EMPLOYMENT TRIBUNALS

Claimant: A

Respondents: 1) B; 2) C; & 3) D

Heard at: London South Croydon, in public, by Cloud Video Platform

On: 7, 8, 10 & 14 July 2025

Before: Employment Judge Tsamados (sitting alone)

Representation

Claimant: in person
Respondent: Mr J Yetman, Counsel

RESERVED JUDGMENT

The Reserved Judgment of the Employment Tribunal is as follows:

The Claimant's complaints of being subjected to detriment for making protected disclosures and for health and safety reasons, automatic unfair dismissal for making protected disclosures and ordinary unfair dismissal are not well founded. The claims are dismissed.

REASONS

Background

1. The Claimant has brought two Claims against the combined Respondents. The First Respondent is a company incorporated in the United States of America, which owns the familial home of E, and which employed the

Claimant. The Second and Third Respondents are brothers and are two of the family members.

2. The First Claim is against the First & Second Respondents and was presented to the Employment Tribunal on 21 November 2023. This followed a period of ACAS Early Conciliation in respect of the First Respondent between 11 July and 22 August 2023 and in respect of the Second Respondent starting and ending on 21 November 2023. The Claim sets out complaints of detrimental treatment following the making of protected disclosures and also for raising health and safety matters.

3. The Second Claim was brought against all three Respondents and was presented to the Employment Tribunal on 16 April 2024. ACAS Early Conciliation in respect of the Third Respondent took place between 15 and 16 April 2024. The Second Claim raises complaints of ordinary unfair dismissal, automatic unfair dismissal for making protected disclosures, as well as further detrimental treatment following the making of protected disclosures and raising health and safety matters.

4. In its Responses to each Claim, presented on 5 January and 10 September 2024, the Respondents deny the Claims in their entirety.

5. A Preliminary Hearing for Case Management was held on 9 February 2025, conducted by Employment Judge ("EJ") Wilson. At that hearing, the Claimant was represented by a solicitor and the Respondents by leading counsel. The dates for this final hearing were listed and various Case Management Orders set. A suggested timetable for the final hearing was prepared. In addition, the complaints and issues to be determined were agreed.

Documents and Evidence

6. I was provided with the following documents: a bundle containing 569 pages, which I will refer to as "B" followed by the relevant page number(s); a list of key documents and a chronology from the Respondents; witness statements for the Claimant and on behalf of the Respondents from M, the Second Respondent, the Third Respondent and S. I heard evidence from all of the witnesses by way of their written statements and in answer to oral questions.

7. I made it clear to the parties that I would only read those pages within the bundle that I was specifically referred to in the witness statements or otherwise drawn to my attention.

The List of Issues

8. The list of issues is at B87-95. I explained to the parties that these are the issues that I will be deciding at this hearing and that I will not depart from them unless there are exceptional circumstances.

Rule 49 Order

9. An Anonymisation Order was made by EJ Codd on 9 May 2025 under Rules 49(1) and (3) (b) of the Employment Tribunal Procedure Rules 2024. This

extended to the omission or deletion from any document entered onto the Tribunal's Register or which otherwise forms part of the public record, including the Tribunal's hearing lists, of any identifying matter which is likely to lead members of the public to identify specified persons. These were identified as the Claimant, the Respondents, E and any witness who gives evidence at the final hearing. There are no written reasons for this Order but I can surmise from what I know of the case why it was granted.

10. Unfortunately, it would appear that the Order was not actioned by the Tribunal's administration. Mr Yetman, appearing for the Respondents, informed me on the first day of the hearing that the names of the parties had been published online, in the Employment Tribunals' Cause Lists on the website CourtServe, on the Friday before the start of this hearing and again on the first day. I indicated that I would take steps to urgently rectify this matter.

11. However, it took some time and some attempts to do so. Whilst it was possible to remove the names from the Public Cause List, it became apparent that it was simply not possible for the Tribunal to remove the parties' names from the Press Cause Lists (the names of the parties still appearing as of 14 July 2025). However, further Cause Lists were anonymised and made clear that a Rule 49 Order was in place.

12. In order to shore up the existing Rule 49 Order, which did not give any indication as to how to anonymise the names, I issued an Amended Anonymisation Order on 8 July 2025.

13. I also issued a combined Restricted Reporting Order, to prevent the reporting of the names of the parties already inadvertently identified in the Cause Lists and a Further Amended Anonymisation Order extending anonymisation to cover specific Locations at which events took place. This was also issued on 8 July 2025.

14. This Judgment and Reasons has therefore been anonymised in accordance with the above Orders and a key to the scheme of anonymisation applied has been provided to the parties for their own use.

Preliminary issues

15. The following matters also arose on the first day of the hearing.

<u>Admissibility of evidence</u>

16. Mr Yetman raised concerns about allegations contained within certain paragraphs of the Claimant's witness statement.

17. At paragraph 3, the Claimant alleges that E had resorted to physical violence in response to his wife's dementia. Mr Yetman submitted that this was not relevant to the issues to be determined and was not part of the Claimant's pleaded case. I agreed. I could not see the direct relevance to the issues and said that frankly it was not something I would need to make a finding on,

in any event. I therefore agreed it should be struck from the Claimant's witness statement.

18. At paragraph 4, the Claimant refers to CCTV footage which he submitted by way of disclosure in support of the allegation at paragraph 3. I would add that the CCTV footage was not provided to me. We were dealing with the reference to it alone. Mr Yetman again submitted that it was not relevant to the issues and had not been pleaded. But additionally, he stated that it was prejudicial and was footage taken from a private NEST camera in Location T's kitchen and had been obtained without permission and unlawfully by the Claimant. I asked the Claimant why he had included it. The Claimant explained that the Second Respondent had denied this incident had happened, despite the involvement of the Police and safeguarding issues, and it supported his allegation that staff had raised continuing concerns about E's behaviour but the Respondents denied it had happened. I told the Claimant that I was not convinced it assisted him in his Claims but for the reasons given by Mr Yetman it is not something I would necessarily allow to be admitted. The Claimant said he was content not to rely on the CCTV footage. I directed that paragraph 4 be removed from the Claimant's witness statement. The Claimant said he was happy with that.

19. At paragraph 5, the Claimant refers to a settlement agreement entered into between his wife, F, and the First Respondent. This is included at B537. Mr Yetman submitted that this had been raised in breach of the confidentiality clause within the agreement. I directed that paragraph 5 of the witness statement be removed along with B537.

20. The Claimant raised concerns as to the allegation that he raised the issue of removal of a firearm from Location T, at paragraph 60 of the Third Respondent's witness statement. The Claimant denied this allegation. I said that either way I could not see the relevance of it.

<u>Correction to the Claimant's witness statement</u>

21. The Claimant asked if he could amend paragraph 22 of his witness statement to correct it to state that he subsequently received his payment in lieu of notice. Mr Yetman agreed.

<u>Early Conciliation Certificates and the status of the Third Respondent</u>

22. I raised my concern as to whether the Claimant had entered into ACAS Early Conciliation in respect of all of the Respondents before presenting his Claim Forms. After a short adjournment, I advised the parties that I had found Early Conciliation Certificates ("ECC"s) for all three Respondents.

23. The Claimant obtained an ECC for the First and Second Respondents in respect of his First Claim. However, he does not have ECCs for them in respect of his Second Claim. His ECC for the Third Respondent related to the Second Claim only which raised additional complaints of unfair dismissal.

24. Mr Yetman submitted that this was fatal to that Claim but my recollection was that there is case law (in fact <u>Compass Group UK & Ireland Ltd v Morgan</u>

UKEAT/0060/16/RN) that states that it is not absolutely necessary to obtain a further ECC. Mr Yetman said that he was aware of the case I was referring to but there has to be some connection between the two sets of proceedings. He submitted that in respect of his Second Claim, the Claimant has an ECC for the Third Respondent but because of the operation of the time limits this would only cover events going back to 16 January 2024. He further submitted that the only valid complaint that could be brought against the Third Respondent is one of unfair dismissal because the detriment complaints in the First Claim are against the First and Second Respondents. Mr Yetman referred me to <u>Abel Estate Agent Ltd & Ors v Elizabeth Reynolds</u> [2025] EAT 6 and submitted that the way forward would be to consider striking out the Claim against the Third Respondent because of the lack of timely Early Conciliation and that it was unreasonable to allow him to proceed.

25. I went over this again for the benefit of the Claimant and suggested that we deal with the matter after lunch. I then heard further submissions from Mr Yetman after lunch.

26. After a short adjournment I gave my decision as follows.

27. <u>Morgan</u> determined that an ECC may cover claims that crystallise after the date of issue, meaning that the Claimant does not have to invoke a fresh Early Conciliation process before instituting proceedings. In cases where there was a challenge, it would be a question of fact and degree whether the proceedings were proceedings relating to any matter in respect of which the individual had (previously) provided the requisite information to ACAS.

28. It is clear to me that there is sufficient linkage between the First and Second Claims. The allegations raised in the Second Claim are a continuation of the allegations made in the First Claim, encompassing further events and the Claimant's subsequent dismissal. The Second Claim focuses on the detriments that were pleaded in the First claim. Whilst the Third Respondent is referred to in the First Claim it is only in passing with regard to certain allegations. Whilst he is mentioned in the Second Claim, it again is only in respect of matters which he would appear to be undertaking on behalf of the Claimant's employer (the First Respondent) and in passing. Further, at the case management hearing, the EJ identified the issues and in fact narrowed them down from those pleaded. The protected acts are framed generally and do not refer to the Third Respondent and the detriments as pleaded are against the First and Second Respondents.

29. So in short, there is no actionable claim against the Third Respondent unless of course the Claimant is alleging that the Third Respondent is his employer, which he is not. However, this ruling does not stop the Claimant from giving evidence in respect of matters relating of the erstwhile Third Respondent, who for the sake of expediency I will continue to refer to as the Third Respondent.

<u>The Claimant's skeleton argument</u>

30. The Claimant submitted a skeleton argument dated 3 July 2025 but on the first day of the hearing neither Mr Yetman nor I had seen it. I asked the

Claimant to forward it to me and then I arranged for it to be sent to Mr Yetman to consider over lunch.

31. Having done so, Mr Yetman made the following submissions. The skeleton introduces evidence in response to the Respondents' witness statements and also further evidence. He referred in particular to sections 6.1 and 6.2. To that extent this evidence should be excluded.

32. The Claimant replied that he did not realise he could not do this. I suggested to Mr Yetman that perhaps he could deal with the additional evidence with his own witnesses. He responded he could but there had been no formal application by the Claimant to adduce further evidence.

33. Having consider the implications of this further, I decided that the Claimant could not rely on his skeleton in respect of evidence that has been submitted after exchange of witness statements and is in fact prompted by the Respondents' witness statements. The majority of the document raises further evidence and it puts the Respondents at a disadvantage because Mr Yetman would have to take instructions, the evidence would have to be put by the Claimant in his evidence in chief and cross examination questions asked and the Respondents would have to deal with it by way of supplemental questions. And all in a case that has already started. I decided that it was neither proportionate or fair to allow this and it put the Respondents to the greater prejudice to allow it rather than to disallow it.

34. The Claimant asked if he could ask about these matters as questions. I responded, no, his questions should be limited to putting his case to the witnesses and asking questions about what they have said in their witness statements and not by raising further evidence.

<u>Conduct of the hearing</u>

35. The Claimant represented himself and the Respondents were represented by Mr Yetman of Counsel.

36. The hearing was conducted by Cloud Video Platform on 7, 8, 10 and 14 July 2025. The Claimant requested not to sit on 9 July to attend to medical treatment required for his dog. It was not possible to sit on 11 July 2025 because Mr Yetman had to attend to a personal emergency.

37. Over the course of three days I heard evidence from the parties and on the fourth day I was provided with written and oral submissions. At the start of the hearing I had indicated that having considered the timetable and the lack of any evidence as to remedy within the Claimant's witness statement (although it was indirectly dealt with in his Schedule of Loss), I felt it was appropriate to deal with liability first of all and then remedy if required.

38. I had intended to sit in private to reach my decision and then give oral Judgment and Reasons, and if appropriate, deal with remedy, on a day in the remainder of July and then in August 2025. Unfortunately, this was not possible due to my sitting schedule. Indeed, as a result of my part-time work pattern and pressure of work, it was not possible form me to perfect the

Judgment and Reasons for several months. In addition, given the terms of the Rule 49 Order, there was the additional task of anonymising the names and other identifying factors within the Reasons. I can only apologise to the parties for this delay.

