



EMPLOYMENT TRIBUNALS

Claimant: Miss S Bennison

Respondent: BTL Industries Limited

FINAL HEARING

Heard at: Birmingham

On: 23 to 27 February & 2 to 4 March 2026

Before: Employment Judge Camp, Mrs W Ellis, Mr T Liburd

Appearances

For the Claimant: in person

For the Respondent: Mr M Cameron, non-legal representative (consultant)

CORRECTED FULL REASONS

[These full reasons are corrected pursuant to Rule 67 of the Employment Tribunal Procedure Rules 2024. The corrections consist of: amendment of dates, in paragraphs 39, 58, 68 and 71, where in the original reasons the wrong year was given; adding-in missing words in paragraphs 81 and 95. Additions are shown by underlining and deletions by striking through text.]

Introduction

1. The Tribunal gave a unanimous oral judgment and summary reasons on 4 March 2026, at the end of an 8-day final hearing. The judgment was to the effect that, apart from in relation to a few days' accrued holiday pay, the whole claim failed. The written judgment was sent to the parties on 5 March 2026. Written summary reasons were later requested by the Claimant and they were provided on 21 March 2026. These are written full reasons, requested by the Claimant on 1 April 2026.
2. The Respondent is a developer and manufacturer of medical and aesthetic equipment. It is the British arm of a Czech multinational. It employed the Claimant as a Territory Sales Manager from September or October 2019 until her resignation in November 2023. Her case is that she was constructively dismissed by a course of conduct that breached trust and confidence between her and the Respondent. The background to her resignation includes her being disciplined and, in September 2023, dismissed for gross misconduct and then, in October 2023, being reinstated on appeal, but with a final written warning.

3. The Claimant has made two Tribunal claims, which have been consolidated. The first claim (1306427/2023) was issued on 13 October 2023 and the second claim (3301438/2024) on 1 February 2024. Early conciliation was from 29 September to 2 October 2023 for claim 1 and from 23 to 24 January 2024 for claim 2.
4. The claims concern:
 - 4.1 alleged whistleblowing, the Claimant's main complaints being to the effect that she made two protected disclosures to the Respondent on 22 May 2023 and was disciplined and dismissed¹, and, after her reinstatement, constructively dismissed as a result;
 - 4.2 constructive unfair dismissal – there is an 'ordinary' (non-automatically unfair) constructive unfair dismissal complaint in addition to the complaint of automatically unfair whistleblowing-related constructive unfair dismissal;
 - 4.3 non-payment of commission allegedly due;
 - 4.4 a deduction from the Claimant's salary of £4251² taken at the end of June 2023;
 - 4.5 non-payment of allegedly accrued time-off-in-lieu (TOIL);
 - 4.6 alleged underpayment of compensation for accrued but untaken annual leave on the termination of her employment.
5. We shall refer to the complaints referred to in paragraphs 4.3 to 4.6 immediately above as the "money claims".
6. Here at the start of our full Reasons, we [the full Tribunal] repeat and highlight some general comments made in our summary reasons.
7. Contrary to the Claimant's core submission, this case is not about what happened between Friday 19 and Monday 22 May 2023 at and in connection with a trade show and how, using the Claimant's word, the situation 'escalated'. Instead, it is largely about the contents of a voicenote message the Claimant sent to a colleague in October 2022. In that message, the Claimant said words to the effect that she routinely committed expenses fraud against the Respondent and that her colleague should do likewise. This case is also about the Claimant having sent other messages – offensive and discriminatory ones – to the same colleague. That colleague, called Emma, decided to pass on the voicenote and other messages to the Respondent after the trade show. We think Emma did this because she was told by a third party – not by anyone from the Respondent – that the Claimant had been making disparaging remarks about her. But it is not the way those messages

¹ Because the Claimant was reinstated, her complaint about non-constructive dismissal is a detriment complaint rather than a complaint of automatically unfair dismissal under section 103A of the Employment Rights Act 1996. There is a section 103A complaint, but it is about her alleged constructive dismissal.

² Not £4261 as stated in some of the documentation.

came to light that is important, but their contents and the fact the Claimant sent them.

8. What was said and written in the relevant parts of the messages was not and is not in dispute. On any reasonable view, the Claimant was potentially guilty of gross misconduct for having sent them and the Respondent was entitled to dismiss her for having sent them. That is why the Claimant was disciplined and dismissed; there is no mystery to it. There is nothing at all to her whistleblowing allegations.
9. The one slight oddity in what happened is that a senior manager within the Respondent's parent company³ decided to reinstate her after she was dismissed, but that was a decision in her favour and was something that, ostensibly at least⁴, she wanted. If she hadn't been reinstated, all that would have changed would be her being worse off financially and the Respondent better off, these proceedings being more straightforward, and the Respondent's defence to the claims being stronger.

Issues

10. There are lists of issues which, with some minor adjustments, are agreed and to which everyone has been working during this hearing, and to which we refer.
11. They are:
 - 11.1 the list of issues prepared by Employment Judge Noons in her written record of the preliminary hearing of 22 November 2024 in which, in particular, the alleged protected disclosures relied on by the Claimant are set out;
 - 11.2 the list of claims prepared by Employment Judge Harding in her written record of the preliminary hearing of 24 July 2025 in which, in particular, the basis of the allegation that the Claimant was constructively dismissed is set out;
 - 11.3 the list of issues prepared by Employment Judge Battisby in his written record of the preliminary hearing of 23 January 2026 in which the five complaints of whistleblowing detriment are detailed, which the Judge said were being added to the claim as amendments.

³ The corporate structure is not clear and it may be that the company that employed Mr Donner, which was not the Respondent, is one of the Respondent's 'siblings' rather than its parent.

⁴ See from paragraph 92 below.

12. The minor adjustments to those lists of issues just referred to are:
- 12.1 the lists are missing details of the complaint of ordinary (non-automatically unfair) constructive unfair dismissal, the missing issues being –
- 12.1.1 was the Claimant dismissed? The Tribunal needs to consider –
- 12.1.1.1 was there a course of conduct for which there was not reasonable and proper cause that was calculated or likely to destroy or seriously damage the relationship of trust and confidence between the Claimant and the Respondent?
- 12.1.1.2 if so did she resign in response to it, i.e. was it at least one of the reasons she resigned?
- 12.1.1.3 did she affirm the contract before resigning?
- 12.1.2 the respondent concedes that if the Claimant was dismissed, that dismissal would be unfair in accordance with section 98 of the Employment Rights Act 1996 (“ERA”);
- 12.2 time limits issues are missing. Those issues potentially arise in relation to anything in claim 1 that happened before 30 June 2023 and anything in claim 2 that happened before 24 October 2023. In addition, the Tribunal needs to consider whether the amendment in January 2026 to add the whistleblowing detriment complaints was a substantive or non-substantive amendment, since this was apparently not something that Employment Judge Battisby expressed a view on when giving permission to amend. If it was a substantive amendment, time limits would apply to those complaints as if they were contained in a claim form presented to the Tribunal when the Claimant first applied to amend. In practice, time limits issues have only arisen in relation to the commission payments complaints, the issue being whether those complaints were made within the time limits in ERA section 23 –
- 12.2.1 was the claim made to the Tribunal within three months (plus any early conciliation extension) of the date of payment of the wages from which the deduction was made?
- 12.2.2 if not, was there a series of deductions and was the claim made to the Tribunal within three months (plus any early conciliation extension) of the last one?
- 12.2.3 if not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?
- 12.2.4 if it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?

