pursue detailed medical examination; all that the employer requires to do is to ensure that the correct question is asked and answered."*

2.44 If an employee's ill health has been caused by the employer's treatment, then a tribunal may require employers to demonstrate extra concern before implementing a dismissal, but that is a question of fact not a rule of law; McAdie v Royal Bank of Scotland [2007] IRLR 895. The ultimate unfair dismissal test is whether the employer behaved reasonably in all the circumstances.

**Wrongful Dismissal**

2.45 Wrongful dismissal claims are breach of contract claims. A dismissal in breach of the contractual term as to notice will be wrongful unless it was in itself a response to the claimant's own repudiation of the contract. The burden in such a circumstance falls on to the respondent to show that there was a repudiatory breach of contract by the claimant prior to the date of dismissal in order to avoid liability for what would otherwise be a breach of contract.

2.46 The necessary conduct entitling the employer to dismiss summarily is usually restricted to conduct said to amount to gross misconduct. The classic statement of what constitutes gross misconduct is in Neary v Dean of Westminster [1999] IRLR 288 that the conduct: "*must so undermine the trust and confidence that is inherent in the particular contract of employment that the master should no longer be required to retain the servant in his employment*."

2.47 A wrongful dismissal case is therefore not about the range of reasonable responses. If the respondent alleges the claimant was already in repudiatory breach, it is a matter for me to assess for myself whether the allegations against the claimant are made out as a matter of fact on the balance of probabilities. If they are made out, I have to assess whether their nature and gravity is such as to fall within the ambit and meaning of gross misconduct that entitled the respondent to repudiate the contract.

**Time Limits**

**Protected Disclosure Detriment and Dismissal**

2.48 Section 48(3) ERA provides in respect of the time limits for protected disclosure detriment complaints:

"*An employment tribunal shall not consider a complaint under this section unless it is presented— (a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months*."

2.49 So far as the sufficiency of the connection is to be a series of similar acts or failures, the Court of Appeal gave the following guidance in Arthur v London East Railway [2007] ICR 193:

*"It is necessary to look at all the circumstances surrounding the acts. Were they all committed by fellow employees? If not, what connection, if any, was there between the alleged perpetrators? Were their actions organised or concerted in some way? It would also be relevant to inquire why they did what is alleged. I do not find "motive" a helpful departure from the legislative language according to which the determining factor is whether the act was done "on the ground" that the employee had made a protected disclosure. Depending on the facts I would not rule out the possibility of a series of apparently disparate acts being shown to be part of a series or to be similar to one another in a relevant way by reason of them all being on the ground of a protected disclosure."*

2.50 If the claim was not presented within the applicable three-month time limit for a particular complaint (which generally involves starting Acas early conciliation in that period), the tribunal has the power to extend time in the circumstances set out in Section 48(3)(b). This has two elements. The first is that the claimant must show it was not reasonably practicable to present her claims in time. The burden is on the claimant to persuade the tribunal of this. If she succeeds in doing this, the tribunal must be satisfied that the further time period beyond the expiry of the primary limit was itself reasonable.

2.51 In assessing whether it was "not reasonable practicable" to meet the time limit, the tribunal must ask whether it was "reasonably feasible" to present the complaint within the relevant time limit (Palmer and Saunders v Southend-on-

Sea Borough Council [1984] ICR 372 (CA)). If the tribunal is satisfied that it was not reasonably practicable to present the claim in time, it must then at stage two be satisfied that it was presented within a further "reasonable period". This is not the same as asking whether the claimant acted reasonably; still less is it equivalent to the question whether it would be just and equitable to extend time. Instead, it requires an: "*objective consideration of the factors causing the delay and what period should reasonably be allowed in those circumstances – having regard, certainly to the strong public interest in claims in this field being brought promptly and against a background where the primary time limit is three months"* (Cullinane v Balfour Beatty Engineering Services [2011] UKEAT/0537/10).

2.52 Under section 111 ERA, an automatic unfair dismissal claim must be presented within 3 months of the effective date of termination. The same "reasonable practicability" test applies in relation to extensions of time.

**Equality Act**

2.53 The Equality Act has a different test in terms of time limits.[1] The initial time limit for complaints under the Equality Act 2010 is 3 months starting with the date of the act of discrimination complained about. The effect of the early conciliation procedure is that, if the notification to ACAS is made within the initial time limit period, time is extended, at least, by the period of conciliation.

2.54 Under Section 123(3) of the Equality Act conduct extending over a period is to be treated as done at the end of the period. A continuing course of conduct might amount to an act extending over a period; Hendricks v Commissioner of Police of the Metropolis [2003] IRLR 96.

2.55 A tribunal may consider a complaint out of time if it considers it just and equitable to do so in the relevant circumstances.

2.56 If the issue of time bar has not been dealt with when an amendment application was considered, it remains a live jurisdictional point which the tribunal at the final hearing has an ongoing duty to address; Douglas v North Lanarkshire Council [2024] EAT 194.

## 3. Findings of fact

**The Respondent**

3.1 It is neither possible or necessary for me to making findings of fact about every evidential point put before me or in issue in this case; only those necessary to decide the questions identified in the List of Issues. My reasons in the separate

[1] Different time limits apply in Equal Pay claims to that described here, but it is not necessary for me to summarise that. There are only time limit considerations in play in this case in the direct race discrimination complaint, the protected disclosure detriment complaints and the protected disclosure dismissal complaint. It is not in dispute that the Claimant's other complaints were brought within time.

Discussions and Conclusions section below are also my key reasoning for deciding what I decide; again it is not possible to cover every evidential point before me in what is already a long Judgment. If something does not expressly feature it does not mean I did not take it into account; I took account of all the evidence and submissions properly put before me. Factual disputes are resolved by applying the balance of probabilities test.

3.2 The Respondent is a private company limited by guarantee without a share capital and was incorporated on 21 September 2005. As explained by MP, the Respondent supports and encourages social enterprise companies which in turn employ significant members of people who for one reason or another struggle to obtain employment, through disability, mental health issues, homelessness, being ex-offenders and the like. Some members are charities, some are Community Interest Companies (CICs), and a few are private companies. The Respondent has no shareholders and any surplus/profit is reinvested in the company or used for community good causes. MP explains that when the Respondent was founded it was part of a family of organisations but since then Social Firms UK closed in 2016, and Social Firms Scotland closed in 2021. The Respondent has received core funding and project funding for many years from Welsh Government. It also generates income from trading, particularly contracts with local authorities. It has a board of voluntary directors and then paid staff.

3.3 SL was Chief Executive Officer from 26 September 2005 until her retirement on 31 May 2024. She joined the board of directors in February 2007. SL explains she was invited to be a director, and did not request to be one. She describes her CEO role as being paid employment, whereas being a director as voluntary. MP was also appointed as a director at the same time as SL. MP Price became the chair in July 2010. The Respondent has always been a small employer. there were no more than 4 employees at any one time actively employed during the relevant period, and sometimes it has been less than that.

**The Claimant and Mr Williams' Work**

3.4 The Claimant started employment with the Respondent on 1 July 2013 as a Social & Corporate Governance Advisor. The Claimant worked from home, as did all employees at the relevant time period.

3.5 The Claimant's job description is at [213-214]. It describes the outline purpose as: "*to work independently and as part of a small Wales-wide team to develop and grow Social Firms that are commercially viable social businesses (enterprises), creating employment for a mixed ability work-force that will include jobs for those considered furthest from the open labour market…[and] To work with a range of partners, partner organisations that all sectors of civil society.*" The job description then has a heading of "Specialist Responsibilities" which lists: "*1. Provide advice, guidance and support on all matters relating to* *good governance 2. Taking into account both social and corporate responsibilities that ensure that Social Firm companies are operated, regulated and controlled appropriately and are compliant with all legal and ethical requirements*." There is a heading of "Broad Responsibilities" which says: "*1. Promote the Social Firm model as an enterprising solution that tackles economic inactivity and social exclusion 2. Advise and support Social Firm development 3. Promote the benefits of a cross sector partnership approach to develop Social Firms using enterprise as a solution to social change attainment 4. Support the development of cross sector partnerships 5. Raise awareness of new partners and promote successes including mutual benefits 6. Develop communication systems to keep all stakeholders informed of activities 7. Support the development of commercially viable Social Firms that can offer volunteering, training and employment opportunities 8. Support the development of new ways of working that can offer support to employees and employers in both supported employment and open market job environments 9. Attend suitable conferences and training opportunities."* There is then a section about ideal and general personal skills before a concluding statement that the list is not exhaustive or exclusive and the employee may be required to carry out other duties that are deemed necessary and reasonably fall within the scope of the post.

3.6 The Claimant signed a contract of employment on 1 April 2016 which is at [233-241] but recognising service back to 1 July 2013. The written contract states the Claimant's duties are as set out in the job description but she may be required to undertake other duties from time to time as the Respondent may reasonably require. The Claimant was initially employed under a 2 year fixed term contract but her employment continued. Her initial salary was £20,567.04 pro rated from a full time equivalent of £25,708.80.

3.7 The Claimant's equal pay comparator is Mr DW. The Claimant paid at a lower rate than DW. A table setting out their rates of pay is at [1843-1844] and [1845].

3.8 DW was employed by the Respondent from June 2011 (although DW gives a date of May 2010) until February 2020 when he was made redundant with effect from 20 April 2020 because of a decrease in funding. DW came from a commercial background, having experience of running commercial businesses and also had experience in the not for profit sector. DW's signed contract of employment is dated 8 July 2013 [1848], initially for a fixed term appointment of 1 year. The contract notes DW had been employed since 13 June 2011 but does not recognise earlier continuity of service. The written contract gives the job title of Markets Advisor. DW's written job description is at [1846] although the title there is "Social Firm Development Officer." The outline purpose given is the same as that in the Claimant's written job description. The "Responsibilities" are listed as: "- *Promote the Social Firm model as an enterprising solution that tackles economic inactivity and social inclusion. –*

*Advise and support Social Firm development – Promote the benefits of a cross sector partnership approach to develop Social Firms using enterprise as a solution to social change attainment – Support the development of cross sector partnerships – Raise awareness of new partners and promote successes including mutual benefits – Develop communication systems to keep all stakeholders informed of activities – Support the development of commercially viable Social Firms that can offer volunteering, training and employment opportunities – Support the development of new ways of working that can offer support to employees and employers in both supported employment and open labour market job environments. – Attend suitable conferences and training opportunities.*" There is no section for Specialist Responsibilities like in the Claimant's job description.

3.9 SL says that DW initially joined the organisation as a Development Officer but that DW's knowledge, skills and experience soon led to his role expanding to include marketing responsibilities and his job title was renamed as Markets Advisor. SL says she renamed his job title because it reflected what DW was able to do, the depth of what he did and his knowledge. She said that it also helped the organisation because at the time DW was working with some local authorities and high profile organisations at a very in depth level. She says that when Keith Simmonds [KS], the Operations and Finance Advisor, who had a banking background, retired, that DW also assumed finance advisory duties with the position evolving into Markets and Finance Advisor. SL says the revision of DW's written job description was, however, overlooked, hence the Development Officer role description. SL says that DW had very in depth skills around finance and so she was able to add to his job title and she wanted to expand his job title because it was the level of work that DW was doing. Based the table at [1843] it would seem that KS had retired by April 2017 and the table records a change in job title for DW to Finance and Markets Advisor by April 2018 (with no increase in pay) and which therefore seems to match what SL says.

3.10 DW's work then (according to SL, which DW did not disagree with in cross examination) involved providing comprehensive business support to social enterprises including financial modelling, product development, market research, market planning, operations, and risk analysis. The work included helping social enterprises understand delivery costs, potential income streams, and the financial implications of growth or diversification. This included analysing pricing structures, assessing grant dependency, evaluating risks, and testing the viability of new trading activities. He helped shape and refine new products and services and supported organisations to set out their concepts into structured proposals for piloting, funding or a market launch. His market research work included activities such as gathering intelligence on local needs, sector trends, competitor activity, emerging opportunities and translating this into actionable insights. It involved analysing gaps in provision, identifying potential customer groups, and helping organisations understand how their strengths aligned with market demand. He helped businesses with their business cases, growth plans and marketing approaches. He supported organisations in strengthening their internal systems and processes such as mapping workflows, improving operational efficiency and putting in place structures to deliver new or expanded services. He helped organisations with risk analysis. SL says that DW had considerable expertise in governance but that his responsibilities were far broader, covering the full spectrum of business development.

3.11 SL gives some specific examples (again agreed by DW in oral evidence) of some key pieces of DW's work including chairing the Welsh Government's Remploy Support Package panel which supported disabled workers into employment during the closure of the Remploy factories in Wales in 2012 to 2013. He also spent several weeks at the Monwel Signs factory in Ebbw Vale where he supported its transition from Local Authority ownership to an independent social enterprise in 2013. He provided similar support for Beacons Candles in Brecon in 2009 (although I am not sure I understand that date reference in relation to DW's dates of employment; but no one explained that to me). SL's evidence is that these examples show the depth of DW's knowledge and that DW was given pieces of work that SL would not trust that other staff could or should do.

3.12 DW said in evidence that had been recruited by SL who had met him previously through Beacon Candles. He applied for the job via a competitive process and said he could remember KS saying the presentation he delivered in interview was on a completely different level compared to the other applicants. DW said that was probably due to his commercial background where he had been involved in management buyouts and so forth and that his interview presentation was probably more akin to a KPMG type report. DW said he did not negotiate his pay he just accepted what he was given, because pay was not the key driver for him taking on the job. He wanted to improve the quality of advice that was being given to social enterprises. DW said he was initially employed as a Business Advisor and that later it became Business and Markets Advisor. He describes his principal role as providing new and existing Social Firms/ Enterprises with business support, including business strategy, business planning, market analysis and strategy, growth, structure and governance. He says he would occasionally deputise for SL at meetings and events and sat on a number of Government advisory groups and panels as already outlined. He said he did not really know why SL had wanted to change his job title to include Markets Advisor as he just saw that of one part of what he did, but the title did not really bother him and he presumed there was a reason why SL wanted it. He agreed that when KS retired he took on finance advisory duties and if there was a forecast to be done he said he would tend to be the one to do it. DW said in oral evidence that parts of his work with the Re-employ support included authoring a full business case and activities like leading negotiations with staff, unions and local authorities, dealing with management pension issues and pension actuaries, risk and evaluation and the potential burdens to new employers. He worked with an interim business plan to get £150k loan and £150k overdraft for a client and did work with the supply chain to look at increasing sales and setting up framework agreements. He said that he did a marketing plan for Monwel signs and a risks management strategy and analysis and that this was all part of the business planning process.

3.13 The Claimant's witness, RV, confirms that the majority of the Claimant's work was governance including advice on legal structures, and resolving governance issues organisations might have. The Claimant says that governance support was specialist support that only she could provide and was crucial to the development of the organisations she supported.

3.14 SL says that the Claimant's role involved advising organisations and individuals to adopt socially responsible values and principles; providing advice, guidance and support on all matters relating to good governance; considering both social and corporate responsibilities to ensure social firm companies were operated, regulated, and controlled appropriately and compliant with all legal and ethical requirements. SL says she has reviewed the Claimant's work location sheets from January 2020 to end of February 2024 and that they show the Claimant mainly working on work related to governance and meetings with team members.

3.15 Before the onset of Covid, the Claimant and other members of staff attended events or functions when they asked SL and that was approved, or when SL asked them to attend as representatives of the Respondent. SL says that she shared invitations and opportunities across the team that included the Claimant but was not limited to the Claimant. I accept this. For example, another employee went to Tokyo, when SL initially had been invited to speak at a social enterprise conference and visit some social enterprises in Tokyo and DW confirmed he also sometimes represented the Respondent.

3.16 Following the onset of Covid 19 SL stepped back from attending in person events because her partner is significantly immunocompromised. SL agreed with the Claimant that the Claimant would attend some events SL's behalf, but SL otherwise continued active in her role as CEO including conducting all meetings where she could virtually. DW had been made redundant by this point. In March 2023 the Claimant spoke on behalf of the Respondent at the Ecwiti grant scheme celebration. She was also an expert panel member at the Cwmpas conference in Swansea. The Claimant attended the Social Enterprise World Forum in Amsterdam in October 2023, representing the Respondent, including a dinner of the British Irish Council and the Social Enterprise, Conference and Awards in Cardiff in October 2023. The Claimant also requested and was permitted to attend Core Funding meetings with the Welsh

Government. She also attended the Future of Business in Wales Event in January 2024. She sat on a Rhondda Cynon Taf asset transfer panel. She represented the Respondent at Cardiff Met University on a module. She was on the award panel of the Social Enterprise Awards (this may be the same awards as already mentioned above) and gave out awards at the ceremony.

3.17 The Claimant's CV is at [501]-[504]. The Claimant says that she and DW had very similar roles and virtually identical job descriptions with both of them being advisors to social enterprises and social firms and doing development support work for the members/membership. She says that many times they supported each other and discussed client work. She also accepted in evidence that DW was not doing specialist governance work but was doing marketing; and that they had different specialisms. She says she was also doing some support with developing business plans and advising on income generation. She says that in a business plan she would work on the risk analysis section. She accepted that she DW had different backgrounds with DW coming from the commercial side, and they had differences in their practical experience. She said that sometimes she would work solely with one organisation and DW with another, depending on capacity and the organisation. She said that a lot of their work overlapped, and day to day they would support each other and step in for each other. She said she also did things that DW did not do, such as developing training and policy development, so did not accept he did a wider breadth of work to her. She said they both sat on different forums. She says that SL said previously [962] that the delivery staff work as a team and all skills/ expertise are equally important. She says that SL also used to say that good governance was important and like the foundations of a building so she does not agree that it is right to differentiate between her work and that of DW.

3.18 DW said in his statement that he and the Claimant, in his view, had very similar roles and they would often team up to deliver to clients, but also accepted there was also a divergence in their roles when doing so. He accepted are practical differences in the advice they would provide to clients and the work they undertook in practice. He says he tended to concentrate on business strategy and planning etc and the Claimant on governance, training etc. He says they also often delivered across all disciplines swapping roles depending on availability, logistics, location and history etc. He says governance issues were a normal part of both his and the Claimant's daily workflow.

3.19 DW said that he and the Claimant did not generally work together on clients and they would lead on their own projects. But they may also step in and help the other. He gave some examples of the Claimant doing some governance work on Beacons Candles and Monwel. He said if he did joint training he would do it with the Claimant because she was a better trainer than him. He gave an example of leading on a project involving an agricultural trust and that the Claimant had then led on an element relating to marketing because the way in which the Claimant engaged with the community and the public was perfect for the task. He said if he was negotiating with unions he might also bring the Claimant in to help because of her negotiation skills. He said before KS retired he would similarly bring KS in to help with training or to help with negotiations with a bank. DW said that SL would generally choose who deals with a client and it was, for example, business planning he would be the first choice but he was not the only choice and could not do it all. He said for example that when he was working with Monwel he was there virtually full time and so SL might be picking up the other clients with his ad hoc input in his general absence because he was at Monwel. DW said he would have meetings with the Claimant where she would ask his opinion or he would ask hers and it was not the case that any role was greater or less than the other, or more important, just that they were slightly different. DW described himself as older and longer in the tooth than the Claimant and that he had owned business and his experience was business growth. DW did accept in evidence that it was fair to say the breadth of his specialisms were greater than the Claimant's and he had a greater breadth of experience; being older and having had a lot of experiences and entrepreneurial background.

3.20 SL said in cross examination that what she was saying was that no one person in the team was more important than another, but the issue with DW compared to the Claimant was depth of what they did and the and knowledge and experience and skills. SL says that the things the Claimant was doing were the kind of things you build up to in your job and fitted in the job description. SL accepted that the Claimant helped with things like swot analysis, and the risk sections on business plans but said that she would expect every member of the team to have an understanding of such areas, and it does not mean the Claimant had an in depth understanding. SL said these are examples of low levels of that type of support and do not equate to a full business plan, or full marketing plan, or full financials and risk assessment in back up prices, or detailed financials profit and loss and balance sheet. SL said that was the difference in the level between the Claimant and the rest of the team compared to the work of DW.

3.21 SL says that DW had extensive involvement with all of the Respondent's clients because they needed to be underpinned by a solid business case and they would face operational challenges. She describes, in her view, the Claimant's role as being more narrow in focus, focusing primarily on governance and company incorporations. SL says that this role formed one component of the broader business planning function whereas DW's role spanned multiple business domains. SL says that it is important for social firms to have correct governance in place, but it is ultimately of secondary importance to ensuring a viable business model. SL says that many clients came with well developed governance already in place, but the majority came without having already a social business case. She describes the scope and complexity of DW's role as being significantly broader than the Claimant's. She says his responsibilities were integral to the strategic development of the Respondent and required a high level of technical and analytical expertise. SL says that in her view they did not undertake the same or broadly similar work and the roles differed at a core level in respect of their breadth of input and workloads.

3.22 In or around 2015 DW was off work for a period of time due to ill health and the Claimant worked some additional hours to help cover his work. There is a dispute about how long that was for and how much of DW's work the Claimant covered. The Claimant says that was for a few months, three or four months if not longer and she covered the development work that they both did. SL disputes this saying she took on a lot of DW's duties. DW said he thought he was off for around 4 to 5 weeks because he had two 10 day periods in hospital. He initially said that the Claimant mainly took up the mantle and stepped in and filled his place, but he also accepted in oral evidence that SL did also pick up a fair amount of the operational and marketing work, including financial planning, when he was off. I accept his evidence that it was a mixture of both.

3.23 The Claimant says she also took over DW's work when he was made redundant in April 2020. SL disputes this, saying she took on the majority of DW's duties working additional hours including at weekends. SL says that the difficult decision was made to make DW redundant because SL thought she could personally take on the more in depth work that DW did, such as working with pension actuaries and she was already doing some of that work when DW was there. I accept SL's evidence that she took over a considerable chunk of work that would otherwise have been done by DW; it explains why it was that DW's role was the role chosen for redundancy.

3.24 According to the table at [1845] DW in 2012 was paid £18,260.84 working 30 hours a week. I do not know what he was paid in 2011. In 2013 the table at [1845] says DW was paid £27,541.69 working 37.5 hours a week which is a different figure to the table at [1844] which gives a figure of £29,000. I do not know why there are two different figures and the figures were not confirmed at all in witness evidence. But the contract of employment gives a figure of £29,000 [1849] annual salary from April 2013 so that would appear to be the correct figure for 2013. In 2014 DW's salary increased to £29,870 (with all employees getting a pay rise). It remained at that figure until April 2017 when he had a pay rise to £30,467.00. The Claimant also received a pay rise. In April 2019 DW reduced his hours to 30 hours a week with his pro-rated salary reducing to £24,373,00. He was made redundant the following year.

3.25 The Claimant's initial salary was set by reference to the daily rate that was paid to independent contractors. The spreadsheet asserts that was originally £120 but it turned out from SL's recollection and subsequent disclosure of documents that originally it was £96 an hour; the same rate as a consultant, Jeff Stevenson. She started out on a full time equivalent annual salary of £24,490 or pro-rated at £19,968 (worked out on the basis of an hourly rate of £12.80 an hour which in turn was based on the £96 daily rate). In April 2014 the full time equivalent increased to £25,709, and in 2017 to £26,223. It next increased after DW had left in April 2022 to a full time equivalent of £27,540. In 2023 she had an approximate 8.5% pay rise (although she had been told it was 5%) so that she was level with the full time equivalent of two new starters, RV and Jan Barwell (both female). SL said in evidence she did want the team on higher rates and it was also because she was bringing in a new staff member, Jan Barwell, who SL said had exceptional skills and experience. So from April 2013 onwards until he left (at which point DW was markets advisor and later from 2017 Finance and Markets Advisor), DW was earning more that the Claimant. For example, in April 2013 the Claimant's equivalent hourly rate (albeit she was paid a salary) was £12.80 and DW's was £14.87 (although again he was paid a salary). During the period of DW's employment when there were pay rises they were the same percentages across the board. To avoid duplication I set out my final findings on the issues relevant to this equal pay like work dispute in the Discussion and Conclusions section of the Judgment below.

**The Respondent's governing documents**

3.26 On 2 November 2015 the Claimant emailed SL about the Respondent's governing documents [215]. It is evident from the email there had been some prior discussions between the Claimant and SL about them and whether they needed amending and, if so, in what way. The Claimant said: "*following our conversation and the point you made about not having to pay corporation tax I can now see the clause (just after the objects highlighted in yellow) I originally suggested removing this, but now realise why we must leave this in*." She attached a version with her thoughts as at April 2014 but said her suggestions may change because her understanding had changed and she may need to revisit it. The Claimant's original April 2014 comment had suggested deleting a clause immediately after the objects of the Respondent which says:

*"PROVIDED THAT:*

*This clause 3 shall be interpreted as if it incorporated an over-riding qualification to the effect that in any case in which an activity permitted under this clause is in its nature capable of being carried on for purposes which are not charitable or are only partly so, as well as for purposes which are charitable (the word "charitable" wherever it appears in this Memorandum of Association having the meaning ascribed to it for the purposes of section 505 of the Income and Corporation Taxes Act 1988 including any statutory amendment or re-enactment for the time being in force), the powers of the Company under this clause shall be deemed to be limited to the carrying out of such activity in such a manner as will be wholly charitable."*

3.27 The Claimant's original view was that as the Respondent was not a charity it could be deleted. The Claimant also flagged up clause 4l which says: *"Subject to clause 6 below to employ such staff, who shall not be directors or trustees of the Company as are necessary for the proper pursuit of the objects and to make all reasonable and necessary provision for the payment of pensions and superannuation to staff and their dependents*", commenting that it needed looking at because it does not allow any staff to be a Director. The Claimant made the same observation about clause 5 which states: "*The income and property of the Company shall be applied solely towards the promotion of its objects, and no part shall be paid or transferred, directly or indirectly, by way of dividend, bonus, or otherwise whatsoever by way of profit, to the members of the Company and no Trustee shall be appointed to any office of the Company paid by salary or fees or receive any remuneration or other benefit in money or money's worth from the Company…*" (then then follow some provisos).

3.28 The Claimant made other suggestions and observations including about other references to charity law, including clause 8 which states: *"No such addition, alternation or amendment shall be made to or in the provisions of the Memorandum or Articles of Association for the time being in force as shall cause the Company to cease to be a charity in law."*

3.29 There are some company accounts in the bundle. The first set for the first trading period 1 October 2007 to 31 March 2009 includes at [211] a statement "*TAXATION The company has written to HMRC applying for an exemption from paying corporation tax due to its not for profit nature. As a result of this no tax has been provided for in these accounts."* There is then a letter at [212] from the accountants to HMRC dated 9 September 2009 stating: *"I should be grateful if you would consider treating the above company as dormant on the grounds that they are a not-for-profit organisation. To assist you in your decision I have enclosed a copy of the accounts for the year ended 31 March 2009 and a copy of the company's memorandum and articles of association."*

3.30 The Claimant says that she raised governance concerns with SL several times in the past. DW's evidence was that he himself had a number of past discussions with the Claimant about the governing documents and their unsuitability for the operational norms of the company. He says he thought the governing documents were too charitable and there were some clauses clearly in conflict with daily operational norms. He says the governing documents said they were a charity when they were not. He said he could remember the Claimant presenting a report to the board but could not remember the date. He said in oral evidence he could also remember a team meeting in Abergavenny where it was brought up and that the Claimant presenting to the board on it was around the same time and may have been around 2015 or 2016. He said he thought KS retired the following year. The Claimant did not give evidence about this. SL said in oral evidence she could remember that Abergavenny meeting and the governing documents being discussed and that there was a need to update them which had never happened. She denied that the Claimant regularly raised these things with her, or that the Claimant had presented a report at all. She said they had searched for documents and all they could find was the Claimant's email with the annotated draft attached, that I have already referred to.

3.31 Witnesses here are trying to remember events from 10 years or more ago. On the balance of probabilities it appears likely that in around 2015/2016 the Respondent's own governance documents were being discussed and whether they needed updating for various reasons. It seems likely there was a meeting in Abergavenny where it was discussed and either before or after that meeting the Claimant sent her email and her comments to SL. The suggested date range marries with the Claimant's email from 2015 and also DW's recollection that KS retired some time around the following year. I do not find, however, on the balance of probabilities that the Claimant was regularly raising these issues thereafter with SL. There are no specific details of that and the Claimant herself in oral evidence was unclear about it. The board were aware that the governance documents needed changing or updating but like the cobbler's shoes it never actually happened.

**Expanding of the board and Ms Leonard's plans to retire**

3.32 SL, as long term CEO gave an indication to the board in 2021 (i.e. RC and MP) that she was contemplating long term retirement, potentially around March 2024. The board at that time, as the minutes show, was also in general considering its strategic direction and future as an organisation. RC prepared a stakeholder review report. In the latter part of 2022 and into 2023 RC was undergoing significant treatment for a serious health condition and stepped away from active board duties, whilst remaining a board member. MP made contact with RC in April 2023 [389]. As part of that contact he explained that SL had said she wished to retire in April 2024, so they had 12 months to think about the future. RC responded to say she was really trying to reduce her commitments at that time, so it would be good to get new trustees on board. RC also in her reply to MP spoke about her ongoing medical treatment. I therefore do not consider that at that time it was in RC's contemplation she would apply for the CEO role. At that time RC was speaking about actually reducing her commitments, and that was one reason why she was keen to recruit some new board members.

3.33 The plan at board level was to review and revise the strategy again, and engage with their membership about the strategy and as part of that seek some volunteers for an expanded board. RC planned and administered a members event on 5 July 2023, on a paid consultancy basis. The Claimant was part of the consultation, and at this time was notified of SL's intention to retire in April

2024. The Claimant spoke with SL about her interest in applying, and SL suggested that the Claimant have a meeting with MP.