39. By email dated 15 July 2025, the Claimant sent supplementary submissions to the Tribunal cc the Respondents' solicitors. I replied to the Claimant cc the Respondents' solicitors stating that evidence and submissions had concluded on 14 July and that I was not able to consider his supplementary submissions unless the Respondents were content for me to do so and in which case they may wish the right to reply. I did not receive any response from the Respondents' solicitors.

Findings of fact

40. I decided all the findings referred to below on the balance of probability, having considered all of the evidence given by the witnesses during the hearing, together with documents referred to by them. Any failure to mention any specific part of the evidence should not be taken as an indication that I failed to consider it.

41. I have only made those findings of fact necessary to determine the issues. It has not been necessary to determine every fact in dispute where it is not relevant to the issues between the parties.

<u>Background</u>

42. The Claimant was employed by the First Respondent at Location T for a total of 11 years over two separate periods. He and his wife, F, were initially employed as a live-in domestic couple from 2005 to 2008. The Claimant was employed as Maintenance Man and his wife as Cook/Housekeeper. The Claimant returned to work for the First Respondent from 1 July 2016 until his dismissal on 17 January 2024. He and his wife lived in a cottage in Location T's grounds. From 31 December 2019, the Claimant's wife left the First Respondent's employment but continued to live with the Claimant in the cottage provided.

43. The First Respondent is a company incorporated in the United States of America in which rests ownership of Location T. The Second and Third Respondents are Directors of that company along with E and the Second Respondent's daughter, G.

44. Location T, is the family home of E and formerly, his late wife, H. The Second and Third Respondents, are E's sons and they were visiting Location T from time to time during the events relating to the Claimant's claim. They both live primarily in the United States but come to the UK to visit their parents for a few weeks each year and latterly for extended periods.

45. The Claimant's letter of appointment dated 27 May 2016 is at B376 & 379. His responsibilities are set out in a Position Summary at B377-378. In essence, his role involved managing Location T's estate and undertaking day-to-day duties but also required discretion and trustworthiness due to

being part of the household and having significant knowledge about the running of Location T and the personal lives of E and other family members. The Claimant was privy to highly sensitive and private information during the course of his employment and was expected to maintain that confidentiality. His duties would be spread across the day would include work in the evenings, weekends around occasional events or meals. The Claimant would spend time with E including scheduling his day, driving him locally and on rare occasions to London when needed as well as maintaining and coordinating the running of Location T's estate.

46. E's wife in her later years was diagnosed with Alzheimer's Disease and became frail. She required carers to attend to her needs and ultimately moved into a care home and passed away in December 2020.

47. From Winter 2021 onwards, E's own health began to deteriorate and he was ultimately diagnosed with Alzheimer's Disease. At the time of the events in question E was in his late 80's, early 90's. His medical condition in turn impacted upon his health and behaviour which at times became somewhat outlandish. This was during the period July 2022 onwards. E had very much been in control of the running of Location T until his health began to deteriorate.

48. On 27 December 2021, there was an exchange of emails between the Claimant and Second Respondent relating to E's worsening confusion (at B110-111). Indeed, in his reply, the Claimant described it as the worst he had seen and raised his concerns.

49. The Claimant's relationship with E worsened as E's health deteriorated. The Second and Third Respondent stated in evidence that their father had asked them to dismiss the Claimant and to replace him. However, at the time they both resisted this request because they believed things were going as smoothly as they could have hoped and it would have had a negative impact upon the other staff. Indeed, the Claimant accepted in cross-examination that there had been an irredeemable breakdown in his relationship with E by July 2022.

50. I would comment that the Claimant's case has been difficult to piece together because his witness statement makes some quite sweeping allegations, in bold terms, many without specific dates or supporting references to documents in the bundle and it also raises many matters which are simply not relevant to the issues to be determined. Indeed, I note that he displays a tendency in the contemporaneous documents and in his evidence to make intemperate and pejorative statements which appear exaggerated. Further, the Respondents' witness statements have been difficult to follow because they take a rather disjointed approach to dealing with events and also raise many matters which are simply not relevant to the issues to be determined, although I appreciate this may well simply be in response to the approach taken by the Claimant in his pleadings. All of this added to the task of reaching my decision.

Overview of the claims

51. In an attempt to get to the nub of this case, I have summarised the position as follows:

    a. The Claimant alleges that he and Location T's staff were placed in the unacceptable position of having to provide care for E as his health worsened, which caused them stress and anxiety. The Respondents deny this;

    b. The Claimant further alleges that the Respondents ignored his requests to implement adequate external care and/or delayed in doing so. The Respondents deny this;

    c. The Claimant asserts that he blew the whistle and raised health and safety matters as the designated health and safety officer in a number of emails and as a result he was treated to his detriment by the Respondents and ultimately unfairly dismissed. He believes that the Second Respondent dismissed him for raising a grievance against him and that the decision was predetermined. This he pleads as both automatically unfair for whistle-blowing and health and safety reasons as well as ordinarily unfair. The Respondents deny that the emails amount to qualifying or protected disclosures or raised health and safety matters and further deny that the Claimant was the designated health and safety officer. In addition they deny that the Claimant was unfairly dismissed;

    d. What is in agreement between the parties is that the Claimant's relationship with E had broken down completely by July 2022 as a result of his worsening health. That the relationship between the Claimant and the Second Respondent had started to irredeemably break down by 9-10 July 2023. That the relationship had broken down completely by 5 January 2024. Further, the Claimant accepted in cross examination that he was not dismissed because he had blown the whistle or because he had raised health and safety concerns but because the working relationship had irredeemably broken down.

52. With this in mind, I have focused on those matters relevant to the list of issues.

Relevant events

53. From September 2022 onwards, J was employed as E's night time carer. I was referred to correspondence in this regard at B127-129. Her role was to prepare evening meals for E and to provide him with night time care.

54. On 19 November 2022, K, a friend of E's, sent an email to the Claimant (at B133) in which she referred to her own observations of his health condition on a recent visit and his angry reaction when she said the word "Alzheimer's" and suggested he sign a lasting power of attorney. She asked the Claimant "so what do you do with that level of anger – A?" Her emailed ended "Hang in there A!" The Claimant accepted in cross examination that this was her recognition of a deterioration in E's health and a supportive message to him.

55. On 7 December 2022, L, the Head of Hospice Dementia & Frailty Care Home Team at the Location U, sent an email to the Third Respondent regarding E's health. In that email, she stated that she had been involved in supporting his father with his late wife's care and well-being management. She further stated that she was writing because she had met with the Claimant and K regarding E's cognition and well-being following his confirmed diagnosis of Alzheimer's disease. The email continues by describing her meeting with E, the care provided by K over the last three months, that she would be leaving Location T on 21 December, when the Second and Third Respondents were due to arrive, albeit staying in separate properties in Location L. She expressed her concern for E as a vulnerable adult requiring supervision/overseeing to ensure his safety in residing in vast premises with numerous stone staircases on his own. She stated that as a healthcare professional she is bound by a duty of care to report her findings to Location V's Safeguarding Team which would result in an investigation to determine what is in E's best interests to ensure his safety. She indicated that she was more than happy to converse with the Third Respondent by telephone, email, teams or zoom.

56. J was dismissed in January 2023 given dissatisfaction with her services. Whilst the Claimant alleges that he was pressurised to dismiss her by the Second Respondent, it is clear from the correspondence that the drive to dismiss J was from him (B143-144).

57. In January 2023, Location T's Housekeeper, M's, hours of work were increased from 24 to 40 hours per week so as to provide additional assistance after J's departure (at B146-147). The Claimant also indicated in an email of 16 January 2023, in strident terms, that he wished to keep his time in dealing with E to a minimum. However, earlier in an email dated 10 January 2023, he had previously indicated that he was prepared to assist (at B137).

58. Also in January 2023, arrangements were put in place with a private care company to provide live-in carers to look after E. I was referred to emails between the Claimant and the Second and Third Respondents at B136-140. The Claimant accepted in cross examination that by 9 March 2023 both daytime and nighttime care was being provided for E. The daytime care was being provided by Location T's staff, particularly, M and N, the Events Manager, the nighttime care by the private company.

59. On 27 February 2023, the Claimant sent an email to the Third Respondent in which he sought permission to set up an online business "on the side" in his own time, raised his concerns about any "succession plan" or at least one that he felt confident would include him, given the dissatisfaction expressed to him by the Second Respondent, and hence his desire to start his business in the event that he had to leave following E's passing. The phrase "succession plan" was a reference to what arrangements would be in place in the event that E passed away. This email is at B465. In cross examination, Mr Yetman, suggested that this was the first indication that the Claimant was more concerned about his own interests and far less concerned about the interests of E. The Claimant disagreed with this assertion.

60. On 10 March 2023, the Claimant sent an email to the Third Respondent copied to the Second Respondent (at B116) in which he set out concerns about E's condition and said that "we are not coping well" with it. He described E's behaviour and said it "has progressively gotten worse over the last month". His email suggested the need for a live-in professional carer.

61. In a reply that same day, the Third Respondent wrote back expressing his concerns for everyone at Location T and fully agreed with the need to look for a full-time carer. The Second Respondent also replied later that day supporting the Third Respondent's sentiments but suggested trying a caretaker before any other option. These replies are also at B116. The Claimant accepted in cross examination that these emails were positive and supportive.

62. In July 2023, the Third Respondent accepts that he mistakenly and foolishly forwarded personal family discussions within a number of emails, between the Second and Third respondents and their partners, to the Claimant. I was referred to emails at B174-188 (but I note that this includes emails from the Claimant in which he refers to the Second Respondent and his wife, in derogatory terms).

63. The Third Respondent states that it was late at night and without thinking of some of the comments made within the chain, he sent the emails to the Claimant for his input in the hope that it could help him make sense of the situation.

64. Unfortunately, this led to a worsening of the relationship between the Third and Second Respondents. The Third Respondent's evidence is that it also led to the grievance subsequently raised by the Claimant (at B194-195) and the raising of a number of further issues (at B198-199). He further states that this then led to the correspondence between the parties' solicitors (at B524-531).

65. The Claimant refers to this incident as the "email slip". He accepted in cross examination that this was the start of the irredeemable breakdown of his relationship with the Second Respondent.

66. The Second Respondent's evidence is that once he became aware of the "slip", he realised that matters would escalate. I was referred to an email from the Claimant to the Second and Third Respondents dated 10 July 2023 and headed "Seeking Legal Advice" (at B173) which appears to be the precursor to the grievance which the Claimant relies upon as being his first protected disclosure.

67. On 11 July 2023, the Claimant commenced Early Conciliation with ACAS, which ended on 21 August 2023 (at B108).

68. On 13 July 2023, the Claimant sent an email to the Second and Third Respondents and to E and G. This is at B194-195 and the subject box indicates that it is a "formal grievance about unfounded allegations and working conditions at Location T". The Claimant relies on this email as making a protected disclosure as well as raising health and safety matters.

69. The email sets out a series of grievance concerns pertaining to what are described as persistent issues at Location T. In summary, these are as follows: he has been accused of a lack of interest in E's welfare by the Second Respondent and his wife; both he and the live-in staff have been subjected to considerable stress, owing to the responsibility of coordinating appropriate care for E, through fear of losing their jobs; false rumours have been circulating regarding the reasons for his wife's dismissal; he has been given misinformation about staff by the Second Respondent and his wife, which led to their unwarranted and unfair dismissal; suggestions have been made that he has a hidden agenda notwithstanding years of undivided attention to E's well-being; the significant adverse impact of these issues on his mental health and that of the staff has been ignored; there has been a breach of his confidentiality to a work colleague, with regard to a legal issue.

70. The email continues by stating that given the Second Respondent and his partner's propensity for baseless allegations against staff members in the past, the Claimant deems it necessary to limit his access to Location T voluntarily to avoid potential false accusations.

71. The email ends by stating that in view of these grave issues, the Claimant formally requests the initiation of suitable corrective action and that he remains steadfast in his belief that every employee is entitled to a safe and respectful working environment.

72. On 19 July 2023, the Claimant sent an email to the Second and Third Respondents. This is at B198-199 and the subject box indicates that it relates to "concerns regarding HMRC correspondence and E's wellbeing". This is the second protected disclosure relied upon by the Claimant as well as raising health and safety matters.