- 12.3 the commission claim being pursued was confirmed by the Claimant at this hearing to be that set out in a document appearing at page 108 of the hearing file / 'bundle' and not anything else;
- 12.4 the claim relating to TOIL had in the lists of issues been incorporated into the claim for compensation for accrued annual leave. In fact, it is properly to be characterised as a freestanding claim for unauthorised deductions from wages (or, conceivably, breach of contract) – in so far as the Claimant has any right at all to the money she is claiming.
13. It has been unnecessary for us to make a decision about every single issue in the lists of issues and we have not done so.

The law

14. This is a case where factual rather than legal issues predominate. The law is accurately reflected in the wording of the lists of issues, amended as above.
15. In addition to what is in the amended lists of issues, in relation to the whistleblowing claim it is unnecessary for us when summarising the law to go much beyond noting the most relevant sections of the ERA: 43B, 47B, 48 and 103A.
16. On the facts as alleged, the Claimant made a relevant protected disclosure if she can show:
- 16.1 that on 22 May 2023 she disclosed particular information to her manager, Mr Pistak;
- 16.2 that at the time she believed, and believed reasonably, that the particular information she allegedly disclosed tended to show that a person had failed, was failing or was likely to fail to comply with any legal obligation to which they were subject and/or that the health or safety of any individual had been, was being or was likely to be endangered;
- 16.3 that at the time she believed, and believed reasonably, that she was making the disclosure in the public interest.
17. Had the Claimant succeeded in showing she made a relevant protected disclosure, in relation to the detriments she was subsequently subjected to, we would have had to have considered whether those detriments were done "*on the ground that*" she made a protected disclosure, in accordance with **NHS Manchester v Fecitt** [2011] EWCA Civ 1190 and **Ibekwe v Sussex Partnership NHS Foundation Trust** [2014] UKEAT 0072_14_2011. In the latter case, HH Judge Peter Clark endorsed an Employment Tribunal's statement of the law relating to the burden of proof under ERA section 48(2) along these lines: where, following the making of a protected disclosure, the claimant is subjected to a detriment and there is no substantial evidence explaining the reason why they were subjected to that detriment, the claimant does not win by default; there remains an evidential burden on the claimant to establish a causal link between the making of the protected disclosure and the detriment. **Fecitt** is to the effect

that once the Claimant discharges that evidential burden, the Respondent has to show that the relevant detrimental act or deliberate failure to act was “*in so sense whatsoever*” done on the ground that the Claimant made a protected disclosure, in the sense that it was a more than trivial part of the reason for the treatment in question. We have anyway in every instance identified the reason(s) why the Claimant was treated as she was.

18. To summarise the law of constructive dismissal:

18.1 dismissal includes an employee terminating, “*the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer’s conduct*”: ERA section 95(1)(c);

18.2 what this means was definitively decided by the Court of Appeal in **Western Excavations v Sharp** [1977] EWCA Civ 165, in the well-known passage beginning, “*If the employer is guilty of conduct which is a significant breach...*” and ending, “*He will be regarded as having elected to affirm the contract.*”;

18.3 the Claimant relies, as the “*significant* [a.k.a. fundamental or repudiatory] *breach*”, on a breach of the ‘trust and confidence term’; that is to say, she alleges that the Respondent, without reasonable and proper cause, conducted itself in a manner calculated or likely to destroy or seriously to damage the relationship of trust and confidence between employer and employee. Any breach of that term is repudiatory. This serves to highlight that it is a high-threshold test: “*destroy or seriously damage*” is the wording used. It is not enough, for example, that – without more – the employer acted unreasonably or unfairly;

18.4 an essential ingredient of the final act or ‘last straw’ in a constructive dismissal claim of this kind is that it is an act in a series the cumulative effect of which is to amount to the breach of the trust and confidence term. The final act need not necessarily be blameworthy or unreasonable, but it has to contribute something to the breach, even if relatively insignificant. See **Omilaju v Waltham Forest London Borough Council** [2005] EWCA Civ 1493 and **Kaur v Leeds Teaching Hospitals NHS Trust** [2018] EWCA Civ 978 at paragraphs 39 to 46;

18.5 in **Wright v North Ayrshire Council** UKEATS/0017/13, the EAT emphasised that in a constructive dismissal case, the repudiatory breach of contract in question need not be the only or even the main reason for the employee’s resignation. It is sufficient that it “*played a part in the dismissal*”; that the resignation was, at least in part, “*in response to the repudiation*”; that “*the repudiatory breach is one of the factors relied upon*” by the employee in resigning. This is the one and only part of the test for whether someone is constructively dismissed in relation to which it is appropriate to look at matters subjectively, from the employee’s point of view;

18.6 as to whether the Claimant affirmed the contract of employment between any breach of trust and confidence and her resignation, we note **Brooks v**

Brooks v Leisure Employment Services Ltd [2023] EAT 137, in particular paragraphs 24 to 30.

19. We address some particular legal issues later in these Reasons, as and when they arise.

Facts & evidence

20. In this section of the Reasons, we are going to outline the basic facts. Most of our findings on points in dispute are made in later sections, where we give our decisions on the issues.
21. Virtually every step in the chronology is documented, including transcripts of most meetings. The documents largely speak for themselves and we refer to them.
22. The Claimant and Respondent both prepared a List of People and Chronology of Events, which we refer to and adopt.
23. The evidence before us consisted, first, of a file or bundle of 1754 pages. As it was impossible in the time available to read or even scan more than a fraction of those pages, we were largely dependent on the parties to take us to the important parts of the important documents, in their witness evidence and submissions and during cross-examination. There was also written and oral witness evidence from the Claimant and, for the Respondent, from:
 - 23.1 Mr Z Pistak, the Respondent's Managing Director and the Claimant's manager;
 - 23.2 Miss E Kopecka, at the relevant time Operations Manager and above the Claimant in the Respondent's hierarchy, but not her manager;
 - 23.3 Mr R Pilous, Regional Manager in Europe for the group of companies of which the Respondent is a part and based in Czechia. He was the decision-maker in relation to the Claimant's dismissal. Before assuming that decision-making role, he had had almost no contact with the Claimant;
 - 23.4 Mr F Donner, a manager, senior to Mr Pilous, working for the group of companies of which the Respondent is a part and based in Czechia. He knew nothing of the Claimant before dealing with her appeal against dismissal;
 - 23.5 Mrs Y Banks, an HR professional working for an independent HR company that at the relevant time had the Respondent as one of its clients.
24. We have no particular or general comments to make about the witnesses and their evidence. None of our findings has been made on the basis that one individual was in a broad sense a more credible witness than someone else. Most of the relevant facts are anyway not in dispute, or are not reasonably disputable. What we mean by not reasonably disputable is that in relation to a particular point of fact: there is clear documentary evidence showing what happened; and/or the Claimant does not know what happened or what was going on in the minds of the

Respondent's witnesses, whereas the Respondent's witnesses do and on the basis of all of the evidence before us there is no good reason to doubt the truth and accuracy of what the Respondent's witnesses told us.