3.34 On 10 July 2023 the Claimant and MP met for coffee. The Claimant says that MP had to be reminded by SL about this. MP said in evidence, and I accept, there was nothing sinister about this; he was a busy volunteer director, and the recruitment process was still some time away. In their discussions they discussed recruitment of new directors. The Claimant suggested a smart recruitment process where the existing board members would identify their skills, and that would allow a gap analysis to be done. The Claimant circulated a questionnaire to the board members that only SL responded to, that same day. The next day there was a board meeting [433] at which RC suggested KW as a potential board member, RC having previously worked with KW on a project and thinking KW had much to offer in terms of being a passionate disability advocate and policy officer for Disability Wales. RC also suggested JG, having noted at the event on 5 July that he was particularly supportive and passionate about the Respondent. It was agreed RC would approach KW, and SL would approach JG about joining the board.

3.35 It is the Claimant's view, as I understand it, that there was a pre-planned unwritten agreement that RC would become CEO when SL retired. At one point at least she suggested that the selection of new board members was deliberately done to secure individuals who would be friendly to RC in the eventual selection process. Certainly, it is the Claimant's view that RC and MP were leaving her, or her ideas, out of this board member recruitment process. On the balance of probabilities, I do not find that the Claimant was being deliberately ignored or sidelined. RC and MP said in evidence they thought it likely as busy voluntary directors they probably overlooked the questionnaire, and it was not intentional. I think that is likely to have been the case, but also that it fell away in circumstances in which by the next day they had a practical plan to contact KW and JG in any event. I do not find that there was any kind of plan to recruit KW (or indeed JG) as a means to manipulate the ultimate CEO selection process. For reasons I come on to later, KW actually championed the Claimant in the later selection process and JG was in general a bit supporter of the Claimant because of the governance help she had given him. I also fully accept KW's evidence that she was perfectly capable of, and indeed did, make up and express her own views and mind. In my judgement, JG and KW were approached for the reasons that RC says they were. Neither of them were particularly well known to RC (indeed it strikes me that JG probably knew SL and the Claimant better, and it was them he had spoken so positively about at the members day). Further, I do not find there was any plan or agreement to appoint RC between RC and MP (or indeed anyone else). As I have already stated, RC at that time, I accept, was actually contemplating reducing her commitments with the Respondent.

3.36 KW and JG agreed to become board members and attended their first board meeting on 2 October 2023 [458]. There is a question in this case about when RC first started contemplating and communicating that she may be interested in the CEO vacancy. At the meeting on 2 October 2023 a provisional timeline for the recruitment process was set [460]. As part of this the selection panel of MP, SL, JG and KW was set. The selection panel did not include RC. The flavour of KW and JG's evidence was that RC stayed out of all discussions relating to recruitment at board meetings including this one, whereas RC's account in her witness statement was that she did not really start contemplating the possibility of applying until December time. In oral evidence RC acknowledged what KW and JG had said, and said her potential interest in applying may have in fact been one reason she was not on the selection panel. She said she could not honestly remember the exact date at which she first expressed an interest. MP said in the grievance that RC had not expressed an interest until the Autum of 2023 and that RC had been considering it prior to then but was suffering with serious health issues and would also have to give up her business. He said RC had no firm intention to apply until January 2024. The Claimant said in the grievance process that SL had told her RC had expressed an interest before the Claimant did, and so it must be before July 2023. SL said in evidence that when RC said she was first considering applying it was much later than when SL mentioned retirement.

3.37 RC's evidence is also that following her last treatment appointment in the summer of 2023 she had begun to think about looking for paid employment, in part because of sick pay security. The evidence on this point is not all consistent, but on the balance of probabilities, I think it more likely that RC had decided she was potentially interested in applying (albeit it was not a final decision) by this time of the October 2023 board meeting, and that she declared the interest and did not take part in the discussion processes. I think as new board members KG and JG are likely to have clearer memories of the sequence of events because there are less board meetings that they can muddle up in their memories. It also ties in with RC completing some serious treatment for her medical condition before making her decision. I also accept that RC did not take part in the discussions; again that was KG and JG's very clear memory. RC absenting herself from the discussions is not reflected in the board minutes or indeed any board minutes. But as I have said, I accept the evidence that it did in practice happen. I also accept SL's evidence that the actual job description, person specification and job advert were not produced at this time; the timeline was about the date by which these things were hopefully going to be done in the future.

3.38 In December 2023 SL then prepared a draft CEO job description, advert and interview questions [475-479]. Amongst various attributes the specification included developing new business opportunities for the organisation and to build the income streams and reserves. By this time RC had definitely decided to apply for the vacancy and told SL. The vacancy was publicly advertised. On 18 December 2023 SL sent the Claimant a copy of the advert and job specification. At the same time SL sent exactly the same email and attachments to RC [481-482].

3.39 On 15 January 2024 RC applied for the role, sending (as had been specified in the job advert) an application letter and CV [486-491]. SL encouraged the Claimant to make an application, reminding the Claimant on 17 January 2024 about the deadline [499 and 498]. On 19 January the Claimant submitted her application, likewise providing a covering letter and CV [500-508].

3.40 There were around 40 applications and a sifting process was undertaken which reduced it down to 9. There was then a shortlisting process where the applications were again reduced from 9 to 5 for interview. On 22 January SL wrote to all 5 candidates inviting them to interview, and giving them notification of a need to provide a 5 minute presentation about their vision and potential plan for the Respondent over the first 12 months of the CEO appointment. SL's email to the Claimant was sent before (albeit by minutes) the same email being sent to RC. On 30 January 2024 all candidates were then sent a copy of the interview questions in advance. Again, the questions were sent by SL to the Claimant, slightly before they were sent to RC. There was therefore no preferential treatment given to RC in terms of timing.

**The scoring of the candidates**

3.41 The interviews then took place on 31 January 2024. The candidates gave their presentations and were asked the same set of questions they had been given in advance. Each panel member had their own scoring sheets they filled in with their own notes or observations as each interview progressed and for recording their own scores.

3.42 For RC, SL scored her 4 out of 5 across the 6 questions, totalling 24/30. MP scored RC with a score of 5 out of 5 on four of the questions, and a 4 to a 5 out of 5 on two of the questions totalling 28 to 30 out of 30. JG scored RC full marks of 30. KW scored RC 5 out of 5 on four questions and 4 out of 5 on two questions, totalling 28 out of 30.

3.43 For the Claimant, SL scored her 4 out of 5 on four questions, on question four gave her a 5 out of 5, and then on question six gave her either a 3 or a 4 out of 5. That gave an overall score of 24 or 25 out of 30. MP scored the Claimant as a 4 or a 5 out of 5 on four of the questions, a 4 on one question, and a 3 or 4 out of 5 on question six. That gave a total of between 23 and 28 out of 30. JG scored the Claimant 5 out of 5 on question one, a four to a five out of 5 on three questions, and a four out of 5 on two questions; giving an overall score of 25 to 28 out of 30. KW scored the Claimant 28 out of 30, with 4 out of 5 on two questions, and 5 out of 5 on the other 4 questions.

3.44 Candidate C was a white female. SL scored her between 17 and 20 out of 30. MP scored her 20 to 25 out of 30. JG scored her 17 to 21 out of 30. KW's evidence is (not challenged in cross examination) that she has looked everywhere and cannot find her notes for Candidate C, but she recalls, like the others, not giving Candidate C a score as high as C or RC.

3.45 Candidate D was a white female. SL scored her 24 or 25 out of 30. MP scored her 29 out of 30. JG scored her 20 to 24 out of 30. KW scored her a 29 out of 30.

3.46 Candidate E was a white male. SL scored him 26 out of 30. MP scored him between 24 to 30 out of 30. JG scored him 13 to 15 out of 30. KW scored him 21 out of 30.

3.47 In relation to JG's scoring of the Claimant, he had handwritten on his score sheet a total score of 32. It was the Claimant's case at the hearing that this, potentially in conjunction with a grid that JG had written on his score sheet about the Claimant and RC, that JG had added some additional criteria and had given her additional marks and more than RC. JG said in evidence that this annotation was not part of the interview process or additional scoring, and it was just him taking his own notes as he worked through the process. I accept his account of what he wrote. I think it likely that the 32 mark was an adding up error; a score of 32 was not mathematically possible.

3.48 There was no global scoring matrix produced on the day. The matrices in the bundle were produced by RC during the course of the tribunal proceedings and she accepts they contain errors. RC accepted she may have rushed the task and not properly checked it. I accept her evidence about that.

**The CEO recruitment decision**

3.49 Once the interviews were complete the panel members compared individual scores and discussed each candidate and their answers. KW says, and I accept her evidence about this, because it best explains what happened next as against the scoring profiles: KW and MP thought that Candidate D had interviewed incredibly well, but SL and JG did not agree with this. JG and SL preferred RC and the Claimant as candidates. In the group discussion it then became clear that the candidates that all the panel members collectively thought were best for the job were the Claimant and RC, and so it was agreed the other three candidates would be put aside and a choice made between the Claimant and RC.

3.50 It had been a long day and so it was decided to meet again the following day and continue the decision making between the Claimant and RC. The process took several hours. The panel members discussed the interviews and scoring in some detail. When they looked at the scoring across the panel RC had scored higher. But they also looked at each candidate's attributes and ability to carry out the role. They did not just make the decision by reference to the highest overall score.

3.51 KW's initial personal preference was the Claimant (so therefore making it unlikely that KW was the subject of a plan to get KW on the board to make a decision that favoured RC as a candidate). KW liked that the Claimant was a long term employee of the Respondent. But KW had scored both candidates the same total score, and felt they had impressed in different ways. For example, she also rated RC on RC's answer given on a question relating to disability, and KW could see RC had a wider range of experience than the Claimant. KW's evidence is that there was a long discussion and her evidence is that it was felt amongst the panel that RC had more experience and could bring a lot of connections. She says: "*We felt that Vina could grow into the job, but that Rosie would come into the job knowing exactly what would need to be done. We felt that ultimately SFW needed the former, namely someone that could immediately come in and run with SFW. This is because SFW operates in a fast-moving environment where funding is difficult to secure; being able to showcase the organisation to stand out was vital and Rosie brought this knowledge with her along with passion and many other attributes. We felt this would mean that SFW was in safe hands. At no point was race a considering factor*." KW says that whilst she initially favoured the Claimant, on discussing the role and candidates with the panel, it was clear there were other factors in place that meant RC's additional breadth of experience was particularly valuable to the Respondent. KW said in oral evidence that they were discussing attributes and how both candidates fit in with the Respondent. She said she had felt the Claimant's attributes were better or different but they both had equally high attributes and different ways of doing things. She said the Claimant was directly inside the organisation but RC came with other strengths such as fundraising and knowledge about disability. She said she changed her mind because she could see the bigger picture and it was a decision she herself had made as she knew her own mind.

3.52 JG's evidence is that he felt RC was the best candidate, saying she showed an in depth knowledge of the third sector and the needs of her clients, giving service focussed responses, and displaying a sophisticated understanding of what it takes to run and manage an organisation. He says he felt the Respondent would be in safe hands. He felt the Claimant was also impressive, and a good candidate, but her answers were not as robust as RC's. That is reflected in his individual scoring. JG's evidence is that RC scored higher than the Claimant in the scoring review conducted across the panel. But he also gives evidence there were long and wider discussions about the candidates. He says he voiced an opinion that RC was a standout candidate who could deliver for the Respondent in the here and now. He says that ultimately the differentiating factor for the panel was RC's breadth of experience and her ability to hit the ground running. He says they felt that the Claimant was a valued employee who could offer a lot, but would need to develop into the role.

3.53 SL in her witness statement at paragraph 53 sets out the Claimant's strengths in the application. SL goes on to say that RC demonstrated a significantly broader range of experience, and a more forward thinking strategic vision for the organisation. SL says that RC articulated a clear understanding of how the Respondent could strengthen its position through deeper alignment with the Welsh Government and others, had proven fundraising capability at scale, extensive experience in designing and delivering training and network events, and strong social media skills. SL says that RC presented a more comprehensive, strategically aligned and future focused skill set. SL says that the ultimate conclusion was reached on the basis of RC's higher scores overall, RC's experience in managing her own successful fundraising business, that RC had broader experience, RC's successes in securing high levels of funding for third sector organisations, and her experience of social enterprise.

3.54 SL handwrote on her scoring sheet that the Claimant knows the organisation, can hit the ground running, is passionate about the sector, that the Claimant showed obvious passion and "Vina deserves this role."

3.55 MP on a scoring sheet for another candidate against the question relating to equal opportunities and an equitable approach wrote "Vina & Ravi" in a circle. He said he could not now explain the reference, but that he did remember some candidates in their replies did refer to members of staff. He said the notation next to it also referred to religious festivals so it was possible it also related to that in some way. I note in that regard that another panel member's summary of the same response [567] does, for example, record an answer referring to reviewing policies.

3.56 MP in his witness statement says RC had a clear vision of what extra skills and experience she would bring, including skills in project design and fundraising. He says he felt RC had the motivation and wherewithal to expand and diversify the Respondent. He says he was impressed by the Claimant's interview, but that he scored her lower on question 6 because he questioned the evidence about her ability to look for new sources of income as CEO and experience in the area. He says he felt the Claimant would be a good pair of hands and continue running the Respondent in much the same way it was already operating. He says that in the ultimate decision making, both candidates had an understanding of how the organisation ran. The Claimant had a greater day to day knowledge of the day to day workings, but RC had experience of running her own business, and a track record in obtaining large grants for clients, which would be valuable to the Respondent because funding for third sector organisations is always a concern. He says that overall it was felt RC had a better mix of skills and things to bring to the role, her presentation was slightly better, her ideas for expanding the role of the Respondent were better, and that as a core source of funding would come to an end in 12 months' time, it concentrated the panel's mind on finding a candidate who had a proven track record of large amounts of money coming into other organisations.

3.57 There is a record of the recruitment decision at [582] which states: "*Both the candidates had ability to lead the organisation, but it was agreed that Rosie had broader experience*…"

3.58 The subsequent grievance investigation by PC (albeit it was not an investigation into a race discrimination allegation because the Claimant had not made that specific complaint at the time), records that SL had said many organisations had their funding from Welsh Government reduced or stopped, and the Respondent could no longer rely on traditional sources of funding in the future. It records that it was therefore decided that RC's broader set of skills and experience – and in particular, running her own successful fundraising business (which meant she had a great deal of experience in obtaining large funds for a number of organisations) – were a better fit for the organisation's future needs and became the deciding factor. PC noted that SL said that KW had been championing the Claimant.

3.59 MP said in the grievance investigation that RC had a strong track record in large-scale funding raising and she was also experienced in terms of business and project planning which are critical to the process of fundraising. He said the Claimant's experience was not on the scale of RC's. PC ultimately concluded that RC was appointed due to her background and experience in large-scale fundraising, and it was PC's view that this was a completely sensible and compelling reason for choosing RC for the role given the funding position. That was PC's finding, however what she actually records as SL and MP saying to her is more nuanced than that, as I have just set out.

3.60 At the grievance appeal stage SL said that one of the factors in the decision making was RC's breadth of experienced of fundraising, but it was not just the fundraising, it was also around RC's strategic thinking and her ability and her broader experience of what they were looking for. MP said that RC got the role because she had a better mix of skills and things to bring to the role, her presentation was slightly better, and her ideas for expanding the role of the Respondent was slightly better. He spoke about how it had been a tough decision between two strong candidates, but that RC had developed other skills that they thought would be useful for the organisation, and RC's vision of what she wanted to do met with what the directors were looking for. He denied that experience of fundraising was the difference in the appointment decision, saying it was an added factor but was not the deciding factor.

3.61 I set out my conclusion on the reason why RC was chosen as the successful candidate in my Discussion and Conclusions section below because, in part, it involves an evaluation of the burden of proof. A decision was also made to offer the Claimant an enhanced role in recognition of what she had to offer, and the work she had done for the Respondent, and in a wish to retain her services in a situation in which the panel knew she was going to be deeply upset. It seems likely that the initial suggestion for this came from JG. It was agreed that MP would let the candidates know the outcome and meet with the Claimant and discuss the potential enhanced role. I find that the expectation of the panel members was that any firm proposal on a role and an increase in salary would need to be approved by the board. Potential titles such as vice or deputy CEO were bandied about but there was no concrete proposal or agreement as to exactly what would be offered to the Claimant. The board were aware that the arrangement also had to be negotiated with RC as the incoming CEO and an idea was formed that the Claimant and RC may be able to work together to carve out a new role for the Claimant. MP was left to take forward this embryonic idea.

**Communication of decision to the Claimant and first claimed protected disclosure**

3.62 On 2 February 2024 MP offered RC the job, which she accepted. MP told the Claimant that her application and not been successful and that RC was the successful candidate. This was the first time the Claimant learned that RC had applied. MP told the Claimant that the board wanted to recognise her commitment to the Respondent. He said that the Claimant had a good understanding of how the organisation runs. He said something about they hoped that the Claimant would be able to make introductions for RC. He said it had been a difficult decision between the two of them, but the panel finally felt that RC was the best fit for the organisation. He told the Claimant that he wanted to meet so that they could discuss an enhanced role to recognise her commitment and they arranged to meet on 5 February.

3.63 MP says that the meeting on 5 February was a difficult one because the Claimant was very upset. He says that he told the Claimant she was a valued employee and that he explained RC had been appointed due to her broader experience in certain areas, particularly her strong track record in fundraising, and her experience of running her own fundraising consultancy and I accept he said something along those lines.

3.64 The Claimant alleges that at the meeting with MP she made a protected disclosure to him. The Claimant said in oral evidence that she told MP that she was disappointed that a director had been appointed, that RC was not eligible to apply under the governing document, that RC was privy to information that other candidates were not, and she had also said there was a conflict of interest. In her witness statement the Claimant asserts that she asked how the board could have appointed someone where there was a conflict of interest and was not eligible to apply according to the governing document. She asserts that MP looked embarrassed and tried to deny any conflict of interest, so she elaborated and said that RC would have been privy to information that other candidates would not have been and reminded him the governing document did not allow board members to be employed. She alleges that MP did not respond directly to her comments but moved the conversation on to the enhanced role.

3.65 MP says that the Claimant was visibly upset and questioned whether the panel had been fair in not exploring her own fundraising experience in greater depth. He says that he had responded that the Claimant's application had included details of her fundraising background which appeared to be limited to local causes. The Claimant does not accept that they had this particular exchange, saying she would have corrected MP as to her wider fundraising background. On balance I consider it likely that they did have an exchange along these lines, because I consider it likely that MP would have proffered some explanation about RC's selection, and also because we know MP scored the Claimant lower than RC on question six.

3.66 MP says in his witness statement that the Claimant did not make any disclosure of the type set out in the List of Issues, or about a potential criminal offence, or breach of a legal obligation, or a miscarriage of justice. He says that the Claimant did not raise anything that suggested she had wider concerns about the Respondent's governance model or structure or that they had done anything wrong beyond not picking the Claimant for the CEO role. MP at one point in oral evidence that the Claimant may have said that RC was privy to information. But then he also said he did not remember that, that the Claimant did not raise these things with him, and he did not recall her saying there was a conflict of interest.

3.67 The Claimant in her ET1 says: "*I raised my concerns with the Chair on the 5th of February when we met, and I also raised the issue of the chosen candidate's eligibility to applying (under the organisational governing document and Charity Law) and conflicts of interest and being a party to information that I nor the other candidates were, giving them an unfair advantage*." In her subsequent email of 13 February the Claimant said she was disappointed to learn that the job had been given to another candidate, and a director. That most contemporaneous written document is therefore far more generalised than what the Claimant has since asserted in her ET1 or witness statement or oral evidence. In that email she also went on to seek various documents, saying she did not feel she had constructive formal feedback, and her request included copies of any conflicts of interest that were registered. In her further email of 19 February 2024 the Claimant said, when seeking a copy of the register of conflicts of interest: "*There are reasonable grounds to believe that the process was flawed. I raised my concerns with Martin at our meeting on the 5th and again with Rosie on the 8th of February highlighting one of the conflicts i.e. that the selected candidate (as a director on the board) was privy to information other candidates weren't giving them an unfair advantage*."

3.68 Weighing all of the evidence, I consider that at this time the Claimant was processing the fact that she had lost out in the appointment to RC, and that she was being told that RC was a better fit. I consider it likely, and find, that this led the Claimant to believe that RC may have had access to information that advantaged RC in some way, hence RC being seen as the better fit. In that context, on the balance of probabilities, I consider, and find, that the most the Claimant said to MP were words to the effect that RC may have had access to or was privy to information that benefited RC in some way or gave RC an unfair advantage. I do not find on the balance of probabilities that the Claimant said at this point there was a conflict of interest, or breach of the governing documents, or breach of Charity Law, or that RC was not eligible under the governing document.

3.69 In relation to the proposed enhanced role for the Claimant, MP told her that he had a blank page, and the board would like the Claimant and RC to carve out her new role. MP said that some of the titles that had been bandied about were Deputy CEO and Chief Operating Officer.

3.70 The Claimant says she was told there would be an enhanced salary to match, which was to be agreed, but would be backdated to 1 February 2024 when agreed. The Claimant says that MP said this could all move forward quite soon with the Claimant to meet with RC in the next couple of days, and then a further meeting with RC and MP after that. The Claimant says that MP said that the role would be implemented with immediate effect or effective immediately. She alleges that MP actually offered her the role of Deputy CEO or Chief Operating Officer.

3.71 MP accepts he may have referred to the backdating of salary to 1 February 2024, but does not, as I understand it, agree he said the role was to be implemented with immediate effect or effective immediately. MP says the Claimant remained upset at the conclusion of the meeting and wanted specific details about her future role, responsibilities and remuneration and that he said these things would be determined once the new CEO had taken up her post but that the board were committed to recognising and rewarding her loyalty and contribution. He says he did not offer the role of Deputy CEO or Chief Operating Officer.

3.72 On balance, I find that MP did not say the role was to be implemented with immediate effect or effective immediately. I find that because on any analysis there was still work to be done in reaching agreement or sorting the arrangements out, so it logically could not be effective immediately. But I accept that the Claimant was left with the impression from what was said that it was a process that MP envisaged would happen promptly, with the enhanced salary, when resolved, backdated to 1 February. MP was of course trying to ensure that the Claimant did not leave and reassure her that she was a valued employee. I think he and the board, and indeed MP himself said this in evidence, were also somewhat naïve about how quickly it could in fact all be sorted out. I also find that MP did *not* offer Claimant the title of Deputy CEO or Chief Operating Officer. There was no job title actually offered because the job title was part of what was to be negotiated and agreed. But MP *did* tell the Claimant these were the kinds of titles the board had bandied about. Again, and I appreciate I say this with the benefit of hindsight, but in doing so it did not help manage the Claimant's expectations going forward, contributing to how things then unfortunately unravelled.

**Second claimed protected disclosure**

3.73 The Claimant asserts she made a protected disclosure to SL on 7 February 2024. There is no content about this alleged disclosure in the Claimant's witness statement other than a reference to her subsequent grievance, saying this included matters she had already raised with SL on 7 February (and MP on 5 February and RC on 8 February) without clearly identifying what it is she was saying she actually said to SL on 7 February. In oral evidence the Claimant said she had looked at SL, asked SL what had happened, that SL had looked down, embarrassed, and that the Claimant had then said "*isn't there a conflict of interest?"* She alleged that SL then said SL could not think of two better people to take the organisation further. The Claimant said she left it there as she had a good relationship with SL and did not want to hurt SL.

3.74 SL in her oral evidence denied this version of events, saying she was not embarrassed in her conversation with the Claimant and did not get embarrassed by these kind of conversations. SL did not agree that the Claimant had said or questioned that the appointment of RC was a conflict. SL said the Claimant was quite cross and said the process was flawed. She said she did not know the Claimant was referring (if indeed the Claimant was) to governance concerns from 2015 as the Claimant had not elaborated. SL in her written witness statement, was trying to respond to an allegation that she had very little information about, and so understandably looked to the Claimant's later grievance. SL therefore said she did not remember the Claimant raising with her things such as neglect of director's duties, company law act breaches, criminal offences, or breach of legal obligations.

3.75 We are (or I am) in the unfortunate position of trying to recreate two years down the line what the Claimant said to SL when the Claimant had not clearly articulated what she specifically said to SL in the meantime. On the balance of probabilities, I do not find that the Claimant said to SL there was a conflict of interest or raised the question of whether there was a conflict of interest. This was never asserted until the final hearing. SL accepted that the Claimant made a reference to the process being flawed and I accept that is the most that the Claimant said to SL.

**Claimed third protected disclosure**

3.76 The agreed next step between the Claimant and MP was that the Claimant would meet with RC so they could have the intended discussion about carving out an enhanced role for the Claimant. The Claimant met with RC in a coffee shop on 8 February 2024. They looked together, on paper, at the CEO job description and the Claimant highlighted what she considered she was already doing and what she thought she could take on a part of her new enhanced role to assist RC. It was agreed the Claimant would take it away and send it through electronically. RC agreed that she would set up a further three way meeting with MP.

3.77 The Claimant's witness statement refers to this meeting with RC but does not set out what it is she says she said to RC that amounted to a protected disclosure. The Claimant said in oral evidence that she said to RC that RC had had an unfair advantage as a member of the board, that RC had asked how that was, and that the Claimant had replied that RC sat on the board and was not eligible to apply according to the governing document. The Claimant said she did not say any more because she did not want to antagonise RC bearing in mind she was hoping to work with RC on implementing the enhanced role. The Claimant said she did, however, say something because she was a little annoyed that RC was not eligible to apply. The Claimant said that breaching the governing document would mean a breach of the Companies Act and potentially charity law too, but she did not use those terms when speaking with RC. The Claimant said she did not think she said to RC that it was unfair to the Claimant and other candidates, but that she had just, on that point, referred to RC having an unfair advantage.

3.78 RC says in her witness statement that the Claimant expressed concerns RC may have had an unfair advantage during the interview process, and that she told the Claimant she did not believe this to be the case, and that when she had declared her interest in the CEO position she had been immediately removed from all board level communications and meetings. RC says she could not recall the Claimant raising any of the protected disclosure points that are in the List of Issues save for 4.6.3.6 [172] that: "*Rosie Cribb was privy to information that other candidates were not, in particular the financial position of the Respondent*." RC said in oral evidence again that the Claimant said at the meeting, she thought that RC had an unfair advantage and that was the Claimant's main concern and the Claimant had been quite open about that.

3.79 Again the first time the Claimant actually properly set out what she alleges she said to RC was in oral evidence at the final hearing, some 2 years down the line. On the balance of probabilities, I find that the Claimant told RC words to the effect that she considered that RC may have had an unfair advantage through being privy to information as a board member, which is in essence how RC remembers it. I do not find the Claimant said to RC that RC was not eligible to apply under the governing document, or there had been a breach of the governing document.

**Other exchanges between the Claimant and RC**

3.80 RC was meeting with the Claimant at the request of MP, on the back of the panel's conclusion that RC and the Claimant should be asked to work together to carve out the enhanced role for the Claimant. RC's evidence is that she found this a difficult situation to be placed in because she had not yet started the job of CEO, did not know what areas she would want to delegate, what the Claimant's exact skill set was, and what would be best for the Respondent as a whole. I accept RC's evidence; it is a perfectly understandable reaction to the situation RC faced which she did not know about until told by MP what the panel's wishes were. But notwithstanding her concerns, RC did as she had been asked and approached the meeting as being an exploratory discussion as to how the new relationship could potentially work. RC was also aware that the Claimant was very upset at not getting the CEO job and she wanted, I accept, to try to build a relationship with the Claimant, to try to find a mutually agreeable pathway forward, and to honour the panel's request and direction.

3.81 When running through the job description to discuss potential aspects of the CEO role that it might be appropriate for the Claimant to take on, RC recalls the Claimant saying her strengths were around networking and building relationships. She says they also discussed the Claimant taking on project management, and perhaps staff supervision. RC says they did also discuss job titles, and RC expressed a preference for Operational Manager. RC says, and I accept, as again it is a natural reaction to the situation RC found herself in, that when she accepted the job she had not expected there to be a Deputy CEO. RC subjectively felt it with such a job title it inherently meant changing the goalposts, carving two roles out of one, and changing the job she had accepted. RC says she was also concerned it would leave an operational gap with the Claimant doing less of the work the Claimant had focused on previously, and have a knock on effect on the rest of the organisation. RC felt she was being rushed into making a really important decision when she was not yet even in post.

3.82 RC says, and I accept, that she did not approach her work with the Claimant during that meeting any differently when the Claimant raised the point about RC potentially having an unfair advantage in the recruitment process.

3.83 RC says that she told the Claimant that she did not want to rush into any staffing decision and needed time to fully understand the operational aspects of the business before implementing any significant changes, it was not going to happen overnight, but that she was committed to exploring an enhanced role and raising the Claimant's salary. The Claimant disputes that RC said this. The Claimant's version of events is that RC agreed to set up the meeting with MP the following week to finalise the job description, and title, with the backdating to 1 February 2024.

3.84 MP had asked RC to get in touch with the Claimant about arranging a face to face meeting, and had then said to the Claimant: "*As we agreed, we will then have a three-way meeting after that. If you could suggest some mutually agreeable dates that would be great.*" [590]. On the morning of Friday 9 February 2024 the Claimant sent RC an email with the highlighted CEO job description, saying she had highlighted areas where she could support RC, roles she was already doing and need to formalise and be given recognition for, and areas she would excel in for the benefit of the Respondent [594]. The Claimant said she was keen to get her new job description and role formalised, that they had agreed on some dates and times to meet MP early the following week, and she set out some potential dates of 12, 13 and 14 February. There must therefore have been a discussion between the Claimant and RC about setting up the next meeting with MP so, on balance, I do not think the Claimant had any impression from RC at that particular point in time that RC was actually feeling it was all a bit rushed, even if RC was in fact increasingly feeling that way (and which is shown by RC then seeking a meeting with SL and MP before the next meeting with the Claimant – see immediately below).