73. The email states that it is written to clarify some of the concerns that the Claimant has already raised in his grievance (in his previous email) as well as an additional concern. The primary concern that the Claimant raises is as to his concern for E regarding his health and behaviour. The additional concern that he raises is as to H's capacity to sign off documents in which she transferred substantial sums of money, at a time when she was already suffering from dementia. This is said to arise from an email that he was asked to forward to E's financial adviser, R, on 16 February 2022. He states that he paid no attention to it at the time but has since revisited that email. He further states that he is not accusing anyone of any wrongdoing he is simply bringing it forward as a concern.

74. On 24 July 2023, the Claimant sent a further email to the Second and Third Respondents. This is at B200 and the subject box indicates that it relates to "urgent clarification requested before 2 August 2023". The Claimant sent a further email to the Second and Third Respondents later that morning, at B201, headed "urgent inquiry (sic) regarding H's gift – final reminder". These two emails are relied upon by the Claimant as further protected disclosures as well as raising health and safety matters.

75. The email of 24 July 2023, responds to an assertion made "in a recent communication", that the Claimant had "engineered it so that has zero contact

with him [E]… and we have not once seen him drive [E]" stating that it is a blatant misrepresentation of the facts. The email goes on make a Data Subject Access Request ("DSAR") under the Data Protection Act and the General Data Protection Regulation ("GDPR"), specifically seeking access to the email referred to in correspondence he received from the Third Respondent on 10 July 2023 timed at 2.28 am and subsequently from W at 2.65 am (sic). The email ends by stating that whilst technically the Respondents have up to 30 days to comply with the request, given the circumstances he asks for them to expedite this process stating that he is scheduling his next meeting with his solicitors on 2 August and that the timely provision of the requested email would greatly assist his preparations for this consultation.

76. The second email of 24 July 2023 again raises the issue of the Claimant's concerns, previously raised in his email of 19 July, regarding H's gifts, to which he states he has not received any response. The email goes on to repeat these concerns in more detail and states that in the absence of a satisfactory explanation, the Claimant feels duty-bound to report the matter to the Police and HMRC. In the alternative to communicating with him directly, the Claimant states that he would welcome an explanation from E's personal adviser or any other nominated representative who can satisfactorily explain the circumstances.

77. B203-205, the Second and Third Respondents and G wrote to the Claimant setting out the outcome of their investigation into the allegations contained within his emails of 19 and 24 July 2023. With regard to the Claimant's allegations that he was being mistreated due to the concerns he raised regarding E's health, safety and well-being, the email advised that following an investigation by reviewing the correspondence and speaking to members of staff, they had concluded that they had been entirely supportive and quick to address any concerns that the Claimant raised. In addition, they had worked hard with him, staff members and doctors, to make the situation better for both their father's welfare and for the staff at Location T. The email then went on to set out events from 27 December 2021 to July 2023.

78. The email continued that upon hearing of the Claimant's increase concerns about their father's welfare and those set out in the Location U letter, they took immediate action and, for over six months, E has had solid overnight attendance when he is most vulnerable, by a professional and there has been no neglect, safety or comfort issues.

79. The email further stated that this was verified with members of staff with caring responsibilities for E and with the private care company.

80. The email further continued that having reviewed the correspondence, the authors concluded that they have not mistreated the Claimant or subjected him to any detriment following his raising his concerns. The email further stated that, to the contrary, they have supported the Claimant in raising his concerns.

81. The email then turned to deal with the issue of H’s finances, denying that there was any impropriety and explaining the basis on which documents were signed in the presence of her solicitor and financial adviser.

82. The email concluded if you would like us to arrange a meeting with you to discuss the above please let us know.

83. The Claimant alleges that sending this letter amounts to a detriment.

84. By email letter dated 15 August 2023 (at B524-529), the Claimant’s solicitors wrote to the Respondents’ solicitors. The letter is headed “Potential Proceedings: A (1) B (2) C”.

85. The letter sets out the following matters. A summary of his grievance contained within his emails of 13, 19 and 24 July 2023. His concern that because of the health and safety and staffing issues he raised, these are being used against him. That the Respondents’ email of 7 August 2023 purports to be a response to his grievance and it acknowledges and makes clear the concerns that the Claimant had raised. The Claimant has been subjected to detriments following his protected disclosures which raised concerns as to the health and safety concerns about E and the staff caring for him, a breach of employment law and the rules of natural justice concerning the termination of staff contracts and potential fraudulent activity concerning the late H. These amounted to qualifying disclosures and are clearly in the public interest. As a result the Claimant has been subjected to detrimental treatment in that: questions/concerns have been raised as to his loyalty, commitment and performance by the Second Respondent on 9 July 2023; N was approached by a member of the Second & Third Respondent’s family member on or around 12 July about taking on the Claimant’s role and a member of the family even congratulated her on her new role as Estate Manager; dealing with his grievance without meeting with him and failing to provide any investigative documents, including interviews with other staff members, not even responding to his concerns; dismissing his grievance on 7 August based on inaccurate findings; not exonerating him from unfounded accusations made by the Second Respondent and failing to deal with DSAR. The adverse impact of these issues on the Claimant’s mental health and that of the staff have been significant and ignored. The Respondents are aware that the Claimant has been prescribed antidepressants to manager his work-related stress but have made no efforts to mitigate or resolve the underlying issues. That the above issues also amount to health and safety concerns which the Claimant raised having been designated by G to carry out such activities and that he brought to his employer’s attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health and safety. The Claimant has suffered injury to feelings as a result of the detrimental treatment. Location T and its employees and agents are urged to discontinue any further acts of detrimental treatment and that to continue to do so will further erode the relationship of trust and confidence which could result in a situation amounting to constructive dismissal and/or automatic unfair dismissal. A proper investigation should be undertaken. The Respondents are put on strict notice not to tamper with any evidence.

86. By email letter dated 22 August 2023 (at B530-531), the Respondents' solicitors wrote to the Claimant's solicitors in response to its letter of 15 August 2023.

87. The letter dealt with the following matters. The Respondents were and remain willing to deal with the Claimant's grievance in accordance with the ACAS Code of Practice on Grievance Procedures and propose that the matter be dealt with by the Third Respondent. The matters raised by the Claimant on 19 and 24 July 2023 do not amount to qualifying disclosures. Nevertheless, the Respondents have treated the Claimant's allegations seriously but found them to be unsubstantiated, as set out in their email of 7 August. That email indicated a willingness to discuss those findings in a meeting with the Claimant. The Claimant has not suffered any detrimental treatment as alleged or at or all or been punished in any way. The Claimant raised a concern about E's health and safety and care generally in March 2023 but since that date the Respondents had arranged a comprehensive care package to be implemented. No further concerns were raised by the Claimant until his grievance dated 13 July 2023 and more specifically on 19 and 24 July. It was unclear on what grounds the Claimant alleges that a private family email from the Second Respondent or the conversation with N amount to detrimental treatment. The Respondents remain willing to deal with the matters raised in the Claimant's grievance dated 13 July in accordance with the ACAS Code of Practice and had been waiting to hear from the Claimant. This did not amount to a detrimental act. The Respondents have not failed to deal with the Claimant's DSAR but have informed him that it would take longer to do so given his period of employment. On what basis does the Claimant allege that the Respondents' email of 7 August 2023 is based on inaccurate findings and moreover allege that his views as to E's care amount to detrimental treatment?

88. The Claimant alleges that this letter denying any wrongdoing on behalf of the Respondents amounts to a detriment.

89. The Third Respondent conducted three grievance meetings with the Claimant. The first of these was on 6 September 2023 (I was referred to B218-222 in this regard). The second of these appears to have been by way of the Third Respondent submitting a grievance document to the Claimant on 29 September 2023, to which the Claimant then provided his responses on 2 October 2023 (at B560-569). The third meeting was on 20 November 2023 (I was referred to B234-235 in this regard).

90. It is clear from the emails that the dialogue between the Claimant and Third Respondent was most difficult, in strident terms and also at times referred to without prejudice discussions.

91. I was also referred to events set out in emails in September 2023 relating to allegations by the Claimant that the Second Respondent was spying on him with his camera whilst he was in his cottage, causing alarm and distress, which the Second Respondent denied (at B277-279). In addition, the Second Respondent refers to the Claimant breaching the confidentiality of staff by sharing their private Whatsapp messages with the Respondents. These

emails reveal a most fraught and difficult dialogue between the Claimant and the Second Respondent.

92. The following alleged detriments arise from the above emails.

93. The Claimant alleges that on 26 September 2023, the Second Respondent subjected him to a detriment by stating that he had no regrets about anything he had done to him and mocked him by stating that he was carrying out paparazzi activities by using his camera near the Claimant's cottage.

94. The Claimant further alleges that on 27 September 2023, the Second Respondent subjected him to a detriment by harassing him by aiming his telephoto lens at the Claimant's cottage for extended periods, causing alarm and distress.

95. The Claimant further alleges that also on 27 September 2023, the Second Respondent subjected him to a detriment by emailing him and making unfounded allegations such as accusing him of spying without explaining what he meant and alleging that he had breached confidentiality by sharing staffs' private WhatsApp messages.

96. The Claimant further alleges that on 28 September 2023, the Second Respondent subjected him to a detriment by failing to respond to his email of at date.

97. The Claimant also alleges that a further detriment by the Third Respondent was in sending him the grievance document on 29 September 2023 (at B561-569).

98. The Claimant alleges a further detriment by the Respondents on 13 October 2023 in failing to comply with his DSAR (I was referred to B222 in this regard).

99. The Claimant alleges a further detriment by the Respondents in wasting his time during the third grievance meeting on 20 November 2023 (I was referred to B234-235 in this regard).

100. On 21 November 2023, the Claimant commenced ACAS Early Conciliation in relation to the Second Respondent (at B109) and also presented his First Claim to the Employment Tribunal.

101. The Claimant alleges that he suffered a further detriment on 26 November 2023 because he was paid a reduced amount of salary during a period of time when he was off sick from work (I was referred to B445 in this regard).

102. On 13 December 2023, the Third Respondent sent an email to the Claimant setting out his decision in relation to the Claimant's grievance (B238-239). The grievance was not upheld and the Claimant was offered the right of appeal.

103. On 5 January 2024, the Third Respondent sent an email to the Claimant (at B240-241). In summary the email dealt with the following. There were a series of concerns that the First Respondent's Directors (identified in the

email as "we" but clarified in a subsequent email at B240)) had about Claimant's conduct, specifically that there had been an irretrievable breakdown in the relationship between the Claimant and them as employer. That it was proposed to hold a hearing on 12 January 2024 conducted by the Third Respondent to discuss them. The Claimant was welcome to be accompanied to the hearing by a work colleague of his choice. The concerns were identified as: personality clash; breakdown of the working relationship; breakdown of trust and confidence; damage to the operation of Location T; the impossibility for employees to work together as a team; the Claimant's refusals as to whom he worked with; his creation of a toxic workplace. The concerns, if upheld, may result in dismissal.

104. By email dated 9 January 2024, the Claimant replied more substantively to the Third Respondent's email (at B242-243). In that email he indicated that he believed that this was further retaliatory action in response to his whistleblowing/health and safety issues and his recent Employment Tribunal Claim. That he found the tone and content to be toxic and adding to an already stressful situation and there had been no prior notice or discussion of these issues and indicated that the decision to dismiss was predetermined. That there was a lack of specific details and examples as to the concerns listed which hindered his ability to defend himself. He requested further information as to each allegation. He indicated that it was infeasible for him to seek accompaniment from a work colleague given that this might inadvertently place them under undue pressure or a perceived target on them.

105. Also on 9 January 2024, the Claimant sent an email to his work colleagues in which he advised them that ahead of a hearing with the Respondents that week, his solicitors had prepared a statement reflecting on his professional conduct which he was asking them, if they felt inclined to so do, to sign and return to him with any appropriate adjustments or deletions (at B244). It is fair to say that he received varying levels of support from those responding (at B245-251). The Claimant said in his written evidence that he supplied these statements to the Respondents but they were ignored. This was not put to the Respondents in evidence. The Claimant alleges in his written evidence that these statements refuted the claims made against him although this was not view that I shared having read them for what it is worth but moreover not something that was put to the Respondents in any event.

106. By email dated 10 January 2024, the Third Respondent responded to the Claimant's email to him (at B252-254) setting out further details of each of the concerns identified in this original email. The Claimant responded to this email at length in an email at B254-271, although I was not referred to this document in evidence.

107. On 12 January 2024, the hearing took place between the Third Respondent and the Claimant. Whilst there is a transcript of this meeting at B290-314, I was not specifically referred to it in evidence.