25. As we understand it, the Claimant and her sales colleagues were based at home and did not meet up, virtually or face-to-face, every day or even every week. They did, however, meet up at trade shows and the like. The Claimant was also in the habit of sending electronic (SMS / WhatsApp) messages and lengthy voicenotes to particular colleagues connected with work. There are transcriptions of various voicenotes she sent in the bundle. In October 2022, she left a voicenote for Emma in which, in summary (and amongst other things), she said she regularly committed expenses fraud against the Respondent and encouraged Emma to do the same and she made disparaging remarks about Czech people. The transcription of that voicenote includes this:

I think with this business you gotta act a little bit smarter. And I've learned this over the last ... year ... I don't let them get away with anything. ... So I think sometimes you have to recompensate yourself by not allowing them to have any financial control of your money that comes out of your bank account or your time.

*For example there's many times I coming in on a night and it's late I'll order some food. Deliveroo, or Just Eat, or whatever and I'll put the ... receipt into work, and they'll pay me on it. She'll say, oh, what's this for? I'll say, it's my dinner, like and then she'll say, oh, was this meal a customer meal? Yes, it was. Sometimes it is. Sometimes it's not. And I just think, you know, I'm doing such a long stint of work, and eating into my own home life. That if I want to take my kids out for a pizza and pasta on a f***** Thursday night and put the receipt in, I'll f***** do it like, not a problem. And Ivana's not the one to stop that. Like no one casts a third eye over it, you know what I mean.*

*So you're manipulated from the company ... You have to manipulate them back. Because the Czech Republic, their mentality is manipulation and ruthlessness, oh God ruthlessness is a f***** Word if you didn't even know what the meaning was.*

... There's many elements that can make you feel a bit better. So sometimes on ... a weekend ... I'll go out with Les for a meal, I'll take the kids out for a meal, and that'll go through as expenses because they've eaten into so many of my hours of the week that I take that back and also it's not going to equate to thousands and thousands of pounds, but the odd hundred quid, 200 quid here a month does actually make me feel a little bit better ...

26. The electronic messages she sent to Emma in 2023 included an ableist message about a colleague called Gabriele, homophobic WhatsApp messages about a lesbian colleague, and a message in which she referred to Mr Pistak as a "f***** c**k".
27. In 2023, the Respondent thought it had a problem with employees gossiping about their colleagues. Mrs Banks and Miss Kopecka put together what could be referred to as a anti-gossip policy. It was drafted in Spring 2023 and was implemented in or around May 2023. Its opening paragraphs included this: "*There have been*

some recent conflicts within our workplace and examples of miscommunication and quite frankly 'gossiping' about others, which has included sharing / disclosing personal information. This behaviour is unacceptable and must cease." [original emphasis].

28. There was a trade show during the weekend between Friday 19 and Monday 22 May 2023. The Claimant was not present on the Friday evening when colleagues were socialising in public and Emma became intoxicated and she and Gabriele had a row.
29. The following day, at the trade show, the Claimant and Mr Pistak were present, but Emma wasn't. Emma's absence was noted, there seems to have been some gossiping about what had happened the evening before, and the Claimant and other colleagues were annoyed about Emma not being there to help out.
30. At some stage during the morning, at the trade show, Mr Pistak showed the Claimant and some of her colleagues, on his phone, the first page of a confidentiality agreement (NDA) the Respondent had entered into with a famous family, to show them that they were the Respondent's clients.
31. On 22 May 2023, the Claimant had a telephone conversation with Mr Pistak during which she alleges she made protected disclosures.
32. On or around 23 May 2023, Mr Pistak had a telephone conversation with Emma in which he took her to task for her behaviour.
33. On 24 May 2023, a Mr Cowley from one of the Respondent's competitors called 3d Aesthetics, which had also been at the trade show, emailed Emma, seemingly at her request. The email begins: "*I was called by Emma last night who was in a distressed state claiming she was informed 3d staff had bad mouthed her to BTL staff on their stand. I explained what I knew which that Suzie Bennison came onto my stand and started talking to Rebecca who is a new member of my team.*"
34. By 30 May 2023, Emma had provided voicenotes and messages from the Claimant to Miss Kopecka and had raised a grievance against the Claimant and another colleague, SJ. The grievance was essentially about them gossiping about her.
35. Miss Kopecka and Mrs Banks collated paperwork, met with and/or spoke to various people, and, generally, dealt with the fall-out from the trade show. This involved, amongst other things, discussions with and between Emma and Gabriele and subjecting SJ to a disciplinary.
36. In relation to the Claimant, there was an investigatory meeting on 24 July 2023 chaired by Mr Pistak, with Mrs Banks and Miss Kopecka also present. Amongst other things that were being investigated was the Claimant's expenses. In light of what she had said in her voicenote of October 2022, the Respondent had looked back through the Claimant's previously authorised expenses claims and had identified some which were potentially suspect.

37. On 31 July 2023 the Claimant was invited to a disciplinary hearing on 8 August 2023. This was subsequently postponed.
38. The Claimant was signed off sick from work from 3 to 17 August 2023. She submitted a grievance on 11 August 2023. One of the things she mentioned in her grievance was a complaint from a client about Emma's alleged conduct at a 'launch event' on 3 July 2023 and Emma's alleged unsafe working practices when carrying out demonstrations more generally. (The grievance is not relied on as a relevant protected disclosure.)
39. A grievance hearing and a disciplinary hearing took place on 18 August 2023, chaired by Mr Pilous, with Mrs Banks and a notetaker also in attendance. The grievance outcome, in which most of the grievance was rejected and the part against Emma was not finally decided (because Emma was off sick; Emma was ultimately dismissed for ill-health incapability), was sent to the Claimant on 23 August ~~2025~~ 2023.
40. On 25 August 2023, by a letter mis-dated 22 August 2023, the Claimant was dismissed with immediate effect. The disciplinary charges, all of which were wholly or partly upheld, were:
 - 40.1 *"Potentially malicious and damaging communications about [Emma] to BRL colleagues and third parties"*. This mainly concerned what Mr Cowley had said the Claimant had done, in his email to Emma of 24 May 2023;
 - 40.2 *"Showing disrespect to your employer, other colleagues and customer"*. This concerned electronic messages, including the homophobic and ableist ones;
 - 40.3 *"Discriminatory and unprofessional references against Czech people"*. This concerned the voicenote quoted from above and an electronic message;
 - 40.4 *"Potentially fraudulent business expenses and encouraging a colleague to also make false claims and disregard any BTL policies"*. This primarily concerned the voicenote quoted from above. Mr Pilous also concluded that two of the suspect expenses claims that had been identified, *"could be examples of you behaving as you advocate in the voice note to Emma"*.
41. On 25 August 2023, the Claimant expressed an intention to appeal both the disciplinary and grievance outcomes. She submitted grounds of appeal, respectively, on 6 and 27 September 2023. There was an appeal hearing with Mr Donner, Mrs Banks, and a notetaker. The Claimant had a companion.
42. Mr Donner's decision on appeal was contained in a letter of 11 October 2023. The gist of his decision (confirmed in his oral evidence) was that:
 - 42.1 the part of the appeal relating to process was not upheld;
 - 42.2 the Claimant was guilty of misconduct in terms of gossiping, but by itself that would merit no more than a warning;