3.85 RC forwarded this email on to MP and SL [594] saying the meeting yesterday "*went well with Ravi – we discussed areas which she was strong in, and which would complement my own skill base*." RC incorrectly named the Claimant, referring to another member of staff, RV. RC said in oral evidence she struggles with names as part of her brain fog post medical treatment, and it was simply an error. In the rest of the email RC uses the Claimant's correct name. RC said to MP and SL that the Claimant had highlighted areas of the CEO job description the Claimant was interested in taking on, and she thought the major one was taking on the line management of two other members of staff. RC said she would like to discuss this with SL and MP before they meet again with the Claimant. RC suggested a virtual chat on Monday and then a meeting with the Claimant on Wednesday, if MP was free. Shortly after RC replied to the Claimant to thank her and said she would talk to MP and confirm the date to meet next week. She said: "*It was good to meet with you yesterday, thank you, I am happy to be working together. I am sure we can find a way forward with which we are both happy.*"

3.86 RC's emails were positive. There was nothing in her email to MP and SL about the Claimant having made any form of disclosure or having said something that concerned RC or would concern the Respondent.

3.87 The Claimant says that the meeting with MP was arranged for Wednesday, and I think that must be correct because she refers to it in her subsequent email.

3.88 On Monday 12 February, in the evening, the Claimant emailed RC saying: "*As you are aware we are meeting on Wednesday to discuss and agree my new JD and job title…"* The Claimant asked RC to send across the new job description by the end of Tuesday because she would need to have sight of it before the meeting with MP on the Wednesday. So, she was expecting a draft job description for her new role [601].

3.89 The following morning, Tuesday 13 February, RC emailed the Claimant, saying unfortunately MP was away on holiday until the next day and so she had not managed to speak to him. RC's proposed meeting with MP on the Monday therefore had not happened. RC then said: "*Due to the impact and implications operationally and financially of any changes to staffing roles and responsibilities, more time will be needed to discuss options with the board before a new job description is drafted for consideration. Therefore I suggest that we postpone the meeting this week until I have had more time to speak with the board and to understand the wider picture. It was useful to meet informally last week to understand your perspective and areas of interest and skill. I would not want to rush into making decisions (and neither have capacity due to my current workload), as it would not be the right thing for anyone involved or for the organisation itself until I have deeper understanding of the implications of any proposed changes. I will talk with Martin and San tomorrow and be in touch following that with a timescale for a new structure to be created in collaboration with the board, and a job description drafted for you to consider."*

3.90 RC forwarded the email on to MP and SL, saying she had suggested postponing the meeting the next day with the Claimant because she definitely felt more time was needed to consider the options and implications of job role changes. RC said it was not something she felt could be decided overnight and with her own limited understanding of the operations of the Respondent. RC said she felt slightly like she had walked into a room blindfolded. RC asked to talk the next day with SL too, saying she felt she needed to get some clarity and talk through the options, because essentially they were looking at a low level restructure.

3.91 MP replied to agree a time to meet and said he was happy to postpone the meeting with the Claimant. SL replied to say she fully understood and suggested times for them to have a discussion.

3.92 At lunchtime RC emailed the Claimant again, copying in MP, saying she had email contact from MP who was quite unwell with a bad cold and would not be able to meet in person the next day. She said they were meeting virtually the next day to discuss options going forward and would be in touch with a timescale "*that we can work to, considering availability of all board members and my own capacity, as it is currently half-term and I have a range of family commitments."* MP confirmed in evidence he had genuinely been unwell with a bad cold. As can be seen from the above RC was also accurately explaining she was due to have a discussion with MP the next day.

3.93 RC's communications did not land well with the Claimant. That afternoon the Claimant emailed MP and SL [629]. She asserts that she made a further protected disclosure in that email.

**Fourth claimed protected disclosure**

3.94 The Claimant's email of 13 February said: "*Following the interview for CEO on the 31 January, I was disappointed to learn that the job had been appointed to another candidate, and a director."* The Claimant went on to say she did not feel she had constructive formal feedback and wanted a copy of the scores, notes from the interview, and copies of any conflicts of interest that were registered. She said: "*All I have been told is that I did extremely well, you were very impressed with my presentation and it fitted in with the vision of the board/panel. However, you told me the selected candidate was a better fit for the next phase of the organisation*."

3.95 The Claimant also said: "*At our meeting you were very keen to say how you value me and do not want to lose me and you offered the roles of Deputy CEO and/or Chief Operating Officer. (You agreed that the new job title and JD would be of immediate effect). You asked me to carve out my new JD to reflect what I already do and want for my career development."* The Claimant said in the email she had met, as agreed, with RC to discuss a way forward, that the Claimant would highlight what she was already said they were due to meet the next day, but that meeting had been rescheduled to a later date. The Claimant said the situation was making her very anxious and uncertain about her current and future roles and she would like to meet the next day, as previously scheduled.

3.96 SL made contact with the Respondent's long term external HR advisors, Effective HRM seeking advice about the Claimant's email [619]. The Respondent has no internal HR personnel. An advice call was arranged for the following day. That afternoon MP replied to the Claimant say he had just got back from a few days away with a streaming cold and he did not think a meeting was advisable because she did not want to catch it. MP said: "*Can I reassure that you do not need to be worried about current or future roles*" and that he would be back in touch to rearrange the meeting.

**14 February 2024**

3.97 The following morning the Claimant emailed MP and SL [627] saying: "*It would really be helpful if you could please explain, if any decisions need to be discussed with the whole board, why was my time and energy wasted in meeting with Rosie, to draft out my new role. Not only has this added on extra* *days to any formal recognition in my role and duties, taken time out of a very busy schedule and has added undue stress."*

3.98 The Claimant asked if RC did not have capacity to draft a new job description or meet why was this only conveyed the day before they were due to meet. She asked why she was led to believe they would be meeting to discuss and finalise her new job description and title. She referred to having previously asked for interview scores, interview notes and a copy of any conflicts of interest that were registered. She said finalising her job description and title to reflect what she was currently doing and taking account of career development was a priority and her job description had not been reviewed since she started in 2013.

3.99 Following the advice call with Effective HRM, MP prepared a draft email for them to check which was sent to the Claimant that afternoon [625]. He apologised for putting off a meeting due to his cold and said he was happy to meet the next day, or Friday, or early the following week. MP set out his response to the Claimant's two emails. He said that on 5 February they had discussed the idea of increasing her responsibilities and reflecting that in a potential different job title and added remuneration. He said that the new CEO did not start until April, and precise details need to be finalised then and agreed by the board. MP said: "*I am sorry if you gained the impression that it would be done sooner. I fear there has been a misunderstanding here and I am very sorry if this is the case.*" He said the purpose of the meeting with RC was to allay the Claimant's fears, for her to get to know the new CEO, and explore how you will work together in the future. He said: "*I expected that you would discuss your enhanced role, but that the details would be finalised later."*

3.100 MP said that the organisation needed to be careful in discussing interview scores, notes and conflicts of interest because of the rules on privacy and data protection. He said they were happy to share the Claimant's own interview notes and scoring, it may take some time to gather the notes from all participants, but they would be shared as soon as possible. The Claimant was offered coaching or mentoring via the HR advisors for career development if she considered it would be helpful. MP said he was happy to discuss all these things and anything else at the meeting and finished up by saying he realised the decision was disappointing but that the last they wanted was for the Claimant to feel under undue stress, she was a very valued employee and they want her to be part of the Respondent's exciting future.

3.101 That evening SL emailed the panel members seeking copies of their notes and scoring [792]. Also, that evening RC emailed MP and SL her letter of resignation as a director [621-622]. In the same email RC also set out some aspects she thought could be considered in a new job description for the Claimant. RC suggested a possible title of Operations and (governance?) Manager with responsibilities for line management of client support staff, project management support, supporting the CEO with membership management and development, business administration, new business development, fundraising, non-specific operational support, deputisation for the CEO at meetings and events when needed.

3.102 The Claimant considers that RC resigning demonstrates that there was disquiet at the disclosures she says she made. RC said in evidence that she resigned from the board because she felt it was best practice to do that, but she also accepted that it was in part a response to the Claimant raising concerns that the Claimant thought RC had had an unfair advantage, and it made her think more about it and that it would be better to have a cleaner break. I accept RC's evidence in that regard. As I have said elsewhere RC was a reflective witness and in my judgement generally a reflective person and whilst she did not think she had in fact had an unfair advantage as a director, she could in effect see how lines could be blurred, or people would see lines to be blurred, it would be better to have a clean break between being a director and then an employed CEO, and she made that personal choice for herself. RC was not in my judgement reacting negatively to what the Claimant had said, or taking against the Claimant.

**15th and 16th February 2024**

3.103 On the morning of 15 February the Claimant replied to MP [623] saying she preferred to meet on the Friday. But she also said she felt they needed to know the purpose of the meeting. She said she felt things agreed at meetings were later being denied and trust was being broken. She said MP had told her the new job description and title would be in place immediately and that he was now saying it needed to be delayed until April/when the CEO starts. The Claimant said RC had stated she would be able to draft a new job description in preparation for the three way meeting. She said she was entitled to the interview scores and other documents for all candidates under the Freedom of Information Act as long as personal information is removed. She said a crucial point had not been addressed that her current job description and title do not reflect what she does and had done for a long time. The Claimant said it needed to be addressed as a priority and could not wait until April. She said without that she felt there was no security in her role. She said: "*You say you value me as an employee, not recognising formally what I do, not reviewing my JD in nearly 11 years, not reviewing my salary in 11 years and the fact that I am on the same pay scale as a new development officer is an insult to me and my commitment to the organisation*." She said if they were to meet that was the one thing she would appreciate being addressed immediately.

3.104 MP contacted Effective HRM seeking further advice [623]. Following that advice, he emailed the Claimant a reply saying given the content of her email it was important to ask if she wanted her concerns dealt formally as a grievance [637]. The Claimant replied [651] to say she considered there were two distinct issues. One was her asking for information as a candidate under the Freedom of Information Act. The second was review of her job title, description and salary to reflect her current contribution, duties and tasks. She said she would welcome an opportunity to do this without raising a formal grievance.

3.105 MP spoke again with Effective HRM who contacted SL to ask, as current CEO and the Claimant's line manager, whether she might be best placed to have the meeting with the Claimant about job description issue. The HR Business Partner also said she would be passing the matter to a colleague, PC, because PC had greater capacity and should be able to deal with the grievance if matters progressed to that [645].

3.106 The next day, Friday 16 February, MP emailed the Claimant to say SL would be in touch to arrange a meeting to discuss the job description, promoted role and salary review. He said they were happy to share the Claimant's own interview scores and notes, and they could be sent as they arrived or once all notes were collated from the panel. MP said they could not provide other candidates' scores and notes because even if names were removed it would still be possible to identify them from jigsaw information, which would breach obligations under the GDPR and Data Protection Act 2018. He said the Freedom of Information Act did not apply to the Respondent because it was not a public authority and there was also an exemption to allow the withholding of information that would be contrary to the GDPR or Data Protection Act.

**19 February 2024 to 21 February 2024**

3.107 On Monday 19 February SL sent to MP a draft job description for his thoughts before she discussed it with the Claimant. Also on 19 February the Claimant emailed MP and SL responding to MP's last email [648-649]. The Claimant said she could meet that week and was keen to resolve it as soon as possible but wanted to make sure discussions were documented accurately because she felt that things said at previous meetings were later denied. She asked to be sent her own interview notes that they currently held. In respect of her request for other candidates' records she said she considered candidates had consented to their information being scrutinised because the Respondent was a public funded body, and that there should also be scoring matrix that could be anonymised and provided. The Claimant referred to her previous request for the register of conflicts saying it was exempt from non- disclosure: *" a. SFW is an organisation of public nature, and is exercised in the public interest. b. to protect against misconduct or mismanagement (whether by trustees, directors, or other persons) in their administration : - There are reasonable grounds to believe that the process was flawed. I raised my concerns with Martin at our meeting on the 5$^{th}$ and again with Rosie on the 8$^{th}$ of February highlighting one of the conflicts i.e. that the selected candidate (as a director on the board) was privy to information that other candidates weren't, giving them an unfair advantage*." She asserted that the Freedom of Information Act did apply to the Respondent as a publicly funded organisation with public interest functions. The

Claimant said if the Respondent were not willing to share the information she would raise a formal grievance. This particular email is not a pleaded protected disclosure in the case.

3.108 SL and MP sought advice from PC about this email [1889]. The Claimant says this email seeking the advice was not disclosed by the Respondent and was obtained through her subject access request made directly to Effective HRM. The underlying material was, however, disclosed. MP replied to propose a note taker be present in the Claimant's meeting with SL. He said they would like to assure the Claimant that no candidate was privy to information that other candidates were not, and the process was designed to ensure no conflicts of interest arose. He summarised the steps taken as including: "*Rosie indicated shortly after San announced her retirement date to the Board that she was considering applying. As a result she took no part in any of the recruitment process.*" MP then summarised the recruitment process followed, including that the interview questions were shared with all candidates at the same time. He sent some of the Claimant's interview scores and notes that were available. MP continued to say that other candidates' scores and notes could not be provided. He said they hoped they had reassured the Claimant that the recruitment process was fair, open and objective but if she still had concerns they encouraged her to raise a formal grievance and that, if so, to ensure impartiality an independent HR consultant would be appointed.

3.109 The Claimant replied on 20 February to confirm she was content for a notetaker to be at her meeting with SL and she would be raising a formal grievance. She asked for the terms of reference for the independent HR consultant [647].

3.110 SL sought further HR advice and they did some legwork to make arrangements as to how the anticipated grievance could be handled (bearing in mind the Claimant was complaining about a decision taken by her line manager/outgoing CEO, and the wider board). On 21 February SL emailed the Claimant to propose their meeting date and set out terms of reference for the grievance, with PC from Effective HRM to act as investigator, and Mark Jenkins [MJ] the Respondent's external accountant to act as decision maker. The Claimant replied [665] to ask about PC's relationship to the Respondent and her impartiality, and to say that MJ was not independent. The Claimant also said it was unacceptable that the decision maker at this stage of the process will decide whether or not to uphold the grievance, and it did not follow the grievance procedure. I do not understand what the Claimant meant by that, nor did SL [664]. SL replied to say PC was an independent HR consultant who had no prior dealings with the Respondent. SL said PC would discuss with the Claimant the Claimant's concerns about MJ, but they considered him to be an appropriate person given he was not involved in the recruitment process [679].

**Further draft job description and meeting between the Claimant and SL**

3.111 On 22 February 2024 SL sent the Claimant a draft job description in advance of their meeting on 26 February [668]. The draft job description was for Operations & Governance Manager [672-673]. It proposed 75% of the time on Governance work and 25% on Operations, incorporating what RC had suggested. The Claimant also emailed SL saying her contact details could be shared with PC but "*whatever Pam Cannell and Mark Jenkins decide has no bearing or binding to my grievance and as you have stated below I retain my right to follow our grievance procedure to the next stage*" [678]. SL asked the Claimant to clarify what she meant, and said the Claimant would have the option of appealing the grievance outcome if she was not satisfied with it. The Claimant said that because she was not provided with the full terms of reference regarding the engagement of PC and MJ she needed to clarify that she retained her right to follow the Respondent's grievance procedure. SL therefore re-sent to the Claimant the terms of reference she had previously provided [676]. What the Claimant was saying or asking was not clear and in my judgement SL was doing her best to respond.

3.112 On 23 February the Claimant emailed SL [687-688] with her thoughts on the draft job description. The Claimant said there were some other duties she had taken on over time that were not covered and she set out her proposals. She felt that operational work was currently more than 25% of her duties. She said she felt the job title did not reflect what she currently did and she had been deputising for the CEO, especially in the past 5 years, internally with staff members, with delivery partners and externally at conferences and events including as a panel member, delivering speeches and workshops. She referred to the titles she said MP had told her the board had considered and said she would like to propose Deputy CEO and Operations and Governance Lead as a job title. The Claimant explained her reasoning.

3.113 SL sent this on to PC and to MP and said she was nervous about her meeting with the Claimant. SL said she felt they were being dictated to and the organisation was too small to have a deputy CEO. She said they did not have the Claimant's grievance, and she thought if the Claimant did not get what she was requesting it would be added to the grievance. SL said the new CEO was not starting until 1 April and part of RC's role was to review the organisation and ensure it is fit for the future and the additional things the Claimant was suggesting would fall within that work. She said she felt the Claimant was trying to rush it through before the new CEO started. SL was nervous the meeting would exacerbate an already precarious situation. She said whatever is discussed needed to be agreed by the board. SL said that since lockdown due to her own personal circumstances she had not been able to attend events in person and the Claimant had been asked to represent the Respondent as requested [687].

3.114 The meeting went ahead on 26 February. The meeting notes start at [724]. The Claimant said she was not happy with the proposed job title because she was doing more than the title suggests, and also because MP had told her on 5 February that the titles the board had bandied around or toyed with were Deputy CEO and Chief Operations Officer, so that was on the table or offered to her on 5 February. The Claimant said for SL to say it would be reviewed again when the new CEO came in was unfair. SL said MP had no authority to offer the Claimant any title and only authority to say titles that had been suggested. SL said she did not feel the organisation was large enough to have a deputy CEO. She said she also was not saying that when RC came in to review the organisation that RC would be reviewing the Claimant's job description.

3.115 SL said some things the Claimant had been doing since lockdown were things SL had asked the Claimant to do because SL was not able to go out and about. The Claimant said there were also things she had done pre-pandemic. SL said some of the things the Claimant did on her behalf would filter to the new CEO and if the new CEO wanted to delegate those things that was for RC. The Claimant was saying she felt that for the Respondent to say when a new CEO came in those duties could possibly be taken off her was not fair and she did not think she had been deputising but instead there were things she was doing. The Claimant said she would be representing the organisation at events when she was leading on projects in her own right, which was a point SL appreciated. There were discussions around giving the Claimant some responsibilities around the website and communication technologies and about working with educational establishments (that the Claimant said she was already doing). There were discussions around how the Claimant and the new CEO could work together in terms of work planning and the deputisation of events and the like. In terms of delivering training, SL said she was happy to put governance training into the job description, but said she was uncertain about adding in other training with the new CEO coming in and there might be other valuable resources coming in with that. They talked about the work the Claimant had done in developing accessible material for clients. They talked about the split between operations and governance, with the Claimant saying she felt it was more 70/30 or 65/35. SL said some of the previous split would be because she had asked the Claimant to do certain things that would go back to the new CEO, and suggested 70/30. The Claimant said she needed to think about that and have time to look back over her work commitment history. The Claimant again said there were some things she had been doing for a number of years. SL said she did not think she could suggest to the board much more than that, but would put 70/30 for now and the Claimant could still question that. SL said she would prepare a further draft for the Claimant to comment on.

3.116 The Claimant said on the subject of job title she considered it irrelevant to the Respondent but that it gave her authority when she was at a meeting. SL said again some of the Claimant's examples here were when SL had asked the

Claimant to attend because SL could not for personal reasons. SL said she could not give the title of Deputy CEO, or Chief Operating Officer. The Claimant was saying she did not think Operations and Governance manager was a proper reflection of what she was doing. SL suggested Operations and Governance Lead, but the Claimant said she still wanted Deputy CEO as a job title taken to the board. SL said she would do so but knew it would not be accepted which was why she wanted them to try to find a compromise.

3.117 On salary the Claimant said she was disappointed to learn that SL as CEO was earning 1.8 times what she was and that she was on the same pay scale as the new development officer. The Claimant proposed 10% below the CEO salary. SL said she would take that back to the board and she could do nothing. SL therefore did not agree that pay, or have authority to do so. SL said she would talk to MP that night and she might not have time to do a redraft of the job description before then, but she had the key points. SL summarised that the points they seemed to have not reached agreement on were the title and a salary, and probably the percentage split as well. The Claimant said she had hoped for a decision by the end of that day, she was waiting to get her grievance in, and to know whether to include it. The Claimant said she did want the title of Deputy CEO and it was something she would find it hard to budge on. She said she also wanted the organisation to consider some backpay for the work she had done for the last 4 to 5 years. SL said she thought they could backdate to 1 February but not prior to that, to align with the interview date. The Claimant asked for that point to also be taken back to the board. The Claimant said she would wait to submit the grievance until the morning because SL was intending to speak to MP that night.

3.118 SL emailed MP and PC that evening [695] fairly describing the meeting as reasonable. SL attached an amended job description. She identified that job title seemed to be a real sticking point. She identified that the Claimant wanted the salary increase to be 10% below CEO backdated to 4-5 years, with SL adding an exclamation mark. SL said she said they could backdate to 1 February 2024. This email was not sent to the Claimant so it cannot in itself represent any offer made to the Claimant. But within the transcript SL did not agree to the Claimant's salary proposal or that there be a backdating to 4 to 5 years. All she said was she thought backdating (of whatever the final sum ended up being) could be to 1 February 2024. I do not find, contrary to the Claimant's assertion, that SL agreed with the Claimant's salary proposal or 4-5 years of backdating. In reality it was a wholly unrealistic request by the Claimant as demonstrated by SL's exclamation mark. SL identified in her email that the Claimant had intimated that if these things were not forthcoming it would be added to the grievance. SL suggested a Teams call in the morning with PC, although PC could not meet until the afternoon. SL did not revert to the Claimant that evening.

**The Claimant's grievance of 27 February 2024**

3.119 The next morning at 7:30am the claimant submitted her grievance [713]. She said she had asked if she could have a decision the previous evening, and as she had not heard back from SL she was left with no other alternative than to add her job description, role and salary into her grievance [713].

3.120 The Claimant's grievance is at [697 – 711]. It starts with the Claimant saying she has a complaint about the recent recruitment process for the CEO role. The grievance is lengthy and difficult to summarise in short form but some things it includes are:

3.120.1 That RC had not stepped down as a director once RC expressed an interest in applying for the role, which the Claimant alleged was neglect of a director's duty to avoid conflicts of interest under section 175 Company Law Act 2006 and resulted in RC having an unfair advantage because there were many opportunities RC would have been privy to information. The Claimant gave examples of RC allegedly becoming privy to strategic direction information through facilitating the strategic consultation event in July 2023, and through knowing the financial position of the organisation. The Claimant said information about the urgency to secure funding post March 2025 was information that she and other candidates were not privy to;

3.120.2 Clauses 4.I and 5 of the Memorandum of Association/ governing document prohibit directors/trustees from being appointed and RC was not eligible to apply for the post;

3.120.3 The Memorandum of Association has objects that are charitable/ deemed wholly charitable, and as the Respondent was a charity, the directors had knowingly and deliberately failed to register the company as a charity with the Charity Commission;

3.120.4 Under Charity Commission guidance if decisions about the recruitment or appointment were made while the individual was a trustee, the Commission's approval to the employment must be obtained, which had not been sought and the appointment must be justifiable, and made without favouritism or improper influence;

3.120.5 Any board meetings to discuss the CEO post after RC announced her attention to apply or the role would not be quorate;

3.120.6 The interview panel members had conflicts of interest and conflicts of loyalty to candidates and measures were not put in place to mitigate the conflicts;

3.120.7 The register of conflicts she had been requesting was not exempt from non-disclosure because the Respondent is an organisation of public nature exercised in the public interest and the Freedom of Information Act applied;

3.120.8 RC had been advertising her private consultancy business through the Respondent's publicly funded newsletter and website and would mean RC taking work away from the Respondent. This was a failure in RC's duty of care as a director to the Respondent. MP had also competed for work;

3.120.9 RC had used publicly funded money to carry out activities for a private business in asking the membership to fill in surveys for RC's private consultancy business, and in asking the Claimant on occasion to do work that RC was a paid fundraiser for;

3.120.10 There was neglect of a duty of care to the Claimant in not since 2011 reviewing her job description or role, in her pay level/lack of pay rises, and a lack of career progression;

3.120.11 The flawed recruitment process, uncovering conflicts of interest, and the way directors had behaved had caused her a lot of undue stress when this was an organisation she believed in and had committed 11 years of her career to. She sought compensation for stress and anxiety, unnecessary wasted time going through the recruitment process when the board had chosen the candidate in advance, loss of pay over the past 5 years, and loss of an opportunity and career progression.

3.121 Also on 27 February 2024 the Claimant was signed off sick by her GP and given a sick note for 28 days with work related stress [784]. That afternoon SL also sent the Claimant a further draft of the proposed job description [785], highlighting in yellow additional suggestions and saying all will need to be agreed by the board. SL asked the Claimant for any amendments she would like to make [785]. Amongst other things it set out the competing options for job title. The draft noted the competing ideas as to the work split. The Claimant never responded.

**Grievance meeting**

3.122 PC then investigated the Claimant's grievance. The Claimant questioned PC's impartiality and sought a copy of PC's terms of engagement from the Respondent [794]. The Claimant also said she did not consider MJ independent as the Respondent's accountant and having worked closely with the board. PC provided the terms of reference and the Claimant said she did not see any reference to Effective HRM being independent but that as the Respondent were able to proceed with the grievance as they saw fit she would attend the investigation meeting. PC also pointed out to the Claimant that MJ was in PC's view a suitable person as decision maker because MJ had no involvement in the matters raised in the grievance and was a professional bound by regulatory duties [803]. PC also said she personally had no prior dealings with either the Respondent or MJ.

3.123 The transcript of the Claimant's meeting with PC starts at [808]. The Claimant said again she did not consider MJ to be independent. She said she also did not see PC as being totally independent because PC was paid for by the Respondent. The Claimant spoke about her complaint that RC was at an unfair advantage being privy to information that other candidates were not, referring to RC undertaking the July 2023 strategic consultation which the Claimant felt would have involved RC being involved in strategic discussions with the board and knowledge of a strategic plan going forward. The Claimant spoke about how RC had access to financial information, including that Welsh Government funding would expire in March 2025 which again she felt aided RC in setting out a vision to the panel. The Claimant said her own presentation had focused on how the Respondent was a strong brand recognised for the fabulous work they did, she had not gone into detail about the direction they wanted to go in, and she felt that RC had an advantage in setting out RC's vision in terms of financials and strategic direction. The Claimant spoke about MP having said to her on the phone that RC was a better fit for the next phase of the organisation. She said she did not focus on the actual phrase at the time because she was focusing on not having got the role, and when she was told RC got the job there were many things going through head: "*like all the things I've put in my grievance around being a director and being a director trustee. Just all of those things were going through my head at the time, so I didn't put a lot of emphasis on it at the time*." The Claimant said she thought the decision to appoint RC had been based on the financial position of the Respondent.

3.124 The Claimant said to PC that she had asked MP on 5th February if she shaped the new role, when would it come into effect, and that he said immediately. She said "*So obviously I wanted that quite quickly*" [835]. She spoke about how she had thought that at the meeting with MP and RC the role would be firmed up and she would have a clearer picture of where she was going to be, but that three-way meeting was then cancelled and it was starting to look like it would not happen until the new CEO started [836]. She said the reply sent by MP was that she had misunderstood the position, but she knew she had not, and that was what had changed, she was accused of being a misunderstanding, and that was when all trust was broken. She talked about how she considered MP had said the posts were never offered and also that MP had said the post would come into effect immediately, once drafted and finalised, which is why she was pushing for it to be done. She said that being told it was going to have to wait until April was the trigger. She spoke about how the Respondent had previously been an organisation she had truly believed in and was committed to the cause [840].

3.125 The Claimant spoke about a director having a duty to avoid conflicts of interest under company law and so RC had a personal conflict when applying for the role. She said it was a specific conflict of interest for the Respondent because: "*We're a public funded body. We have public money, which means the organisation should not be for personal gain*" [845]. She spoke about being told that RC was not part of the discussions, but that under the governing documents, they would need RC for a quorum of three. The Claimant spoke about directors having a duty of care to the organisation. The Claimant was asked why it was relevant to her grievance about not being chosen as CEO, and she said it was about disregard for company law, legislation, not following the governing document and the way the board had been behaving [848]. She said she had raised with SL in the past at least twice about being a director and the governing document did not allow it. She said that it had not sat comfortably with her for years as a governance advisor and it was something she had discussed with past colleagues. She said when she had offered to go to the board and to look at the governing document SL had said we have to be careful because RC wrote the governing document. (Incidentally SL denies saying this and RC's evidence was that she did not write the governing documents). The Claimant said as an employee her hands were tied and she was not going to raise it again. She was asked why she was therefore raising it now, and she said: "*this has highlighted how the board have been behaving for a while i.e. They've been running this organisation for private gain, to benefit. To benefit themselves"* [851].

3.126 The Claimant told PC that on 5 February she had said to MP that she did not know whether RC was eligible to apply in the first place, and that she thought RC was privy to information the Claimant was not or the other candidates were not. She said she had said the same thing to RC on 8th February [853]. She said she thought both of them were alarmed about how upfront she was on both points.

3.127 The Claimant spoke about how she believed the new board members were engineered by at least RC and MP, particularly KW, to favour RC. She spoke about how she considered RC was ineligible to apply under the governing document, legislation and charity law. She said her requests for a copy of any register of conflicts was being ignored, and that the panel members would have had loyalty to RC and a different panel should have been convened.

3.128 The Claimant said she and past employees had private conversations about not feeling comfortable with MP and RC being on the board because they ran consultancy businesses doing very similar work to the Respondent [872]. She said there was a conflict and that both of them were using the Respondent as a platform to find clients and promote their own businesses. She said that there was a total disregard for any legislation around company law and charity law:

"*And the fact that the organisation is publicly funded and the organisation and its assets and its staff are being used for [personal] gain"* [879].