108. On 17 January 2024, the Third Respondent sent an email to the Claimant (at B287-289) in which he informed the Claimant of his dismissal. Whist the letter is written in the third person, this is a reference to the Claimant's

employer, the First Respondent. The letter stated that the allegations made against the Claimant in correspondence were substantiated by the points made in response to their concerns and his continued combative approach (at B288):

"In particular:

- *Your toxic inability to work with Directors, particularly given that you made clear that you avoid seeing E while C and D are in residence. This is of particular concern given that C and D spend up to 9 months a year in residence;*
- *alllege that both avoided difficult conversations due to concerns about being cut out from their inheritance;*
- *maintain your stance that C is failing to promote the success of Location T, and is lying about the grounds on which O and J were dismissed, despite your grievance not being upheld in this respect;*
- *continue to threaten us with going to the media;*
- *continue to allege that C has no interest in the events business, and has shown little interest in E, and set out the substantial challenges working with C, together with the continued allegations regarding his photography.*

Lastly, rather than engage in a meaningful discussion, you sought to reject all of the allegations against you and allege that the same have been falsified to terminate your employment.

In light of the above, we have come to the clear conclusion that the working relationship between you and us, your employer, has fundamentally and irretrievably broken down. Consequently, we have no alternative but to terminate your employment on the basis of the fundamental and irretrievable breakdown of the relationship between us."

109. The email ended by offering the Claimant the right of appeal and indicated that he would be paid 7 weeks' payment in lieu of notice and any accrued but untaken holiday pay and was allowed to continue to occur his cottage for a period of 7 weeks.

110. The Claimant alleges that he suffered further detriments by the making of false allegations against him and dismissing him on 17 January 2024.

111. The Claimant was subsequently sent a copy of the transcript of the hearing attached to an email dated 22 January 2024.

112. Both the Second and Third Respondent's were in agreement as to the Claimant's behaviour, the deterioration of the working relationship and what led to his dismissal.

113. The Second Respondent said in his written evidence as follows. The Claimant responded confrontationally to everything and much of his correspondence was unpleasant and angry. He gave the email that the Claimant sent to him and the Third Respondent at B266 as an example. Certainly, I found that the Claimant was prone to writing emails in pejorative and intemperate terms. His evidence continued that the Claimant never indicated that he wanted to keep his job or improve his relationships with the members of the family. He did as little as possible and made it increasingly difficult for the Second and Third Respondent to work with him. It was the breakdown in the relationship, the lack of trust and confidence in him to carry out his role and his refusal to work with the Second Respondent which

rendered his continued employment untenable and which led to the termination of his employment.

114. The Third Respondent said in his written evidence as follows. The Claimant became increasingly difficult to deal with and his relationships with the family members broke down. He clearly did not wish to spend time with E from July 2023 onwards He refused to interact with the Second Respondent and often seemed angry. He gave an example which was discussed at the disciplinary hearing (at B300-301 of the transcript) and his concern for his own safety by the Claimant's expression of pure anger. As a result there were serious concerns about his continued ability to do his job. These factors, together with concerns about the Claimant's attitude, the severely diminished trust in his ability to undertake his role which had involved significant levels of trust in him and the influence he would be seeking to impose on other members of staff, made it necessary to speak with him about his continued employment at a disciplinary hearing. Following the meeting it was clear that it was impossible for the Claimant to continue in employment due to the stance he had taken. The Third Respondent said in oral evidence that the decision to dismiss the Claimant was one that he and the Second Respondent and the Directors took mutually.

115. I have no reason not to accept the Second and Third Respondents' evidence in this regard.

116. The Claimant accepted in oral evidence that he was dismissed because of the irretrievable breakdown in the relationship between him and the First Respondent including the Second Respondent Director and that his dismissal was unrelated to his alleged protected disclosures. He accepted in cross examination that this started with what he referred to as the "email slip" and had reached a point of no return with the Second Respondent by 5 January 2024. He accepted by this point there was no way back.

117. The issue of the redeemability of the relationship was put to him on two separate occasions in cross examination and indeed I explained to him the significance of what he had said, making it clear that it amounted to conceding the automatic unfair dismissal complaint within his claim. He indicated that he understood the significance of this concession.

118. By email dated 31 January 2024, the Claimant appealed against his dismissal (at B317-320). An appeal hearing was initially scheduled to take place on 12 February 2024 but was postponed by agreement between the parties' then solicitors to facilitate possible settlement negotiations. In an email to P, the First Respondent's form solicitor on 6 March 2024, the last day of his notice period, the Claimant alleged that the Third Respondent had cancelled the hearing and that he had been dismissed without any appeal process. He asked for confirmation of this (at B323). P replied on 7 March 2024, offering to forward his email to the Directors or, possibly better, suggested that he write to them directly. The Claimant responded that same day stating: "no point really – they never do the right and ethical thing anyway" (at B322).

119. The Claimant did not pursue the matter further and neither did the Respondents. He said he was unaware that he could pursue his appeal post-

termination. However, the Claimant accepted in cross examination that he had abandoned his appeal as of 7 March 2024.

120. The Claimant alleges by postponing the appeal hearing this also amounted to a detriment.

121. The Claimant alleges that he was a designated health and safety officer and wrote the First Respondent's Health & Safety Policy. This was of significance because of his complaint of detrimental treatment under section 44 of the Employment Rights Act 1996 ("ERA") and automatic unfair dismissal under section 100(1)(a) ERA. The Claimant relied on the Health & Safety Policy which he said he had authored but of which a copy was not provided. He also relied upon a risk assessment (at B380-385) which he had written. This relates to hazards associated with residents, visitors and activities at Location T. It is dated 21 September 2023, which post-dates the commencement of the first period of ACAS Early Conciliation and the Claimant's solicitors' letter of 7 August 2023, raising the allegation that he was the designated health and safety officer. It was the only risk assessment that the Claimant undertook. In cross examination, he denied creating this document just to enhance his claim. The Claimant also relied upon a Health & Safety Executive ("HSE") wall poster (a photograph of which is at B446). This names the Claimant as health and safety representative along with one other person. It is undated but the Claimant said in oral evidence that it had been up a few years.

122. On 14 March 2024, the Claimant sent an email to Q, E's secretary, about an approach made by a reporter from the BBC, in response to his email to them of the same date (at B328). He asked her to contact the Directors and ask them if they would like to take part and that he would be speaking to his solicitor before proceeding and suggested they should soon. His email to the BBC was included in the email thread which included an earlier conversation he had with someone else at the BBC in September 2022 regarding E and contained allegations very much echoing, in brief terms, those made as part of his grievance and indeed in evidence at this hearing. The email thread also contained a previous exchange on the same subject on 12 September 2022 (at B329).

123. In cross examination, the Claimant was asked why he was doing this in March 2024 after he had been dismissed and had abandoned his appeal, rather than in July 2023, when he allegedly blew the whistle? The Claimant replied that it was because he had yet to receive his pay in lieu of notice, he was sitting in his cottage and the care issues regarding E were continuing. It was put to him that he was attempting to "whip up a storm". The Claimant responded that he had invited a response, this was the BBC, not some tabloid and they would not publish without doing their research. It was further put to him that he was attempting to capitalise on an individual whose health was deteriorating. The Claimant replied that it was the care and staffing issues, he was marooned in his cottage with no pay in lieu of notice by a spiteful and malevolent employer. It was further put to him that if he had genuine concerns about E and the situation, he would have raised the matter sooner. The Claimant replied that if he had done so, then Mr Yetman would have been even more forceful in his questioning.

124. On 21 March 2024, the Claimant sent a further email to his contact at the BBC in which he said that the good news is that all the necessary arrangements for E's well-being have been made and he apologised for the alarm. He also stated that he had been paid his notice pay and he therefore retracts his previous email in its entirety and will not participate in any interview or investigation relating to the matter. This is at B330.

125. The Claimant said in oral testimony that by then he had got his pay in lieu of notice and so why would he not have retracted his email, and the care was in place, and his colleagues had received pay rises. It was put to him that the approach to the BBC and the subsequent retraction of his allegations was vexatious and unreasonable. The Claimant denied this.

126. It was further put to the Claimant that if, as he alleges, an unfair dismissal process followed, he would have been dismissed in any event, given how bad the employment relationship had become because of his response to the Second Respondent, his withdrawal of care for E and his general conduct which had led to his dismissal or as a minimum that he contributed to his dismissal by this behaviour (I explained the issue of contributory fault to the Claimant). The Claimant did not accept these propositions and was of the view that there was a chance that they could have repaired the relationship.

127. On 7 December 2023, the Claimant had stated to the Second Respondent in an email that he felt compelled to share his experience and that of others with a local newspaper (at B253 and 262).

128. Both the Second and Third Respondents gave written evidence in which they believed that the actions in contacting the BBC and threatening to contact the local newspaper were threats which had nothing to do with any legitimate concerns and were an attempt to manipulate matters in his favour and cause additional stress and anxiety (respectively).

129. The Claimant stated just before lunch on 10 July 2025 that he was not going to ask any questions of S or M, the Respondents' two other witnesses.

Closing Submissions

130. I received written submissions from both parties which they spoke to orally at the hearing. I do not propose to set out the details of the submissions in these reasons unless specifically referred to. However, I would assure the parties that I have taken them fully into account.

131. Unfortunately, the Claimant's submissions contained matters of new evidence and so I have been careful not to take these into account in reaching my decision.

Essential law

132. Section 43A Employment Rights Act 1996 ("ERA"):

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

133. Section 43B ERA:

(1) In this Part a " qualifying disclosure " means any disclosure of information which, in the reasonable belief of the worker making the disclosure, [F2 is made in the public interest and] tends to show one or more of the following—

(a) that a criminal offence has been committed, is being committed or is likely to be committed,
(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,
(d) that the health or safety of any individual has been, is being or is likely to be endangered,
(e) that the environment has been, is being or is likely to be damaged, or
(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed…"

134. Section 44 ERA:

"(1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that—

(a) having been designated by the employer to carry out activities in connection with preventing or reducing risks to health and safety at work, the employee carried out (or proposed to carry out) any such activities,
(b) being a representative of workers on matters of health and safety at work or member of a safety committee—
(i) in accordance with arrangements established under or by virtue of any enactment, or
(ii) by reason of being acknowledged as such by the employer,
the employee performed (or proposed to perform) any functions as such a representative or a member of such a committee,
[(ba) the employee took part (or proposed to take part) in consultation with the employer pursuant to the Health and Safety (Consultation with Employees) Regulations 1996 or in an election of representatives of employee safety within the meaning of those Regulations (whether as a candidate or otherwise);]
(c) being an employee at a place where—
(i) there was no such representative or safety committee, or
(ii) there was such a representative or safety committee but it was not reasonably practicable for the employee to raise the matter by those means,
he brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety,
(d) …
(e) …

(1A) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his or her employer done on the ground that—

(a) in circumstances of danger which the worker reasonably believed to be serious and imminent and which he or she could not reasonably have been expected to avert, he or she left (or proposed to leave) or (while the danger persisted) refused to return to his or her place of work or any dangerous part of his or her place of work, or
(b) in circumstances of danger which the worker reasonably believed to be serious and imminent, he or she took (or proposed to take) appropriate steps to protect himself or herself or other persons from the danger.]

(2) For the purposes of subsection [(1A)(b)] whether steps which [a worker] took (or proposed to take) were appropriate is to be judged by reference to all the circumstances including, in particular, his knowledge and the facilities and advice available to him at the time.

(3) [A worker] is not to be regarded as having been subjected to any detriment on the ground specified in subsection [(1A)(b)] if the employer shows that it was (or would have been) so negligent for [the worker] to take the steps which he took (or proposed to take) that a reasonable employer might have treated him as the employer did.

(4) … this section does not apply where the [worker is an employee and the] detriment in question amounts to dismissal (within the meaning of [Part X])."