- 42.3 Mr Pilous's findings in relation to "*Showing disrespect to your employer, other colleagues and customer*" and "*Potentially fraudulent business expenses and encouraging a colleague to also make false claims and disregard any BTL policies*" were upheld in full;
- 42.4 so far as concerns the voicenote advocating expenses fraud and the potentially fraudulent business expenses, Mr Donner took the view that actual fraud was unproven, but he agreed with Mr Pilous that what the Claimant said in the voicenote was serious misconduct;
- 42.5 nevertheless, even though Mr Donner had "*concerns about ... continuing with the relationship based on the matters which have come to light throughout this case*", he decided that the Claimant should be reinstated and the sanction of dismissal replaced with a final written warning. In his oral evidence, he said the reason he made that decision "*was probably I wanted to give her another chance*" and that he had "*felt sorry for her*".
43. Although the Claimant wrote to him after he had given his decision, from Mr Donner's point of view the matter was closed and he had no further involvement in the Claimant's case
44. To cut a long story short:
- 44.1 the Claimant was reinstated, in that she was paid the difference between what she had been paid by the Respondent since dismissal and what she would have been paid had she not been dismissed;
- 44.2 there was correspondence between the parties about the Claimant potentially returning to work, including, in particular, a letter of 13 October 2023 from the Claimant addressed to Mr Donner in response to the appeal outcome which opened with, "*I made it very clear to yourself on the appeal meeting call that there was unfortunately no way I could return to work for BTL*" and in which she mentioned that she had submitted a claim form, "*to the Employment Tribunal for them to look at my case*";
- 44.3 there was a Google Meet meeting between the Claimant, Mr Pilous and Mrs Banks on 27 October 2023 which did not produce an agreed way forward;
- 44.4 on 7 November 2023, the Claimant provided a fit note dated 31 October 2023 which covered a period from 17 August to 1 December 2023;
- 44.5 on 8 November 2023, the Claimant resigned by email. Her resignation was accepted by an email Mr Pilous sent the following day.

Decision on the issues – money claims

45. In relation to the money claims that were pursued at the hearing, we have very little to add to what was in the summary reasons and here we, substantially, repeat them.

46. As to the claim for £4251 unauthorised deduction from wages: this deduction was to recover an overpayment of commission and was therefore not something the Claimant can legitimately make a claim of this type about (because of ERA section 14(1)(a); see also **Sunderland Polytechnic v Evans** [1993] IRLR 196 and **SIP (Industrial Products) Ltd v Swinn** [1994] IRLR 323); in addition, as a matter of fact, the Respondent had overpaid the Claimant by this amount and was therefore entitled in law to recover it.
47. As to compensation for accrued but untaken annual leave: the Claimant is owed 3 ½ days'-worth of compensation, because she had accrued 21 days, took 14 ½ days, and was paid for 3 days in addition. This was discussed in detail during the hearing and by the end we did not understand there to be any real dispute about it.
48. As to the claim for accrued TOIL: this claim fails because we are not satisfied that there was a contractual or other legal right on termination to compensation for unused TOIL.
49. The only reference to TOIL in any of the contractual or quasi-contractual documents is something in the employee handbook in the section dealing with "*Travel on company business*" which suggests there is an entitlement to a day off in lieu if the employee has an overnight stay at a weekend when on company business. Although this shows that – and anyway it is accepted that – there was a practice of granting TOIL in certain circumstances, there is nothing in writing we have been referred to that sets out any kind of TOIL 'scheme' or the rules that might apply to any such scheme. There is nothing at all even hinting at the existence of a right to compensation for unused TOIL and there is no evidence before us of any custom or practice of paying compensation for unused TOIL. It is also not necessary to imply such a right into the Claimant's contract for it to make sense or for any other discernible good reason.
50. Moreover, in order for this part of the Claimant's claim to succeed, she would have to persuade us not just that she had a right to compensation for unused TOIL in principle, but that there were detailed rules governing when TOIL could and could not be claimed and when the right to compensation for unused TOIL did and did not arise in practice – rules to the effect that: she had an unlimited right to claim TOIL whenever she classified herself as having done work at weekends; she did not have to give prior notification or get prior authorisation; TOIL never lapsed – once accrued she did not have to be take it within any particular time. There is no proper basis for implying any of those things into her contract of employment; she had no such rights.
51. The claims for commission all fail on their merits too. Some also fail because of time limits issues (see paragraph 12.2 above). In the sub-paragraphs immediately below, references to "*Client* [so-and-so]" are to particular claims, as detailed in the document at page 108 of the bundle.
 - 51.1 There is a preliminary issue, which is whether these claims were made in either claim form and are before the Tribunal at all. On balance we don't think they are, but for present purposes we shall assume otherwise. Making that assumption, if they are to be found anywhere in either claim form, it is

in the following from section 8.2 of the first claim form: “*BTL have also unlawfully deducted monies from my salary on several occasions without my permissions*”.

- 51.2 As this is an unauthorised deductions claim, only complaints arising on or after 14 October 2021 can be dealt with, because of ERA section 23(4A).
- 51.3 The Claimant agrees that commission, if payable at all, was not due unless and until the customer had paid.
- 51.4 *Client Victoria Ruthven* – claim arises before 14 October 2021.
- 51.5 *Client Nu Yu* – the customer did not pay until January 2024, after the end of the Claimant’s employment.
- 51.6 *Client Este Medical Group* – the claim fails: in circumstances where there was no written or other clear commission scheme showing, for example, when and in what circumstances commission was and was not payable; and in the absence of evidence demonstrating a custom and practice of paying commission in relation to sales to this kind of client to someone other than the client’s dedicated manager. This claim is also out of time, in that it relates to commission allegedly due before 30 June 2023, there was no relevant series of deductions, and the Claimant has not shown that it was not reasonably practicable to present her claim within the primary time limit.
- 51.7 *Client Therapie Clinic* – the parties agree that the Claimant was only entitled to these commission payments if she hit her target in the relevant year. We are not satisfied on the evidence that she did so. Also, this claim relates to payments allegedly due in 2021 and is out of time, for similar reasons to those given in the previous sub-paragraph.
- 51.8 *Client Mid Ulster Laser Clinic* – as pursued at this hearing, this is a claim for an ‘introduction fee’, the Respondent had no practice of paying any such fees, and the Claimant had no right to one.

Whistleblowing

52. We start with the whistleblowing complaints. There are five detriment complaints and one complaint of automatically unfair dismissal under section 103A of the Employment Rights Act 1996 (“ERA”).
53. The detriment complaints, designated complaints “a.” to “e.”, were added to the claim by order of Employment Judge Battisby of 23 January 2026. The following issues arise in relation to these complaints in connection with that order:
- 53.1 was Employment Judge Battisby permitting the Claimant to amend her claim substantively when he made that order?;
- 53.2 if he was, were those complaints deemed presented within the applicable time limits, in accordance with **Galilee v Commissioner of Police of the Metropolis** [2018] ICR 634?

54. Our decision on those issues is that it was not a substantive amendment, except in relation to complaint d. We make that decision because: those complaints – a., b., c., and e. – were in fact, in our view, made in the first claim form; all Employment Judge Battisby was doing when giving permission to amend was allowing the Claimant to clarify her claim.
55. Complaint d. was plainly not made in the claim form and so time limits issues do arise in relation to it. We have not, though, dealt with those issues, because doing so is unnecessary, as the complaint fails on its merits.

