



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Y H Denli

**Respondent:** Jaguar Land Rover Ltd

**Heard at:** Birmingham

**On:** 15 – 26 June 2026

**Before:** Employment Judge Meichen, Mr R Virdee, Mr P Kennedy

**Appearances**

For the claimant: Ms E Darlow Stearn, counsel

For the respondent: Mr C Crow, counsel

## UNANIMOUS RESERVED JUDGMENT

The respondent did not subject the claimant to detriments on the ground that he made protected disclosures. The claim fails and is dismissed.

## REASONS

### Issues

1. The list of issues for us to determine was refined and agreed between the parties during the final hearing. The final agreed list of liability issues for the tribunal to determine is as follows:

#### **1 The Claimant's claims**

- 1.1 The Claimant brings a complaint of detriment for having made a protected disclosure (Employment Rights Act 1996 "ERA": section 47B)

#### **2 Protection under legislation**

- 2.1 The Respondent accepts that the Claimant was a worker for the purposes of section 43K(1)(a) ERA, in that the Claimant:

- 2.1.1 was introduced or supplied to work by a third person; and
- 2.1.2 the terms on which the Claimant was engaged to do the work were in practice substantially determined not by him but by the person for whom he worked, the third person, or by both of them.

The Respondent accepts that it substantially determined the terms on which the Claimant was engaged to do work for the Respondent from 8 January 2024 - 18

July 2024 and, therefore, under s.43K(2)(a) ERA, it was the employer of the Claimant during that period, for the purposes of Part IVA ERA only.

### 3 Protected disclosure (ERA: sections 43B to 43H)

3.1 Did the Claimant make one or more qualifying disclosures as defined in section 43B(1) ERA? The Claimant relies upon the following:

~~3.1.1 On or around 18 January 2023, the Claimant began to make reports of safety concerns to his line manager, Nick Gennard, Global Chassis Chief Engineer at Tata Technologies. The reports related to safety concerns relating to the front suspension, rear suspension and speed of the development of the Vinfast project.~~

~~3.1.2 On or around 18 January 2023, the Claimant began to send Mr Gennard a series of photos via Microsoft Teams of when parts/systems had failed. The photos included pictures of the safety critical front strut to knuckle connections loosening in the front suspension, the struts completely failing and falling off entirely, the lower control arm colliding with the wheel arch and the EDU mount brackets and casing snapping off.~~

3.1.3 Between 29 and 30 May 2024, the Claimant made a series of posts on the Vinfast Community on Reddit. The relevant posts are set out at Appendix B. The posts are individually and collectively relied on as a disclosure(s) apart from disclosures 1, 4, 7, 11, 13 and 14, which are only relied upon collectively (to be considered with the rest of the disclosures).

~~3.1.4 On 31 July 2024, the Claimant submitted a grievance form to HR at Danbro (an email address) and Grant Nesbitt, Agency Director, at Danbro.~~

3.2 Were any such disclosures qualifying? The Tribunal will decide:

3.2.1 Was information disclosed?

3.2.2 Did the Claimant believe the disclosure of information was made in the public interest?

3.2.3 Was that belief reasonable?

3.2.4 Did the Claimant believe that the disclosures tended to show:

(i) that the health or safety of any individual had been, was being or was likely to be endangered? and/or

(ii) that information tending to show the health or safety of any individual had been, was being or was likely to be endangered, had been, was being or was likely to be deliberately concealed?

3.2.5 Was that belief reasonable?

3.3 Where any of the qualifying disclosures protected?

~~3.3.1 Did the Claimant make the disclosure to their employer or one of the other categories of people listed in sections 43G to 43F ERA?~~

~~(i) The Claimant says that the disclosures at 0 and 0 were made to his employer or the responsible person, TATA technologies (s43G).~~

~~(ii) The Claimant says that the disclosure at 0 was made to the Respondent as his employer.~~

3.3.2 Was the disclosure at 0 a wider disclosure under s43G:

(i) Did the Claimant believe that the information disclosed and any allegations it contained were substantially true?

(ii) Was this belief reasonable?

(iii) Was the Claimant acting for personal gain?

(iv) Did any of the following apply?

(A) (s.43G(2)(a) ERA) At the time he made the disclosure, the Claimant reasonably believed that he would be subjected to a detriment by his employer if he made a disclosure to his employer.