135. Section 47B ERA:

> *"(1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.*
>
> *[(1A) A worker ('W') has the right not to be subjected to any detriment by any act, or any deliberate failure to act, done—*
>
> *(a) by another worker of W's employer in the course of that other worker's employment, or*
> *(b) by an agent of W's employer with the employer's authority, on the ground that W has made a protected disclosure.*
>
> *(1B) Where a worker is subjected to detriment by anything done as mentioned in subsection (1A), that thing is treated as also done by the worker's employer.*
>
> *(1C) For the purposes of subsection (1B), it is immaterial whether the thing is done with the knowledge or approval of the worker's employer.*
>
> *(1D) In proceedings against W's employer in respect of anything alleged to have been done as mentioned in subsection (1A)(a), it is a defence for the employer to show that the employer took all reasonable steps to prevent the other worker—*
>
> *(a) from doing that thing, or*
> *(b) from doing anything of that description.*
>
> *(1E) A worker or agent of W's employer is not liable by reason of subsection (1A) for doing something that subjects W to detriment if—*
>
> *(a) the worker or agent does that thing in reliance on a statement by the employer that doing it does not contravene this Act, and*
> *(b) it is reasonable for the worker or agent to rely on the statement. But this does not prevent the employer from being liable by reason of subsection (1B).]*
>
> *(2) … this section does not apply where—*
>
> *(a) the worker is an employee, and*
> *(b) the detriment in question amounts to dismissal (within the meaning of [Part X]).*
>
> *(3) For the purposes of this section, and of sections 48 and 49 so far as relating to this section, 'worker', 'worker's contract', 'employment' and 'employer' have the extended meaning given by section 43K.]"*

136. Section 98 ERA:

> *"(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—*
> *(a) the reason (or, if more than one, the principal reason) for the dismissal, and*
> *(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.*
>
> *(2) A reason falls within this subsection if it—*
> *(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,*
> *(b) relates to the conduct of the employee,*
> *(c) is that the employee was redundant, or*
> *(d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.*
>
> *(3) In subsection (2)(a)—*
> *(a) 'capability', in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality, and*
> *(b) 'qualifications', in relation to an employee, means any degree, diploma or other academic, technical or professional qualification relevant to the position which he held.*
>
> *(4) [Where] the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—*

(a) depends on whether 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."

137. Section 100 ERA:

"(1) 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—

(a) having been designated by the employer to carry out activities in connection with preventing or reducing risks to health and safety at work, the employee carried out (or proposed to carry out) any such activities,

(b) being a representative of workers on matters of health and safety at work or member of a safety committee—

(i) in accordance with arrangements established under or by virtue of any enactment, or
(ii) by reason of being acknowledged as such by the employer,

the employee performed (or proposed to perform) any functions as such a representative or a member of such a committee,

[(ba) the employee took part (or proposed to take part) in consultation with the employer pursuant to the Health and Safety (Consultation with Employees) Regulations 1996 or in an election of representatives of employee safety within the meaning of those Regulations (whether as a candidate or otherwise),]

(c) being an employee at a place where—

(i) there was no such representative or safety committee, or
(ii) there was such a representative or safety committee but it was not reasonably practicable for the employee to raise the matter by those means,

he brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety,

(d) in circumstances of danger which the employee reasonably believed to be serious and imminent and which he could not reasonably have been expected to avert, he left (or proposed to leave) or (while the danger persisted) refused to return to his place of work or any dangerous part of his place of work, or

(e) in circumstances of danger which the employee reasonably believed to be serious and imminent, he took (or proposed to take) appropriate steps to protect himself or other persons from the danger.

(2) For the purposes of subsection (1)(e) whether steps which an employee took (or proposed to take) were appropriate is to be judged by reference to all the circumstances including, in particular, his knowledge and the facilities and advice available to him at the time.

(3) Where the reason (or, if more than one, the principal reason) for the dismissal of an employee is that specified in subsection (1)(e), he shall not be regarded as unfairly dismissed if the employer shows that it was (or would have been) so negligent for the employee to take the steps which he took (or proposed to take) that a reasonable employer might have dismissed him for taking (or proposing to take) them."

138. Section 103A ERA:

"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."

Conclusions

Time limits

139. At paragraph 1 of the list of issues at B87, I am required to consider whether the allegations of detrimental treatment have been presented within the time limits set out in section 48 ERA.

140. Given the operation of the dates of presentation and the Early Conciliation period, any alleged detriment raised in the First Claim which took place before 11 July 2023 has been presented out of time and in the Second Claim, any alleged detriment which occurred before 16 January 2024 has been presented out of time. This is of course subject to paragraphs 1.1.2 and 1.1.3-1.1.4 of the list of issues.

141. The Claimant alleges a series of detriments, the earliest of which occurred on 7 August 2023 and the latest of which occurred on 12 February 2024. These are set out in the list of issues at B92-94.

142. I had a very brief submission from Mr Yetman that the complaints against the First and Second Respondent were presented in time. I have already dealt with the position of the Third Respondent above. The Claimant did not say anything about time limits. In any event, I am content to proceed on the basis that the complaints were presented in time given my decision.

<u>The complaints</u>

Protected disclosures

143. This is a case involving what is commonly known as whistle-blowing. In essence, a worker is protected by law if he discloses certain categories of information and makes the disclosure to the correct person and in the correct way.

144. Under section 47B ERA, a worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer, done on the ground that the worker has made a protected disclosure. Section 103A ERA provides protection against unfair dismissal for employees.

145. I had regard to <u>Shamoon v Chief Constable of the Royal Ulster Constabulary</u> [2003] IRLR 285, HL, in which the House of Lords (now called the Supreme Court) found (in the context of discrimination complaints) that in order for a disadvantage to qualify as a “detriment”, it must arise in the employment field in that the court or tribunal must find that by reason of the act or acts complained of, a reasonable worker would or might take the view that s/he had thereby been disadvantaged in the circumstances in which s/he had thereafter to work. An unjustified sense of grievance cannot amount to “detriment”.

146. Section 43A ERA defines what is called a “protected disclosure” as meaning a “qualifying disclosure” which is made in accordance with sections 43C to 43H.

147. Section 43B ERA states that a qualifying disclosure means any disclosure of information that the worker making the disclosure reasonably believes is made in the public interest and tends to show one or more of the following

has, is, or is likely to have taken place: a criminal offence; breach of a legal obligation; a miscarriage of justice; the health and safety of an individual has, is or is likely to be endangered; or information tending to show any of these has, is or is likely to be concealed.

148. Sections 43C–H set out to whom qualifying disclosures may be made and in what circumstances. This includes to one's employer.

149. So for there to be a protected disclosure there are the following requirements:

a. The worker must have "disclosed" "information".

b. The disclosure can be orally or in writing. It need not follow any special whistleblowing procedure, even if the employer has such a procedure. The factual disputes before the tribunal may be:

i. If it was an oral disclosure, what exactly was said, to whom and when? The respondent may deny it was said at all or allege that something different was said.

ii. If it was a written disclosure – where was it written and who received it/read it.

c. What "information" was disclosed? The claimant needs to identify exactly what he said or wrote amounted to the relevant "information". Often claimants say the disclosure was in a long email. But what is the relevant "information" which the email contained?

d. Does it amount to "information" under the law? Complaints, allegations and comments may or may not contain "information".

e. It does not matter that the Claimant was telling his employer something which the employer already knew. It is still a "disclosure of information".

150. Mr Yetman referred me to <u>Cavendish Munro Professional Risks Management Ltd v Geduld</u> [2010] IRLR 38, in which the Employment Appeal Tribunal indicated that it was not sufficient for a claimant to simply make allegations about a wrongdoer:

"… the ordinary meaning of giving "information" is conveying facts. In the course of the hearing before us, a hypothetical was advanced regarding communicating information about the state of a hospital. Communicating "information" would be "The wards have not been cleaned for the past two weeks. Yesterday, sharps were left lying around." Contrasted with that would be a statement that "You are not complying with Health and Safety requirements". In our view this would be an allegation not information."

151. This has to be read in the light of <u>Kilraine v London Borough of Wandsworth</u> [2018] IRLR 846, in which the Court of Appeal said that the concept of "information" is capable of covering statements which might also be characterised as allegations. Section 43B(1) should not be glossed to introduce into it a rigid dichotomy between "information" on the one hand and "allegations" on the other. In <u>Cavendish Munro</u>, the Employment Appeal Tribunal was not seeking to introduce such a rigid dichotomy; all it was

seeking to say was that a statement which merely took the form, “You are not complying with Health and Safety requirements”, would be so general and devoid of specific factual content that it could not be said to fall within the language of s 43B(1) so as to constitute a qualifying disclosure.

152. The information must, in the Claimant’s reasonable belief, tend to show one 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,

    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.

153. It is necessary for a Tribunal to pinpoint what issue the Claimant had in mind. For example, if the belief concerns a criminal offence, what criminal offence? If it concerns breach of a legal obligation, what legal obligation?

154. The Tribunal does not have to decide whether in fact there is a danger to health and safety (for example). It must decide:

    a. Did the Claimant believe the information tended to show a danger to health and safety?

    b. Was that belief “reasonable” for the Claimant to hold?

155. Of course, Claimants tend to want to prove that their concerns were valid. It is important that a Tribunal does not get distracted from the legal issues. Indeed, a Tribunal does not usually have to decide whether a Claimant’s concerns were correct.

156. The Tribunal must also consider whether the disclosure was, in the Claimant’s reasonable belief, made in the public interest. Again, the question is not whether the disclosure was in fact in the public interest. The Tribunal must decide:

    a. Did the Claimant believe disclosure was in the public interest?

    b. Was it reasonable to believe that?

157. It does not matter if disclosure was also made in the Claimant’s own interest.

158. The “public” can simply be other people employed by the same employer.

159. What is in the “public interest” is common sense looking at all the circumstances including:

    a. How serious was the matter?

    b. How many people might be affected?

    c. The identity of the wrong-doer.

160. Once the protected disclosure is identified, the Tribunal has to decide whether:

    a. the reason or main reason for the dismissal was one or more of the disclosures (section 103A ERA); and/or

    b. whether the reason or part of the reason for the detriments was one or more of the disclosures (section 47B ERA).

161. Where the claim is for automatic unfair dismissal due to whistle-blowing as well as for ordinary unfair dismissal, there are no complex rules about who has the burden of proof. As with all unfair dismissal claims, the employer must prove the reason for dismissal. If the employee is suggesting that the employer dismissed him/her for whistleblowing, s/he has to produce some positive evidence of that, but s/he does not have to discharge any burden of proof. Having heard the evidence of both sides and making inferences from the primary facts, the Tribunal then needs to decide what the reason for dismissal was. If the employer is unable to prove an alternative reason, this may indicate that whistle-blowing is the true reason, but not necessarily (Kuzel v Roche Products Ltd [2008] IRLR 530, CA).

162. Where the claim is for detriment, the burden of proof is closer to that in discrimination claims, ie once less favourable treatment amounting to a detriment following a protected disclosure has been shown, the employer must prove under section 48(2) ERA on what ground s/he acted and that the protected disclosure was no more than a trivial influence, if any, on the employer’s treatment of the whistle-blower (Fecitt & Ors v NHS Manchester [2012] IRLR 64, CA).

163. This is different from the position on an automatic unfair dismissal claim, where because of different wording in the legislation, it is unlawful only if the protected disclosure was a larger factor, ie it must have been the reason or principal reason for dismissal.

Health and Safety reasons

164. It is unlawful to dismiss employees or subject them to detriments for various kinds of health and safety reasons set out in sections 100 and 44 ERA.

165. Employees designated with a specific health and safety duty under statute or by agreement with their employer have the right not to be dismissed or

subjected to detrimental treatment because they carry out or propose to carry out their health and safety duties. The way in which the designated employee carries out his health and safety activities is also protected, unless, possibly, if the representative is acting completely unreasonably, maliciously or irrelevantly to the task in hand.

166. Where there is no health and safety representative at the workplace or it is impracticable for the employee to raise the particular issue through the representative, it is also automatically unfair to dismiss an employee because he brings to the employer's attention by reasonable means conditions of work which s/he reasonably believes are harmful or potentially harmful to health and safety. It is also unlawful to subject the employee to any detriment other than dismissal on any of these grounds.

167. The burden of proof is the same as for whistle-blowing.

<u>The Claimant's credibility</u>

168. Having considered the evidence before me, I agree with Mr Yetman submissions that the Claimant's credibility is in issue and gives rise to the inference, put to him in cross examination, that he has sought to capitalise from a private family matter of a serious nature in order to manufacture and/or unreasonably exaggerate the nature of his claims. This has to be viewed in the context of E's unfortunate decline in health during July 2022 and July 2023, and the Claimant's awareness of family tensions that came to a head in July 2023.