Protected disclosures

56. The first issue arising on the merits in relation to all whistleblowing complaints is: did the Claimant make qualifying and protected disclosures, as set out in paragraph 3.1 of the list of issues in the written record of the preliminary hearing on 22 November 2024 before Employment Judge Noons? These are:
 - 56.1 *“The Claimant said to Mr Pistak he had breached a NDA in that he had the NDA on his telephone and he showed it to the Claimant.”* We’ll call this the “first disclosure”.
 - 56.2 *“The Claimant raised concerns that a colleague was not using equipment in accordance with safety protocols and had also attended work whilst under the influence of alcohol and drugs.”* We’ll call this the “second disclosure”.
57. Starting with the first disclosure, our finding is that no such disclosure was made: there was no discussion with Mr Pistak relating to the NDA.
58. The Claimant’s failure to mention it until very late in the day is striking. There was nothing about the NDA in the claim form, let about an alleged protected disclosure concerning it. The first time the NDA seems to have been mentioned at all was on 11 August ~~2024~~ 2023, in her grievance. What the Claimant wrote in relation to the NDA there was to make allegations, to people other than Mr Pistak, that he did something wrong when he showed her the NDA in May 2023.
59. The first time the Claimant alleged she made a protected disclosure to Mr Pistak about the NDA seems to have been at or immediately before the November 2024 preliminary hearing. That hearing was originally due to take place in February 2024 and it is notable that in the Case Management Agenda she submitted on 19 February 2024 for that hearing, she wrote nothing at all about the NDA and described her alleged protected disclosure(s) in the following way: *“disclosure and concerns surrounding a colleague [Emma] ... of misconduct and ill behaviour pertaining to a work colleague”*. She also referred in the Agenda to *“detriment the claimant faced from making a protected disclosure to the managing director regarding a colleague”*. In other words, the first disclosure appears not to have been any part of her case until 18 months or so after she allegedly made it and until over a year after she presented her claim.
60. The position in relation to the second disclosure is overall the same: she did not make it. What is different is that everyone agrees that the Claimant did have a conversation on 22 May 2023 with Mr Pistak concerning Emma. What the

Claimant and the Respondent disagree about is whether the contents of that conversation included the Claimant raising concerns about Emma “*not using equipment in accordance with safety protocols*” and attending “*work whilst under the influence of alcohol and drugs*”.

61. The Claimant’s case is specifically that: that was the information she disclosed; she reasonably believed that information (not some other information relating to alleged wrongdoing by Emma) tended to show breach of a legal obligation / danger to health and safety⁵; that she reasonably believed that disclosure of information (again, not some other information) was made in the public interest. That was what was put to the Respondent’s witnesses. The Claimant’s case was not that she said something unspecified about Emma in which she alleged some kind of wrongdoing and that whatever she said was a protected disclosure. Moreover, we do not think it would have been fair to the Respondent for her to have been allowed to take her claim forward in such a non-specific way.
62. There is evidence that the Claimant wanted on 22 May 2023 to raise concerns about Emma and about what those concerns were. That evidence was created just an hour or so before the Claimant made the telephone call in which, she says, she made the protected disclosures. The evidence is a note the Claimant wrote to herself on her mobile telephone detailing “*Issues*” she had with Emma, timed at 09:31 hrs on 22 May 2023, which runs from page 1640 of the bundle. In short, the issues she apparently had do not seem to have included “*not using equipment in accordance with safety protocols*” and attending “*work whilst under the influence of alcohol and drugs*”.
63. Evidently, the Claimant made that note for a reason. We think the reason was most likely that she wanted to record the “*issues*” or concerns she had for potential later use for some employment-related or employment-claim-related purpose. She would not hold back from writing anything and everything she wanted to in it; she was not writing it with a view to definitely sending or showing it to someone else; no one else would know she had written it; and she would only show it to someone else if she wanted to.
64. Even if the note was something like a personal diary entry, there would surely be at least a passing mention of the things that Claimant now says she was most concerned about – the things she alleges she made protected disclosures to Mr Pistak about just an hour later – if it were true that she had made them.
65. As with the first disclosure, the Claimant did not mention the alleged contents of the second disclosure in the claim form. In it, she just referred to having a “*chat concerning behaviour of colleague [Emma] and how concerned I was that she may need some help as her behaviour and professionalism were concerning*”. She did not highlight any concerns she supposedly had about the health and safety of third parties.

⁵ We are using “*breach of a legal obligation*” and “*danger to health and safety*” as a shorthand for “*that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject*” and “*that the health or safety of any individual has been, is being or is likely to be endangered*”.

66. What she wrote in her grievance in relation to this also aligns much more comfortably with what is in her contemporaneous note to herself than with the case in the list of issues: that what she told Mr Pistak was about Emma's *"behaviour on the Friday evening ... and how Emma was encouraging a negative feeling towards the neighbouring stand"*.
67. The fact that the Claimant was not until very late in the day suggesting she had disclosed information about Emma *"not using equipment in accordance with safety protocols"* and attending *"work whilst under the influence of alcohol and drugs"* was a point the Claimant inadvertently made against herself when she was cross-examining Mr Pistak. She took him through the transcript of the investigation meeting on 24 July 2023, and to successive references to the Claimant having raised concerns about Emma. Those references all related to Emma's behaviour around the show, and not to health and safety concerns or to her turning up for work under the influence of drink and drugs. We invited the Claimant to take Mr Pistak to anything in the transcript touching on the information allegedly contained in either protected disclosure. She did not, and apparently could not, do so. We therefore assume that nothing like that was said at the meeting. (We have not had time to read through every word on every page of all the transcripts included in the bundle and we made the parties aware of this. We have speed-read them and done an electronic keyword search of the transcript of this July 2023 meeting and could not find anything.)
68. We have struggled to identify the first time the Claimant suggested she disclosed this specific information to Mr Pistak in May ~~2022~~ 2023, but – as with protected disclosure 1 – it may well have been as late as at or shortly before the November 2024 preliminary hearing. Before then, what the Claimant seems to have referred to was something different and/or more general.
69. For example:
- 69.1 in her appeal against dismissal of 6 September 2023, she wrote that Mr Pistak, *"broke my trust by allowing Emma to know of the concerns I raised regarding her professionalism, her absence for the show on the Saturday and her general reputation for being unable to be professional in a working event"*;
- 69.2 what she wrote in her case management agenda of February 2024 – see paragraph 59 above. (In fairness to the claimant, she did in that agenda suggest that one of the issues was, *"Did the respondent handle the information and concerns of the claimant in such a manner that it protected the wider team and the public?"*⁶).
70. In short, the Claimant did not disclose the information she alleges she did, or any information along those lines.