~~(B) No person was prescribed for the purposes of section 43F in relation to the relevant failure and the Claimant reasonably believed that it was likely that evidence relating to the relevant failure would be concealed or destroyed if he made a disclosure to his employer, or~~

(C) (s.43G(2)(c)(i) ERA) The Claimant previously made a disclosure of substantially the same information to his employer or to a prescribed person? The Claimant says he had made disclosures of substantially the same information to his previous employer Tata Technologies as detailed at paragraphs 0 and 0 (struck through above for the purposes of s.43B(1) but relevant here).

(v) Was it reasonable in all the circumstances of the case for the Claimant to make the disclosure? When deciding that question, regard shall be had by the Tribunal, in particular, to:

(a) The identity of the person to whom the disclosure is made;

(b) The seriousness of the relevant failure;

(c) Whether the relevant failure is continuing or is likely to occur in the future;

(d) Whether the disclosure is made in breach of a duty of confidentiality owed by the employer to any other person;

(e) In a case falling within subsection (2)(c)(i) (previous disclosure to employer), any action which the employer or the person to whom the previous disclosure in accordance with section 43F was made has taken or might reasonably

be expected to have taken as a result of the previous disclosure;

- (f) In a case falling within subsection (2)(c)(i) (previous disclosure to employer), whether in making the disclosure to the employer the worker complied with any procedure whose use by him was authorised by the employer.

3.3.3 Alternatively, the Claimant says that the disclosure at 0 was a disclosure of an exceptionally serious nature under s43H:

- (i) Did the Claimant believe that the information disclosed and any allegations it contained were substantially true?
- (ii) Was this belief reasonable?
- (iii) Was the Claimant acting for personal gain?
- (iv) Was the relevant failure of an exceptionally serious nature?
- (v) Was it reasonable in all the circumstances of the case for the Claimant to make the disclosure? When deciding that question, regard shall be had, in particular, to the identity of the person to whom the disclosure is made.

#### **4 Protected disclosure detriment (ERA: section 48)**

4.1 Did the Respondent do the following things:

- 4.1.1 Martin Jones, Corporate Investigator at the Respondent, and Muntazim Nazir, Corporate Investigations Manager at the Respondent, on 11 July 2024 carried out an investigation meeting with the Claimant in a high handed and aggressive manner;
- 4.1.2 Martin Jones and Muntazim Nazir suspended the Claimant on 11 July 2024;
- 4.1.3 Martin Jones and Muntazim Nazir via Jonathan Lee terminated the Claimant's role on 18 July 2024;
- 4.1.4 Martin Jones instructed Magnit (a platform used to identify and recruit individuals) to blacklist the Claimant on or around 18 July 2024;
- 4.1.5 Guy Higgins, Director of Compliance, Ethics and Risk at the Respondent, wrote a letter to the CEO of Whistleblowers UK on 26 September 2024 in which he suggested the Claimant would not be able to distinguish between sensitive commercial information and disclosures relating to serious endangerment to life and that he was a risk to a future employer;
- 4.1.6 Martin Jones wrote a letter to Danbro responding to the Claimant's grievance on 29 September 2024 in which he suggested the Claimant would not be able to distinguish between sensitive commercial information and disclosures relating to serious endangerment to life and that he was a risk to a future employer.

4.2 By doing so, was the Claimant subjected to a detriment?

4.3 If so, was it done on the ground that they had made a protected disclosure?

## 4.4 Which detriments are linked to which disclosure/(s)?

**Appendix B to list of issues**

| # | Post text                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Bundle page |
|---|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| 1 | Vinfast, I wouldn't get into one....never will and I won't let my loved ones get into one either                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | 777         |
| 2 | <p>The front strut to knuckle connections do not last very long 15 to 25k depending on how you drive...in a jaguar Land Rover vehicle they are designed to last 150,000 with a safety factor of 2...so 300,000 miles for the average user....</p> <p>The bushes that connect the ICA to the body are made by a supplier in china that never ever produced bushes before...they last about 10% of the life of the vehicle...</p> <p>The knuckle snaps off in an extreme event, like hitting a pothole at 55mph under full lock breaking scenario...</p> <p>Chairman wanted the cheapest suspensions that was designed in record time...we designed and simulated the suspensions over a few months without any real world testing and kicked off manufacturing....</p> <p>Jaguar Land Rover or Mercedes take 5 years to design, simulate, test, fix any issues and then retest for validations before production....they also use 20-30 engineers just for a suspension in that time, that team did it with 4 people....</p> <p>Vinfast skipped the last 3 steps to save money and do it in time...you get what you paid for...</p> | 782         |
| 3 | <p>There are very very serious life and death problems with the steering hardware and software on Vinfast vehicles</p> <p>I won't go any further than that as I know what I know...but it's fatal problems with it...and the very senior management knew about them...</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | 783         |
| 4 | <p>Yes he [Vinfast chairman] knew of our concerns...or issues reported...we follow strict reporting guidelines etc.</p> <p>He basically didn't care</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 784         |
| 5 | Fatigue is the biggest problem for the Vinfast ... they really are not designed to last ... I would say front and rear suspensions are really bad ... they need their fixings replaced at every 25,000 miles or so... the sub frame needs checking every 40,000 miles along with the edu brackets...                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | 786         |
| 6 | <p>When we ran the CAE it was fine just about...</p> <p>But CAE is never 100% accurate...</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 787         |