169. Mr Yetman points to the time line in support of his submission, which he asserts, speaks for itself. In particular by reference to the following matters arising in evidence:

    a. The Claimant's acceptance that his direct relationship with E was irredeemable as of July 2022;

    b. The contemporaneous email evidence pointing to his concern about succession planning and tensions between him and the Second Respondent as of 27 February 2023;

    c. His acceptance that as of 9-10 July 2023 email, his relationship with the Second Respondent had become irredeemable due to the accidental email "slip" by the Third Respondent;

170. To this I would add that the Claimant accepted in cross examination that his relationship with the Second Respondent had broken down completely by 5 January 2024. In addition, there is the language and tone of his email correspondence with the Respondents, which at times was very fraught and difficult to deal with, to the point that it contained both intemperate and pejorative language towards the Respondents. Further, there is his belated approach to the BBC, which in view of his evidence, appears to have been done for intemperate reasons, more to do with his anger at sitting in his cottage, not working and having not received his notice pay, rather than for any legitimate concerns that he asserts led to his protected disclosures..

171. Mr Yetman further submits that the Claimant's conduct from July 2023 onwards is consistent with the conclusion that his personal grievance with both the Second and Third Respondents caused him to manipulate the situation so as to craft the spurious claims that are now before this Tribunal. This he asserted amounts to unreasonable conduct. I agree that there is certainly a questionable degree of self-serving timing and content and what I would call "sabre rattling" as to threatened legal action, which leads one to the conclusion that these matters are not obviously raised for the legitimate reasons put forward by the Claimant in his claims.

172. By way of illustration Mr Yetman pointed to:

a. The timing of the Claimant's first ACAS certificate in respect of the First Respondent is dated 11 July 2023. This pre-dates his first alleged protected disclosure made on 13 July 2023;

b. The alleged disclosures concern an alleged state of affairs that were known to the Claimant, even on his own case, at the latest by March 2023 (or certainly before 13 July 2023);

c. In that context, the Claimant has provided no explanation, either in his pleadings or in evidence, to explain why his alleged disclosures were made when they were as opposed to an earlier point in time;

d. The Claimant also accepted that throughout 2021 to July 2023, all of the key changes to E's care arrangements were primarily instigated by other people (for example, L's safeguarding referral on 7 December 2022, preceding the introduction of the private care company's' night-time care, and an email from that company of 28 June 2023, outlining the potential need for day-time care). The Claimant was not the driving force of the changes but yet he sought to undermine the Second and Third Respondents by seeking to depict them as being resistant to providing adequate care for E and/or the other members of staff between 2021-2023, in the face of his recommendations. This characterisation is not supported by any of the contemporaneous documentation;

e. The clear inference is that the only explanation for this timing is his unreasonable intention to manufacture circumstances from which to build his claims;

f. Absent any grounds other than his own (alleged) suspicion, he sought to characterise private inheritance tax information concerning H's dispositions and her alleged lack of capacity as being indicative of criminal fraud. This is an incredibly serious allegation to make. In addition, it was also based upon matters known to him well before making the alleged protected disclosure (the Claimant accepted it arose from an email he was said to have received in 2022). This begs the question: why was this disclosure not made in 2022? I would add that the Claimant's explanation was not convincing and again appears self-serving. Mr Yetman submitted that the corollary finding arising from this timing is once more that the Claimant sought to concoct material for the purposes of these proceedings;

g. The Claimant also misrepresented matters in order to suit his claim. A key example of this was his suggestion J was pushed out by him under the Second Respondent's instruction. The emails from 14 January 2023 tell the story accurately and undermine the Claimant's position entirely, in particular at B144 where the Claimant wrote the words "She must go!";

h. The Claimant's threats to weaponize the situation so as to go to the BBC as of 14 March 2024, before retracting this option as of 21 March 2024, once he was paid his notice pay. This is consistent with a conclusion that he was more concerned with causing reputational harm to the Respondents for his own benefit rather than any genuine concern for the situation outside of his ongoing claim.

173. I accept these submissions and the impact on the Claimant's credibility. I have accordingly taken this into account in reaching my conclusions as to the Claimant's complaints.

<u>Conclusions as to the alleged protected disclosures</u>

174. Mr Yetman submits that all of the emails relied upon by the Claimant as amounting to protected disclosures are simply the conveyance of general allegations tied to a private internal grievance which in itself is tied to private family matters.

175. In particular, in his submissions he pointed to <u>Smith v London Metropolitan University</u> [2011] IRLR 884, in which the Employment Appeal Tribunal held that grievance documents did not amount to protected disclosures within the meaning of section 47B(1) ERA and following the ruling in <u>Cavendish Munro.</u>

176. In addition, Mr Yetman submits that the matters raised are simply not in the public interest and refers to an extract from Harvey on Industrial Relations and Employment law Division CIII, 5. Qualifying disclosure, B. Public interest - the 2013 reforms (at paragraphs 47-48).

177. On an analysis of each of the protected disclosures relied upon I come to the same conclusion. I would say that I have taken into account the way in which these alleged disclosures were raised at the time and the surrounding circumstance, rather than the way they have subsequently been presented in this litigation. And in particular, I have taken into account the issues regarding the Claimant's credibility.

178. Dealing then with the alleged disclosures each in turn.

179. The email of 13 July 2023 is the Claimant's formal grievance. It simply relates his concerns regarding allegations made against him and his concerns about E and other members of staff. What it boils down to is a series of complaints and counter allegations to what he believes are allegations that have been made against him. This does not amount to information.

180. Further, it is difficult to see how even in the Claimant's reasonable belief, the email shows that one of the matters in section 43B ERA arises. Moreover, even if the email does raise a matter falling under section 43B, I do not find

that in the Claimant's reasonable belief this raise matters in the public interest. I have taken into account the degree of seriousness of these allegations and that they do affect other members of staff and the identity of the alleged wrongdoer. However, this is a small private employer albeit involving a prominent member of society, but it involves personal matters regarding that person and other members of staff. Any public interest that could possibly arise in this would hardly be legitimate and could only be of a prurient nature. But given my concerns about the Claimant's credibility I do not believe that he had a reasonable belief.

181. The email of the 19 July 2023 contains clarification of some of the concerns that the Claimant has already raised in his grievance email of 13 July 2023. Again it relates to concerns regarding E's health and behaviour and does not convey information. In addition, whilst it does raise alleged concerns as to H's capacity to enter into legal agreements in transferring sums of money at a time she was suffering from dementia, the Claimant goes to great lengths to say he is just raising the matter as a concern. He does not expressly or even implicitly referred to some alleged wrongdoing to bring this within one of the matters within section 43B.

182. Moreover, he raises a matter which was contained within an email of 16 February 2022 which he claims to have paid no attention to at the time but recently "revisited that email." Given my concerns about the Claimant's credibility, it does appear on balance of probability that he is simply belatedly referring to this matter at a later stage in an attempt to create a legal case or as I have said as "sabre rattling".

183. What is most telling is that the Claimant states that he is not accusing anyone of any wrongdoing but is simply bringing it forward as a concern. I take into account that on 11 July 2023 the Claimant had already entered into Early Conciliation with regard to the First & Second Respondents.

184. I conclude that the Claimant did not hold a reasonable belief that these matters amounted to issues falling under section 43B assuming I was able to identify what part of the section he relies upon.

185. I reach the same conclusion regarding any reasonable belief of there being a public interest given these matters again relate to private grievances and the private financial position of an individual and given the terms in which they are raised.

186. The first of the two emails sent on 24 July 2023 raises what in effect is a further grievance regarding allegations made against the Claimant but otherwise goes on to simply refer to his DSAR and requires a response to coincide with his forthcoming meeting with his solicitors. Again this is not raising information and there is no indication of how it possibly falls within section 43B and further as to how it could possibly be of public interest. Indeed, it does seem self-serving and is perhaps more designed as a vehicle to convey to the Respondents that the Claimant is seeing his solicitors on 2 August 2023 (as I have referred to, "sabre rattling").

187. The second of the two emails sent on 24 July 2023 raises slightly more specific concerns regarding H's dispositions but is in reality simply chasing the Respondents for a response to the concerns raised in his previous email of 19 July. The Claimant does state this time that in the absence of a satisfactory explanation he feels duty-bound to report the matter to the Police and HMRC. This would indicate the Claimant alleges that he believes that a criminal offence might have been committed but given my concerns about his credibility (as above) I cannot conclude that this is a reasonably held belief. Similarly, I do not believe that alleged wrongdoing of this nature gives rise to a public dimension and, even if it does, I have concerns about the Claimant's credibility as to whether he actually had a reasonably held belief that it does and I conclude that he did not.

188. I therefore find that none of the matters relied upon by the Claimant give rise to protected disclosures.

<u>Conclusions as to the alleged health and safety reasons</u>

189. The Claimant alleges that he was a designated health and safety officer pursuant to section 44(1)(a) ERA. Having considered my findings, I conclude that the he does not fall within this section. The closest it comes to it is his name on a standard HSE poster. Any one could have written that in, including the Claimant. Moreover, the Respondents deny that he was a designated health and safety officer. He produced one risk assessment in evidence which post-dates the first of his Early Conciliation referrals and the allegation that he was such an officer within his solicitors' letter to the Respondents. He states that he authored a Health and Safety Policy but has not provided a copy of it. Again given the Claimant's credibility, I have grave doubts about the extent to which this evidence is simply self-serving in order to create a legal claim.

190. For the same reasons, I reach the same conclusion with regard to whether the Claimant falls under section 44(1)(b). It is clear that the Claimant is not a representative of workers on matters of health and safety at work (or for that matter a member of a safety committee) either in accordance with arrangements established under or by virtue of any enactment or by reason of being acknowledged as such by his employer. I would add that this was not a matter that was actively pursued by the Claimant at the hearing although it was identified in the list of issues.

191. I believe that this is more correctly a potential complaint that falls under section 44(1)(c); the Claimant being an employee at a place where there was no such representative or safety committee (there is no suggestion that there is such a representative or safety committee by those means). Again, whilst this is contained within the list of issues, it was not a matter that was actively pursue by the Claimant at the hearing, who solely relied upon being a designated health and safety representative.

192. Under section 44(1)(c), the Claimant then has to go on and show that he brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety.

193. For the purposes of his health and safety complaint he relies on the same emails that I have just examined above under the heading of protected disclosures. I think it is fair to say that certainly taken at their broadest the emails of 13 and 19 July raise matters harmful or potentially harmful to health and safety, although I have my grave doubts to whether the Claimant reasonably believe this given my concerns about his credibility and conclude for the above given reasons that he did not.

194. I therefore conclude that the Claimant does not fall within the protection afforded by section 44 ERA.

<u>Conclusions on the detriments</u>

195. For the sake of completeness, I have gone onto consider the alleged detriments. The Claimant relies on the same detriments for the purposes of his whistle-blowing complaint and his health and safety reasons complaint.

196. As indicated above, in a case where someone has brought a complaint of automatic unfair dismissal and detrimental treatment, the burden of proof is very close to that which applies in discrimination cases. Namely, once less favourable treatment amounting to a detriment following a protected act/the raising of health and safety reasons has been shown, the employer must prove under section 48(2) ERA on what grounds it acted and that the protected disclosure/raising of health and safety reasons was no more than a trivial influence, if any, on the treatment in question.

197. Turning first to the alleged detriments against the First and Second Respondent (references are to paragraphs in the list of issues)

Paragraphs 5.5 dealing with the Claimant's grievance by sending him the outcome on 7 August 2023:

Sub-paragraph 5.5.1 without meeting with him and failing to provide any of the investigative documents including interviews with other staff members

198. Dealing with the first part, as to not meeting with him. In an email to the Second and Third Respondents dated 7 October 2023 (at B173) the Claimant asked that all communication be conducted exclusively via email.

199. It was put to him in cross-examination that the fact that there was no in-person meeting to deal with his grievance was in fact in line with his own request and so could not amount to a detriment. The Claimant did not agree with this because he said it could have been resolved in other ways, although it was unclear what he meant by this. He did accept that relying on that email then yes he agreed it was not a detriment.

200. Dealing with the allegation of failing to provide investigative documents. It was put to him that the turnaround time from his grievance being raised on 24 July to the outcome being sent to him on 7 August 2023 amounted to a prompt response, indicative of the desire to resolve the matter in a timely manner, without delay. The Claimant agreed with this. He also accepted that

the outcome email (at B203-205) was quite detailed and set out a timeline to his grievance. The Claimant did not accept that the level of detail and the timeline at B204 onwards is indicative of it being a more than adequate response and it fairly dealt with his grievance. Whilst it indicates that some staff were spoken to, a lot of it related to his emails and his interactions with E and less about the involvement of other members of staff. Given the level of reliance by the Respondents on the emails which were referred to in the email of 7 October 2023 I do not find that this detriment is made out.