⁶ She also wrote in the Agenda: *"The event on the 3rd July 2023 in a Care Quality Commission Medical premises where an incident took place and the colleague (ES) had to be removed from duty after being unfit for work and could be seen harming a patient, could this have been avoided following on from the whistleblowing concerns made by the claimant?"*

71. We are not satisfied that the Claimant did any more on 22 May ~~2022~~ 2023 than complain to Mr Pistak about Emma being intoxicated during the evening of Friday 20 May ~~2022~~ 2023, getting into an altercation with a colleague, and not turning up to help out at the show on Saturday, 21 May ~~2022~~ 2023, and that this showed a lack of professionalism on her part and was potentially damaging to the Respondent's reputation. The Claimant herself did not suggest in her evidence that she believed (reasonably or otherwise) that that was information which tended to show breach of a legal obligation or danger to health and safety and that she was disclosing that information in the public interest. Anyway, as we emphasised in paragraph 61 above, her whistleblowing claim is not based on an alleged protected disclosure consisting of what we have found the Claimant raised with Mr Pistak.
72. It follows that the Claimant did not make protected disclosures as alleged and that all whistleblowing complaints, including the complaint of automatically unfair dismissal, fail.

Detriment complaints

73. Although we have found that the alleged protected disclosures were not made, we shall now go through the individual complaints of detriment.
74. Complaint d. is about failing "*to address the concerns the claimant had raised in her protected disclosures*". As the Claimant did not raise those concerns, this complaint necessarily falls away.
75. There is also an inherent difficulty with a complaint to the effect that the Respondent failed to address particular concerns because / "*on the ground that*"⁷ the Claimant raised them. If the employer was aware of the whistleblowing concerns and was not addressing them before the worker blew the whistle, whatever the reason was that they were not addressing them will presumably continue to apply after the worker blew the whistle. The employer not addressing them is just a continuation of what went before. Similarly, if the employer did not know about the concerns before the worker blew the whistle and therefore could not have addressed them, it is difficult to envisage circumstances in which the employer continuing not to address them after the whistleblowing – essentially ignoring them – could be said to be done on the ground that they were brought to the employer's attention.⁸
76. Detriment complaints a., b., and e. relate to the Claimant being investigated, disciplined and [non-constructively] dismissed. The reason this happened was: the Respondent was provided with evidence that the Claimant had committed acts of gross misconduct (something she had in fact done); and, having considered that evidence, Mr Pilous came to believe, on reasonable grounds, following a

⁷ In so far as there is a technical distinction between "*on the ground that*" and "*because*", it does not affect the validity of what is set out in this paragraph.

⁸ 'We did not know about this before and *because* we now know about it we are not going to do anything about it' makes little sense.

reasonable investigation and a reasonable procedure, that the Claimant was guilty of gross misconduct and, reasonably, that dismissal was the appropriate sanction.

77. The disciplinary action taken against the Claimant was broadly about three things: spreading gossip about Emma; sending the voicenote about defrauding the Respondent; sending voicenotes / messages containing disparaging remarks about Czechs, lesbians and others. The Claimant has throughout these proceedings virtually ignored the second and third of these things. Her focus has been on the allegation about spreading gossip. The Claimant did spread gossip about Emma and it was reasonable for the Respondent to take disciplinary action against her for doing this. But her gossiping was not something the Respondent was particularly concerned about or considered to be gross misconduct. It is highly unlikely that she would have received more than a low level warning at worst if gossip had been the only issue. We note that her and Emma's colleague SJ was issued just with a verbal warning for her part in spreading gossip.
78. The thing that was most important to the Respondent, and which would, we think, be of most concern to most employers, was the voicenote in which, essentially, the Claimant stated to a colleague that she routinely defrauded her employer when claiming expenses and she encouraged the colleague to do likewise. The Claimant suggests that it was an historic message, but it apparently dated from around October 2022, so was hardly, as it were, ancient history. Whenever it dated from, it amounted to a confession of committing imprisonable criminal offences.
79. The Claimant has also sought to suggest that, despite what she said in the voicenote, she has never defrauded her employer. It would be the most bizarre message to send if that were so and we do not believe her. The fact that the Respondent could not find proof positive that she had 'fiddled' her expenses on any particular occasion is, in our view, almost irrelevant. The overwhelming majority of employers would deem that voicenote in and of itself to be gross misconduct and would dismiss for it. The Claimant should consider herself extremely fortunate that Mr Donner was one of the small minority of managers who would be willing to give an employee another chance in such circumstances.
80. The comments about Czech people and the homophobic and ableist comments were also potentially gross misconduct, certainly when taken together.
81. We have already found that there were no relevant protected disclosures. It is clear from the documentary evidence how disciplinary action against the Claimant came about. Emma's grievance gives us her contemporary perception of what happened and tells us what led to her raising her grievance and sending the voicenotes and other evidence. Emma was taken to task by Mr Pistak. The Claimant's name was not mentioned; Mr Pistak did not say to Emma that the Claimant had said anything to him. Emma was given the information that the Claimant had been criticising her by Mr Cowley. That in turn evidently led to Emma trying to get the Claimant into trouble – we assume on the basis that Emma felt the Claimant had got her into trouble and Emma wanted to return the compliment. It was not something encouraged or orchestrated by Mr Pistak, Mrs Banks, Miss Kopecka, or anyone else. It was entirely down to Emma herself, in response to information from a third party that the Claimant had been disparaging her.

82. It may be that the Claimant's case that she was disciplined and dismissed on the ground that she blew the whistle partly relies on an argument along these lines: her raising concerns about Emma led to Emma providing the evidence that the Respondent used to justify investigating, disciplining and dismissing her.
83. Such a case would be factually accurate. There was an indirect link between the Claimant speaking to Mr Pistak on 22 May 2023, Emma providing the evidence, and the Claimant being dismissed. As just explained, his conversation with the Claimant led Mr Pistak to speak to Emma; that led to Emma contacting Mr Cowley; Emma found out from Mr Cowley that it was the Claimant who had been bad-mouthing her; in all likelihood it was this that motivated Emma to send Miss Kopecka the voicenotes and so on; if Emma had not done this, the Claimant would probably not have been accused of gross misconduct, let alone dismissed for it.
84. However, even if the Claimant made one or more protected disclosures when speaking to Mr Pistak on 22 May 2023 and even if there were a more direct causal link between that conversation and Emma providing the evidence to the Respondent – for example, if Mr Pistak had told Emma about his conversation with the Claimant (which he didn't) – it would still not mean that the Claimant was investigated and disciplined and [non-constructively] dismissed "*on the ground that*" she made a protected disclosure. In that scenario: what the Claimant said to Mr Pistak would simply be part of the background⁹ and in no sense whatsoever a reason for the treatment; the reason why the Claimant was treated as she was would still be the fact that she sent the voicenotes and messages for which she was dismissed; and the only relevant thing that, arguably, did happen on the ground that the Claimant made a protected disclosure would be the Claimant's gross misconduct being discovered.
85. If the Claimant had not been reinstated, this would have been a completely straightforward case. There was no dispute that the Claimant sent the voicenotes and message for which she was dismissed. Her sending them was plainly gross misconduct. She was not contrite. The procedure the Respondent followed was unimpeachable. There is nothing of any substance in the evidence suggesting the Respondent had or might have had an ulterior motive for dismissing her. Her apparently genuine conviction that she was treated unfairly has no objective basis.
86. Finally, detriment complaint c. is "*Continually contact[ing] the claimant about the disciplinary process even though she was signed off sick*". If the word "continually" were replaced with the word "continued" then this allegation, which relates to the first half of August 2023, would be factually accurate. The Respondent acted entirely reasonably throughout. The reason – the only reason – the Respondent did this was because, from before the Claimant went off sick, it had been trying to arrange a meeting with the Claimant and the contact after the Claimant went off sick was simply follow-through of that. It had nothing to do with the Claimant's conversation with Mr Pistak on 22 May 2023.
87. We would add that if the Claimant thinks an employer is obliged to stop contacting an employee about a disciplinary process if the employee goes off sick, she is mistaken. Apart from anything else, doing that incentivises employees who know

⁹ To use old-fashioned legal language, it would be a *causa sine qua non*.

they have committed acts of serious misconduct and who are facing a disciplinary to get themselves signed off sick as a way of avoiding the consequences of their actions.