3.129 The Claimant was asked why she had not questioned RC's professional integrity before, and the Claimant said she had raised being uncomfortable with SL being a director with SL and: "*Why have I questioned it now? The whole process, the whole recruitment process highlighted for me how unfairly I have been treated and remunerated. And these are the points that I've made right at the end of the grievance."* [873]. She spoke about how she felt she had been neglected and unrecognised.

3.130 The Claimant said she considered the Respondent was a charity because it had charitable aims and it did not matter that it was not registered with the charity commission; it had to follow charity legislation. She said if it was over the threshold of £5000 a year it also had to register with the Charity Commission. She said she had been aware of it for a long time and had raised it again and again, though when pressed she also said it had only taken her until now to fully understand what the governing document said [892], and before that she had said there was a clause that contradicted the aims, but at the time she did not fully understand what it meant. She said she now understood the clause said all activities would be deemed wholly charitable. She said she felt the clause had been written for tax purposes and to draw down funding. She said the directors had knowingly and deliberately failed to register the company with the Charity Commission. PC said to her that was not a direct impact on the grievance and the Claimant said: "*No, but in a way isn't it?... The fact that they are aware of this, the fact that they are aware Rosie is not in a position to be able to stand for the CEO post or any role within the organisation*." [902]

3.131 The Claimant said under charity guidance RC would have to resign at least 12 months prior to applying. She said they also had to seek Charity Commission authorisation. The Claimant said that the Freedom of Information Act applied in terms of sharing information because this was an organisation with public interest functions. They discussed briefly the Claimant's complaint about what she said was a lack of recognition for the duties she had been doing. The Claimant was asked what would resolve the grievance for her. The Claimant spoke about loss of pay for 5 years when deputising for SL, and the things she had already asked for. She said she was not looking for the decision to appoint RC to be overturned, but that she had suffered a loss of opportunity and need recognition for what she does. She said the process had highlighted to her how unfairly she had been treated.

**Sickness absence contact**

3.132 SL held regular sickness absence meetings with the Claimant. On 21 March 2024 the Claimant said most of her anxiety was due to waiting for the outcome of the grievance and uncertainty around her job description/ role in the company. She was asked if that would make a difference to her return to work, and she said she was uncertain. She asked what a phased return to work might look like and SL said it could be planned starting with 1-2 days gradually building back up to 4 days [943]. On 28 March the Claimant again said the situation and uncertainty about her job was still causing anxiety [949]. She said she felt let down by not having her years of work acknowledged and things were promised by MP on 5 February, only to be taken away. She said her GP and friend had told her to stop reading emails and the transcript of her interview with PC.

**Grievance investigation report, grievance outcome and lodging of grievance appeal**

3.133 On 18 March 2024 PC produced her grievance investigation report, starting at [954]. PC recommended that there was insufficient evidence to uphold the grievance. She recommended that there be an agreed process and timescale for the Claimant's role and salary review and proposed mediation to repair what might be a breakdown in relationships. On 28 March 2024 MJ sent the Claimant his grievance outcome decision letter [974-975] and PC's investigation report. He did not uphold the grievance. His letter said the investigation report had been redacted where it contained other individual's personal data.

3.134 In the meantime on 24 March the Claimant contacted the Charity Commission. On 30 March 2024 the Claimant sent her grievance appeal [978-979]. She said she was also going to submit her case to ACAS on 9 April. She commenced ACAS early conciliation on 10 April 2024.

**Further sickness absence contact**

3.135 In a sickness absence call on 5 April 2024 the Claimant spoke about there being no clarity around her role when returning and recognition, and she felt that without clarity a return to work would be difficult [1001]. On 11 April she said she felt overwhelmed by the grievance process but felt she needed to get through it [1004].

**Grievance appeal investigation**

3.136 An employment lawyer, AB, from P4B Law was appointed to deal with the grievance appeal and given delegated authority to make a decision. One point the Claimant raised in her appeal was that there was a redacted name on page 15 of the grievance investigation report, that she had not given permission for her grievance to be discussed with someone else, and that page 15 showed, in her view PC had discussed the matter with someone else. The Claimant said she was concerned it breached her GDPR rights [1011].

3.137 The Claimant met with AB on 12 April. The AI transcript starts at [1102]. The Claimant said that one thing which had not been addressed was that she said three directors were using a publicly funded body and its resources for private gain [1116]. She said that included SL being employed on a salary really twice the size of her own. She talked about having given the dates of when another director advertised their own private business in newsletters. She said she gave an example of a particular director picking up a client and asking staff from the Respondent to do the development side of the work. She said she had an example of another director competing for a piece of work. She said these things were not allowed under the governing document. The Claimant also spoke about how SL also could not be a CEO and a trustee. She said this all showed a culture of mismanagement and disregard for legislation, in not adhering to the governing document, disregarding company law and charity law and ultimately it was about using the organisation for private gain. She said that the mismanagement goes back to the way she had been treated for the 11 years she worked with the organisation [1119]. She said that the governing document said they were a charity and that was the way they were being perceived to the outside world in drawing down public money, and the three of them are gaining, and staff are being taken advantage of. She said the whole process had highlighted that for her. She said these things were also conflicts of interest and referred to section 175 Companies Act.

3.138 The Claimant said she had gone through the company accounts and in 2009, in the first accounts submitted the Respondent had applied for HMRC for exemption from corporation tax which was normally only applicable to charities.

3.139 The Claimant spoke about how she felt PC had not looked at her allegation she had been offered a position on 5 February which was later backtracked on, and that this all went back to the way the board had been behaving and that their duty of care to staff had been neglected [1128]. She spoke about how trust had completely been broken [1133] and it was a real blow to realise that people she trusted were taking unfair advantage of her. She spoke about how the titles of Deputy CEO or Chief Operating Officer had been offered to her by MP and that these two titles did reflect what she had been doing and what she was currently doing [1142]. She said she needed her duties reflected in her job description and salary and cemented in that way, before the new CEO came in, otherwise it could all be taken away from her. The Claimant also spoke about RC being privy to information that she felt would have advantaged RC.

3.140 The Claimant was asked whether she had raised issues before, and she spoke about telling SL she was not comfortable with the governing document. She said a few things had not sat comfortably with her, in that they were saying they were a charity but were not following charity law and were not registered [1153]. She referred to clauses prohibiting staff sitting on the board and that SL was on the board for a number of years and that situation had aways been uncomfortable for the Claimant as somebody who gives advice to other organisations [1154].

3.141 The Claimant said Charity Commission guidance says a decision to employ a trustee or former trustee must be justifiable and made without favouritism or improper influence and the Commission's approval of the appointment must be obtained. She said approval for SL would have been needed too. She said that for the Respondent to say the governing document was off the peg and needs updating, meant that they were not following a legally binding governing document and that this was reportable to the regulators by MJ.

**Further sickness absence contact and request for pay in lieu of holiday**

3.142 At a sickness absence meeting on 18 April 2024 the Claimant said she felt she needed to work through the grievance process [1046]. She said the same on 25 April.

3.143 On 25 April 2024 the Claimant emailed SL to say she had 9 days of unused holiday for April 2023 to March 2024 that she had been unable to take due to work commitments and being unwell. She asked to take the days as paid rather than losing some and carrying some over [1057]. SL sought advice from PC on 29 April [1057].

3.144 PC replied on 7 May 2024 apologising for the delay and advising that the staff handbook contained no provision to carry over unused holiday or have it paid out but that employees are entitled to carry over 4 weeks' unused holiday entitlement when they have been unable to use it due to being on long term sick leave [1098].

**Grievance appeal decision**

3.145 In the meantime AB produced his appeal decision on 3 May 2024 [1074 -1093]. The appeal was not upheld other than in some respects AB concluded that PC had unwittingly not addressed all the grievance points the Claimant had raised. But AB then went on to consider those outstanding complaints and concluded they were not upheld. On the issue of the redaction to PC's report, AB said that he had asked PC to share the full, unredacted version with him. He said the redactions in the report related to sensitive personal data relating to RC and that PC had not discussed the matter with anyone else [1092].

**Request for OH referral**

3.146 On 8 May 2024 SL sent the Claimant a letter and consent form inviting her to an occupational health (OH) assessment [1167]. The letter said the purpose was to help the Respondent take a view on the Claimant's likely return to full health, assist with planning her work, and identify any requirements for reasonable adjustments. The letter said obtaining the report would involve the processing of sensitive personal data and so they required the Claimant's consent under the Data Protect Act/ GDPR. The letter said the Claimant's contract of employment and Company sickness absence policy required the Claimant to comply with a reasonable request to attend a medical examination, agree to the disclosure of any subsequent report to them, and they considered their request to be a reasonable request. The letter said if the Claimant did not attend an appointment or refused consent they would make a decision about her continuing employment based on the medical information they currently held. The letter said that once they had the report the Claimant would be invited to meeting to discuss its content.

3.147 On 8 May the Claimant asked for the next welfare meeting to be recorded. SL replied to say recordings were not permitted but she was happy to provide summary notes of the calls for the Claimant to review and check. The Claimant said she had asked for calls to be recorded because she felt they had discussed things and when she later asked for clarity by email she had been ignored. She gave an example of asking what authority MP had in making decisions. SL replied explaining things from her perspective. SL's response included that the annual leave the Claimant had requested was outside the Respondent's normal pattern of leave entitlement and so she would talk this through with MP as chairman and her own line manager and they would sometimes also seek HR advice from Effective HRM [1170].

3.148. In a sickness absence call on 10 May the Claimant asked about what a phased return to work would look like and said she would also discuss it with her GP and seek their guidance at her next GP appointment. She also asked what it would mean in terms of pay. SL said she would discuss this with MP and seek guidance from Effective HRM.

**Charity Commission**

3.149 The Claimant's contact with the Charity Commission on 24 March had said that the organisation may be operating as a Charity but not registered with the Commission. On 10 May the Commission emailed the Claimant saying that they were writing to the trustees with regulatory advice and guidance about registering with the Commission [1178]. Their letter to the Respondent is at [1179]. The Respondent was told to consider the guidance and if appropriate apply for registration, and no further action was being taken at that time.

**Claimant's refusal to consent to Effective HRM being involved in an OH referral**

3.150 On 12 May the Claimant returned the OH consent form, agreeing to the Respondent referring her to OH but refusing permission for Effective HRM to make the referral. She said she wanted to see the report prior to it being sent to her employer. She agreed that her employer could see the report containing limited and relevant information about her medical conditions but not Effective HRM. In her covering email she said she was currently unable to give permission to share highly sensitive and personal data from this or any assessment with Effective HRM because she did not know the exact relationship Effective HRM had with the Respondent and the scope of their work, other than PC was engaged to investigate her grievance. She said that

PC on page 15 of PC's report had clearly discussed her grievance with someone else and the name had been redacted and she had not given permission for her grievance to be discussed with anyone else. She said that she had raised this with AB, giving the exact page number of the report, but AB had failed to look into the matter and identify the person; and she had also separately asked for this, including in a subject access request [1182].

3.151 SL replied on 14 May to explain that she had previously explained that Effective HRM provided advice on an as needed basis because the Respondent did not have its own HR department. She said that their role was to liaise with the OH provider to facilitate the referral process and the Respondent was also likely to require HR advice from Effective HRM when the report had been provided. SL also explained that AB had addressed the question about the redaction in PC's report and she quoted what he had said [1192]. She asked the Claimant if she was now content to proceed.

3.152 I should note here that despite AB's explanation, repeated by SL, and explained on further occasions thereafter the Claimant, at least until December 2024, continued in the belief that her question about the redaction in PC's report had not been answered. The Claimant thought that the redacted part had to be someone else's name and was unable to accept that it was RC's personal, medical information that had been redacted. But from the Respondent's perspective the point had been explained several times, and this became a pinch point that became very difficult to handle or resolve.

3.153 The Claimant replied on 15 May to say she was continuing to have contradictory information about Effective HRM's role. It was not clear to me what that was referring to. She also said her concerns about a breach of her personal data had been completely ignored again (as just set out, in fact, it had not been). She said she was becoming increasingly overwhelmed with the amount of times she had to cross reference documents to make a point, only for it to be ignored. As the Respondent had engaged solicitors for Acas early conciliation she asked that all communication be via them. SL replied to explain the solicitors were only engaged for the separate Acas process. SL said the Respondent would continue to liaise directly with the Claimant on other matters. She said the grievance process had been concluded. SL said the Claimant's subject access request was being processed. She said she would continue to focus on supporting the Claimant thorough the sickness absence and return to work [1190].

3.154 At a sickness absence call on 17 May [1194] the Claimant said she had not yet discussed a phased return to work with her GP, and would do so. Acas early conciliation came to an end on 22 May 2024. At the next call on 24 May [1198] the Claimant was asked if she had any update on her condition and she said this was personal and she could not make any reasonable decisions when she was so stressed, had no one to support her, and was worried about her career.

She said she had not discussed a phased return to work with her GP because she was too stressed. The Claimant said the Respondent had not answered the question about how the return to work would impact on her financially. SL said HR was not her area of expertise but her understanding was that the Claimant would be paid for the time she was in work, until normal hours resumed. The Claimant said the Respondent could be kind and continue full pay if they chose to do so. The Claimant said she was frustrated because her grievance had not been recognised, she had not been provided with finances, was not on equal pay, and governance had not been dealt with. SL said that information was about the grievance which was not the purpose of the call. The Claimant said the calls were too frequent and SL suggested fortnightly calls instead, and that the Claimant could always change this [1198].

3.155 [1094] is an Effective HRM occupational health referral form which is itself undated but refers to a welfare meeting on 24 May and which the Claimant says was processed by Effective HRM after she refused consent.

3.156 I do not have the email itself but [1211] quotes from an email said to be dated 29 May saying: "*Further to my last email on this matter of 15th May, I would like to confirm that we will be proceeding with organising an occupational health assessment for you per your consent of 12th May. I must also inform you that – on the basis that Effective HRM operates, in effect, as the Respondent's internal HR team and is bound by confidentiality and data protection obligations as any HR team would be - we will be asking them to both facilitate and advise us on the referral process and any resulting findings; it is my view that it is both in your interest and that of SFW for HR to assist with reviewing the situation and advising appropriately. With the above in mind, I will ask Effective HRM to proceed with facilitating the referral.*" There is no suggestion anywhere that I can see that this email of 15 May was not sent. I find that it was, particularly bearing in mind if it had not been sent then when the Claimant did get the email at [1211] she would have raised the point she did not receive the email of 29 May; and she did not.

3.157 On 6 June 2024 the Claimant presented her first tribunal claim. On 11 June SL wrote to the Claimant to say (again referred to at [1211]), that Louise was an OH assessor for The Independent General Practitioner and with regards to the terms of reference, Louise would carry out an independent and objective medical examination to assess the Claimant's fitness for work and her capability to fulfil the duties and responsibilities of her role safely and without detriment to her health.

3.158 On 12 June the Claimant emailed SL to say she had received a phone call from someone called Jane and it appeared her private number had been given to them without her consent. The Claimant said in a subsequent email that it was someone from OH. PC forwarded this to Amelia Kirk from Effective HRM who said Jane worked for the OH provider and said that "*I am not entirely sure why* *she has been contacted as she requested only to be contacted when an appointment link had been sent to her email however she did not confirm the appointment so nothing will have been sent to her."* [1200]. An appointment had been arranged for 17 June.

3.159 On 14 June SL emailed the Claimant to say the Claimant was not entitled to a copy of the terms between Effective HRM and the OH company because the information was not personal to the Claimant. SL set out the questions the OH provider had been asked which had already been provided as part of the OH referral they considered the Claimant had consented to. SL said the Claimant had consented to the OH referral and to initiate that process they had shared the contact details with the provider and Jane had been calling about the Claimant's potential availability for 17 June.

3.160 SL said the Claimant had queried in her email of 7 June what would happen to her unused holiday and what the financial position of a phased return to work would be. SL said that as the Claimant would be aware annual leave not taken at the end of the year would be forfeited other than the ability to carry over 4 days. SL said: "*However on this occasion and as a one off exception, we will allow you to carry over 9 days of unused holiday to this holiday year which can be taken as and when you are back at work."* SL said on a phased return to work the Claimant would be paid for the days worked and on days not worked the Claimant would receive company sick pay or statutory sick pay if the Claimant was still entitled to these at the time. SL said that they hoped the OH report would clarify the best course of action about a phased return to work. She said the 17 June was no longer available for an appointment, and a revised date of 22 July had been proposed. SL she asked the Claimant to confirm her attendance by return.

3.161 The Claimant replied to say that her data had been shared without consent when arranging the OH appointment and she had not given consent for Effective HRM to be part of the process. She said she felt there had been a breach by PC in the first stage of the grievance investigation (i.e. the redaction point) which had not (in the Claimant's view) been addressed. The Claimant said therefore to make it absolutely clear she did not give permission for Effective HRM to be part of any OH assessment or to see any resulting report. She asked for the terms of reference the Respondent had with the OH provider. She said she felt that 4 of the questions were too intrusive. She said she would like to reiterate that she was unable to take 9 days annual leave in 2023/24 due to her workload and subsequently being off work with work related stress. She said she wanted to reiterate that the Respondent had the power to pay her salary in full in any phased return work and if they genuinely wanted to support her back to work and take away anxiety around her financial position that is something the board would do. She said any OH assessment she agreed to would need to be AI recorded.

3.162 SL replied to say she understood the Claimant was keen to discuss her phased return to work and was concerned about finances but for the Respondent to understand the best course of action they really needed an OH report, and if it could not be confirmed the Respondent would have to continue with the absence process without the benefit of that information. SL asked the Claimant to confirm if she could make an appointment on 24 June by 20 June, and otherwise she would have to assume the Claimant was no longer willing to consent to the OH process. SL said she had already responded to the other questions, but she summarised that the Claimant had consented to the OH referral which assumed that the Claimant's contact details would be provided to the OH provider. She said Effective HRM's involvement in the OH referral process had been explained as had the assertion there had been a breach by PC. SL gave details of the OH provider's website. She said: "*We have agreed to honour the 9 days of holiday from last year.*" She said she had explained the position regarding financial payments in a phased return to work.

3.163 The Claimant said again the Respondent could make a different decision on pay for a phased return to work. She said she could not confirm attending an OH appointment without the terms of reference and definitely not if Effective HRM were still part of the process. She said SL was bombarding her with emails late in the day and setting short timescales which was adding to her stress and anxiety. She said Amelia Kirk sharing her personal data was a breach of her personal data because it was without consent. The Claimant said she had been given contradictory information about Effective HRM because in February she had been told that PC was an independent HR consultant but now was being told that Effective HRM were the Respondent's HR. She asked again for the terms of reference with the OH provider. She said that her GP practice also provides independent OH assessments and suggested using their service. The Claimant said she had asked for the 9 days to be paid. She said any OH assessment had to be AI recorded. She said: "*I would like to reiterate, the way I am being bombarded by emails and lately with short timescales for a reply are adding to my stress and anxiety. I am feeling harassed by you, especially as you fail to address my concerns and give contradictory information. This email I received late yesterday evening made me very anxious and disturbed my sleep.*" She asked again for communication to go via the legal representative saying this would hopefully mean that all correspondence was coherent and addressed the points raised. She asked for a reply that day from the legal representative.

3.164 SL in fact replied on 26 June saying she thought it would be helpful to summarise her previous responses and any additional comments the Claimant had made. SL set out her previous response to the complaint that PC had committed a data breach. She set out her previous explanations about Effective HRM's role. She set out her email of 29 May (referred to above) about continuing to proceed with the OH referral and the use of Effective HRM. SL said that Effective HRM being the HR provider did not mean the tasks they carried out were biased, and that PC had no involvement in the recruitment process that led to the grievance, and was not the decision maker. SL said if the Respondent had chosen someone internal to undertake the grievance process or employed internal HR to advise, she struggled to see how that addressed the Claimant's concerns about independence. SL said the Claimant had been given contact details for the OH provider. She said they had confirmed they did not have facility to record the conversation but had requested the Claimant inform the assessor at the start of the assessment if she intended to record the conversation herself. SL said they did not agree to arranging an assessment with the provider attached to the GP surgery because under the contract of employment the Claimant had consented to a doctor nominated by the employer. In relation to holidays SL set out how she had already answered this question twice. She set out how she had answered the question about finances for a phased return to work twice. SL said she was satisfied the concerns had been addressed, repeatedly in some cases, and she would not be engaging further on these matters. SL said she was sorry to hear the Claimant was feeling stressed and anxious, but she did not accept she had been bombarding the Claimant with emails and had simply been responding to the questions as well as attempting to arrange the OH assessment to assist with getting the Claimant back to work. SL said she considered the Claimant was frustrating that process by not allowing them to get to that point. She said she had arranged for one last appointment on 22 July and asked the Claimant to confirm by 28 June if she would attend, otherwise they will continue the absence process without the benefit of an OH assessment. SL said again that it was not appropriate for all communication to be sent via the legal representative, the Claimant's return to work was an internal matter, and SL would continue to be the point of reference to ensure continuity.

3.165 The Claimant's reply was: "*For all of the reasons I have given in previous correspondence and your continuing failure to address my concerns (and gaslight me), I cannot agree to your unreasonable request*" [1209].

3.166 SL was very upset at the allegations the Claimant was levelling against her and said she did not feel able to continue as the point of contact and RC took over.

**Sickness absence process with RC**

3.167 On 4 July MP emailed the Claimant to say: "*Whilst I appreciate that you are finding this process upsetting, some of the language you have been using, for example, references to "feeling harassed" and "gas lighting", has caused extreme upset and distress to San. The language is highly emotive and inappropriate, and I would respectfully ask that you refrain from using language of this nature from now on. As you are aware, San has simply been responding to your numerous requests for information and trying to proactively manage your absence with you.*"

3.168 MP asked the Claimant to confirm that SL could give RC her personal contact details so RC could message the Claimant prior to sending an email (as requested by the Claimant). The Claimant replied asking in what capacity MP was emailing her because she said she had never had a clear answer to contradictory information. She said she had asked previously what authority MP had on 5th February to offer her Deputy CEO and COO and later on 26 February San had said MP "had no authority." The Claimant said she had already given consent for her number to be given to RC on 5 February. She said she had been feeling harassed for days and had received emails late in the day, one day as late as after 7pm, and the emails disrupt her evening and sleep because she could not stop thinking about then, especially when asked to reply in a limited time frame. The Claimant said she considered she had questions that had continuously not been addressed or ignored relating to the allegation PC had shared her grievance on page 15 of the grievance report. She said Amelia Kirk had shared her sensitive data despite her refusal of permission. She said again that she considered that in a phased return to work, if the Respondent wanted to support her return to work, they could take anyway the anxiety around reduced pay. She said she had asked how and why her personal data had been shared which had not been addressed. She said she had been given contradictory information, referring to the meeting with MP on 5 February and the email of 14 February, the meeting with RC on 8 February and RC's emails of 12/13 February. She said she had been caused anxiety by the Respondent insisting on an OH assessment despite not giving her the terms of reference, and not reassuring her it could be accurately recorded, and with her personal data and medial information being shared without consent. The Claimant said there were also emails saying there had been a cancellation and then asking the Claimant to agree to an imminent OH assessment, so she did feel bombarded. She said those things and many more made her feel harassed, anxious and stressed and she had on numerous occasions questioned herself and had to trawl through correspondence to find a date or raise a query and checking and double checking to see if she had a reply, and if she had referenced the correct page. She said this and MP's email were further increasing her stress levels and were examples of gaslighting.

3.169 On 11 July the Claimant was invited to a stage one first sickness absence meeting on 17 July [1239]. The Claimant was told it could take place via Teams or using the offices of Effective HRM (the Respondent does not have their own permanent physical premises). The Claimant was told an HR consultant would attend as HR support and summary notes would be provided following the meeting. The Claimant was told of her right to be accompanied by a fellow employee or trade union official. She was told if she failed to attend the meeting may be held in her absence and on the basis of the information currently available. She was given the option to provide written information. The letter said it was hoped the outcome would be to continue to try to find a way to get the Claimant back to work but the possibility was that the outcome at a later stage could be dismissal on the ground of ill health if there was no, or little reasonable prospect of the Claimant returning to work in a reasonable timescale. Adjustments could be considered as would any redeployment opportunities. It was said again that the intention of the meeting was to confirm their support to the Claimant as an employee and to discuss a return to work for the benefit of both parties.

3.170 The Claimant replied to say the matters formed part of her tribunal claim and she intended to refer the letter and request to the tribunal judge at the preliminary hearing on 20 August and she also again asked that any correspondence should come via the legal representative. RC replied on 16 July to say that the sickness absence management process was unrelated to the tribunal process and urged the Claimant to attend. The Claimant replied to say it had already been referred to the judge so she would await their direction.

3.171 On 18 July RC wrote again to the Claimant to say that the tribunal process was unrelated and the Claimant was required to attend the meeting. It was rearranged for 7 August, on the same terms. The Claimant replied to say her situation remained the same. The sickness absence meeting therefore went ahead in her absence [1251]. RC summarised the position and said taking that into account and that the Claimant's continued absence was having a serious impact on the organisation's ability to conduct its day to day operations with one key member of staff continuously absent with no indication of any return, she had decided to issue a written warning and move to stage 2 of the process. The Claimant was sent a letter on 15 August 2024 notifying her of this and explaining the reasons why. Part of the letter said that the Claimant's current sick note expired that day and there was no indication of a potential return date.

3.172 The Claimant replied to say she had sent a sick note on 12 August which RC had confirmed receipt of. She said she did not understand why RC was saying they had no information as to the current state of her health. She said she had not retracted consent for attending an OH assessment. She asked for the information RC had used to come to RC's conclusion. She said that whilst the tribunal had said that they could not give advice to the Claimant, that the Claimant's claims could be discussed further at the case management hearing. There was a case management preliminary hearing before EJ Jenkins on 20 August 2024. RC replied on 29 August to reiterate that the purpose of the process was to help the Claimant to return to work, and that the fit notes only confirmed she was currently not fit to return to work due to stress at work but did not give information about the causes of stress at work or what could be put in place to help alleviate that stress, how long the absence was likely to last, or what adjustments could be put in place to enable a return to work. RC said they had attempted to arrange an OH assessment, but they understood the Claimant had withdrawn her consent in her email of 28 June. RC said they had also attempted to engage the Claimant in meaningful conversation about a return to work by inviting her to a stage 1 sickness absence meeting that the Claimant had declined to attend. RC said that without proper medical advice or the Claimant's full engagement in a conversation about ways they could help her to return to work, they would have to base decisions on the limited information available in the fit notes. RC said if they had misinterpreted the Claimant's email of 28 June they would be happy to reschedule the OH appointment, or the Claimant could write in with suggestions about what would facilitate a return to work. RC said again she was keen to support the Claimant in a return to work and would welcome the Claimant's thoughts on how to achieve that [1270].

3.173 The Claimant replied to say that she had explained to SL that some of her anxiety and stress is caused by the uncertainty of her role at work. She said she had met with SL on 26 February and during this meeting they had discussed her job description and roles and reasonable remuneration, however, what had been discussed at the meeting had not been revisited or upheld, further adding to her anxiety. She referred to other correspondence, including her email of 19 June which she said set out her reasonable criteria to engage in an OH assessment. She said the stage 1 sickness absence criteria were unreasonable because it was not practically possible for her to bring a colleague, and she did not have a union representative. She also complained about RC not being willing to allow an AI recording of the meeting. She said again she did not give permission for Effective HRM to be part of any meeting regarding her personal data and especially her health because she had reason to believe that they had at least twice breached her data. She said the tone of the initial letter of 11 July was also very aggressive. She asked if the formal warning stood given that the letter had (in her view) so much incorrect information in it.

3.174 RC replied on 16 September to say she was treating the Claimant as having appealed against the written warning. RC said she understood the Claimant's concerns about not attending meetings at the current time, and that as the Claimant had clarified the Claimant was not opposed in principle to attending an OH assessment or a sickness absence meeting, she had upheld the appeal and withdrawn the written warning. RC said the process was being reset back to stage 1 in order to move forward in a manner that did not further increase the Claimant's anxiety. RC said she had also reconsidered the Claimant's suggestion about using the OH assessment service at the Claimant's GP practice and asked the Claimant to provide details of it. RC said she would also make an exception to allow the stage 1 meeting to be recorded and that the Claimant could bring a friend or family member as companion, with a view to increasing the Claimant's trust in the process. RC said again she was seeking constructive dialogue to facilitate a supportive return to work.

3.175 The Claimant replied on 24 September to say in fact the GP surgery could not do a OH assessment but she suggested two alternative OH companies that she would attend, albeit she would not authorise Effective HRM to be part of the process because her data had been breached by them at least twice and she had no explanation or apology [1266].

3.176 RC replied on 3 October to say they could use either OH provider. In relation to Effective HRM RC referred the Claimant to her contract of employment where she had consented to the processing of her personal data in order to monitor sick leave and take decisions about fitness for work, and that the contract also said this could be made available to advisers. RC said that, as before, they would need to take advice from Effective HRM once the OH report had been provided. RC said that in light of the contractual clause they did not require further consent from the Claimant, but that she wanted to assure the Claimant that Effective HRM were bound to keep all matters confidential and had not and would not share any sensitive personal data without express permission. RC said:

*"- you consented to The IGP arranging an OH assessment and your contact details were therefore provided to them. Given that consent, sharing your contact details was not a breach of your data.*

*-Pam Cannell did not discuss your grievance with anyone else (the redacted information in her grievance report related to another individual's personal data – it did not indicate that the grievance had been shared). "*

3.177 The Claimant replied to identify her preferred OH advisor, and said in relation to the clause in her contract: "*San Leonard and Pam Cannell have fraudulently misrepresented to me on more than one occasion that Pam Cannell is independent and had no prior dealings with SFW, this misrepresentation makes consent under my contract void*." She said again she did not give consent for Effective HRM to be part of her OH assessment or to see any report generated by such an assessment. She said she had never consented to IGP carrying out any OH assessment.