|   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |     |
|---|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
|   | <p>You design...do the CAE...change if necessary...then you build the prototype...attach sensors everywhere and collect RLD (road load data)...you then take the RLD and plug it back into the CAE as that is the accurate load data and cycles you have...during this stage you always have something going wrong and naturally as CAE can never be 100% accurate...so you make improvements</p> <p>Except we were told to skip that step and not make the improvements</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |     |
| 7 | <p>Most of the parts are produced in China and India...</p> <p>There are good suppliers in both of those countries but the ones used by Vinfast are the worst of the worst...</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 787 |
| 8 | <p>All electric vehicles have an explosion risk with a major battery sitting in the lower half of the vehicle...all of them...regardless of the model or make</p> <p>That being said many factors come into play that determines that risk...major ones are the torsional stiffness of the body, battery durability and design, and suspension characteristics...</p> <p>For the Vinfast vehicle the body is not good or bad, it's bang on average, the battery is the cheapest most dogshit battery you could find...in a crash scenario the subframe is designed to decouple by making the rear fixings as weak as possible...so in a front crash it meets the regulatory requirements (but isn't thee [sic] safest on the road either)...</p> <p>Major risks come into play from the suspension from potholes and speed bumps or flying the car into the air.</p> <p>The suspensions of the Vinfast6 and Vinfast7 are pretty badly designed...not because I (or the team) was incompetent, but the higher up management gave us a limited budget, with limited people, with the shortest timescale in the history of automative engineering</p> <p>After about 25,000 miles the front strut to knuckle connections start to become loose, meaning more loads pass from the wheel to the body, which in turn distributes the load to the vehicle including the battery....this was what we call fatigue stress....so over time you wear out the battery to body connections, the internal cells of the battery...resulting in disaster when the battery starts to deflect too much or undergoes torsion beyond its limit...</p> <p>Long story short..If you buy the vehicle it's not going to explode or catch on fire, if you live in an area like London or Europe or china with lots of potholes and speed bumps though make sure you do not drive it above 25,000 miles an hour...</p> | 791 |

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|----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------|
|    | And FYI, if a car starts giving smoke from the battery or catches fire do not try to put it out...RUN at least 20m from the vehicle don't wait....you car has no hope but you do if you run...you can drown a [sic] on fire car battery in a swimming pool and it will still burn for days...                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                |
| 9  | <p>If you drive it carefully, at 50% WOT all the time on normal tarmac road without significant speed bumps it should last the whole life of the vehicles (which is 150,000 miles as industry standard)</p> <p>If you drive it above 75% WOT (wide open throttle) consistently then it all depends on your luck (tolerance of the subframe attaching to the EDU)...the EDU brackets that connect to the subframe were not designed correctly before I joined the company...and when it was tested the brackets snapped in half...every time...deforming the subframe too...</p> <p>But at which point I told them how to fix it but they said 'we are 2 months from production and it would cost a fortune to change it and major reworks of the first batch of vehicles so be quiet' by the chairman</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                            | <p>429 full text</p> <p>(792 partial text)</p> |
| 10 | <p>We had a very big problem with the vehicle dynamics and NVH of the Vinfast vehicles...So basically you have isolation (compliant mounting) in vehicles...These are rubber components that isolate noise, vibration and harshness that comes in through various ways...the two most common is the road input and the second one being the drivetrain (EDU)...At Vinfast we did not work with a reputable isolation supplier like Vibracoustic, Hutchinson or Boge etc...We had to use a supplier that the chairman said we have to use, which was he's [sic] mates company in China...So the bushes were quite bad...They had durability issues as mentioned below...So to avoid some durability issues we decided to increase the shore hardness...At shore hardness above 67-69 you take a bush from its linear region into its dynamic region and it starts snubbing...(also has other factors but in this case I have simplified it)...This improves the durability of the bushes, but stiffer also means more load is transferred to the vehicle itself. Isolation is reduced...</p> <p>Also, in a typical vehicle of its size...the Vinfast Vinfast6/7 is heavier than it should be...that increases the reaction loads from the wheels into the body...</p> | <p>432 full text</p> <p>(797 partial text)</p> |
| 11 | We did the real world testing and whatever small we could fix we fixed...but all of that serious faults data was basically buried under the carpet...Vinfast basically said give us the data and we will deal with it but they never really dealt with it                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 799                                            |
| 12 | The car has the potential to kill someone when driving on the motorway for no reason...like your [sic] just driving in a straight line and no other cars about and it would steer one way losing control killing people or injuring them...                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | 801                                            |