Constructive unfair dismissal

88. We move on to the complaint that the Claimant was constructively unfairly dismissed. The only 'live' issue is: was the Claimant dismissed?
89. The Claimant identified to Employment Judge Harding at the preliminary hearing on 24 July 2025 the basis of the allegation that she had been constructively dismissed and we have in our decision focussed on the issues she identified. They are not exactly the same as those the Claimant raised in her resignation letter or those she highlighted in her witness statement; and what is in the resignation letter and the witness statement are not the same as each other either. We have nevertheless considered all the additional matters the Claimant mentions in her resignation letter and in her witness statement that are not listed by Employment Judge Harding in her written record of the July 2025 preliminary hearing.
90. In short, the only one of those matters that actually occurred, that there was not reasonable and proper cause for, and that comes anywhere near constituting conduct calculated or likely to destroy or seriously to damage the relationship of trust and confidence between employer and employee is the appointment of Ms Tondo in August 2023 to cover part of what was at that time the Claimant's territory, without warning to, or consultation with, the Claimant.
91. However, objectively serious though that was, it was not so serious as to breach trust and confidence by itself; and there is nothing else that is objectively significant. Also: we not satisfied that Ms Tondo's appointment was any part of the Claimant's reasons for resigning; if there was a breach of trust and confidence by Ms Tondo's appointment and the Claimant had resigned in response to it, the Claimant was not constructively dismissed because she had affirmed the contract of employment by the time she resigned.
92. Those findings in relation to the appointment of Ms Tondo (the detail of which is set out from paragraph 110 below) are informed by our other findings in relation to constructive dismissal, in particular as to the reasons for the Claimant's resignation. We shall explain what they are now.
93. The answers to the questions why did the Claimant resign, and why did she resign when she did, are not something we are able to give definitively. We are, however, sure that the reason or reasons for her resignation did not include anything that happened after she was reinstated.
94. In her oral evidence, in response to a question from the Tribunal, the Claimant confirmed she was never going to return to work following reinstatement come what may. Even if she hadn't explicitly confirmed this in her oral evidence, it was abundantly clear from all her post-reinstatement correspondence, such as the letter she wrote immediately after reinstatement, on 13 October 2023, the first substantive paragraph of which begins: *"I made it very clear to yourself on the appeal meeting call that there was unfortunately no way I could return to work for*

BTL. As you may recall I stated that because of Zbynek & Emma I couldn't put myself in a situation to be working alongside them."

95. The Claimant also kept suggesting during the hearing that she couldn't possibly return to work under someone who had dismissed her, and that she thought Mr Pilous's decision was completely illegitimate. She thought this even though the decision was almost entirely upheld on appeal, except in terms of sanction. Potentially, she was saying, wholly unreasonably, that she expected the Respondent to sack or move Mr Pilous, a senior, European-wide manager, for the sake of an area salesperson who had committed gross misconduct but was being given a second chance.
96. Similarly, the Claimant was unable to explain to us, and was seemingly unable to put to Mr Donner (despite our best efforts to help her put her case), what decision he could have made and/or what the Respondent could realistically have done in response to her appeal that might have led to her returning to work. For example, she did not take up the Tribunal's suggestion, made only half-jokingly, that perhaps what she wanted was for the Respondent to sack Emma and Mr Pilous and for there to be no disciplinary sanction at all.
97. In addition, the Claimant had great difficulty identifying what the 'last straw' was and explaining why, given that she never wanted to return to work and was never going to return to work, she waited nearly a month post-reinstatement to resign, rather than resigning straight away.
98. We asked the Claimant why she had appealed, given that it was never her intention to return to work. She said two things. One was that it was her "*statutory right*", as she put it. We are not sure what she was getting at there. We do not accept, if this is what she was saying, that she wanted to appeal as a quasi-academic exercise. The other thing she said was to the effect that she appealed because she did not want to have a gross misconduct dismissal on her record. We can accept that that was the or a reason for her appealing. However, given that she had no intention of returning to work if reinstated, she was always going to resign; and she was effectively appealing with a view to being reinstated and then resigning. This means that as soon as she had been reinstated, she had achieved the purpose for which she appealed. That, in turn, makes her delay in resigning even more puzzling. We suspect the true reason for the delay in resigning was tactical, although the evidence is insufficient to justify us making a finding to that effect.
99. In summary, then:
 - 99.1 the Claimant never wanted to return to work for the Respondent after her dismissal and, putting any tactical reasons to one side, she only appealed because she did not want a gross misconduct dismissal on her record;
 - 99.2 similarly, there was nothing the Respondent could reasonably have done or that the Claimant wanted the Respondent to do that would have stopped her resigning once she was reinstated;

- 99.3 in other words, the Claimant was always planning to resign if she was reinstated;
- 99.4 taking those matters in particular into account, we find that the Claimant did not resign in response to anything that happened after she was reinstated; none of those matters was any part of her reasons for resigning.
100. We don't really know why the Claimant resigned. This is a potential problem for the Claimant because it is for her to satisfy us that she resigned in response to something particular that was a repudiatory breach of contract. She has failed to satisfy us of that.
101. We are not satisfied that the Claimant's reasons for resigning included anything other than her conviction – which seemingly persists to this day – that she should not have been subjected to any disciplinary action at all; and her corresponding anger at Mr Pistak and Emma, who she seems to blame for her being subjected to disciplinary action; and, possibly, she also genuinely persuaded herself that the two of them should have been subjected to disciplinary action as well as or instead of her. That this was potentially the case is supported by the contents of the grievance. In the main, it was not a grievance at all – that is to say, it was not a complaint about people doing things to the Claimant. Instead, it was largely an attempt to get others, and Emma in particular, into trouble in revenge for the fact that, in the Claimant's perception, they had got her into trouble.
102. None of those matters breached trust and confidence (i.e. was without reasonable and proper cause and was calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee). For example, the fact that others may allegedly have misconducted themselves did not excuse or mitigate the Claimant's own misconduct, particularly not when, in relation to the most serious allegations of misconduct made against the Claimant, there was and is no doubt about what the Claimant did, nor about it being potential gross misconduct. It follows that even if other things had breached trust and confidence, they would not mean the Claimant was constructively dismissed, because they were not a significant part of her reasons for resigning.
103. We shall now deal specifically with other matters listed by Employment Judge Harding in paragraphs 3.1 to 3.8 of her written record of the preliminary hearing of July 2025 that the Claimant alleges were, or were part of, a breach of trust and confidence.
104. 3.1 is "*A colleague of the claimant's, who was in fact the subject of the claimant's alleged protected disclosure, was informed of what the claimant had said about her*". As pursued, this is actually an allegation that the information constituting the [alleged] protected disclosure relating to Emma, and the [alleged] fact that it was the Claimant who had supposedly made that protected disclosure, were shared with Emma by Mr Pistak. That is not what happened, not least because no such information was disclosed by the Claimant.
105. 3.2 to 3.4 and 3.8 mirror whistleblowing detriment complaints we have already dealt with. In summary, there was reasonable and proper cause for the

Respondent's actions (e.g. dismissal) and the Claimant did not raise the concerns she alleges she did.