Sub-paragraph 5.5.2 in the outcome of the Claimant's grievance not responding to all his concerns such as those relating to: the failure to protect staff and the unfair treatment of staff resulting in many of them being dismissed; the concerns about the rumours in relation to his wife; and the issue concerning N

201. The Claimant accepted that the outcome email at B204-205 addressed those concerns and agreed that this was all that was required even though he might not agree with what was said. The Claimant did not accept that they adequately addressed his concerns. However, given that the concerns had been dealt with, whether the Claimant liked the outcome or not, I reach the conclusion that this detriment is not made out.

Paragraph 5.5.3 dismissing the Claimant's grievance based on inaccurate findings

202. The Claimant did not address this detriment in his witness statement and did not do so in oral evidence beyond stating that they had not addressed his grievance. I therefore conclude that it has not been made out in evidence.

Paragraph 5.5.4 Failing to exonerate the Claimant of unfounded accusations made by the Second Respondent.

203. Again the Claimant did not address this detriment in his evidence. One of the issues was to do with his allegations about H's finances. The Claimant accepted in cross examination that this had been addressed but again stated that it was not addressed adequately.

204. In cross examination, the Claimant explained that he had revisited an earlier email when he reviewed correspondence when gathering evidence for his grievance and he came across an email that he was asked to forward to R by E. He said that what struck him about the email was that the dates on which H had signed transfer documents was at the time she suffered from dementia and knowing her relationship with the Second and Third Respondents was strained, it seemed odd to him that she would or had the capacity to make gifts to them. This was not evidence contained within his witness statement and the email was not within the bundle. Paragraph 14 of his statement raises the general allegation but refers to B337 and B338 which are HRMC calculations of Inheritance Tax.

205. Mr Yetman submitted that the Claimant raised this matter in bad faith, at a time when there was no obvious reason to do so other than for self-serving reasons and that, in any event, it formed part of a personal grievance. Whilst I would agree, at this point I am determining whether the detriment is made out.

206. Again this comes down to the fact that the Claimant is challenging the outcome of a grievance process which can amount to a detriment.

Paragraph 5.5.5 The outcome of the grievance being signed off by the Third Respondent, G, and also the Second Respondent, despite the fact that the grievance was about the Second Respondent.

207. It was put to the Claimant that G's name on a grievance is nothing to do with the detriment of the disclosures. The Claimant neither agreed or disagreed but said that he thought he was treated badly because her name was included in that email because he did not think she as a director of the First Respondent company knew that. He said that he thought that including her in his email had angered the Second Respondent. However, this is not the way the detriment is put, relies on supposition, and it seems to me that being angry because of a name on a grievance would in any event be de minimus. I find it is not reasonable to characterise this as a detriment.

Paragraph 5.6 The response of the First Respondent's then solicitors of 22 August 2023 denying any wrongdoing despite the fact that the investigation was incomplete.

208. It was put the Claimant that this is unrelated to any particular detriment, this is just a legal representative corresponding with him. The Claimant, after being given time to read the document, agreed.

Paragraph 5.7 On 26 September 2023, the Second Respondent notifying the Claimant that he had no regrets about anything he had done to the Claimant and mocking him by saying he was carrying out paparazzi activities by using his camera near the Claimant's property

209. It was put to the Claimant that the exchanges set out at B277 are just evidence of the breakdown in the relationship between him and the Second Respondent. I said, in that context, it is not related to his protected disclosures. The Claimant disagreed. Whilst this might amount to a detriment, I agree that given the language within those allegations, which does amount to somewhat of an over reaction and exaggeration, and given the intemperate terms used by both parties, this is more indicative of a mutual dislike between them and even if it can be characterised as a detriment is not something that is linked to the protected disclosures.

Paragraph 5.8 On 27 September 2023, the Second Respondent harassing the Claimant and his partner by aiming his telephoto lens at the Claimant's cottage for extended periods, causing alarm and distress.

210. The Claimant accepted in cross examination that the Second Respondent enjoyed wildlife photography and took photographs in the grounds of Location T. He did not accept that it was another indication of his exaggeration of events and his vendetta against the Respondents. He also did not accept that it had no link to any protected disclosure or that he simply perceived it that way. Given my above conclusions, again this is part of the general mutual ill-

feeling and a level of hyperbole by the Claimant even if it does amount to a detriment.

Paragraph 5.9 On 28 September 2023, the Second Respondent emailing the Claimant and making unfounded allegations such as accusing him of "spying", without explaining what was meant by this, and alleging that the Claimant had breached confidentiality by sharing staff private WhatsApp messages).

211. The Claimant accepted in cross-examination that he did share private staff messages with the Third Respondent. He also accepted that if he did not have the consent of those members of staff to share those messages then it was reasonable for an employer to raise concerns. However, the Claimant's position is that he had their consent. Again, I conclude as I have in the above paragraph.

Paragraph 5.10 The Second Respondent failing to respond to the Claimant's email of 28 September 2023 where the Claimant queried the Second Respondent's use of the word "spying", and asked for proof about the alleged breach of confidentiality, for the matter to be taken seriously and to be notified as to whether he had notified staff about this allegation as it would destroy any trust that they had in the Claimant.

212. It was put to the Claimant that this was another example of him inflating and exaggerating parts of the situation at the time in order to enhance his claim. He did not agree. It was also put to him that the matter was being taken seriously because the Respondents were investigating his grievance and so there was an ongoing dialogue. The Claimant's position is that the Second Respondent said that he would not reply until he had spoken to solicitors and he did come back and apologise but his apology came across as legal rather than an apology. Mr Yetman put it to the Claimant that he was simply re purposing this to make it fit his claim. The Claimant disagreed. I conclude that in the circumstances it is not reasonable to characterise this as a detriment.

Paragraph 5.11 Failing to fully comply with the Claimant's Subject Access Request on 13 October 2023.

213. Whilst failing to do might constitute a detriment, the Claimant offered no indication as to why it might be one relating to his protected disclosures.

Paragraph 5.12 Failing to progress the Claimant's appeal and not offering him a right of appeal.

214. I have dealt with this in my conclusions in respect of the complaint of unfair dismissal below. In short, I do not accept that the First & Second Respondent failed to progress the appeal or failed to offer him a right of appeal. On my findings, it is not reasonable to characterise the appeal process as a detriment in any event.

Paragraph 5.13 Had failed to pay him his salary on 26 November 2023 for £2,272.23.

215. The Claimant's case is that never in the history of the First Respondent has any deduction been made for sickness and let alone for stress. This deduction just before Christmas and without warning was deliberately done to hurt him.

216. It was put to him that the email from the Second Respondent at the top of B231 was an accurate depiction from the time.

217. Whilst this could amount to a detriment, the Claimant offered no evidence as to how it was done as result of his disclosures.

218. Turning now to the allegations of detrimental treatment as against the First Respondent alone.

Paragraph 5.14 With respect to the grievance findings of 29 September 2023

219. The Claimant was referred to B561. It was put to him that there had already been a substantive response on 21 September. The Claimant accepted it was a response but not that it was substantial. He accepted that there was a further response on 29 September. He did not accept this was indicative of a thorough investigation. He said that he told the Third Respondent that he should have spoken to the staff one by one to ascertain their feelings without them feeling pressurised by the Second Respondent. He did not come back with the list of questions asked. He accepted that at B562 steps were taken and he was given an opportunity for a hearing. He also agreed there was consultation with the staff on 28 September. He did not accept that all of the issues he brought up were simply not made out in evidence and whether or not the grievance was correct or dealt with correctly has nothing to do with his protected disclosures. I was of the view that whilst the Claimant might not agree with the findings and this could amount to a detriment, there was nothing to support the view that arose from his disclosures.

Paragraph 5.15 Wasting Claimant's time 20 November 2023 by making him think that First Respondent wished to further discuss his grievance, although nothing actually happened, and referring to confidential without prejudice discussions in front of Q.

220. The Claimant accepted that this post-dated the grievance conclusion and so was unrelated to the grievance outcome proceedings in terms of the findings.

221. Turning then to the allegations of detrimental treatment as against all Respondents.

Paragraph 5.16 Raising false allegations against the Claimant.

222. This is of course the Claimant's view and which he refers to in his first alleged disclosure. However, he did not expand upon this. From the Respondents' perspective, there were no false allegations. The Claimant simply disagrees with their conclusions. This could amount to a detriment but there was no evidence linking it to his alleged disclosures.

Paragraph 5.17 Taking the decision to dismiss the Claimant

223. The Claimant has accepted that there was an irredeemable breakdown his relationship with E from July 2022. He also accepted that the email slip was the start of an irredeemable breakdown in his relationship with the Second Respondent which crystallised on 5 January 2024.

224. The Claimant further accepted that the reasons given for his dismissal were as set out in the dismissal letter at B287, as highlighted at B288. However, he added that he believed everything before that should be taken into account. He also accepted that his dismissal was entirely unrelated to his protected disclosures/health and safety reasons and was to do with a personality clash. I explained to him the significance of this concession and explained to him the burden of proof in whistle-blowing detriment cases. He said that he understood significance of this.

225. Whilst I have found that some of the above allegations might amount to detrimental treatment, I would emphasis that there is nothing to indicate that they were done by the Respondents on the grounds that the Claimant had made a protected disclosure and/or carried out or proposed to carry out activities in connection with preventing or reducing risks to health and safety at work.

226. I therefore find that these complaints are not well-founded.

<u>Automatic unfair dismissal</u>

227. In evidence on 10 July 2025, the Claimant accepted that he was dismissed because of the irretrievable breakdown in the relationship between him and the First Respondent and that his dismissal was unrelated to his alleged protected disclosures or health and safety reasons. Indeed, this was put to him twice and I also explained to him the significance of what he said, making it clear that it amounted to conceding this element of his claims.

228. The Claimant accepted that there was an irredeemable breakdown his relationship with E from July 2022 onwards. He further accepted that as of 9-10 July 2023,email trigger point, his relationship with the Second Respondent had become irredeemable due to the accidental email disclosure by the Third Respondent and that the relationship had broken down entirely by 5 January 2024..

229. The Claimant accepted that the reasons given for his dismissal were as set out in the dismissal letter at B28, highlighted at B288. However, added that he believed everything before them should be taken into account. Nevertheless, he accepted that his dismissal was entirely unrelated to his protected disclosures and was to do with a personality clash. I explained to him carefully the significance of this concession and also explained to him the “burden of proof” in cases involving whistle-blowing detriments and automatic unfair dismissal (as set out above). He responded that he understood significance of this.

230. I therefore conclude that the complaint of automatic unfair dismissal is not well-founded.

Ordinary unfair dismissal

231. Section 98 ERA sets out how an Employment Tribunal should decide whether a dismissal is unfair. There are two basic stages.

232. Firstly, the employer must show what was the reason, or if more than one, the principal reason, for the dismissal. The reason must be one of the four potentially fair reasons set out in section 98(2) or some other substantial reason of a kind such as to justify dismissal.

233. Secondly, the Employment Tribunal must then decide in accordance with the reasonableness test within section 98(4) whether it was fair to dismiss the employee for that reason.

234. I first considered whether the Respondent has shown a potentially fair reason for the Claimant's dismissal within section 98(1) and (2). If the Respondent cannot show the reason for dismissal, the dismissal will be unfair. If there are several reasons, the employer must establish the principal reason. The dismissal will be unfair if the reason shown is insignificant, trivial or unworthy.

235. The reason for dismissal will be the set of facts known to the employer at the time of dismissal or a genuine belief held on reasonable grounds by the employer which led to the dismissal. This usually means that the reason is what is in the mind of the dismissing manager or panel. However, in some circumstances it may include a reason or fact in the mind of an investigating officer or person in the hierarchy of responsibility above the worker, but unknown to the dismissing officer.

236. An employer is not prohibited from giving one reason for dismissal at the time or immediately afterwards and another once Employment Tribunal proceedings have started, although the change may affect the employer's credibility. It is the true reason for the dismissal at the time of the dismissal which is relevant. The Employment Tribunal will be reluctant to accept a change of reason if raised at the hearing for the first time, particularly if it will cause prejudice to the employee and the employee will not have had the fullest opportunity to answer the allegations made.

237. The Respondents allege that the Claimant was dismissed for some other substantial reason of a kind such as to justify dismissal. This can include a situation where the interests of the employer's business might suffer as a result of friction at work between two colleagues or an employee is incompatible and does not fit in. A substantial reason is one which is not trivial or unworthy but one which would justify dismissal.