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|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
|    | <i>[question from Reddit user: is it only when you enable ADAS, lane assistant?]</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |     |
|    | Nope                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |     |
| 13 | <p>I've worked for many companies and never ever shared anything, and I work on some very secret stuff right now too...and I will never break my NDA for any one under any circumstances...</p> <p>But Vinfast...oh man they are worth the risk...</p> <p>I always encounter situations in my career that I do not like, I get told to do things I disagree with, sometimes immoral...and I never share...but NEVER has anyone in any other company I worked for endangered lives knowingly to meet shareholder requirements or make money...NEVER...</p> <p>We cut corners on quality, we cut corners on costs, timescales but never ever ever ever when that endangers lives...</p> | 803 |
| 14 | <p>I will never share confidential information to anyone apart from this scenario....but we as engineers have a responsibility, my responsibility is to escalate to my senior who takes it up the chain to the senior management who then make the decision.....but at Vinfast lives don't matter</p>                                                                                                                                                                                                                                                                                                                                                                                 | 803 |

## **Law**

### **Protected disclosures**

2. The relevant parts of sections 43A and 43B ERA state:

#### **43A Meaning of “protected disclosure”**

*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.*

#### **43B Disclosures qualifying for protection**

*(1) In this Part a “qualifying disclosure” means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following –*

- (a) that a criminal offence has been committed, is being committed or is likely to be committed,*
- (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,*
- (c) that a miscarriage of justice has occurred, is occurring or is likely to occur,*
- (d) that the health or safety of any individual has been, is being or is likely to be endangered,*
- (e) that the environment has been, is being or is likely to be damaged,*  
*or*

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

3. Section 43C ERA says that a qualifying disclosure is protected if the worker makes the disclosure to his employer.
4. The word 'disclosure' does not necessarily mean the revelation of information that was formerly unknown or secret. Section 43L(3) of the ERA provides that *'any reference in this Part to the disclosure of information shall have effect, in relation to any case where the person receiving the information is already aware of it, as a reference to bringing the information to his attention'*. Accordingly, protection is not denied simply because the information being communicated was already known to the recipient. This was confirmed by the EAT in Parsons v Airplus International Ltd EAT 0111/17.
5. The worker's reasonable belief must be that the information disclosed tends to show that a relevant failure has occurred, is occurring, or is likely to occur, rather than that the relevant failure has occurred, is occurring, or is likely to occur. In other words, the worker is not required to show that the information disclosed led him or her to believe that the relevant failure was established, and that that belief was reasonable — rather, the worker must establish only reasonable belief that the information tended to show the relevant failure.
6. There is no need for the worker to believe that any allegation contained within the information disclosed is true. This point was considered by the EAT in Soh v Imperial College of Science, Technology and Medicine EAT 0350/14. In that case the EAT explained that there is a distinction between saying, 'I believe X is true' and 'I believe that this information tends to show X is true'.
7. The EAT has stated that the test of 'belief' in section 43B establishes a low threshold. However, the reasonableness test clearly requires the belief to be based on some evidence — rumours, unfounded suspicions, uncorroborated allegations and the like will not be enough to establish a reasonable belief (Korashi v Abertawe Bro Morgannwg University Local Health Board [2012] IRLR 4).
8. If the claimant reasonably believed that the information tends to show a relevant failure there can be a qualifying disclosure of information even if they were later proved wrong. This was stressed by the EAT in Darnton v University of Surrey 2003 ICR 615, EAT. The EAT held that the question of whether a worker had a reasonable belief must be decided on the facts as (reasonably) understood by the worker at the time the disclosure was made, not on the facts as subsequently found by the tribunal.
9. There may be more than one reasonable view and the tribunal must not substitute its own view; per Twist DX Limited and others v Armes and another UKEAT/0300/20/JOJ at [69]-[70]. The reasonableness of the belief *'will depend in each case on the volume and quality of information available to the worker at the time the decision to disclose is made. Employment tribunals will have to guard*

*against use of hindsight to assess the reasonableness of the belief*. This illuminating quote is from J Bowers, J Mitchell and J Lewis, *Whistleblowing: the new law* (Sweet & Maxwell, 1999), cited with approval in Darnton v University of Surrey [2003] ICR 615 at [31]-[32] as being 'a correct statement of the law', and it was very helpfully drawn to our attention by Ms Darlow Stearn.