3.178 The stalemate continued with RC replying on 9 October to say they would liaise with the OH provider to make the arrangements, but before doing so she needed to reiterate that they needed to take advice from Effective HRM in relation to the assessment and they did not feel further consent was needed from the Claimant to do so. RC said neither SL or PC had misrepresented that PC was independent given (a) PC was independent of the matters being raised in the grievance and (b) PC had no prior dealings with the Respondent at the time she investigated the grievance. RC said the Claimant had consented to the IGP conducting an OH assessment in the form the Claimant herself had provided. RC said again that the OH report would be shared with Effective HRM to obtain advice. RC said if the Claimant would not proceed with an OH assessment if Effective HRM were involved, then they would have to revert to a stage 1 sickness absence meeting without the benefit of the report. RC said that a HR representative would be in attendance at the meeting (who would be an individual from Effective HRM).

3.179 The Claimant replied to say: "*Just because you say that San and Pam did not fraudulently misrepresent Pam does not mean that they did not*." She asked where she had given consent to IGP conducting an OH assessment. She said it remained she would not give permission for Effective HRM to access any OH report. She referred to the Respondent being unwilling to call Effective HRM as witnesses at the tribunal hearing. She said: "I *am consistently having to check the same questions over and over again and having to check correspondence against dates as SFW are continuously incompetent, this is adding to my anxiety and stress."* [1260].

3.180 On 25 October RC emailed to say that as the Claimant was unwilling to participate in an OH assessment on the basis that their HR advisors would be involved in the process, they would need to revert to a stage 1 meeting without the benefit of an OH report. RC said that her assumption is the Claimant would be unwilling to attend because Effective HRM would need to be involved in the meeting and any subsequent process. She said as an alternative they were happy to send a list of questions for the Claimant to participate in writing. Otherwise, they would have to proceed in the Claimant's absence. RC set out where the Claimant had previously consented to the instruction of IGP. The Claimant then replied to say she had assumed she was agreeing to "an Independent General Practitioner" (i.e. as a concept rather than a provider of that name), she felt the form was misleading, and she was not agreeing to an actual firm. She said again she did not give permission for Effective HRM to have access to any of her personal and medical information because they had breached her data on more than one occasion. She said any dealing against her consent was void.

3.181 On 12 November 2024 the Claimant was sent an invite to a stage 1 meeting on 21 November [1274]. The letter said a HR consultant from Effective HRM would be in attendance as HR support. RC agreed the meeting could be recorded. The Claimant was told she must take all reasonable steps to attend the meeting and failure to do so without good reason may be treated as misconduct. She was again told she could bring a friend or family member. She was told she could submit written information instead and a set of suggested questions was again sent to her. The questions included questions such as what the Claimant specifically considered was preventing her from returning to work, and what support could allow her to return to work. She was given the opportunity send any documents. The Claimant was told it was hoped the outcome would be to continue to find a way of getting the Claimant back to work but again there was a possibility at this meeting or later in the process the outcome could be dismissal on the grounds of ill health if there was no or little reasonable prospect of a return to work in a reasonable timescale. Again, it was said that adjustments or redeployment opportunities would also be considered.

3.182 The Claimant did not attend. The stage 1 meeting happened in her absence on 21 November 2024. RC prepared a written report [1277] dated 22 November 2024. RC noted that the Claimant had been absent from work since 27 February 2024 due to work related stress with no indication of a potential return date. RC noted the Claimant had declined to attend an OH assessment on the basis that Effective HRM would be involved in the process due to concerns about how the Claimant's data had been processed. RC said those concerns had been investigated and no issues had been found. RC said that due to the refusal to attend an OH assessment they had no information from a medical professional as to what was preventing a return to work or what further support could be offered during the Claimant's absence or to assist in a return to work, and that the Claimant also had not taken up the opportunity to provide written submissions about this. RC said the situation was becoming increasingly difficult for them to manage as a small organisation with very limited resources and capacity, and it was becoming critical to facilitate some form of return to work. It was said the Claimant's absence was having a significant impact on the organisation's ability to conduct its day to day operations. The Claimant's duties had been reallocated amongst their limited workforce, which meant they could not dedicate the same time and resources to other activities they normally would. RC said she had decided to move to a stage 2 absence meeting.

3.183 On 25 November 2024 RC wrote to the Claimant with her decision [1279], largely setting out the same information as in her report. The Claimant was sent information about what the stage 2 meeting would cover and that it was to take place on 5 December 2024. The Claimant was given the same information about the practical arrangements for the meeting, including that it was hoped the outcome would be to continue to try to find a way to get the Claimant back to work. But there remained the possibility that the outcome could be dismissal on ill health grounds. The Claimant was also offered a right of appeal.

3.184 The Claimant replied on 3 December saying her position had not changed, but that she wanted a copy of the investigation report about her concerns about the handing of her personal data.

3.185 The Claimant did not attend on 5 December 2024 so again RC conducted the meeting in the Claimant's absence. RC again prepared a report [1283]. This included that the Claimant's objection to her information being shared with Effective HRM continued to create a barrier to her engagement, and RC had investigated the allegations into breaches of data and had concluded they were unfounded. RC decided, on the basis of similar reasoning to her previous reasoning, to proceed to a stage 3 final sickness absence meeting.

3.186 RC's investigation report into alleged data breaches is at [1284]. This included an explanation that in May 2024 the board had contacted a data protection specialist lawyer at Aria Grace Law firm to review its data protection practices to ensure the Respondent had appropriate policies in place. RC said Aria Grace had reviewed the EHRM/Respondent's terms and conditions and confirmed they were content it held EHRM to the correct data protection standards in relation to the Respondent sharing employee data with them. She wrote: "*In relation to sharing personal data with EHRM and other relevant providers, SFW has both contractual and legitimate grounds for doing so (section 6 of our privacy policy), based on advice provided to Social Firms Wales from the solicitor.*"

3.187 RC set out the redacted and the unredacted section of PC's report making clear that the redacted part related to her own illness, and did not involve another individual, as the Claimant alleged. In relation to the second alleged data breach RC set out the history in some of the key correspondence. RC said she concluded the allegation was unfounded because: the first alleged breach was investigated at the time and found to have no merit; the Claimant had returned the OH consent form, consenting to the IGP contacting her; the Respondent's use of EHRM to support with HR matters was lawful and valid on the basis of contractual and legitimate interest (as outlined in the internal privacy notice).

**Dismissal meeting**

3.188 RC wrote to the Claimant on 20 December 2024 [1291]. The Claimant was notified of the stage 3 final meeting due to take place on 9 January 2025. The Claimant was given the same practical information about arrangements and the importance of attending. It was again said it was hoped that the outcome will be to continue to try to find a way of getting the Claimant back to work but if it was possible the outcome could be dismissal on the ground of ill health if there was no, or little reasonable prospect of her returning to work in a reasonable timescale. The Claimant was offered the right of appeal.

3.189 The Claimant wrote to RC on 6 January stating she could *"not comment or engage in any further conversation regarding this, as you are aware that this matter is being brough to the OPH in February 2025, by SFW solicitors*" (i.e. the public preliminary hearing that took place before EJ Povey). RC replied to say that, as had been set out in previous correspondence, the employment tribunal process was unrelated to the internal sickness absence procedure, and the Claimant was required to attend the meeting. RC said she was writing to offer one final opportunity to attend the meeting, rearranged for 16 January 2025.

3.190 The Claimant declined to attend saying on 14 January: "*As you have instructed your solicitors to include documents pertaining to Sickness within the bundle* *for the OPH in February 2025, and therefore raise this matter at the OPH I cannot engage any further in the matter.*"

3.191 The stage 3 meeting continued in the Claimant's absence. RC's notes are at [1299]. RC noted that the Claimant had been absent from work due to work related stress since 27 February 2024. She noted that the Claimant had declined to attend an OH assessment on the basis of the involvement of Effective HRM and that the concerns about data processing had been investigated, with no issues found. RC recorded that this investigation had been shared with the Claimant. RC noted that there was therefore no information from a medical professional as to what was preventing a return to work or what further support could be offered. RC noted the formal sickness absence meeting history, the adjustments offered for that process, and the rescheduling of meetings, to facilitate engagement. RC recorded again that the Claimant's absence was having a significant impact on the organisation's ability to conduct its day to day operations. She said that the absence was also an unsustainable cost with the Claimant continuing to accrue holiday during her absence. RC concluded: "*Taking the above into account I believe that she is not capable of performing her role due to ill health, in the absence of any evidence of a potential return date or steps that either she or we can take to support a return to work and the impact her absence is having on our organisation, we do not believe it is reasonable for our organisation to hold her job open indefinitely.*" RC decided to dismiss the Claimant on grounds of ill health.

3.192 RC notified the Claimant of that outcome and reasoning in a letter of 11 February 2025 [1302]. RC said again that the employment tribunal process was unrelated to the internal sickness absence procedures and that she could also confirm that the solicitors did not include documents pertaining to sickness within the bundle for the public preliminary hearing on 4 and 5 February 2025. As I understand it that was because the tribunal refused to increase the page number limit for the preliminary hearing bundle and the Respondent had ideally wished to include them for the purposes of the deposit order application. The Claimant was told that with immediate effect, her last day of employment was 11 February. She was told she was entitled to 3 months' notice which would be paid in lieu of her notice period at the SSP rate, however, her SSP expired on 19 February. She was told she was therefore owed 6 days of SSP up to and including 11 February and then 5 remaining day's SSP for the payment in lieu of the notice period. She was to receive payment in lieu of 29 days accrued holiday plus the 9 days carried over from the previous year. The Claimant was offered the right of appeal.

3.193 The Claimant replied on 11 February saying when she wrote on 14 January documents about her sickness absence were still to be included in the bundle for 4 and 5 February and it was only later in the evening the Respondent's solicitor had said they were consider removing the sickness absence review meeting minutes and: *"While we acknowledge that these minutes provide ancillary background information and relate to causation, Counsel will address this in his submission at the hearing itself."* The Claimant said again that she had made it clear she did not agree with Effective HRM being part of the OH process and handling her medical data. She said again she felt that Effective HRM had breached her data but also that PC had on more than one occasion fraudulently misrepresented herself to the Claimant. She said that the Respondent had made no effort to remove this barrier from the process. The Claimant said her contract of employment said the medical examination would be shared with the employer and they had insisted on sharing it with Effective HRM. She said the clause also referred to a doctor not a nurse and IGP had only offered an appointment with a nurse.

3.194 The Claimant said the insistence on sharing her data with Effective HRM was contrary to the data protection handbook which said data subjects must be easily able to withdraw consent at any time. She said the Respondent was well aware she was off sick with work related anxiety that had been caused by her anxiety around her role, which she initially raised with MP on 13 February 2024 and that she had discussed the Respondent's attempt to demote her when she met with SL on 26 February 2024 and how it was making her stressed. The Claimant said the Respondent had done nothing to alleviate the stress and it was something that happened after she raised her concerns regarding the recruitment of a sitting board member and other conflicts of interest, matters to be heard at the tribunal hearing. She said in many welfare calls with SL they discussed a phased return and SL was very slow and reluctant to clarify what this would look like, making it difficult for her to return to work. She also said the Respondent had waited for the public preliminary hearing to conclude before giving their decision to dismiss, causing her further hardship. She said it was unfair dismissal and further detriment.

**Appeal**

3.195 RC asked the Claimant to confirm whether her reply should be treated as an appeal. The Claimant said it was. RC wrote on 17 February to say an appeal had been arranged with MP on 21 February and a HR consultant from Effective HRM would be in attendance. MP had agreed the meeting could be recorded and she could be accompanied by a friend or family member. The Claimant said she could not agree to the meeting whilst Effective HRM were involved. RC replied to say the meeting would proceed in the Claimant's absence and she could provide additional documents she wanted MP to consider. The meeting was delayed until 24 February to allow time for that.

3.196 The Claimant re-sent her email of 19 February and also said that the Employment Judge had decided she had a valid claim and an 8 day hearing would be scheduled which would include the stress and anxiety caused by the Respondent after she made protected disclosures to MP, SL and RC and in her grievance and grievance hearings. She said she did not understand why she was being asked the same questions over and over again, with stress caused by the Respondent for 12 months, and they should refer to their legal representatives if they did not understand what issues are being discussed at the full hearing. She said she would like it noted that to date they did not know her concerns around her job security despite the tribunal and her legal representative knowing. She also said she did not understand how she could be dismissed without 3 months' notice because clause 9 of her contact clearly stated that 3 months' notice is required from both parties. She said that was a breach of contract.

3.197 On 25 February 2025 MJ sent the claimant form SSP1 relating to the cessation of her statutory sick pay and also sent her P45. The Claimant wrote to MP and RC complaining it had been sent in the evening causing her stress and disturbing her sleep. She said that showed the Respondent had already made a decision to dismiss her and they were just going through the motions of an appeal process.

3.198 MP sent his appeal decision on 3 March [1327] having heard the appeal on 24 February in the Claimant's absence. MP said that the tribunal process was completely separate and had no bearing on internal sickness absence procedure. He said the Claimant had been absent due to work related stress for over a year and they had no indication of a likely return. He said given the Claimant had refused to engage with the sickness absence procedure (including withholding consent to an occupational health assessment), despite being offered repeated opportunities and adjustments in order to do so, that he supported RC's view that the Claimant was not capable of performing her role due to ill health, and it was not reasonable for the organisation to hold her job open indefinitely due to the impact her absence was having. MP said that Effective HRM had supported the Respondent for several years and it was, in his view, unreasonable to expect the Respondent to conduct a fair and thorough sickness absence procedure without the benefit of HR support and advice given they had no internal HR expertise. He said that the Respondent had not insisted that the Claimant see a nurse rather than a doctor for an OH assessment, and that they had agreed to use a provider of the Claimant's choice, but that she had continued to refuse to participate due to the involvement of Effective HRM. MP said he could also see RC had conducted an investigation into the allegations against Effective HRM in respect of a data breach and had found no case to answer.

3.199 MP said that he could find no evidence that the Respondent had attempted to demote the Claimant and that he could see the organisation had been unable to engage with the Claimant in a meaningful way about a return to work due to her refusal to participate in the process. He said there had been repeated invites to an OH assessment which was a reasonable precursor to work for her health and wellbeing, and to ensure the Respondent could make any necessary adjustments. He said the Claimant's points about alleging this happened following raising concerns about the recruitment of a sitting board member and other conflicts of interest, and that the Respondent had waited for the public preliminary hearing to conclude before giving their decision to dismiss (causing further hardship) bore no relation to the process. MP said that in relation to the Claimant's allegation that SL was slow/reluctant to clarify what a phased return to work would look like, that he could see the Claimant's discussions with SL regarding a phased return to work focused solely on her demand for full pay during any agreed phased return.

3.200 In relation to the Claimant's question how she could be dismissed without giving 3 months' notice, he said: "*I can confirm that you were dismissed with 3 months' notice per your employment contract. However, given that you are currently absent due to sickness and have been since February 2024- and given that your contractual notice period is 1 week more than your statutory notice period entitlement, your 3 months' notice period has been paid in lieu of notice at the Statutory Sick Pay (SSP) rate of £116.75 per week (your entitlement to SSP expired on 11 February 2025 and you were therefore owed 5 days' pay at the SSP rate). I can confirm that this is not a breach of your employment contract.*"

3.201 In relation to MJ sending the Claimant her P45 and the allegation that the appeal was prejudged, MP said that under the sickness absence procedure the date that any dismissal takes effect is not delayed pending the outcome of an appeal, but if the appeal is successful the decision to dismiss is revoked with no loss of continuity or pay.

3.202 The Claimant commenced her second period of Acas early conciliation on 3 March 2025. That concluded on 14 April 2025 and she presented her second tribunal claim on 30 April 2025.

3.203 On 24 August 2025 the Claimant wrote again to the Charity Commission [2061] alleging that the Respondent has charitable aims and had used them to draw down funding and apply for corporation tax exemption but had not registered with the Commission. She alleged there had been trustees employed and benefiting from the organisation and both CEOs had been trustees when recruited and had unfair advantage over other candidates. On 8 October 2025 the Charity Commission wrote again to the Respondent [2055] stating they had recently been made aware of concerns that the organisation was claiming to be or operating as a charity but not registered with the Commission. The Commission said that if the organisation had been established for charitable purposes only, is for the public benefit, is based in England and Wales and has an income over £5000, the trustees had a legal duty to register. MP replied to the Commission on 10 October 2025 [2057] stating the Respondent is not a charity and had never presented itself as a charity. He explained they were a not for profit company whose work was with business, enterprise, and trading and a significant proportion of its income coming from contracts to provide business advice won by competitive tendering (i.e. in effect saying that they were not established for charitable purposes only).

3.204 On 5 February 2026 the Information Commissioner's Office (ICO) provided its decision in response to a complaint made on 5 March 2025 that the Respondent had shared her personal sensitive medical data with Effective HRM and her personal mobile number after she had made it clear in an email and by filling in a form saying she did not want her data shared with Effective HRM. The case officer said it was not a personal data breach but the way in that the matter had been handed fell below expectations. The case officer said it was standard practise for small organisations to retain an external HR provider and to share employees special category data with such a provider. The case officer said that the processing was likely to be lawful under GDPR Articles 9 and 6 (processing necessary for the performance of a contract to which the data subject is party). However, the case officer was concerned that in his view the Respondent had sought consent and yet had no intention of relying on it. He said "*Fundamentally I think SFW were unfair to seek consent and then fail to explain why they were processing VP's special category data to EHRM despite her objections. I intend to close this case on the basis of an infringement of the above*." He said the Respondent should take steps to improve their information rights practices.

## 4. Discussion and Conclusions

**Direct Race Discrimination – paragraph 2 of the List of Issues – Did the Respondent fail to appoint the Claimant to the role of CEO, instead appointing Rosie Cribb a white person? Was that less favourable treatment? If so, was it because of race?**

4.1 I have to apply the law and the findings of fact to the issues to be decided in the case. Before doing so I address a point that was raised in oral closing submissions and, in particular, the Claimant and her support objected to the Respondent's counsel seeking conclusions for the same reasons as those given in deposit orders. There was no particular application made, but I was told that they wanted the point "noted." What happed with regards to deposit orders was inherently before me in this case. It was part of the agreed reading and moreover the Claimant expressly refers to the public preliminary hearing before EJ Povey at the making of the deposit orders in her own witness statement. However, I was and remain acutely aware (and I voiced this opinion to the parties and the Respondent's counsel did not disagree with me) that my responsibility and duty is to reach my own independent conclusions afresh on the evidence before me. I have complied with that duty. The consequences of any deposit orders made, if any at all, is not a matter before me at this stage and I have made my findings independently and unsullied by any other previous views expressed. In reaching my conclusions I will try to work roughly chronologically through the complaints (other than the “like work” Equal Pay complaint which transcends a large period and I therefore address at the end). I therefore take the direct race discrimination complaint first. It is not in dispute that RC was appointed as the successful candidate and that RC is white. The Respondent also accepts that selecting the Claimant for the role is likely to be detrimental treatment and I would find that it was detrimental treatment from the Claimant’s perspective; it was clearly a role that she very much wanted.

4.2 I would not find that the Claimant has proved, on the balance of probabilities, facts from which I could conclude, in the absence of an adequate explanation, that the Respondent has committed an act of discrimination so as to shift the burden of proof onto the Respondent. But in any event, even if I proceed on the basis that the burden does shift, I would find that the Respondent has proved, on the balance of probabilities, through sufficiently cogent evidence, that the treatment was in no sense whatever on grounds of race. My core reasoning is as follows.

4.3 That RC was white and successful is not sufficient to shift the burden of proof because it is simply a difference in treatment. Factors that the Claimant points to include that she says there was inconsistent and altered scoring. I do not find there was inconsistent scoring. On the face of it the panel scored individually on the basis of their assessment of each individual candidate’s individual answer, as shown by how the panel members filled in their sheets. There is always going to be scope for differences, but differences do not equate to inconsistency and in fact where there were candidates who divided opinion, there was still some consistency in the majority viewpoint and the minority viewpoint, rather than there being complete outlier viewpoints. Further the Claimant and RC were collectively the top two scoring candidates.

4.4 In terms of altered scoring, I anticipate that is a reference to JG’s scoring. But I have not found that was altered. I do not find as a matter of fact that JG, as argued by the Claimant, gave her some additional points that were over the total available points, and that this was then somehow taken from the Claimant again. It was a mathematical error on JG’s part when he did a totting up that did not ultimately affect the decision making process.

4.5 The Claimant also relies on missing records. KW’s missing records did not, however, relate to either the Claimant or to RC and relate to a candidate whose scoring is of no consequence to the analysis. It also does not follow that because KW did not have the missing set when she was subsequently asked for them, that she did not have them at the time of the actual decision making process. KW also was not really challenged in depth in cross examination about the point, and what the Claimant said it went to. In particular, if the Claimant was seeking to argue that KW was for some reason up to something here (and what that would be I do not know), that was not put to KW. If the Claimant here is also referring to her originally not having a page of JG's notes, then she accepted she had that page at the time of or not long after the public preliminary hearing when the error came to light. The point also has to be viewed in the context that the contemporaneous records also show SL promptly trying to gather the records when first requested by the Claimant and chasing them up. There was an offer to send the Claimant her records as soon as they came in, and the reluctance to send the Claimant other candidates records outside of the litigation disclosure process safeguards is understandable given the concern about the scope for jigsaw identification even if names were redacted. But this is all is generally indicative of trying to be as open as the Respondent reasonably could rather than being indicative of them seeking to hide something. I appreciate the Claimant says the Respondent not immediately centrally pulling together and holding all the records did not comply with the Respondent's recruitment policy or good practice. Employment tribunals are peppered with employers large and small who do not in the reality of day to day busy working life comply with complicated internal policies, and it does not to me read as being any more than that.

4.6 The Claimant also says that there was the erroneous introduction of Candidate D as being the second highest scoring candidate during the February 2025 public preliminary hearing before EJ Povey. As I understand it, this relates to a scoring matrix which had initially been produced in place of handing over the other scoring sheets to the Claimant, and which ultimately proved to be incorrect when the scores were transposed into the matrix. Obviously, I was not at the hearing, and all I have are EJ Povey's judgment and orders which makes no reference to the point. But is on the basis of those written records that I must proceed. Those written records simply therefore do not accord with the Claimant's assertion in evidence that most of a day at the hearing was spent on the point, or that it was operative on the mind of EJ Povey when he decided what he did at that hearing. More importantly for the current analysis, the scoring matrix was not created at the time of the decision making, it was something that RC later produced for the purposes of the litigation. RC candidly accepted in evidence that she probably rushed it and she made a mistake. RC was generally a thoughtful and considered witness, and was prepared to concede and reflect when appropriate. I accept her evidence about what happened. Further, this was all (including the production of the matrix and what was said at the public preliminary hearing) after the event. It did not reflect the actual decision making process at the time which was based on individual performance and scoring, not on the production of a scoring matrix and for which we have (other than one set of records) the individual scoring sheets. I do not consider that the general handling of the disclosure of the recruitment materials is suggestive of the Respondent hiding the real reasons for its actions, as the Claimant asserts.

4.7 The Claimant also relies on the Respondent not calling MJ as a witness in the employment tribunal litigation. But MJ was not part of the decision making panel. MJ was the grievance decision maker and whilst I appreciate the Claimant was and is unhappy with the decision he reached, it is not a direct complaint in this litigation. It is therefore understandable why he was not called as a witness and I do not consider it appropriate to draw anything from the fact he was not called.

4.8 It became evident during the course of the hearing before me that the heart of this race discrimination complaint is levelled against MP. The Claimant declined to put to any other members of the interview panel in cross examination (despite being invited/reminded to do so) that in their decision making they were motivated by race. Instead, the Claimant alleges that MP provided tainted information to the interview panel, by allegedly “creating fear” and the need to consider fundraising as a priority criterion in their selection. The Claimant alleges that MP was motivated in doing so by race and a preference for RC. She seeks to draw support for that by asserting that MP manipulated her interview and that he had circled the Claimant’s and RV’s names on the interview records, which the Claimant states is as classic indicator of racial stereotyping and she said at one point she considered it meant that MP did not want any more staff from a minority background. She says that lumping together minority individuals is discriminatory and creates an adverse inference of bias. She referred to a first instance employment tribunal decision of <u>Sharma v Jaguar Landrover Limited 1300105/2023</u>. She also referred to alleged confusion between Asian candidates and says that indicated racial bias which she asserts infected the collective panel decision. The Claimant asserted in evidence that she had always known that MP had held biased views towards her. The Claimant also alleges that the expressions “best fit” and “better fit” are subjective and a classic veil for discrimination. She says the expression was a loaded phrase to her and meant that her face did not fit, she did not fit on, and to her that meant that the colour of her skin and her race did not fit. She alleged that the Respondent’s thinking was that she was good enough to be the deputy or a representative when SL was the CEO, but she was only good enough to be the second person and not the CEO, and she considers that was because of her race. Much of this, including that she was levelling the complaint against MP, only came to light when the Claimant gave her oral evidence.

4.9 The Claimant’s statement that she had “always known” that MP allegedly helped biased views towards her was a bold, bare, generalised statement made for the first time at the hearing and is unsupported by any concrete allegations that were put to the Respondent in any way that they would be able to answer. That is not a fair way to proceed in litigation, and it is therefore an assertion I discount. In relation to the Claimant’s point about lumping together minority individuals, or confusing names, the only evidence about confusion in names related to the one email sent by RC. I have accepted as a matter of fact RC’s evidence in relation to that, but in event RC was not involved in the decision making so it is not an evidential point that relates to this allegation. In relation to MP writing down the Claimant and RV's names on his interview records, I do not consider this is evidence from which I could conclude that MP was biased against the Claimant on grounds of race. What would it go to? MP know full well it was the Claimant he was interviewing for the post, not RV. As MP states it most likely went to an answer given by another candidate external to the organisation, bearing in mind it was the Claimant and RV working there at the time. In relation to the Sharma case, it is a first instance non binding decision, and each case ultimately turns on its own facts. The Respondent in that particular case had also failed to call the key witness in question.

4.10 I do not consider that there is good evidence that MP manipulated the scoring process. All the panel members denied that had happened and I accept their evidence because I accept that they were, as both SL and KW said, fully able to and did make up their own minds, indeed as demonstrated by the fact the decision making process was a lengthy one. As the Respondent points out, MP actually scored Candidate D higher that either the Claimant or RC and KW and MP both initially best liked Candidate D. That in itself is also inconsistent with an allegation that he was manipulating the scoring to engineer an outcome that favoured RC.

4.11 The Claimant here also asserts that MP shut down her answers when she attempted to speak about fundraising, and that MP, in effect, then made the panel fearful of the funding future of the Respondent, to make it a priority criterion that went in RC's favour. MP denied shutting down the Claimant when attempting to speak about fundraising in her presentation and when answering the panel questions and said it would be odd thing to do so given it was relevant to the presentation and question six. SL and KW had no recollection of this happening either. Weighing that evidence into account, I do not find on the balance of probabilities that it occurred. In context I do not consider likely that MP would do that or that it would go unremarked upon or without intervention from others on the panel. The Claimant alleges that the decision was made, or largely made on the issue of fundraising, and she alleges that was not the basis of any of the planned interview questions. I do not agree; question 6 (which like all the questions, every candidate had in advance of the interview), did refer to fundraising. I also do not find that MP create a fear in the panel members of the Respondent's funding position that he alleged used to favour RC. There is nothing in the witness evidence to support that. The Respondent at that time, given the sector in which it operates, had a reasonably healthy current and mid term outlook with core Welsh Government funding for a year and a further year of reserves. As I come to below, fundraising was a consideration but I do not accept that MP was illegitimately installing fear in the wider panel. Indeed it would be difficult to see how he could have that effect on SL in particular, who as a long term director and CEO would well know the position herself. To address a point that also featured at points in the case (although I am not sure it featured in cross examination); I also do not find that MP deliberately failed to give the Claimant the same information about the financial position of the Respondent that he gave to other candidates.

4.12 I do not consider that the use of the expression better fit or best fit is evidence from which I could conclude that the panel's decision, or MP's decision, on who to select was because of race. The context here is important because it was not an expression used with no context; it related to RC's fit as against the job description, criteria and person specification in terms of what the Respondent was looking for when the panel drew all the threads together. There is a risk here of crossing over here into the reason for the decision itself, which is to be left out in this stage of the burden of proof analysis and therefore a point I return to below. But I have to touch on it in part because I otherwise cannot fairly address the point the Claimant makes. The point is that MP was vocalising, or trying to explain, in the context of a difficult and finally balanced choice between two strong candidates, why they made the decision that they did. Some wording always has to be used to explain the decision. The expression used did not land well with the Claimant, in particular in all likelihood over time when she continued to ruminate over her non-selection. But the fact she perceives the expression to have a meaning does not of itself mean that it actually did or that use of the word was suspicious.

4.13 The Claimant also alleges that RC's appointment breached the law in terms of allegedly violating section 175 Companies Act, charity law, and the Respondent's governing documents. She alleges that the Respondent bypassed the law to favour RC as the white candidate. I do not find, however, that the panel had any of those things in their mind when they made the selection decision. Whatever the legality of the situation, SL had operated as both CEO and board member for many years and in terms of any potential conflict as the Respondent saw it, they had from their perspective considered they had dealt with it by removing RC from the selection process.