238. In Perkin v St George's Healthcare NHS Trust [2005] IRLR 934, the Court of Appeal held that a breakdown in confidence between an employer and a senior executive for which the latter is responsible for and which actually or potentially damages the operation of the employer's organisation, or which rendered it impossible for senior executives to work together as a team, can amount to some other substantial reason for dismissal.

239. By analogy although in the context of what is essentially a small employer consisting of family Directors, this is the situation here. The Claimant was in a position where he was running the Estate and given he was privy to confidential family information held a position where utmost trust was required. It is clear from the evidence I heard that the decision to dismiss the Claimant was made in the genuine belief that he had conducted himself in such a way that the First Respondent no longer had any trust and confidence in him to carry out his duties and to work co-operatively with the Directors. Indeed, the relationship with E had become irredeemable as had the relationship with the Second Respondent. The Claimant has admitted as much and accepts that his dismissal was not because of his other claims but was for the reason put forward by the Respondents. There is nothing to support his allegation that the dismissal was predetermined or as a result of his grievance against the Second Respondent.

240. I therefore find that the Respondents have shown a potentially fair reason for the dismissal, namely some other substantial reason.

241. I then turned to consider whether this was a sufficient reason for the Claimant's dismissal within the reasonableness test within section 98(4). This involves an examination of both the way in which the Respondent dismissed the Claimant (the process followed) and the reason for the dismissal (the substance).

242. In deciding whether a dismissal is fair, a Tribunal must have in mind the size and administrative resources of the employer. The larger the employer, the greater the obligation to operate proper disciplinary, grievance and consultative procedures. This does not mean small employers can get away with poor employment practices, but it may be reasonable for them to have taken a more informal approach.

243. This is a small employer, consisting of family members acting as Directors and with no internal HR function but it would appear relatively easy access to legal advice. Nevertheless, it is in effect a family business and the Claimant was in a key position where his co-operation with E was vital and given E's worsening health, as with the other Directors.

244. The Tribunal also needs to consider equity and the substantial merits of the case. Equity requires that an employer treats employees consistently; an arbitrary or capricious dismissal will be inequitable.

245. The real question is not whether the Tribunal would itself have chosen to dismiss the employee in the circumstances, but whether the decision to dismiss fell within "the band of reasonable responses" open to a reasonable employer. The Tribunal must be careful not to substitute its own opinion for that of the employer. The Tribunal may think that the dismissal was harsh but nevertheless within the band of reasonable responses. Within such a band, one employer might reasonably retain the employee whereas another employer might reasonably dismiss him/her. If so, then it is not unfair dismissal, even if the Tribunal would not itself have chosen to dismiss.

246. When deciding whether a dismissal was unfair, it is not for the Tribunal to find out the truth about the employee's behaviour. Instead, the Tribunal has to ascertain what the employer believed and to decide whether the employer carried out a fair investigation and had reasonable grounds for that belief.

247. This approach was established in a case concerning dishonesty but it tends to apply to many types of unfair dismissal cases. It comes from BHS v Burchell [1979] IRLR 379 EAT. The final question is then whether the sanction was fair. The band of reasonable responses test applies both to the way the investigation was carried out and to the employer's decision regarding the sanction.

248. I had regard to the test contained in Burchell. This requires me to consider the following:

    a. Whether the employer believed that the employee was guilty of misconduct;

    b. Whether the employer had in mind reasonable grounds upon which to sustain that belief; and

    c. At the stage at which the employer formed that belief on those grounds, whether s/he had carried out as much investigation into the matter as was reasonable in the circumstances.

249. The final question is whether dismissal is a fair sanction and in proportion to the offence. The Tribunal cannot substitute itself for the employer and decide whether it would itself have dismissed or carried out a fuller investigation. It is irrelevant whether the evidence against the employee is insufficient to satisfy an Employment Tribunal of his/her guilt, if by the objective standards of a reasonable employer, the investigation and conclusion was reasonable. What counts is the evidence in front of the investigating and dismissing officers. It does not help to put evidence of the employee's innocence to the Employment Tribunal if the employee chose not to produce that evidence to his/her employer at the time (unless that was due to the employer's failure properly to investigate).

250. When assessing whether the Burchell test has been met, the Tribunal must ask itself whether what occurred fell within the "band of reasonable responses" of a reasonable employer. This has been held to apply in a conduct case to both the decision to dismiss and to the procedure by which the decision was reached (Sainsbury's Supermarkets v Hitt [2003] IRLR 23, CA).

251. Turning to procedural unfairness. Although it is not against the law in itself to fail to follow any relevant part of the ACAS Code of Practice on Disciplinary and Grievance Procedures (2015), the Code sets standards of sound industrial practice and a Tribunal must take it into account. However, its sets rather basic standards. The Tribunal should also have regard to the employer's disciplinary procedure particularly if this goes further than the ACAS Code. I was not referred to one.

252. In Polkey v AE Dayton Services [1987] IRLR 503, HL, the, then, House of Lords established that a dismissal may be unfair purely because the employer failed to follow fair procedures in carrying out the dismissal. This case overturned the previous "no difference" rule, so that it is now unfair to omit fair procedures even if following them is unlikely to have altered the decision to dismiss. However, compensation will often be reduced if the dismissal was substantively fair, ie for a fair reason. The only exception to Polkey is if the employer was reasonable to consider at the time that carrying out such procedures would have been utterly futile. It is very rare that consultation, for example, would be utterly futile. The exception probably envisages circumstances such as making unexpected redundancies following a sudden and unforeseen financial crisis.

253. The House of Lords gave some guidance on what it considered to be fair procedures. It would not normally be fair to dismiss an employee for incapacity without giving him/her fair warning and an opportunity to improve; in a conduct case, a dismissal would not normally be fair unless the employer fully investigated and listened to what the employee had to say; in a redundancy case, it would not normally be fair unless the employer warned and consulted any affected employees or their representatives, adopted a fair basis for redundancy selection and took reasonable steps to find redeployment.

254. However, not all procedural failings will make a dismissal unfair; it is important to consider the fairness of the process as a whole. In Fuller v Lloyds Bank plc [1991] IRLR 336 EAT, the Employment Appeal Tribunal held that any defect in a disciplinary procedure has to be analysed in the context of what occurred. Where there is a procedural defect, the question that always remains to be answered is did the employers' procedure constitute a fair process? A dismissal will be held unfair either where there was a defect of such seriousness that the procedure itself was unfair or where the results of the defect taken overall were unfair. The question does not alter because the procedural defect was based on a policy adopted by the employers. The motivation of the employers in adopting the policy which led to the procedural defect is not a relevant subject of inquiry.

255. The Claimant said very little about why he believed his dismissal was unfair in evidence. And as I have indicated he accepted that his other complaints had nothing to do with his dismissal and that what caused it was the irredeemable breakdown in his relationship with the First Respondent.

256. In his Second Claim Form he relies rather blandly on the dismissal being unfair in reliance on all the matters set out in his grounds of claim, both procedurally and substantively. He particularly relies on the ACAS Code of Practice and quotes what he believes are relevant sections. This is at B62-63. He also includes references to the element of the Code of Practice as it relates to grievances and it may well be that this has been pleaded more with the potential uplift in compensation that can be applied in a successful claim if the employer has unreasonably failed to follow the Code. The list of issues at B87 identifies that the Claimant alleges his dismissal was carried out by the Second Respondent against whom he had raised a grievance and further that the decision to dismiss was premeditated.

257. Mr Yetman provided me with submissions as to the applicability of the ACAS Code of Practice to dismissals for some other substantial reason. He reproduced a section from Harvey on Industrial Relations and Employment law at paragraph 13 of his written submissions which sets out a somewhat contradictory approach taken by different divisions of the Employment Appeal Tribunal as to the applicability of the Code in such cases.

258. In order to sidestep this jurisprudential dispute, I have taken what I would call a commonsense view that certain procedural steps have to be applied when dismissing an employee by way of the law of natural justice and of course looking at this within the context of the test of reasonableness. I have also taken into account the above case law which indicates that in certain circumstances the absence of procedural steps may not render a dismissal unfair.

259. The Claimant was sent a letter requiring him to attend a disciplinary hearing which set out the basis on which he faced disciplinary action, warned him of the possibility that one outcome could be his dismissal and advised him of his right of accompaniment. There was then an exchange of correspondence in which the Claimant challenged the basis on which he faced disciplinary action in what I have already described as both pejorative and intemperate terms and to which the Second Respondent replied to in a similar way, perhaps responding to the way in which the Claimant was addressing him. There was then a meeting at which the Claimant was given the opportunity to challenge the reasons he faced disciplinary action. After the meeting, the Claimant was sent a letter of dismissal setting out in detail the reasons why his employment had been terminated and offered him the right of appeal. There was an attempt to arrange an appeal meeting. However, given the ongoing negotiations between the parties which could have resulted in a resolution of the matter, the meeting was delayed and then scheduled for a particular date and then postponed. Whilst the Claimant complains that he was not given the right of appeal, the evidence before me does not support this. He in the very least acquiesced in the delay in dealing with the appeal whilst discussions between his solicitors and the First Respondent's solicitors took place. Whilst on the last day of his employment he raised the issue of the appeal and alleged that he had been dismissed without appeal, I have to say that I find this correspondence disingenuous and does not denote what appears to be a genuine concern but simply an attempt to add a further element to a legal claim. Indeed, in a further exchange of correspondence he effectively abandons his right of appeal rather than attempting to pursue the matter.

260. Whilst the Claimant in his pleaded case complains of there being no proper or reasonable investigation or any investigation at all, it is unclear whether he is referring to his grievance or those matters that led to the instigation of disciplinary proceedings. It seemed to me that there was nothing to investigate given that it was self-evident to the First Respondent through the Claimant's conduct and in the correspondence with the Respondents as to how the allegations being made against him arose. These were explored at the disciplinary hearing in front of the Third Respondent, in what appears to have been an attempt to explore the possibility of a way back. The Claimant was given the opportunity to put his case and had already done so in the

email correspondence prior to the meeting. However, given what occurred at that hearing and the Claimant's continued combative approach, a collective decision was then taken to terminate his employment. This was effectively on the basis that his relationship that the First Respondent, through its Directors, had irretrievably broken down and that the First Respondent had no confidence in the Claimant's ability to conduct himself in a manner conducive with carrying out his duties and thus there was no ongoing employment relationship. I do not find anything unreasonable in what occurred.

261. Perhaps it was not ideal for the Second Respondent to have been involved in the decision to dismiss. However, he did not conduct the disciplinary hearing, the Third Respondent did. This is a small employer acting through its Directors. The Claimant in any event alleges that the decision was made by the Second Respondent when it was a decision of all of the Directors. He further alleges that the Second Respondent dismissed him because of his grievance. There is no evidence on which to find this allegation made out. He also alleges that the dismissal was predetermined. Again, there is nothing on which to reach such a finding. I do not believe it was unreasonable in these circumstances for the Second Respondent to be indirectly involved in the decision making process. Nor is it something that would render the dismissal unfair. It appears to me that it would have been difficult to find anyone amongst the First Respondent's Directors who had had no dealings with the Claimant and no experience of his behaviour, conduct and not received his emails.

262. Similarly, perhaps it would have been better for the First Respondent to have revisited the matter of scheduling a potential date for an appeal hearing once it was clear that negotiations had broken down. But given the Claimant's continued tone of correspondence and his final email in effect abandoning his right of appeal, I can understand why the matter did not proceed any further. I do not find anything unreasonable in the approach taken by the First Respondent.

263. However, these are not matters that I conclude render the dismissal unfair. It was again disingenuous of the Claimant to suggest that perhaps there was some way back from dismissal on appeal. From the evidence I heard any such appeal would not have changed the outcome.

264. Turning then to the band of reasonable responses. It seems clear to me that whilst some employers acting reasonably might not have dismissed in these circumstances it is not possible to reach the conclusion that no reasonable employer would have dismissed in these circumstances. Dismissal was clearly within the range of reasonable options open to a reasonable employer in these circumstances.

265. I therefore find that the dismissal was fair and the complaint of unfair dismissal is not well founded.

Final conclusion

266. In final conclusion then I find all of the complaints are not well-founded and I dismiss the Claimant's Claims.

Employment Judge Tsamados
Date: 12th March 2026

Judgment sent to parties on:
Date: 15th April 2026

For The Employment Tribunal