106. 3.5 is, *"The respondent failed to deal with the claimant's grievance in that: no grievance hearing was held, no investigation was carried out into the complaints raised by the claimant and the claimant was offered no right of appeal."* In relation to this:

106.1 there was a grievance hearing;

106.2 an investigation was begun, but it could not be completed because the main target of the grievance – Emma – went off sick and remained off sick until her dismissal for incapability, which came after the Claimant's resignation;

106.3 given that the Claimant exercised a right of appeal, her allegation that she wasn't *"offered"* one makes little sense in and of itself and even less sense as an allegation of conduct that was sufficiently detrimental to her to cause or contribute to a breach of trust and confidence;

106.4 if this is an allegation about the appeal not progressing, there was reasonable and proper cause for its lack of progress, in that it got nowhere initially because the Claimant was dismissed and no longer subject to the grievance procedure and latterly because after her reinstatement the Claimant had no interest in coming back to work, let alone in having a grievance appeal hearing.

107. 3.6 is, *"The respondent failed to take steps to prevent the claimant from resigning namely, the respondent failed to address concerns raised by the claimant in two attachments to an email of 27 September 2023 sent to Mr Donner."* As is clear from the claim form in case number 3301438/2024 where the constructive unfair dismissal complaint is made, and from what the Claimant put forward at this hearing – including what she put to the Respondent's witnesses during cross-examination – this complaint is not, in fact, about her email of 27 September 2023 at all. Instead, it relates to the Claimant's correspondence post-dating her reinstatement, and in particular the letter of 13 October 2023. Our findings about that are, in summary:

107.1 that the Claimant did not want anything 'addressed' – she did not want anything at all from the Respondent we can identify and was just waiting to resign at a time of her choosing;

107.2 in terms of addressing such *"concerns"* as she raised, the Respondent did what any reasonable employer would do in similar circumstances – and it had reasonable and proper cause for doing this – which was to have a meeting with the Claimant;

107.3 the Respondent's alleged failure in some unspecified way to address the Claimant's alleged concerns had no impact on trust and confidence, nor did the Claimant resign in response to that alleged failure.

108. 3.7 is, *“The respondent failed to ensure the claimant could return to work after her successful appeal. The claimant confirmed that this mainly covers the same factual territory as the complaints set out at point 3.6 above, but it also includes that prior to her dismissal the respondent hired Victoria Tondo to replace the claimant. Ms Tondo started with the respondent on 15 August 2023”* [in fact, Ms Tondo started on 21 August 2023, albeit she was recruited some weeks before that, as we understand it]. By the end of evidence and submissions, it was clear that the only thing this allegation covers in addition to what is in 3.6 is Ms Tondo’s appointment.
109. The only thing stopping the Claimant from returning to work was her unwillingness to do so. We repeat that nothing the Respondent could realistically have done would have persuaded her back to work.
110. If this part of the case is really about Ms Tondo’s appointment, we agree with the Claimant that that appointment was badly handled. Ms Tondo was not, though, appointed to replace the Claimant. The decision to appoint someone was taken well before any disciplinary process against the Claimant started.
111. The original intention was for Ms Tondo to deal with Scotland, which was part of the Claimant’s designated territory. The problem with that, objectively, was not that the Claimant territory was being split in two and that the Respondent was going to employ two people to cover geographical areas that had previously just been covered by one person. It was, we think, within the scope of the Respondent’s managerial prerogative to do that. To put it another way, there was reasonable and proper cause for the Respondent doing that.
112. The problem was the way in which the Respondent made and implemented this decision and, in particular, the fact that it was done without warning or consultation. That the Respondent was apparently intending to have a meeting with the Claimant about it before Ms Tondo was appointed – a meeting that did not happen for various reasons – is not good enough. Even if it was not reasonably practicable to hold a meeting at some stage between decision in principle being made early in 2023 and around August 2023 when Ms Tondo was appointed – and the Respondent has not shown this – management could and should, at least, have written to the Claimant explaining what was happening and why.
113. The Respondent did not have reasonable and proper cause for the manner in which it made and implemented the decision and this would have caused some damage to the relationship of trust and confidence.
114. However, Ms Tondo was appointed before the Claimant was dismissed. The first time the Claimant mentioned her was after she was reinstated. This was in her [the Claimant’s] letter of 13 October 2023, where she wrote this: *“I am aware of my replacement Victoria Tondo who has been recruited into BTL who is covering my role in the North & Scotland. The reputation of this individual is extremely concerning. I wouldn’t be happy working in a team with this lady.”*
115. The Claimant’s objection to Ms Tondo at that stage was not, then, the objection she might have been expected to raise: that she was losing part of what had been her territory and with it the opportunity to earn commission on sales in that part of

her territory. Nor did she raise the legitimate objection that she had not been warned or consulted with. Judging her by what she wrote, neither of those things was of particular concern to her at any stage. Instead, her objection seems to have been to Ms Tondo herself; as well as to the fact that – for obvious reasons and in practice inevitably – someone else had been covering the whole of the Claimant's territory when she had not been in work, because she had been off sick from work and had been dismissed.

116. We also note that Ms Tondo's appointment was not mentioned – neither explicitly nor, at least not with any clarity, implicitly – in the Claimant's resignation letter. In addition, it barely featured at this hearing until it was raised with Mr Pistak by the Tribunal, at end of his evidence. We repeat the finding we have already made that the reasons we are satisfied the Claimant had for resigning do not include the manner of Ms Tondo's appointment.
117. Ms Tondo's appointment in August 2023, without warning or consultation, would have had significant impact on trust and confidence. It is the only thing having any such impact the Claimant has complained about as a potential reason for her resignation (including not just the things the Claimant identified to Employment Judge Harding but everything she has mentioned in her witness statement and/or resignation letter) that actually happened and that there was not reasonable and proper cause for. However, in conclusion on this point:
 - 117.1 we are not satisfied that it met the high threshold of conduct that was calculated or likely to destroy or seriously damage trust and confidence;
 - 117.2 we are not satisfied that it was a significant part of the Claimant's reasons for resigning;
 - 117.3 although the mere fact the Claimant appealed against her dismissal would not by itself mean she had affirmed her contract of employment, by appealing and following the appeal process for 2 months or so after Ms Tondo was appointed and purportedly seeking reinstatement (despite having no genuine interest in returning to work) and then, post-reinstatement, delaying nearly a further month before resigning, we find that there was affirmation.
118. In summary, there was no breach of trust and confidence at any relevant time, the Claimant was not constructively dismissed, and therefore the complaint of unfair dismissal fails.

Employment Judge Camp

Original version approved on 29 June 2026

Corrected version approved on 21 August 2026