4.14 The final main point that the Claimant points to is a failure by the Respondent to follow their own policies and in particular the Equality and Diversity Procedure in the handbook found starting at [1636]. Paragraph 4.1.1 on recruitment and selection says that those undertaking recruitment and selection should have all received training in equal opportunities. It is accepted there was no specific training on this for those on the selection panel although some (MP, KW and JG) had received equal opportunities training in other roles. The policy requires copies of the Equality & Diversity Policy to be made available to each candidate. It was not sent to each candidate although it would be made available in the sense they would be at liberty to ask for it. The Claimant herself had access to it as a current employee in any event. The policy states that all vacancy advertisements will include an appropriate short statement on Equality

& Diversity which it is accepted was not specifically done. The policy requires equal opportunities information record keeping and monitoring against the protected characteristics of gender, racial origins, disability and age which it is accepted has not been done. The policy requires all interviewers to be briefed on the Company's Equality & Diversity Policy which was not expressly done although again some had had training in other roles although of course not specific to the Respondent. The policy also requires the Respondent to monitor all the various activities under it on regular basis with the setting up of a sub group of the board, a Pay and Conditions Group to meet quarterly. Again this was not done although it is hard to see given the size of the board for much of the time how a sub group would have been possible.

4.15 To set this all in balance there are some good practice measures the Respondent did do. It was a planned out process. There was a selection panel of 4 rather than one person making the decision (and which met a requirement of the policy). There was a record kept for the reason of the selection of the successful candidate. The vacancy was advertised internally and externally and the opportunity was open to internal staff. Indeed, the Claimant was encouraged to apply by SL. All candidates were asked the same questions which were shared with them in advance and were scored for their answers under the same scoring system.

4.16 Set in this context, and bearing in mind this is a small organisation with a board of volunteer directors, I do not consider that the failures to comply with the identified aspects of the Equality and Diversity Procedure are sufficient to shift the burden of proof. I do not see how they could be capable of showing, in context, that the reason for the Claimant's non selection was her race. This was not, for example, some kind of closed procedure, with no published criteria, and no clear reasoning proffered for the decision made, that might in my judgement be the kind of instance where suspicions may arise.

4.17 Further, if it stand back and I look at matters as a whole, I also do not consider there are sufficient facts to shift the burden of proof, including here the fact that the Claimant was actually scored higher than other white candidates. But if I am wrong I have gone on to consider the reason why RC was selected in preference to the Claimant in any event.

4.18 I find that RC was selected over the Claimant due to be combination of factors. First, RC across the panel received a higher total overall score than the Claimant. The scores were in my judgement each panel member's genuine assessment of the answer they were given against the scoring criteria for each question and by reference to the actual answer given. To take one example, JG said in answer to one question the Claimant had given an answer that related to a Church fete whereas he considered RC had given a stronger answer on that particular one. Or on one question, KW particularly liked an answer that RC that showed RC's knowledge about disability (although of course there were other questions where KW rated the Claimant's responses).The panel, however, went on to still have a wider discussion about RC and the Claimant's respective suitability and attributes for the role in circumstances in which they were both good, strong candidates who had much to offer. The Claimant in her answers and her experience, it was considered would run the organisation in a similar way to as it had been under SL's stewardship and she brought with her, her valuable knowledge of knowing the functioning of the organisation on a day to day basis. The Claimant was seen as having to grow into a new leadership position. RC held different attributes such as, from the panel's perspective, experience running her own consultancy as her own boss, so had the experience of the responsibility of running and managing an organisation in the third sector. It was felt that RC could hit the ground running in that regard. It was also felt that RC had demonstrated a more forward thinking strategic vision in terms of, for example, a deeper alignment with Welsh Government and as KW puts it, a plan to showcase the organisation to stand out. The panel also liked RC's experience in social enterprise and in project design. The panel also liked RC's fundraising experience, having managed her own fundraising business and what they understood was success in securing funding for third sector organisations. It was seen a positive attribute both in terms of creativity in ways to expand, grow and diversify the Respondent with the funding to do that and also the Respondent's long term financial security in which it always will be having to seek future funding schemes because governmental funding will always be periodic, with a need to keep on applying in cycles and never a guarantee that it will be maintained. What the panel understood to be RC's previous success in that regard was an attractive factor. Pulling all of these threads together, RC was seen as having the better mix of skills, experience, and ability to carry the organisation forward in a way they found attractive. ambitious and resourceful. Fundraising was therefore, in my judgement, an important consideration but it was not the sole criterion and similar to the view MP expressed in his evidence, that particular point in my judgement became overstated in the grievance investigation conclusions at stage one and did not reflect what were in reality wider and more nuanced considerations. But in any event the fundraising point was of value to the Respondent and I reject the notion that, as already referred to above, it was manipulated by MP to the other panel members to secure success for RC in some kind of way that was illegitimate. As I have said, how would MP do that to SL who knew the organisation and its finances inside out? JG's overall preference was for RC in any event, and KW was clear in her evidence, and I accept, that she knew her own mind and that ultimately she could see the bigger picture.

4.19 I am satisfied there is sufficiently cogent evidence to reach these conclusions having had access to the scoring records and the evidence of all four of the panel members tested under cross examination. None of the above reasoning is because of race in the sense of race being a significant influence on the decision making. It is in my judgement the genuine reasoning of the panel as they went through their decision making process. That the Claimant disagrees with how they rated RC compared to her, or feels that there was more she had to offer in terms of these things, does not mean that was not the genuine decision making process and reasoning that the panel had at the time, and it does not make it because of race. Likewise, even if RC had an advantage in the process as a board member (something the Claimant believes and the Respondent disputes, or asserts was no more an advantage than the Claimant having her own, different advantage through being an employee) that helped RC to achieve success, that would not make it race discrimination. The direct race discrimination claim is therefore not well founded, does not succeed and is dismissed.

**Did the Claimant make a protected disclosure to MP on 4 February 2024?**

4.20 I turn next to the protected disclosure detriment complaints with the first alleged protected disclosure allegedly made to MP on 4 February 2024 following the Claimant being told she was unsuccessful and that RC was the successful candidate.

4.21 What the Claimant said to MP must be a disclosure of information. It must have sufficient factual content to be capable of tending to show breach of a legal obligation, or commission of a criminal offence, or a miscarriage of justice. I do not find that it meets that threshold. I have found that as a matter of fact that the most the Claimant said were *words to the effect that she considered RC was privy to information that would have benefitted RC or gave RC an unfair advantage.* The Claimant therefore did not communicate information capable of tending to show (or capable of forming the basis of a reasonable belief that it tended to show) any of the alleged criminal offences at paragraph 4.6.1 of the List of Issues.

4.22 In terms of the alleged disclosure of information tending to show breach of a legal obligation the only listed matters potentially in play would be 4.6.2.2: “Breach of s175 of the Companies Act 2006 (duty to act in the best interests of the Respondent as a statutory director) by not following its governing document” and 4.6.2.3: “Breach of charity law by not registering as a charity & by permitting a former Trustee to be appointed as a member of staff in … Rosie Cribb” But what the Claimant actually said did not have sufficient factual content to be capable of tending to show those things or the basis of a reasonable belief that it tended to show those things. The Claimant did not mention breach of s175 of the Companies Act, or the duty to act in the best interests of the Respondent as a statutory director and she did not expressly mention the Respondent not following its governing document. Whilst what she said related to RC’s appointment as a member of staff and former trustee, she did not mention an alleged breach of charity law.

4.23 The Claimant's view is that RC's appointment breaches the Memorandum of Association at paragraph 5 [189]:

"*The income and property of the Company shall be applied solely towards the promotion of its objections and no part shall be transferred, directly or indirectly, by way of dividend, bonus, or otherwise whatsoever by way of profit, to the members of the Company* ***and no Trustee shall be appointed to any office of the Company paid by salary or fees or receive any remuneration or other benefit in money or money's worth from the Company*** *PROVIDED THAT nothing shall prevent any payment in good faith by the Company:*

*Of the usual professional charges for business done by any Trustee who is a solicitor, accountant or other person engaged in a profession, or by any partner of his or hers, when instructed by the Company to at in a professional capacity on its behalf; Provided that at no time shall a majority of the trustees benefit under this provision and that a Trustee shall withdraw from any meeting at which his or her or appointment, or that of his or her partner, is under discussion.*

*Of reasonable and proper remuneration for any services rendered to the Company by any member, officer, or servant of the Company who is not a Trustee…"* [My emphasis above]

4.24 But the Claimant saying RC was privy to information that would give RC an unfair disadvantage was not in my judgement capable of tending to show an alleged breach of this aspect of the Memorandum of Association/ governing documents or the basis of a reasonable belief that it tended to show that. The content and specificity simply was not there. The Claimant says the Respondent would have known what she was referring to by implication because she says she had previously raised concerns about SL being a paid member of staff and a trustee/director. But in my findings general concerns about the drafting of the governing document, including whether directors/trustees could also be paid staff was last raised in or around 2016. I do not find it was on SL or anyone else at the Respondent's mind at the time. It did not mean, in context, that what the Claimant was communicating about RC allegedly being privy to information and having an unfair advantage would be understood as relating to this point, as opposed to simply communicating a concern about perceived unfairness. In any event the content has to be in the disclosure or disclosures itself. The point of making a protected disclosure is that it has got to be capable of being understood as to what it is getting at and thereby qualify for protection.

4.25 In terms of an alleged miscarriage of justice, those potentially in play would be most likely to be 4.6.3.3, 4.6.3.4 and 4.6.3.6 in the List of Issues, but in fact again the Claimant did not say that the Respondent had failed to follow its articles of association in connection with the appointment of a trustee as an employee (or words to that effect), and she did not use the expression that the Respondent had engaged in discriminatory conduct.

4.26 In terms of 4.6.3.6 in the List of Issues the Claimant did say words to the effect that RC was privy to information that other candidates were not, although I have not found that she went on to expressly reference the financial position of the Respondent. But again that does not in my judgment amount to a disclosure of information tending to show that a miscarriage of justice had occurred or the basis of a reasonable belief that it was information tending to show such a miscarriage of justice. The case law authorities are clear that in the context of an alleged disclosure of information tending to show breach of a legal obligation, the source of the legal obligation should be identifiable, even if not in strict legal language. It does not cover, for example, breach of morals or non legally binding guidance. In my judgement the same principle must apply to the concept of a "miscarriage of justice." As the Respondent's counsel observes the phrase "miscarriage of justice" is not defined in the legislation. It is an expression that would have to be given its natural meaning in the context of the harm the legislation is aimed at. In my judgement, that natural meaning must involve a failure in the administration of justice in the sense of the conduct of legal proceedings (or potentially the regulatory field of quasi-judicial proceedings). I do not consider its ambit covers day in day out decisions made by employers even if that decision making involves compliance with or defiance of some legal obligation. I therefore do not consider that what the Claimant said was capable of being a disclosure of information tending to show a miscarriage of justice or capable of being the subject of a reasonably held belief that it tending to show a miscarriage of justice within the meaning of that expression. But, in any event, there was also not sufficient factual content to enable MP to understand the Claimant was disclosing this type of alleged wrongdoing and nor was it capable of forming the basis of a reasonably held belief that it was information tending to show such a wrongdoing for the same essential reasoning.

4.27 I would also find that at this point in time the Claimant did not have a genuine belief she was making the disclosure in the public interest. I remind myself that the expression "in the belief" is not simply answered by examining motive. Further, the belief of the worker that the disclosure was in the public interest need not be the predominant motive for making it, and indeed could form no part of the motive at all. I have to make factual findings about, whatever may have been her motives, did the Claimant genuinely consider at the time that her disclosure was in the public interest. Or did she, for example, not even consider the public interest?

4.28 I do not find that the Claimant genuinely believed her disclosure was in the public interest. In my judgement, what was said was the Claimant's immediate reaction to not being given the role, it being given to RC instead, and the

Claimant subjectively considering that RC had been unfairly advantaged and therefore succeeding through being privy to some additional information as a director. I do not consider that at this time the Claimant had actually turned her mind to whether this engaged any wider interests other than her own. She made the disclosure purely in her own interests relating to her unsuccessful application for the CEO role and RC's countervailing success in the process. The Claimant made no mention of other candidates and I do not accept she had those in mind at this time. Further, as already stated the Claimant made no mention of, allegations such as breach of the Companies Act or charity law. In my judgement, the Claimant did not believe she was making the disclosure in the public interest at the time. The Claimant did not make a protected disclosure to MP on the 5 February.

**Did the Claimant make a protected disclosure to SL on 7 February 2024?**

4.29 I turn to the second alleged protected disclosure. I have found as a matter of fact that the most the Claimant said to SL was that the *process was flawed*. I do not find that this was a disclosure of information that was capable of tending to show breach of a legal obligation, or commission of a criminal offence, or a miscarriage of justice as set out in the List of Issues at paragraphs 4.6.1, 4.6.2 and 4.6.3. Nor was it capable of forming the basis of a reasonably held belief that it tended to show those things. It simply did not have sufficient specificity of content. The Claimant, as I understand it, asserts that SL should have understood that she was referring to breach of the governing document in the context of her having raised questions in the past. SL said in evidence she did not understand that, and I accept that to be case. Even if the Claimant did have that in mind subjectively at that time, the Claimant did not, through what she actually said to SL communicate information that was capable of tending to show such breach of a legal obligation or commission of a criminal offence or a miscarriage of justice within the meaning of that latter phrase that I have already set out. The content has to be within the disclosure or disclosures itself.

4.30 I also do not find that the Claimant genuinely believed her disclosure was in the public interest. Again, this was her immediate, personal reaction to not being given the role, it being given to RC instead and the Claimant considering RC may have been privy to some information that gave an unfair advantage. I do not consider that at this time the Claimant had actually turned her mind to whether this engaged the wider, public interest. What she was saying at this point in time was to advance her personal interests. There is nothing inherently wrong in having a personal interest, the Claimant was understandably upset and disappointed she did not get the appointment, but that does not make it a public interest disclosure. No protected disclosure was made on 7 February 2024.

**Did the Claimant make a protected disclosure to RC on 8 February 2024?**

4.31 The next claimed protected disclosure is to RC on 8 February 2024. I have found that the Claimant told RC words to the effect that she *considered RC may have had an unfair advantage through being privy to information as a board member.* Again, I do not find that was a disclosure of information tending to show one of the qualifying wrongdoings for the same reasons I have already given in respect of the similar content that the Claimant expressed to MP that I therefore will not repeat here. Again nor was it capable of forming the basis of a reasonably held belief that it tended to show any of those types of wrongdoing.

4.32 I also find that the Claimant did not believe at the time her disclosure was in the public interest. Again, this remained the Claimant's immediate reaction to not being given the role, it being given to RC instead, feeling some unfairness had gone on and wanting to advance her own interests in the discussions about her enhanced role that the Claimant and RC had been asked to work together to carve out. I do not consider that at this time the Claimant had actually turned her mind to whether this engaged the wider, public interest. No protected disclosure was made on 8 February 2024.

**Did the Claimant make a protected disclosure in her email to MP copied to SL of 13 February 2024?**

4.33 I turn to the Claimant's claimed protected disclosure in respect of her email to MP of 13 February 2024. The part the Claimant seeks to rely on is the opening sentence: "*Following the interview for CEO on 31 January, I was disappointed to learn that the job had been appointed to another candidate, and a director.*" The Claimant asserts that her reference to "and a director" would have led MP (and SL) to know she was referring to the appointment being a breach of the governing documents. There is also a vague reference to conflicts of interest where the Claimant asked, amongst other things, for copies of any conflicts of interest that were registered.

4.34 The Claimant's disclosure was not capable of tending to show any of the alleged criminal offences set out in paragraph 4.6.1 of the List of Issues or of forming the basis for a reasonably held belief that it tending to show those things. It simply did not have sufficient specificity but was more of a statement of disappointment and question/ a request for further information. In terms of paragraph 4.6.2 in the List if Issues (breach of a legal obligation) again it mentioned nothing about charity law as set out in 4.6.2.1 and 4.6.2.3. It also made not mention of what is at 4.6.2.4 or 4.6.2.5. In terms of 4.6.2.2 there was no mention of the Companies Act 2006 or using public money for private gain, or any direct reference to not following the governing document. Again, I do not find that the Claimant's reference to "and a director" or her requesting conflict of interest registers was sufficient specificity to be capable of being information tending to show a breach of the governing document and therefore breach of a legal obligation or forming the basis of a reasonably held belief that it tended to show that. In terms of whether the Claimant disclosed information tending to show a miscarriage of justice, paragraphs 4.6.3.1, 4.6.3.2, 4.6.3.4, and 4.6.3.5 did not feature. In relation to 4.6.3.3 in the List of Issues, again the Claimant did not communicate an allegation of failing to follow the articles of association in connection with the appointment of a trustee (RC) as an employee. There was not sufficient specificity.

4.35 In relation to 4.6.3.6 the Claimant did not in the actual email say that RC was privy to information that other candidates were not (although she had said it in prior conversations). She did not reference the financial position of the Respondent. I do not consider that even within the wider context, that the Claimant's email and its references to "a director" being successfully appointed, and asking for copies of any conflict of interest registers, there was sufficient specificity in what the Claimant communicated to be capable of being understood as information tending to show a miscarriage of justice had occurred. For reasons, already given, I also do not consider that the ambit of the meaning of "miscarriage of justice" would in any event cover what it was the Claimant was complaining about. The content should be in the disclosure itself. It was not capable of tending to show a miscarriage of justice had occurred in thar regard, or capable of forming the basis of a reasonably held belief that a miscarriage of justice had occurred in that way.

4.36 For reasons similar to those already given, I also do not find at this time the Claimant believed she was making a disclosure in the public interest. At that time the Claimant was focused on her own personal interest, in her disappointment in not getting the CEO role, and in wanting to push ahead with having the meeting to resolve her enhanced role going forward. The Claimant did not make a protected disclosure on 13 February 2024.

**Alleged protected disclosure detriment: Between 12 - 14 February 2024, Martin Price & San Leonard failed to reassure the Claimant that her role was safe, including cementing the discussion around her role and set and implement a timeline, thereby failing to support her return to work**

4.37 I have not found that the Claimant had made any protected disclosures by the time of the 12 to 14 February 2024. As a result this detriment claim cannot succeed because it cannot have been in response to the making of a protected disclosure. But in case I am wrong about whether the Claimant made an earlier protected disclosure I will briefly address the point in any event. The Claimant accepts that the words "thereby failing to support her return to work" do not apply and can be ignored because she was actually working as normal at this point in time.

4.38 I do not find as a matter of fact that MP and SL failed to reassure the Claimant that her role was safe. After the Claimant expressed that the situation was making her very anxious and uncertain about her current and future roles, MP emailed her that very same day to reassure her that she did not need to be worried about current or future roles. In his further email of 14 February he told the Claimant she was a very valued employee and they wanted her to be part of the Respondent's exciting future. That aspect of the complaint would fail on the facts.

4.39 As I understand it, the heart of what the Claimant seeks to complain about here is what she sees as a moving of the goalposts. She had been expecting to meet with RC and MP on the Wednesday but was then told by RC on Tuesday 13 February that RC wanted to postpone the meeting until RC had more time to speak to the board. RC then also said she was meeting MP the next day (without the Claimant) and she would then be in touch with the Claimant about a timescale. The Claimant then protested in her emails, and MP in his email of 14 February, whilst offering to meet with the Claimant the next day, Friday, or early the following week said, that the precise details of the new role needed to be finalised when the new CEO started in April.

4.40 In one sense MP did therefore still actually reassure the Claimant her role was safe and set out a timeline. What the Claimant is truly seeking to complain about is what she sees as having initially been told that the new job description and title would be in place immediately, was now being delayed until April; i.e. not sticking to what she says was the originally communicated timescale. I have found as a matter of fact MP did not tell the Claimant the role would be implemented with immediate effect or effective immediately but that in his meeting with the Claimant she had been left with the impression that it would happen promptly, and the Claimant herself wanted it resolved promptly.

4.41 If I treat that generously as falling with the complaint that there was a failure to cement the discussion around her role and set and implement a timeline, I would in any event find that what happened at this point in time was not because of (in the sense of being significantly influenced by) any of the Claimant's alleged protected disclosures. It happened because the panel (who were the board, absent RC), including MP, initially and somewhat naively thought it could be resolved quickly. It then transpired that it was more complicated and needed more time dedicated to it than was first thought. RC had been set the task of carving out the role with the Claimant without any prior consultation with RC about it. RC found that a difficult task for a variety of reasons; she had not yet started in the role and so it was difficult to understand and know how everything worked and what she would want to delegate to the Claimant and the impact that might have operationally; she had some concerns about a job title of Deputy CEO; it was a piece of work that she struggled at that time to dedicate the time needed to it bearing in mind she had a workload to run off in her existing job before starting with the Respondent; she was not yet working for the Respondent as CEO and would not be until the April; and she had family commitments during the half term break. In my judgement, MP belatedly appreciated that it was a bigger, more complicated job than the panel had first envisaged and so he sent the communication that he did on 14 April 2024. In my judgement it had nothing to do with any alleged protected disclosure by the Claimant. In my judgement MP or anyone else involved also were not seeking to backtrack or delay things unnecessarily; they were still trying to drive it forward. For example, that evening SL started trying to collect the interview notes, MP was offering to still meet with the Claimant, and RC emailed SL and MP with some proposals about a new job description for the Claimant. The Claimant points to the fact that the Respondent sought HR advice, but I do not see anything sinister in that; the Claimant was asking about many things, including access to other candidate's interview records that raised data protection issues. It is understandable the Respondent wanted to get some HR advice.

**Alleged protected disclosure detriment: On or around 26 February 2024, demoting the Claimant by denying and/or taking the following roles off her (including ending discussions on an enhanced role and taking no further action): Outwardly representing the Respondent; Developing policies; Training**

4.42 I have not found that the Claimant had made any protected disclosures by this point in time. As a result this detriment claim dated 26 February 2024 cannot succeed because it cannot have been in response to the making of a protected disclosure if none had in fact been made.

4.43 But I will any event briefly address the complaint. By this point in time the Claimant had expressed her ongoing concerns and the impact it was having on her, and following advice from Effective HRM it had been decided that in fact SL as current CEO would be better placed to have a meeting with the Claimant about the job description, promoted role and salary review at that point in time, and the meeting was arranged for 26 February. SL worked on a draft sent to the Claimant on 22 February which the Claimant replied to on 23 February. The meeting on 26 February then took place.

4.44 The Respondent had not in fact taken any duties off the Claimant; the Claimant had been working as normal until she was signed off sick. I also do not find that the Respondent was seeking to take a role off the Claimant of outwardly representing the Respondent. The draft job description SL had given the Claimant in advance of the meeting said "Deputise CEO at meetings and events when needed" [672]. As SL sets out in her witness statement, she was telling the Claimant that the Claimant's outward facing representation of the Respondent had always been at SL's request or with SL's knowledge and never as a matter of right or automatic authority and in effect this situation could continue. This is again reflected in the amended draft version SL sent to the Claimant after the meeting which said "Deputise CEO at meetings and events as requested." The Claimant says that being left to the mercy of the new CEO if they want to delegate was a demotion. I do not agree. This was not something that was the Claimant's contractual right. The potential for deputisation was still there, as SL said in evidence it was just something to be discussed with the new CEO, but the Claimant was not being stopped from, for example, networking. There was also still room for further negotiation.

4.45 In terms of developing policies, SL explains in her witness statement that the Claimant did contribute to the development of organisational and operational policies but that it was not a formal or exclusive part of the Claimant's remit or role, and the responsibilities were shared collaboratively. SL says that she expressed to the Claimant that the proposal to grow the Claimant's role to include policy development in her job description needed further discussion and agreement. The draft job description SL sent to the Claimant following the meeting had within it (subject to board approval): "Developing organisational and operational policies with CEO." I accept SL's evidence. She was not taking a role off the Claimant and it was not something the Claimant had a contractual right to do. SL was simply saying it had not been the sole preserve of the Claimant and that she envisaged that the Claimant could continue to contribute to the work in conjunction with the incoming CEO. Again, as SL says there was also scope for ongoing negotiations.

4.46 In relation to training SL says in her witness statement that the Claimant had delivered governance training and had been involved in other training activities such as feasibility study training. SL agreed that governance training should be in the Claimant's remit but was cautious about expanding the Claimant's training responsibilities beyond that with the impending arrival of the new CEO and SL thought that any broader training remit would need to be considered in light of future organisational developments. This reflects what SL said to the Claimant at the meeting on 26 February as set out in the minutes. Again, in my judgement SL was not taking a role off the Claimant, she was agreeing governance training should be in the Claimant's remit and was saying that the remit for other training needed to be considered further with the arrival of RC and the resources RC brought with her. (In SL's understanding training was a skill of RC too.) SL said in evidence it was likely that the Claimant's willingness would be welcome to RC but it was something SL considered needed to be discussed with RC as incoming CEO. I do not accept that the Claimant already had within her remit the delivery of all training across the Respondent's delivery. What SL was in effect doing was expanding the formal remit of the Claimant's role to expressly include governance training, and in terms of other training maintaining the status quo in that it would be reviewed in conjunction with the incoming CEO.

4.47 In general, I do not find SL was demoting the Claimant, what SL was seeking to do was what had been envisaged by the panel, which is to offer the Claimant improved terms and conditions (and here it is important to bear in mind there were a variety of things added to the Claimant's remit in the draft job description, beyond these things the Claimant identifies) and to seek to increase the scope of her contractual role to acknowledge the Claimant's contribution to the Respondent. SL was not taking roles off the Claimant. The position of Operations and Governance Manager would have been a promotion for the Claimant from her existing role as Social and Corporate Governance Advisor. Further, SL certainly was not ending discussions on an enhanced role and taking no further action. The whole point of the meeting was to further the discussions about the enhanced role and the minutes show SL engaging with the Claimant to talk through what the Claimant had in mind, to understand their respective positions, to see what compromise could be reached, and if it could not be on a particular point to agree to take the respective positions back to the board/ RC. SL said she would talk to MP that night, but she might not have time to do a further redraft of the job description before then. SL did not send it through to the Claimant that night, but SL had never made an absolute promise that she would do. SL wanted to have a Teams meeting with PC which PC could not do until the following afternoon and she said in evidence, which I accept, that she just could not formulate the full response that quickly, which I accept. But SL did then send the Claimant the further revised job description on 27 February that the Clamant never responded to. So, again, it is not the case that SL ended discussions on an enhanced role or that SL took no further action. The Respondent remained, in my judgement, committed to taking it forward.

4.48 This detriment complaint would therefore fail on its facts. But in any event, I would not find that what was happening was in any way whatsoever influenced by the alleged protected disclosures the Claimant asserts she made. There was no change in behaviour by the Respondent in response to things the Claimant was saying; they were seeking to engage with the Claimant on what had been promised; to carve out an enhanced role for her with a job title and improved salary. The timescales had been slightly elongated for the reasons I have already given but the Respondent's intent remained the same and they were taking steps to sort an enhanced role for the Claimant.

**Did the Claimant make a protected disclosure in her written grievance of 27 February 2024?**

4.49 I have not been aided in my deliberations in this case by the fact that the Claimant's written grievance is lengthy (as are the transcript records of the next two alleged protected disclosures in terms of the grievance investigation meeting and the grievance appeal meeting) and nowhere does the Claimant clearly set out which specific parts of the grievance are said to be specific protected disclosures by reference to the matters in the List of Issues.

4.50 But the Respondent does accept that the grievance does identify the following alleged types of wrongdoing by reference to the List of Issues:

- 4.6.1.1 that the Respondent had evaded its tax obligations by applying for an exemption from corporation tax in 2009 in circumstances where this was granted due to a Governing Document that says the Respondent is a charity (said by the Claimant to be a criminal offence);
- 4.6.2.1 by not registering the Respondent with the Charity Commission in circumstances where it meets the criteria to do so (said to be breach of a legal obligation);
- 4.6.2.2 Breach of s175 Companies Act 2006 (duty to act in the best interests of the Respondent as a statutory director) by not following is governing document and by using public money for private gain – (but not the additional wording of “in particular SL being paid 1.8 times more than other members of staff) (said by the Claimant to be breach of a legal obligation);
- 4.6.2.3 Breach of charity law by not registering as a charity and by permitting a former Trustee to be appointed as a member of staff in [SL] and/or [RC] (said to be breach of a legal obligation);
- 4.6.2.4 [RC] breaching her obligation under s175 of the Companies Act 2006 as per personal business benefitted from public money and resources ringfenced for the Respondent (breach of a legal obligation);
- 4.6.2.5 [MP] breaching his obligation under s175 of the Companies Act 2006 by competing for work/contracts with the Respondent (breach of a legal obligation);
- 4.6.3.2 The Respondent was misleading its organisation members and consortium partners (said to be a miscarriage of justice);
- 4.6.3.3 The Respondent failed to follow its articles of association in connection with the appointment of a Trustee as an employee (said to be a miscarriage of justice);
- 4.6.3.6 [RC] was privy to information that the other candidates were not, in particular the financial position of the Respondent (said to be a miscarriage of justice).

4.51 I agree with that analysis and do not find that the remaining parts of the List of Issues in 4.6.1.2, 4.6.3.1 (both about allegedly misleading the Welsh Government), the second part of 4.6.2.2 (SL’s pay), 4.6.3.4 (that the Respondent had engaged in discriminatory conduct), and 4.6.3.5 (failure to pay holiday pay in sickness absence) feature in the Claimant’s written grievance and are therefore not capable of being protected disclosures at this point. Indeed, the Claimant’s complaint about failure to pay holiday pay cannot have been an element of any of the alleged protected disclosures because it had not happened by that point in time.

4.52 In terms of the content that is there, the Respondent disputes that the Claimant disclosed information, asserting that she did no more than set out a statement of her position. The Respondent also denies that the Claimant had a reasonable belief that any information disclosed tended to show a criminal offence, breach of a legal obligation, or a miscarriage of justice, and also denies the Claimant had a reasonable belief that any disclosure was in the public interest.

4.53 In my judgement there was sufficient specificity in what the Claimant wrote to be capable of a disclosure of information tending to show the identified types of wrongdoing above (other than my point about whether any of the Claimant's allegations are capable of being information tending to show an alleged miscarriage of justice). I also find that the Claimant had a subjective, genuine personal belief that the information disclosed tended to show these things.

4.54 In terms of whether that was a reasonably held belief, here the test is not what a hypothetical reasonable worker might have believed in the same circumstances, but whether there is some objective basis for the Claimant's own belief. Someone with a professional or "insider" knowledge will be held to a different standard to laypersons in respect of what it is reasonable to believe but the threshold is not a particularly high one. The belief must have some evidential basis.

4.55 In my judgement, there was a reasonable basis for the Claimant's belief that the governing document was being breached with SL holding office as a board member as well as paid CEO given the content of the governing document. Indeed, MP confirmed in evidenced himself he was not seeking to say that SL's appointment did not contravene the governing document. The belief that the information tended to show breach of s175 Companies Act and therefore a legal obligation therefore was a reasonably held one. Although for reasons already given, I am less satisfied it was a reasonably held belief that the information tended to show a miscarriage of justice had occurred.

4.56 In terms of the position of RC as a director applying for the role as CEO, that situation is more nuanced because RC stood down as a director before she took up paid employment as CEO. But the Claimant believed that RC was privy to information gained in RC's role as director that would have assisted RC in the application process and there was some objective basis for that belief given it was not entirely clear to the Claimant from the Claimant's perspective what board meetings RC would or would not have been in, or financial or strategic information available to RC. I consider the Claimant therefore did have a reasonably held belief that this tended to show a potential conflict of interest and with it breach of a director's statutory duty under s175 Companies Act/breach of a legal obligation. Again, I am less convinced about the equivalent miscarriage of justice argument.

4.57 By the time of her formal grievance the Claimant had a firm, subjective belief that, based on the wording of the governing document and her own research, the Respondent was in fact a charity and had failed to register with the Charity Commission, and also under Charity Commission guidance the decision to employ a trustee or former trustee had conditions upon it, including the need to seek the Commission's approval of the appointment. The Claimant's stance was based on the governing document written with objects that are charitable in nature, at least in part, and the saving provision in clause 3 of the memorandum that seeks to "blue pencil" non charitable activity. It was also based on clause 8 which seeks to prohibit amendments that would cause the Respondent to cease to be a charity in law. The Claimant's focus was therefore firmly on the wording of the governing document. She said in her subsequent grievance interview that when she had initially looked at the governing documents she thought they needed updating because the Respondent's objects were not wholly charitable but the governing documents did not reflect that. By the point in time of her grievance her view had changed to being that she thought the Respondent was presenting itself as a charity, and that it was required to register.

3.58 MP's position is that the reality of the situation is that the Respondent is not a charity, and if it sought to register as a charity (not that it wishes to do so) it would be unsuccessful in doing so because irrespective of the wording of the memorandum of association the Commission would be likely to refuse registration because of the significant level of secondary trading the Respondent does (for example contracts with local authorities). MP says the fact that the Respondent is a membership organisation one step removed from the beneficiaries would also be a difficulty. MP says the Charity Commission will not base a registration decision just on how the governing documents are drafted, and that the reality of the situation is that the Respondent is not a charity but the governing documents need updating. He said that when the Respondent was set up it likely copied a template from the original family of Social Firm membership organisations. RC was around at the time of the incorporation of the Respondent and says the same. DW likewise said in evidence that the Respondent is not a charity, and its objects are in part in conflict with its operational nature, and he thought they should have been amended. The Respondent's view is that as a governance specialist the Claimant should have seen the reality of the situation and that the Respondent was not a charity and did not need to register.

3.59 I take that point and indeed the point that part of the Claimant's own job was to help organisations whose governing documents were not fit for purpose or adequate and needed updating/amending. But it is not at all evident to me that the Claimant had specialist skills and knowledge in charity law, charity registration and taxation. For example, it is not evident that she had seen organisations struggle to register with the Charity Commission in the same way MP says he has, and whose evidence in that regard I accept. The Claimant was purely focusing on what the governing documents say and by this point in time she had shifted from a viewpoint that the governing documents should be amended to reflect the operational reality of the organisation as not being a charity, to instead now believing that the Respondent's governing documents meant it must be a charity and must therefore register. The governing documents say what they say, and I consider in those circumstances there was some objective basis behind the Claimant's belief that the information tended to show a lack of compliance with charity law and therefore breach of a legal obligation. Again, I am less convinced by the equivalent argument about an alleged miscarriage of justice. That said I can understand MP's practical viewpoint which reflected that of DW and I am not making an actual finding that the Respondent was or is a charity; I am only concerned with whether the Claimant had a reasonably held belief. I would also add that I think the Claimant's protestations in this regard where unlikely to be a cause of concern to the Respondent because their belief was that the reality was that the Respondent was not a charity and would not meet the Charity Commission's test.

4.60 I am also less convinced whether there was a reasonable basis for the Claimant's stated belief that the Respondent was committing a criminal offence by evading tax obligations by applying for an exemption from corporation tax in 2009 in circumstances in which the Claimant alleges it was granted due to the governing document saying the Respondent is a charity. The actual request to HMRC does not assert that the Respondent is a charity but seeks the exemption on the basis of being a not for profit organisation (which the Respondent is). Nothing is known about the criteria HMRC actually applied or what evidence they actually made their final decision on. Moreover, the application was handled by the accountants and there is nothing to suggest the accountants did not know the true nature of the Respondent. The accountants do not state the Respondent is a charity. The assertion of belief in the commission of a criminal offence is a very steep one, and a big jump, hanging on the basis of the accountants saying they were sending HMRC a copy of the memorandum and articles of association to assist with the decision (referring to charitable objects etc). But the assertion that the Respondent was allegedly illegally claiming a tax exemption it was not entitled to then directly conflicts with the Claimant's other assertion that in fact the Respondent is a charity and should be registered as such. If she happens to be right about that, then why would claiming a tax exemption based on charitable status be a criminal offence? On balance I do not consider the Claimant's belief that she disclosed information tending to show commission of a criminal offence was a reasonably held belief.

4.61 There is then the Claimant's assertions that she believed that RC and MP were breaching obligations under s175 Companies Act 2006 by having personal businesses benefitting from public money and resources ring fenced for the Respondent, and competing for work/ contracts with the Respondent, respectively. There was some factual basis behind what the Claimant was asserting from the Claimant's subjective viewpoint (for example asserting that RC had advertised her private consultancy business in the newsletter and website). RC said herself in evidence she did not consider that she was doing what is alleged, saying she was offering out free courses, but that she had reflected that such activity was probably not worth the risk of how it was it could be perceived. Given the low threshold of the test, I would accept that the Claimant's belief that she disclosed information tending to show a failure to comply with a legal obligation was a reasonably held belief. (To be clear none of these conclusions are a conclusion by me that the Respondent or MP, or SL or RC actually did at all breach a legal obligation, or conduct a miscarriage of justice, or commit a criminal offence because none of those things are for me to actually determine.)

4.62 The next question is whether the Claimant believed the disclosure of information was made in the public interest, and if so, whether any such subjective belief was based on reasonable grounds. The Respondent's case is that the disclosure was made solely in furtherance of the Claimant's own personal interests as opposed to the public interest and was made after the Claimant was not content with the decision to appoint RC and not content with the revised job description and terms of the enhanced role being proposed to her by SL. The Respondent points to the fact that the things the Claimant was raising such as the governing document and SL being a board director and CEO the Claimant had known about for a long time. The Respondent points to the fact that in the grievance the Claimant was seeking compensation as an outcome and with no mention of how the alleged breaches impacted the public interest or changes that she would seek such as in the governing document or to stop publishing adverts on newsletters, or for the Respondent to change their position on tax.

4.63 I do not find that the Claimant at the time believed she was making her disclosure in the public interest. It is important to remember that just because something is capable of being in the public interest does not necessarily mean that the individual at the time subjectively thought they were making it in the public interest. There is no language of that nature in the document, other than a fleeting reference to use of public money for personal gain. When the Claimant later explored her grievance with PC in the grievance investigation that position remained the same; the Claimant occasionally referred to the Respondent using public money, but it was all in the context of how she felt this showed unfairness or illegality in the system that resulted in the selection of RC and not her. That was the focus of her grievance, along with what had happened since with the handling of the enhanced post. Further when the Claimant was being challenged about the point in cross examination, and whether she had at the time a belief in the public interest, rather than her own personal interest, her initial response was "does it really matter?" To me this shows that she had not at the point of time in question turned her mind to the public interest/ the interest of anyone other than herself. That is not a criticism of the Claimant; there is nothing wrong in being personally upset about something and challenging it.

But she did not at the time in my judgement believe that she was making the disclosure in the public interest. As a result the grievance document was not or did not contain protected disclosures. But if I am wrong about that I have gone on to consider the subsequent alleged detriments in any event.

**Did the Claimant make a protected disclosure orally during a stage one grievance investigation interview with Pam Cannell on 5 March 2024?**

4.64 As the Respondent observes the transcript of this meeting between the Claimant and PC is lengthy and the Claimant has not clearly identified the specific wording of each oral disclosure she says amounted to a disclosure of information. But in large part the interview goes over the same ground as the written grievance and therefore I repeat my conclusions above in that regard in terms of what disclosures of information there were with sufficient specificity capable of forming a qualifying disclosure. In terms of those not covered before, it continues to be the case the Claimant did not alleged that the Respondent had engaged in discriminatory conduct and she did not complain about holiday pay. The remaining three points in the List of Issues not previously covered when assessing the written grievance are then items 4.6.1.2 and 4.6.3.1 relating to allegedly misleading the Welsh Government and also 4.6.2.2 relating to SL's pay.

4.65 The Claimant did not in the interview, so far as I can see, refer to the Respondent allegedly misleading the Welsh Government, funders and members by misrepresenting itself as a charity. The Claimant did refer to how she considered the treatment of her pay was unfair, including as it matched against SL's pay but she did not mention it as far as I can see in relation to use of public money or an allegation of breach of s175 of the Companies Act. As such my ultimate views on whether the Claimant made a protected disclosure to PC in the meeting are the same as my views on whether she made one in her written grievance; including my findings on whether the Claimant at the time believed she was making the disclosures in the public interest. I find that she did not. She did not make a protected disclosure or disclosures in the interview. But if I am wrong about this, again I have gone on to consider the remaining detriment complaints in any event.

**Did the Claimant make a protected disclosure orally during a stage two grievance investigation interview with Andrew Baker on 12 April 2024?**

4.66 Again the transcript of the Claimant's interview with AB is lengthy and I have not been given anything readily identifying the specific protected disclosures said to have been made. To the best that I can identify the Claimant did raise that in 2009 the Respondent had allegedly applied to HMRC for an exemption from corporation tax normally only applicable to charities but did not expressly assert she believed that was a criminal offence. My conclusions as to why that was not in my judgement a protected disclosure remain as already analysed above.

4.67 The Claimant also referred to the Respondent being perceived by the outside world as a charity and was drawing down public money when the directors were allegedly gaining. When asked about this by AB she said that the bulk of the Respondent's core funding comes from the Welsh Government. But I do not consider that the Claimant said with sufficient specificity that she believed the Respondent was committing a criminal offence through misleading Welsh Government, funders and members by misrepresenting itself as a charity, nor that misleading organisation members and consortium partners was a miscarriage of justice. She did not allege that the Respondent had engaged in discriminatory conduct or a complaint about her holiday pay.

4.68 The Claimant did allege that the Respondent was failing to comply with its legal obligations by not registering with the Charity Commission. She did allege breach of s175 of the Companies Act/ duty to act in the best interests of the Respondent as a statutory director and by using public money for private gain. She did at this point also reference this allegation of using public money for private gain to include SL being employed on a salary nearly twice as much as hers as the person deputising for SL. She did also allege breach of charity law by not registering as a charity and by reference to SL and RC's appointments. She did also allege in effect RC and MP allegedly breaching their obligations under s175 Companies Act in terms of personal business allegedly benefitting from public money and resources ringfenced for the Respondent /competing for work and or contracts with the Respondent. I find that she did raise matters 4.6.2.1 through to 4.6.2.5 in the List of Issues with sufficient specificity that they were capable of amounting to qualifying disclosures of information that was capable of tending to show breach of a legal obligation or obligations. I also find that the Claimant believed that the information tended to show these things and from her perspective that was a reasonably held belief for the reasons already given above.

4.69 I do not, however, find that the Claimant genuinely believed at the time that the disclosure was made in the public interest as opposed to her own private interest in advancing her grievance appeal about the recruitment process and about the Respondent's treatment of her in relation to matters such as career progression, her job description and title and pay. I have again taken into account the fact that the Claimant was raising allegations of use of public money for private gain but she also said: "*Its all part of this. It forms part of it. Its about the whole thing and my job description, salary and all of this underlies the way Ive been treated, doesn't it*" i.e. what the Claimant had in mind even when raising wider matters was about it demonstrating that she herself had been poorly treated. That was shown also by the Claimant's answer in cross examination of "does it really matter?" I do not consider that when making the disclosures the Claimant believed at the time she was making it in the public interest. But if I am wrong about that I have gone on to consider the alleged protected disclosure detriments in any event.

4.70 Turning to the alleged remaining protected disclosures relating to miscarriages of justice (List of Issues 4.6.3.1 and 4.6.3.3), I do not consider that the matters disclosed are capable of tending to show a miscarriage of justice or could form the basis of a reasonable held belief they tend to show a miscarriage of justice for the reasons I have already given. But in any event, they would fail on the same public interest grounds.

**Alleged protected disclosure detriment: Sometime after February 2024 (when the Claimant commenced sick leave), the Respondent failed to answer the Claimant's request that she be paid in lieu of nine days of accrued but undertaken leave for the 2023/2024 holiday year**

4.71 This complaint fails on its facts because the Respondent did respond to the Claimant’s request. The Claimant asked on 25 April 2024 that her 9 days of accrued annual leave to be paid rather than losing some and carrying some over. SL replied (having taken advice) on 14 June 2024 to say that on that occasion and as a one off the Claimant could carry over 9 days into the current holiday year and take it when she was back at work. There was an answer to the request. Indeed, when the Claimant asked again on 17 June 2024, SL replied again on 18 June reminding the Claimant that they had agreed to honour the 9 days.

4.72 The Claimant said in oral evidence that the complaint was about the delay in responding and that if the Respondent was trying to facilitate her return to work and reduce her anxiety SL would have replied when she had the advice from Effective HRM on 7 May 2024. But that is not the pleaded complaint. The Claimant’s closing submissions seem to put it in a different way again, saying that the complaint is more about not being paid for the annual leave at the actual time (rather than carrying over) and the financial harm she says that caused. Again, that is not how the allegation is put. Further, the Claimant’s contract of employment (and indeed the Working Time Regulations) do not allow for pay in lieu of untaken holiday except on termination of employment. If the Claimant is intending to refer to actually taking booked holiday whilst on sick leave and therefore being paid for it, that is not the request she made at the time. This complaint of protected disclosure detriment is not well founded and is dismissed.

**Alleged protected disclosure detriment: In or around August 2024, the Claimant's sick pay was reduced to statutory sick pay**

4.73 The Claimant’s contract of employment gives her after 3 years’ service an entitlement to 4 months full pay and one month’s half pay [236]. The Employee Handbook says the same [1587]. SL’s witness statement sets out that in accordance with this the Claimant was paid 4 months full pay sick pay, one month half pay in July 2024 and then moved on to SSP in August 2024.

4.74 In my judgement the Claimant was simply paid in accordance with her contract. I do not find that it was because of any alleged protected disclosures. The Claimant says that the Respondent had discretion to do more if they chose to do so. There is no evidence of the Respondent, for example, exercising discretion for other employees and not for the Claimant that might for example be suggestive of the Claimant being singled out compared to others. This is a small employer with limited resources. I can see no evidence on which I can or could conclude that the alleged protected disclosures materially influenced the Respondent in paying the Claimant sick pay that was in accordance with her contract. The Claimant said in evidence that her point was more that if the Respondent had not stopped her enhanced role she would not have been off sick and therefore not suffered the loss. I have not found that the Respondent did not stop her enhanced role, but in any event such an analysis does not apply the correct causation test. This complaint of protected disclosure detriment is not well founded and is dismissed.

**Alleged protected disclosure detriment: Not giving the Claimant the role of Deputy CEO & Operations & Governance Lead verbally offered to her by Martin Price on 5 February 2024**

4.75 I have taken this claimed detriment last because there is no particular date identified for it and to be the most generous to the Claimant it could span the period February 2024 through the rest of her employment.

4.76 I have not found that MP verbally offered the Claimant the role of Deputy CEO and/or Operations & Governance Lead (or indeed Chief Operating Officer as I suspect this complaint is meant to read – the potential title of Deputy CEO and Operations and Governance Lead was actually what was proposed by the Claimant later down the line). What MP said was that the panel wanted the Claimant and RC to work together to carve out an enhanced role for the Claimant that would have enhanced pay. There was work to be done on those things albeit I accept the Claimant was given the impression it should be able to happen promptly, because that was the belief at the time. MP gave the Claimant some examples of titles that had been bandied about by the panel, but there was no actual offer. In my judgement, that was the point that SL was trying to make to the Claimant later down the line. It is therefore not the case that there was an offer by MP to the Claimant that was withdrawn or not honoured, although as I have said, particularly with the benefit of hindsight, saying that the panel had bandied about terms like deputy CEO and Chief Operating Officer really did not help manage the Claimant's expectations when it came down to actually trying to negotiate and resolve the enhanced role.

4.77 The proposed enhanced role was therefore not withdrawn, although as I have already said, the initial timescales became somewhat elongated because the task was more complicated than was first envisaged. But the commitment to carve out an enhanced role for the Claimant remained. When SL sent the Claimant the first potential new job description on 22 February with the title of Operations and Governance Manager, it was therefore not in my judgement a pulling back from what the original plan was. It was also still a title that was up for discussion.

4.78 The Claimant in her email of 23 February then proposed Deputy CEO and Operations and Governance Lead. SL did not consider that was an option given the size of the organisation and they talked through their respective positions at the meeting on 26 February. SL suggested Operations and Governance Lead as a stand alone title. The Claimant still wanted her proposed job title to be put to the board and SL said she would do so, but SL was upfront with the Claimant that she knew it would not be accepted and that why SL was keen to try to find a compromise. Again, it is not the case that there was a promised role by MP that was being withdrawn from the Claimant. SL was seeking to continue and honour the negotiations. But the Claimant was very wedded to the title of Deputy CEO. I should add for completeness I also have not found that SL agreed to the Claimant having a salary of 10% less than the CEO or that it would be backdated by 4 or 5 years.

4.79 After the Claimant's grievance was submitted SL then sent the Claimant a further draft revised job description at [786] which had three potential job titles in it of Operations & Governance Manager, Operations & Governance Lead and Deputy CEO & Operations & Governance Lead, and in which she highlighted additional points that would need to go before the board. SL asked the Claimant for any amendments and the Claimant never responded to that email. But again, this was not SL not giving or not honouring giving the Claimant an enhanced role; this was SL trying to continue the negotiations and reach some common ground.

4.80 The Claimant as stated had just commenced her formal grievance and also went on sick leave that became long term sick leave. Discussions did not further progress at that time, in my judgement, both because the Claimant was on sick leave and also because she wanted to see through her grievance and then her grievance appeal, the treatment of her role being part of that grievance. The Claimant was talking about anxiety and uncertainty around her job description and role, but she was also saying although feeling overwhelmed by the grievance process she needed to get through it.

4.81 Once the Claimant's grievance appeal was exhausted SL was then seeking the referral to OH to get advice about various matters including advice about a return to work with the anticipation of then being able to hold a meeting with the Claimant. That ultimately did not come to fruition because of the prolonged stand off about the involvement of Effective HRM. The Claimant was also saying she would discuss a potential phased return to work with her GP but did not in fact do so. There was also friction in the general relationship due to the Claimant's dissatisfaction with the grievance outcome and the Claimant's concerns about pay. The working relationship between SL and the Claimant was then at an end by the end of June 2024 with the Claimant having accused SL of harassing her and gaslighting her when in fact, in my judgement, SL had been doing her best to answer the Claimant's questions and to arrange an OH referral to assist with getting the Claimant back to work.

4.82 I have had the benefit of hearing evidence from SL, tested under cross examination. I do not find that SL ever had any intention to not progress the negotiation of the Claimant's enhanced role and with it the job description and pay review. SL was trying to progress it before the Claimant commenced sick leave. It was then impacted on by the grievance process and the Claimant's extended sick leave. As SL said in evidence, the Claimant had the draft job description and knew it was under negotiation but she had not responded to SL. SL knew the Claimant would need a phased return to work and that was important because the Claimant was very stressed. SL did not feel it appropriate to chase the Claimant for feedback on the job description because the Claimant was very stressed and also SL was mindful that she was already having very difficult interactions with the Claimant. SL said when she asked the Claimant questions the responses were quite sharp and short and SL felt that it was not the right time to try to lead the discussion about the enhanced role. SL thought it better to get the Claimant back to work, when ready, on a phased return, and that the discussions could then continue. I accept this is what SL's thought process was, also bearing in mind SL likely thought they could be difficult negotiations bearing in mind the Claimant's standpoint about things like job title, level of pay and backpay. In my judgement if the Claimant had said she wanted to pick up the negotiations, or it reached the point that OH or other medical advice said that was a good idea, then SL would have acted on that, but those eventualities simply never happened. As SL said in evidence, the Claimant had never actually said to her that the outstanding role negotiations were stopping her returning to work, or that she needed it finalised before a return to work, and OH advice was also needed. SL also said in evidence, again which I accept, that she did at times when speaking to the Claimant say that there would still be an enhanced role for the Claimant with an enhanced salary and that she wanted the Claimant back in work.

4.83 I find that SL always had the intention of giving the Claimant the enhanced role and what went on in that regard had nothing to do with any alleged protected disclosure by the Claimant. It was simply the way in which a complicated situation and dynamic unfolded. SL's behaviour towards the Claimant did not change. In my judgement she sought to support the Claimant throughout, and was unaffected by any of the alleged protected disclosures. SL simply stood aside at the end because she was hurt about the way in which the Claimant wrote accusing her of harassment and gaslighting and the like.

4.84 RC then picked up the Claimant's line management/ point of contact and RC went through all of the phases of the sickness absence process as set out in the findings of fact, including the various efforts to obtain OH advice. Again, I have had the benefit of hearing evidence from RC tested under cross examination. Again, I do not find that RC ever had any intention not to implement the Claimant's enhanced role. She had met with the Claimant and discussed it in their initial meeting. RC had then wanted more time to resolve the mechanics of it, as set out above, but I do not find RC was ever against the Claimant having an enhanced role and enhanced pay and she had sent SL her thoughts on it. When RC then picked it up again when SL stood aside, again I do not find that RC was seeking to not give the Claimant the enhanced role. RC wanted to engage with the Claimant in the sickness absence process with a view to the Claimant returning to work and picking up the discussions. That did not happen because the Claimant never did engage in any meaningfully facilitative way and/or she was not well enough to do so, but it was in my judgement always RC's wish and intent to get the Claimant back to work and to resolve this outstanding issue about her enhanced role. RC said in evidence, which I accept, that she thought the discussions with the Claimant about the enhanced role could be picked up in their meetings, or the Claimant could set out her thoughts in writing that could be responded to if they could get the engagement going and it was appropriate to do so; but again that eventuality never arose because any meaningful engagement did not get off the ground.

4.85 RC's actions were, in my judgement, unaffected by any of the alleged protected disclosures. RC went through many stages with the Claimant and made various offers to try to find a way forward, including at one point reverting back to stage one of the process. In general, if I give the allegation a wider meaning of allegedly not giving the Claimant an enhanced role, which had not come to fruition by the time of the Claimant's dismissal, I do not find that any alleged protected disclosures had a material influence on how that unfolded. It did not come to fruition before dismissal simply because of the Claimant's sickness absence and the lack of engagement from the Claimant in steps such as attending meetings and getting OH advice (which could of course have covered the appropriateness of having the discussions at any particular time). I do not agree as a matter of fact with the Claimant's assertions that there was a promised role that was stepped back from, followed by a differing stance with taking roles off her, followed by the stopping of the enhanced role altogether and deliberately not giving her the role of Deputy CEO/Chief Operating Officer. My findings simply do not accord with that. If the Claimant did make any protected disclosures this alleged detriment was not because of/not materially influenced by any such disclosure.

**Protected disclosure detriment – time limits**

4.86 I have not upheld the Claimant's protected disclosure detriment complaints on their substantive merits and therefore I have not go on to consider the question of time limits.

**The reason for dismissal – automatic unfair dismissal claim**

4.87 I have found the Claimant did not make any protected disclosures and therefore the principal reason for dismissal cannot be the making of a protected disclosure such that the complaint cannot succeed. But if I am wrong about whether the Claimant made protected disclosures I have gone on to consider this complaint in any event.

4.88 The decision to dismiss was made by RC. She says the decision was hers alone and was not influenced or directed by anyone else and I accept her evidence which accord with the contemporaneous documents. The Claimant, as I understand it, asserts that MP manipulated her dismissal; and I reject that assertion. MP simply dealt with the appeal.

4.89 In my judgment the principal reason that RC decided to dismiss the Claimant was because RC thought the Claimant was no longer capable of performing her duties relating to ill health, having been absent from work on ill health grounds for almost a year.

4.90 The Claimant had been signed off work on a succession of fit notes since February 2024 and there was no indication of any likely return to work. I do not consider that the Claimant has shown that there is a real issue as to whether the reason put forward by the Respondent was not the true reason. The Claimant asserts that ill health is a sham reason and that she was being pushed out and eventually dismissed because she had exposed legal and governance breaches. I do not see that as being any more than an assertion by the Claimant and my findings have been that no protected disclosures were made but that in any event the Claimant was not the victim of having an offer of an enhanced role taken away from her, or duties taking away from her, or other obstacles deliberately put in her way by the Respondent to prevent a return to work. They were actually trying to facilitate these things. Why would the Respondent go through such efforts to try to find ways to engage with the Claimant if they were seeking to force her out/ dismiss her? Why would RC go to the effort of resetting the process to stage one if she was simply seeking to dismiss the Claimant, or investigate the Claimant's data protection concerns and incur the expense of getting specialist data protection legal advice?

4.91 Even if there was something sufficient to shift the burden, having heard evidence from RC and having seen the contemporaneous documents, I am satisfied the Respondent has proved this reason for dismissal and that it was not because of any alleged protected disclosure. The Claimant's last alleged protected disclosure was the grievance appeal interview many months before in April 2024, with the decision to dismiss some 10 months later. The Claimant's grievance appeal had not succeeded. The Respondent had then been managing the Claimant's sickness absence and trying to get the Claimant to engage, in general, and in the gathering of medical evidence to see if they could facilitate a return to work. Significant efforts were made in that regard as set out in the findings of fact. None of that is suggestive or probative of the Respondent seeking to force the Claimant out or dismiss her due to alleged protected disclosures, rather it is suggestive and probative of genuine efforts over a sustained period to find a way forward that did not come to fruition because the Claimant was not capable of returning to work to perform her role. MP reached the same decision on appeal.

4.92 The automatic unfair dismissal complaint is not well founded and does not succeed. I would have also in any event found the complaint to be out of time. EJ Cawthray granted the amendment to allow the complaint to proceed only on the basis that the question of time limits be considered at the final hearing. The Claimant was dismissed on 11 February 2025. She entered Acas early conciliation on time on 3 March 2025 which completed on 14 April 2025. The Claimant did not make her application to amend until 20 August 2025, nearly two months out of time. I do not accept that it was not reasonably practicable for the Claimant to bring that complaint within time. The Claimant had already been through a process of making an application to amend her claim in respect of her protected disclosure detriment complaints, and she had been told what was required in respect of protected disclosure complaints. She successfully brought the ordinary unfair dismissal claim within time and it was reasonably practicable for the Claimant to have properly set out her automatic unfair dismissal claim within that second ET1.

**"Ordinary" unfair dismissal claim**

4.93 I turn then to the "ordinary" unfair dismissal claim. The Claimant's dismissal was for the potentially fair reason of the lack of capability of the Claimant to perform work of the kind which she was employed by the Respondent to do, due to ill health.

4.94 I then find that the decision to dismiss was within the range of reasonable responses open to this employer. In my judgement RC genuinely believed that the Claimant was no longer capable of performing her duties. All of the Claimant's fit notes from 27 February 2024 onwards said she was not fit for work in any capacity. There was no medical evidence indicating any likely fitness for a return to work whether from OH or any other source such as the Claimant's GP. There was no indication from the Claimant herself that the Claimant was fit to return in some form or shortly would be.

4.95 In terms of the reasonableness of the process followed and the evidence gathered before RC made her decision, SL had held regular meetings with the Claimant and RC made reasonable attempts to hold her own meetings.

4.96 The Respondent, in my judgement, took reasonable steps to refer the Claimant to OH to gain an opinion and advice offering various appointments, being willing to engage in the OH service the Claimant had thought was attached to her GP service (which turned out not to be the case) and to then agree an alternative provider with the Claimant.

4.97 In terms of the blockers to an effective OH referral the Claimant was told multiple times over many months that PC had not discussed her grievance with someone else and that was not what the redaction was, instead the redaction was RC's personal medical information.

4.98 The Claimant also had the relationship between the Respondent and Effective HRM explained to her multiple times. I would add that it is the kind of relationship and the kind of steps external HR providers often take when an employer is a small organisation without its own internal HR officer or HR team. As I understand it the Claimant takes objection to use of the word "independent" because PC/Effective HRM receive instructions from and are paid by the Respondent. Whereas PC's use of the word was to mean independent of the matters under investigation in the grievance and because, as an associate consultant to Effective HRM, she had not been involved with the Respondent in giving any previous advice or assistance. The point is, however, that if a grievance was to be investigated internally (which is the usual position with grievances) it would be investigated by someone employed by and paid by the organisation. What the Acas Code of Practice says is that the person should not be the subject of the grievance or involved in the grievance issue – i.e. independent of that. The Respondent here understandably went external to the organisation because the Claimant was complaining about her current line manager/CEO, the incoming CEO and the decisions and actions of the remaining board members. When using external HR for advice and support, again they will have to be paid by the Respondent because they need to be paid by someone, and an internal HR person is likewise going to be paid by the organisation. The reality of the situation was that, in my judgement, it was reasonable for the Respondent to want to have some HR advice to guide them through the process and assist with obtaining the OH report and that is a service they would have to pay for.

4.99 The Claimant was told on 29 May that the Respondent was proceeding with the referral to OH based on her consent of 12 May (which had consented to an OH referral but not to the involvement of Effective HRM). She was also told that Effective HRM, being bound by confidentiality and data protection obligations, would be facilitating and advising on the referral process and the ensuing report. The Respondent at this point had also taken specialist data protection legal advice, who had advised that Effective HRM were held to the correct data protection standards in relation to sharing employee data with them. The Respondent had also been advised that it had both contractual and legitimate grounds for doing so as set out in section 6 of the Respondent's privacy notice [1285] [1492]. I appreciate the Claimant says that the Information Commissioner's office has since taken a different view on the point. The Information Commissioner's office's view was that the processing was likely to be lawful which would appear to agree with the legal advice the Respondent received, but also went on to say that it was unfair to seek consent and then fail to explain they were processing the Claimant's special category data despite her objections. Incidentally, it is not clear to me whether the Information Commissioner saw the email of 29 May in that regard which on the face of it did explain why they were still processing the Claimant's data despite her objections. If not, the obviously I do not know what the Information Commissioner's office would make of that. But in any event the material point is that the Information Commissioner's opinion or finding was not known to the Respondent at the actual point in time we are dealing with. At the actual time the Respondent sought professional advice and it was within the reasonable range in my judgment for them to proceed on the basis of that advice.

4.100 The Claimant was not prohibited from recording the OH appointment. All she had been told was that the OH provider did not have facility to record the appointment, but the Claimant should inform the assessor at the start of the assessment if she was intending to record it.

4.101 It was within the reasonable range for the Respondent to consider the Claimant had originally consented to the IGP being the OH provider rather than it being a reference to an independent general practitioner as a concept. But in any event, the reality was the Respondent was ultimately willing to consider other providers; it was the involvement of Effective HRM that was the sticking point. In relation to IGP only offering an appointment with a nurse and not a doctor, the Respondent had not insisted that the Claimant see a nurse not a doctor, and again the reality was that they would have used a provider of the Claimant's choice, but the sticking point again came back to the involvement of Effective HRM.

4.102 RC even investigated afresh the Claimant's concerns about Effective HRM, appreciating that the Claimant was saying it was a barrier to her engagement, explaining to the Claimant the essence of the legal advice they had obtained from Aria Grace. RC even waived her own privacy and set out the unredacted version of the grievance report to show that it referred to her and not a third party but it was to no avail.

4.103 The ultimate sticking point in relation to getting OH advice was the involvement of Effective HRM. The Claimant says the Respondent could have instructed alternative HR advisors. RC said in evidence she had considered this, but she did not consider it was fair to sack Effective HRM when she had looked into it and could see that they had not done anything wrong and she needed HR advice. She was a new CEO dealing with a difficult HR situation. To engage different HR advisors would have been an expensive step given they would have to pay new advisors from scratch and bearing in mind this is a small organisation with limited resources. I appreciate this was the key stumbling block to the Claimant's active engagement, but RC's reasoning its in my judgement legitimate and valid in its considerations and I cannot say it was outside the range of reasonable responses for the Respondent to decide not to instruct new HR advisors or to dispense with HR advice at all.

4.104 In terms of other strands of investigation, it was in my judgement also within the reasonable range. The Claimant was taken through many stages of invitations to meetings with the opportunity to put her position and following the Respondent's sickness absence procedure. She was told what each meeting was about. She was told of her statutory right to be accompanied and when she raised practical difficulties with that it was extended to an offer to be accompanied by a friend or family member and to be permitted to record the meetings. The Claimant was offered the alternative opportunity to participate in writing including being sent some questions if it would assist and was given the opportunity to comment on matters such as what she considered specifically was preventing her from returning to work and what support would allow her to return. She had the opportunity to send in any documents she wished, for example, she could have provide further evidence from her GP or other medical practitioner if she wished. She was given the right of appeal. Again a barrier from the Claimant's perspective was the involvement of Effective HRM. However, as already stated I consider it was within the reasonable range for the Respondent to continue to wish to seek HR advice and support from Effective HRM. There were protections available to the Claimant too such as, as I have said, the opportunity to record meetings, and to be accompanied by a friend or family member. Both of those things were afforded to the Claimant when the process was reset to stage one and when it looked like (albeit it did not come to fruition) there would be a way to get the OH referral done.

4.105 The Claimant questions, as I understand it, whether Effective HRM were genuinely going to be at the meetings or whether she was just told that. She points to the fact that RC ended up holding meetings alone. However, as RC explained that was because the Claimant did not attend. If the Claimant had attended then HR would also have been in attendance.

4.106 The Claimant also says that the Respondent, if they were not going to dispense completely with Effective HRM, could have made it clear to her that it was not PC that was going to attend the meetings. But as the Respondent observes, the Claimant never actually said she would attend if PC personally was not present.

4.107 It was also, in my judgement, within the range of reasonable responses for the Respondent to continue to deal directly with the Claimant about her attendance and related processes, rather than acceding to her requests to correspond via the Respondent's solicitors. It was also with the reasonable range for the Respondent to continue with their processes despite the ongoing tribunal process. As was explained by the Respondent to the Claimant several times, they were separate processes. It was also within the reasonable range for the Respondent to consider the Claimant saying she could not attend the stage three meeting because her sickness records were going to be in the bundle for the public preliminary hearing was not a good reason not to engage bearing in mind this separation had been explained to the Claimant several times and bearing in mind the Claimant was at stage three of the process, facing dismissal. I should add that the Claimant did not ask for the stage three meeting to be pushed back on health grounds/because of the pressure of the tribunal hearing and the stage three meeting being close to each other.

4.108 I do not find that the outcome was prejudged. The Claimant here refers to her P45 being sent before the appeal outcome. However, as explained by the Respondent, dismissals occur and take effect at the time of the original decision; the effective date of termination is not delayed by an outstanding appeal. Instead, where appeals are successful (which was not the case here) the dismissal is then, in effect, at that point reversed. It is in my experience quite normal for employers to process at P45 at the stage of the original decision.

4.109 The Claimant also refers to Effective HRM allegedly committing fraudulent misrepresentation and making defamatory comments about her in the grievance procedure. The misrepresentation point as I understand it comes down to the different viewpoints on the meaning of "independent" dealt with already above. In relation to the content of PC's grievance report, the Respondent was aware that the Claimant was unhappy with the report and its conclusions. The Respondent gave the Claimant the right of appeal, and passed that appeal to AB as an external party and gave AB free rein in his conclusions. It was within the reasonable range for the Respondent to then treat that grievance process as concluded and to take the Claimant through their sickness absence process. The Claimant also refers to SL delaying in getting back to her about questions relating to returning to work/phased return to work. I have found, however, that SL was engaging with the Claimant and doing her best to repeatedly answer the Claimant's questions. Indeed there was never a suggestion from the Claimant that she was anywhere near being fit for a return; she had said at one point she was not even able to discuss that with her GP.

4.110 I accept RC's evidence that the Claimant's absence was having a significant impact on the small organisation's ability to conduct its day to day operations, with her duties relocated and reducing the capacity of staff to undertake other activities. The Claimant's own witness, RV, spoke about the difficulties covering specialist elements of the Claimant's work. The Respondent was incurring consultancy fees of £752 a month to help with some of the cover. Whilst I appreciate once the Claimant was on half pay and SSP her wages were not being incurred, but as RC says the Claimant's employment still was not cost free, including such matters as holiday pay and the time and energy being expended in trying to maintain the relationship and HR advice and legal advice, for example relating to data protection. The Respondent was also on pause not able to permanently recruit.

4.111 In my judgement the decision to dismiss was ultimately within the range of reasonable responses and this was a situation in which the Respondent could not reasonably be expected to wait any longer. The Claimant had been on sick leave for nearly a year on a succession of sick notes. There was no indication at all from medical evidence or the Claimant herself when she would be likely to be able to return. There were no positive signs of a likely return. The Respondent had taken more than reasonable steps to try to consult the Claimant. The Respondent had taken more than reasonable steps to try to understand the medical position. The Claimant's absence was having a serious impact and there was nothing to say any of that would improve any time soon.

4.112 There was no real ability for the Respondent to consider alternative deployment given the Claimant was not engaging and it was a small team. The Respondent had a genuine belief that the Claimant was incapable of performing the work she was employed to do on health grounds and that was not going to improve any time soon. There were reasonable grounds for that belief reached having undertaken a reasonable investigation. The Respondent was aware of the Claimant's previous valued, length of service. She was highly rated and valued by her colleagues and SL. Whilst they did not have detailed medical evidence the respondent was aware that their own recruitment decision and the fallout from that including the enhanced role seemed likely to be the cause of the Claimant's ill health and her intractable way of interacting with the Respondent. Their appreciation and understanding of that was demonstrated, in my judgement, in the remarkable patience they showed through the process in trying to get some occupational health advice, to engage with the Claimant, and to see if they could work towards a return to work. But it was to no avail and, as stated, the ultimate decision they could not be expected to wait any longer was within the reasonable range. Taking into account the reason shown by the Respondent, in the circumstances, including the size and administrative resources, equity and the substantial merits of the case, the Respondent acted reasonably in treating it as a sufficient reason for dismissing the Claimant. The ordinary unfair dismissal complaint is not well founded and does not succeed.

**Notice pay claim / Wrongful dismissal**

4.113 The Claimant was dismissed on 11 February and paid in lieu of notice. The Claimant's contract of employment requires prior written notice to terminate by either party of 3 months' [237]. It also says at paragraph 9.2: "*We shall be entitled to dismiss you at any time without notice or payment in lieu of notice if you commit a serious breach of your obligations as an employee, or if you cease to be entitled to work in the United Kingdom.*"

4.114 That is the only reference to pay in lieu of notice; the contract does not expressly give a right to pay in lieu of the 3 month notice period. Arguably in paying in lieu rather than giving notice and letting the 3 month period run and expire before termination, the Respondent was acting in breach of contract because they had no express right to pay in lieu. The Employee Handbook does refer to termination normally being with full notice or payment in lieu of notice but the Respondent accepts the Handbook was not contractual.

4.115 I asked the Respondent's counsel about that point in oral closing submissions. He said the Respondent's position was that there was an entitlement to dismiss without notice because the Claimant had committed a serious breach of her obligations as an employee set out in paragraph 102 of the Grounds of Resistance [125] in relation to (a) the conduct the Claimant showed towards SL and RC in adopting an unreasonable position and stating she had been harassed and gaslighted; (b) the persistent refusal to engage with the sickness absence management process including the refusal to consent to an OH assessment due to need for the Respondent to take advice from Effective HRM in circumstances where it was unreasonable for her to do so (this being in breach of the Employee Handbook); and (c) the failure to follow reasonable management instructions to attend sickness absence meetings because there were analogous proceedings in the Employment Tribunal. Again, I would observe that the Employee Handbook is not contractual. The Respondent's counsel point to bullying and serious insubordination as being examples of potential gross misconduct in the Handbook at [1560].

4.116 On balance, I do not find that the Claimant committed conduct that so undermined trust and confidence that it entitled the Respondent to terminate the contract summarily with no notice. Like the Respondent before me I do not have medical evidence about the Claimant's ill health other than what the fit notes say. But I accept it is likely that she was genuinely very unwell and that this was affecting how she interacted with the Respondent. In particular, it is striking that the Claimant had been a long term, very valued employee by SL and everyone else who worked with her (for example JG). The Claimant had not behaved previously the way she behaved after she was unsuccessful in the CEO application. From the Claimant's subjective perspective she lost all trust in the Respondent and those running the Respondent and it seems likely to be that the Claimant was excessively ruminating and going over everything, and unpicking it and assessing things in the worst possible light or with the worst possible motivation. That can be seem in how she says her GP and friends told her to stop rereading her interview with PC, and in her general interactions with the Respondent. She also struggled to accept explanations that she was given for things. These things lead the Claimant to accuse SL of harassment and gaslighting. It was objectively not justified, and was immensely hurtful to SL who had been trying her best. But in my judgement it came borne of the Claimant being in that dark place, and even without medical evidence in my judgement that was evident to the Respondent too.

4.117 Similarly, the Claimant did persistently refuse to engage in the sickness management process and the OH referral and to accept the explanation she was given over, for example, the redaction of the grievance report to remove PC's medical information. The Claimant acted objectively unreasonably but again in my judgement it came from the same place of ill health and again the Claimant picking everything apart to build a picture in her mind of the Respondent always working in the worst possible light or with the worst possible motivation. Similarly, although it was explained to her multiple times, she has never really been able to separate out the tribunal process from the Respondent's internal processes.

4.118 In my judgement, the Respondent in reality also saw this as in likelihood linked to the Claimant's health. They knew how changed she was. Moreover, they dealt with it throughout as a sickness absence, and through that process, rather than any kind of conduct related process.

4.119 This context is important because it throws light on the way the alleged repudiatory acts were viewed and how they would be viewed by a reasonable person (with that knowledge) in the position of the Respondent. Set within that context I do not find, judged objectively, that the Claimant committed gross misconduct/ that through that conduct she so undermined the trust and confidence inherent in her contract of employment that the Respondent could not longer be required to keep her in employment. The Respondent was not in the position of being contractually entitled to summarily dismiss on that basis.

4.120 That of course does not mean that the Respondent was not entitled to terminate the Claimant's employment on capability/ill health grounds, but the point there is that the Claimant was entitled to her contractual notice. I find that in summarily dismissing the Claimant with pay in lieu of notice the Respondent technically did act in breach of contract and the Claimant is entitled to a declaration in that regard. In a way it is an odd technical success because the Claimant was actually complaining at appeal stage that the process was being unnecessarily drawn out, and if she had been dismissed with her notice period to run, that actually would have drawn things out for her even further.

4.121 As the Respondent argues, however, even if there was a technical breach of contract there does not appear to have been any financial loss to the Claimant. At the point of dismissal the Claimant remained on long term sick leave and on SSP and was paid in lieu to the value of her remaining entitlement to SSP. There is no evidence that if the Claimant had been given her notice period rather than being paid in lieu, that she would have returned to work and thereby have become entitled to more pay. If she had been given her notice period she would have received the same sum financially that she got when she was paid in lieu. I therefore cannot see that there is any loss or balance or monetary compensatory award payable to her. For completeness, I would add that as asserted by the Respondent section 87(4) Employment Rights Act 1996 would not appear to assist the Claimant either. As set out by MP in his appeal outcome letter the statutory provisions on notice that can sometimes entitle an employee to full pay do not apply because the notice to be given by the Respondent to terminate the contract was at least one week more than the statutory minimum notice required by section 86(1) ERA (3 months notice/13 weeks notice compared to the 11 weeks statutory notice period).

**Equal pay - Like work complaint**

4.122 Finally I turn to the equal pay like work complaint. It is not asserted that the Claimant and DW's work were exactly the same.

4.123 I do not find that the Claimant and DW's work were broadly similar. When DW's pay started exceeding the Claimant's starting salary in 2013, DW was Markets Advisor and the Claimant was Social & Corporate Governance Advisor. I accept that there were some similarities in their work. They both, at their core, were providing advice, guidance and support to the Respondent's membership and supporting their development as social firms and promoting the social firm model. There was some generic low level development support across the board that all advisors could and did give to the membership, so some cross over at a low level in that sense. They also both would take on at hoc representation responsibilities and other ad hoc activities. But, in my judgement, the vast majority of their time was spent working in their specialist fields; the Claimant in governance and DW in a wide range of business support activities such as business and growth planning, business strategy, market research, market planning, risk analysis, product development, developing operational efficiencies and some financial advice and support (that later element increasing later on after the departure of KS). Whilst appreciating that this first stage of the assessment is a broad assessment, in my judgement the similarities between the work is at too great a macro, generic level to be said that it constitutes broadly similar work. That level of assessment does not truly look at the kind and nature of the work that was actually being done day to day. Iny my judgement, looking at the nature and extent of the day to day differences in the work, and how frequently that difference was occurring, I do not find the work to have been broadly similar. The day to day specialisms were different.

4.124 If I am wrong about that and their respective work was in fact broadly similar, then I have to go on and consider at a more granular level the differences in the work between the Claimant and DW and whether such differences that exist are of practical importance as would generally be reflected in terms of employment. Again, that includes look at the frequency with which the differences occur in practice and the nature and extent of the differences. Here I would find that the differences are of practical importance that would generally be reflected in terms of employment. Even accepting that the Claimant did undertake some other activities such as some training work and policy development work, DW's work covered, in my judgement, a much broad range of activity or specialisms compared to the Claimant. His work also at times involved chairing or leading or being heavily involved in substantial, high profile projects with the Welsh Government and Local Authorities (for example Re-employ and Monwel), something one would expect to be reflected in the terms of employment. His work had, in my judgement, greater complexity and involved a greater depth of knowledge, previous experience and skills across all his areas of activity, again something one would expect to be reflected in the terms of employment. In my judgement, these differences (including their nature and extent and frequency in practice) are of practical importance in relation to the terms of the employment. I therefore do not find that DW and the Claimant were engaged in like work. As this like work complaint does not succeed I have not gone on to consider the material factor defence.

## 5. <u>CONCLUSION</u>

5.1 The Claimant's complaints before me therefore have not succeeded other than the wrongful dismissal notice pay complaint in respect of which the Claimant would not appear to be entitled to any compensation, just the declaration I have made. The Claimant's equal pay equal value complaint is potentially outstanding. The Claimant should write to the Tribunal (copied to the Respondent's solicitor) within 28 days confirming if she is pursuing the equal value claim. If so, a case management hearing will be arranged. Equal value complaints are notoriously complicated and lengthy and the Claimant may also wish to consider obtaining some professional advice about that complaint. I apologise for the delay in delivering this Judgment caused by the pressure of other judicial work and the length/complexity of the issues in the case.

Approved by:

**Employment Judge Harfield**

**24 July 2026**

Judgment sent to the parties on:

27 July 2026

For the Tribunal:

Kacey O'Brien

Notes

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at https://www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found at www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/

## List of Issues

### 1. TIME LIMITS

1.1. Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 11 January 2024 may not have been brought in time.

1.2. Were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

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

1.2.2. If not, was there conduct extending over a period?

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

1.2.4. If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

1.2.4.1. Why were the complaints not made to the Tribunal in time?

1.2.4.2. In any event, is it just and equitable in all the circumstances to extend time?

1.3. Given that the application to amend presenting the whistleblowing detriment claim contained in Claim 1 to the Tribunal was presented on 3 September 2024 and the dates of early conciliation, any complaint about something that happened before 23 April 2024 may not have been brought in time.

1.4. Were the whistleblowing detriment complaints made within the time limit in section 48(3) of the Employment Rights Act 1996? The Tribunal will decide:

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

1.4.2. If not, was there a series of acts the last act of which is in time?

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

1.4.4. If not, was it reasonably practicable for the Claimant to have presented her complaints within the time limits for doing so?

1.4.5. If not were the claims brought within a further period that the Tribunal considers to be reasonable?

1.5. Given that the application to amend presenting the automatic unfair dismissal claim contained in Claim 2 to the Tribunal was presented on 21 August 2025 and the dates of early conciliation for Claim 2, was the complaint made within the time limit in section 111(2) of the Employment Rights Act 1996? The Tribunal will decide:

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

1.5.2. If not, was there a series of acts the last act of which is in time?

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

1.5.4. If not, was it reasonably practicable for the Claimant to have presented her complaints within the time limits for doing so?

1.5.5. If not were the claims brought within a further period that the Tribunal considers to be reasonable?

## 2. DIRECT RACE DISCRIMINATION (EQUALITY ACT 2010 SECTIONS 13 AND 9) – CLAIM 1

2.1. Did the Respondent fail to appoint the Claimant to the role of the Respondent's Chief Executive Officer, instead appointing Rosie Cribb, a white person?

2.2. Was that less favourable treatment?

The Tribunal will decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the Claimant's. If there was nobody in the same circumstances as the Claimant, the Tribunal will decide whether they were treated worse than someone else would have been treated.

2.3. If so, was it because of race?

## 3. EQUAL PAY (EQUALITY ACT 2010 CHAPTER 3) – CLAIM 1

3.1. Did the Claimant undertake like work[2], i.e. work which was the same or broadly similar, to that undertaken by a former colleague, David Williams

3.2. If so, did Mr Williams' contract contain a term which was more favourable than the corresponding term of the Claimant's contract?

[2] The Claimant also contends that her work was of equal value to that undertaken by Mr Williams, but is content for her complaint to be considered by reference to "like work" first. She will reassess her situation following the conclusion in relation to that complaint.

3.3. If so, was any difference between the Claimant's terms and Mr Williams' terms because of a material factor, falling within section 69 of the Equality Act 2010?

**4. PROTECTED DISCLOSURE – CLAIM 1**

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

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

4.2.1. In her grievance of 27 February 2024, submitted to Ms Leonard, the Respondent's then CEO

4.2.2. Orally to Martin Price on 5 February 2024

4.2.3. Orally during a stage one grievance investigation interview with Pam Cannell on 5 March 2024

4.2.4. Orally to San Lennard of 7 February 2024

4.2.5. Orally to Rosie Cribb on 8 February 2024

4.2.6. In her email to Mr Price, copied to Ms Lennard, on 13 February 2024

4.2.7. Orally during a stage two grievance investigation interview with Andrew Baker on 12 April 2024

4.3. Did she disclose information?

4.4. Did she believe the disclosure of information was made in the public interest?

4.5. Was that belief reasonable?

4.6. Did she believe it tended to show that:

4.6.1. A criminal offence had been, was being or was likely to be committed in that:

4.6.1.1. The Respondent had evaded its tax obligations by applying for an exemption from corporation tax in 2009 in circumstances where this was granted due to a Governing Document that says the Respondent is a charity;

4.6.1.2. The Respondent misled the Welsh Government, funders and members by misrepresenting itself as a charity;

4.6.2. A person had failed, was failing or was likely to fail to comply with any legal obligation:

4.6.2.1. By not registering the Respondent with the Charity Commission in circumstances where it meets the criteria to do so

4.6.2.2. Breach of s.175 of the Companies Act 2006 (duty to act in the best interests of the Respondent as a statutory director) by not following its governing document & by using public money for private gain (in particular, San Leonard being paid 1.8 times more than other members of staff)

4.6.2.3. Breach of charity law by not registering as a charity & by permitting a former Trustee to be appointed as a member of Staff in San Leonard and/or Rosie Cribb

4.6.2.4. Rosie Cribb breaching her obligation under s.175 of the Companies Act 2006 as her personal business benefitted from public money and resources ringfenced for the Respondent

4.6.2.5. Martin Price breaching his obligation under s.175 of the Companies Act 2006 by competing for work/contracts with the Respondent

4.6.3. A miscarriage of justice had occurred, was occurring or was likely to occur as:

4.6.3.1. The Respondent was misleading the Welsh Government by stating it was a charity in circumstances where it has failed to register with the Charity Commission

4.6.3.2. The Respondent was misleading its organisation members and consortium partners

4.6.3.3. The Respondent failed to follow its articles of association in connection with the appointment of a Trustee as an employee

4.6.3.4. The Respondent had engaged in discriminatory conduct

4.6.3.5. The Respondent has failed to pay the Claimant for holiday she accrued in the 2023/2024 holiday year when she requested this during her sickness absence

4.6.3.6. Rosie Cribb was privy to information that the other candidates were not, in particular the financial position of the Respondent

4.7. Was that belief reasonable?

4.8. If the Claimant made a qualifying disclosure, it was it a protected disclosure because it was made to an appropriate person within the statutory framework?

**5. DETRIMENT (EMPLOYMENT RIGHTS ACT 1996 SECTIONS 47B AND 48) – CLAIM 1**

5.1. Did the Respondent do the following things:

5.1.1. Not giving the Claimant the role of Deputy CEO & Operations & Governance Lead verbally offered to her by Martin Price on 5 February 2024

5.1.2. On or around 26 February 2024, demoting the Claimant by denying and/or taking the following roles off her (including ending discussions on an enhanced role and taking no further action):

5.1.2.1. Outwardly representing the Respondent

5.1.2.2. Developing policies

5.1.2.3. Training

5.1.3. Between 12 - 14 February 2024, Martin Price & San Lennard failed to reassure the Claimant that her role was safe, including cementing the discussion around her role and set and implemented a time line, thereby failing to support her return to work

5.1.4. In or around August 2024, the Claimant's sick pay was reduced to statutory sick pay?

5.1.5. Sometime after February 2024 (when the Claimant commenced sick leave), the Respondent failed to answer the Claimant's request that she be paid in lieu of nine days of accrued but undertaken leave for the 2023/2024 holiday year

5.2. By doing so, did it subject the Claimant to detriment?

5.3. If so, was it done on the ground that she made a protected disclosure?

**6. UNFAIR DISMISSAL - SECTION 98 EMPLOYMENT RIGHTS ACT 1996 – CLAIM 2**

6.1. It is accepted that the Claimant was dismissed on 11 February 2025.

6.2. What was the reason or principal reason for the Claimant’s dismissal? The Respondent relies upon capability (ill health) as being the reason.

6.3. If the reason was capability, did the Respondent act reasonably in treating this as the reason, did the Respondent act reasonably or unreasonably in all the circumstances, including the Respondent’s size and administrative resources, in treating that as a sufficient reason to dismiss the Claimant? The Tribunal’s determination whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case. The Tribunal will usually decide, in particular, whether:

6.3.1. The Respondent genuinely believed the Claimant was no longer capable of performing their duties;

6.3.2. The Respondent adequately consulted the Claimant;

6.3.3. The Respondent carried out a reasonable investigation, including finding out about the up-to-date medical position;

6.3.4. The Respondent adequately considered redeployment as an alternative to dismissal;

6.3.5. Whether the Respondent could reasonably be expected to wait longer before dismissing the Claimant;

6.3.6. Dismissal was within the range of reasonable responses.

The Claimant says the dismissal process was unfair as she was not able to participate as she was not given any adjustments to attend meetings, was told the report produced would have to be with shared HRM, that OH assessments were organised to be held with a nurse and not a doctor and her requests for meetings to be recorded were refused.

**7. AUTOMATICALLY UNFAIR DISMISSAL – SECTION 103A EMPLOYMENT RIGHTS ACT 1996 – CLAIM 2**

7.1 Was the reason or principal reason for dismissal that the Claimant made a protected disclosure?

7.2 If so, the Claimant will be regarded as unfairly dismissed.

**8. WRONGFUL DISMISSAL – CLAIM 2**

8.1. Was the Claimant an employee of the Respondent?

8.2. What was the Claimant's notice period? C says entitled to 3 months

8.3. Was the Claimant wrongfully dismissed? Specifically, did the Respondent breach the Claimant's contract of employment by dismissing them without notice or payment in lieu of notice?

8.4. If the Claimant was wrongfully dismissed, what sums (if any) should be awarded to the Claimant by way of damages for breach of contract?

**REMEDY ISSUES**

**9. REMEDY FOR DISCRIMINATION**

9.1. Should the Tribunal make a recommendation that the Respondent take steps to reduce any adverse effect on the claimant? What should it recommend?

9.2. What financial losses has the discrimination caused the Claimant?

9.3. Has the Claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

9.4. If not, for what period of loss should the Claimant be compensated?

9.5. What injury to feelings has the discrimination caused the Claimant and how much compensation should be awarded for that?

9.6. Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?

9.7. Is there a chance that the Claimant's employment would have ended in any event? Should their compensation be reduced as a result?

9.8. Should interest be awarded? How much?

## 10. REMEDY FOR PROTECTED DISCLOSURE DETRIMENT

10.1. What financial losses has the detrimental treatment caused the Claimant?

10.2. Has the Claimant taken reasonable steps to replace their loss of earnings for example by looking for another job?

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

10.4. What injury to feelings has the detrimental treatment caused the Claimant?

10.5. How much compensation should be awarded for that?

10.6. Has the detrimental treatment caused the Claimant personal injury?

10.7. If so, how much compensation should be awarded for that?

10.8. Is it just and equitable to award the Claimant other compensation?

10.9. Did the Claimant cause or contribute to the detrimental treatment by their own actions?

10.10. If so would it be just and equitable to reduce the compensation?

10.11. If so, by how much?

10.12. Was the protected disclosure made in good faith?

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

10.14. If so, by what proportion, up to 25%

## 11. REMEDY FOR UNFAIR DISMISSAL

11.1. Does the Claimant wish to be reinstated to their previous employment? If so, 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.

11.2. Does the Claimant wish to be re-engaged to comparable employment or other suitable employment? If so, 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.

11.3. If an order for reengagement is made, what should the terms of the re-engagement order be?

11.4. What basic award is payable to the Claimant?

11.5. Did the Claimant engage in culpable and blameworthy conduct that resulted in her dismissal? If so, should any basic award be reduced on grounds of contributory fault? If so, by what proportion?

11.6. Is it just and equitable to make a compensatory award in the circumstances of the case? If there is a compensatory award, how much should it be? The Tribunal will decide:

11.6.1. What financial losses has the dismissal caused the Claimant?

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

11.6.3. If not, for what period of loss should the Claimant be compensated?

11.6.4. 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?

11.6.5. If so, should the Claimant's compensation be reduced? By how much?

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

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

11.6.8. Does the statutory cap of 52 weeks' pay or £118,223 apply?

11.7. What basic award is payable to the Claimant, if any?

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