10. In Kilraine v London Borough of Wandsworth 2018 ICR 1850, the Court of Appeal held that 'information' in the context of S.43B is capable of covering statements which might also be characterised as allegations - 'information' and 'allegation' are not mutually exclusive categories of communication. The key principle is that in order to amount to a disclosure of information for the purposes of S.43B the disclosure must convey facts.

11. In Kilraine the Court of Appeal held:

- (i) In order for a statement to be a qualifying disclosure, it had to have sufficient factual content and specificity such as it was capable of tending to show one of the matters listed in subsection (1).
- (ii) Whether that was the case was a matter for the tribunal's evaluative judgement in the light of all the facts. It was a question which was closely aligned with the other requirement of s.43B(1), namely that the worker making the disclosure should have a reasonable belief that the information they disclosed tended to show one of the listed matters. If the worker subjectively believed that the information they disclosed tended to show one of the listed matters, and their disclosure had sufficient factual content and specificity such that it was capable of tending to show that matter, it was likely that their belief would be reasonable (see paras 30-36 of judgment).
- (iii) The context in which the statement is made is crucial. The measure of whether the information disclosed could in all the circumstances reasonably have sustained the belief that the information tended to show the relevant failure is the objective element of the test which calls for the evaluative judgment of the ET. Sales LJ emphasised the need for this to be assessed in the light of all the circumstances of the case.

12. As explained by the Court of Appeal in Babula v Waltham Forest College 2007 ICR 1026 a worker does not have to prove that the facts or allegations disclosed are true, or that they are capable in law of amounting to one of the categories of wrongdoing listed in the legislation. As long as the worker subjectively believes that the relevant failure has occurred or is likely to occur and their belief is, in the tribunal's view, objectively reasonable, it does not matter that the belief subsequently turns out to be wrong, or that the facts alleged would not amount in law to the relevant failure. The worker only needs to show that the information "tends to show" the relevant failure, which is a lower hurdle than "shows".

13. As to the correct approach to the public interest test Ms Darlow Stearn drew our attention to the judgment of Underhill LJ in Chesterton Global Ltd v Nurmohamed [2017] IRLR 837 (CA) at [28]-[31], [34] and [36] and the further clarification

provided by HHJ Tayler in Dobbie v Paula Felton t/a Feltons Solicitors [2021] IRLR 679 (EAT) at [27]. We considered and took into account those decisions and the key principles which were helpfully identified by Ms Darlow Stearn in her submissions, as replicated below:

- (1) the necessary belief is that the disclosure is made in the public interest. The particular reasons why the worker believes that to be so are not of the essence. That means that a disclosure does not cease to qualify simply because the worker seeks, as not uncommonly happens, to justify it after the event by reference to specific matters which the tribunal finds were not in his head at the time he made it. ...in principle a tribunal might find that the particular reasons why the worker believed the disclosure to be in the public interest did not reasonably justify his belief, but nevertheless find it to have been reasonable for different reasons which he had not articulated to himself at the time: all that matters is that his (subjective) belief was (objectively) reasonable.
- (2) while the worker must have a genuine (and reasonable) belief that the disclosure is in the public interest, that does not have to be his or her predominant motive in making it; [Underhill LJ in Chesterton is] 'inclined to think that the belief does not in fact have to form any part of the worker's motivation – the phrase "in the belief" is not the same as "motivated by the belief"'.
- (3) the exercise requires the tribunal to recognise, as in the case of any other reasonableness review, that there may be more than one reasonable view as to whether a particular disclosure was in the public interest. ... The Tribunal should be careful not to substitute its own view of whether the disclosure was in the public interest for that of the worker.
- (4) a disclosure which was made in the reasonable belief that it was in the public interest might nevertheless be made in bad faith.
- (5) there is not much value in trying to provide any general gloss on the phrase "in the public interest". Parliament has chosen not to define it, and the intention must have been to leave it to employment tribunals to apply it as a matter of educated impression.
- (6) the statutory criterion of what is "in the public interest" does not lend itself to absolute rules still less when the decisive question is not what is in fact in the public interest but what could reasonably be believed to be.
- (7) the essential distinction is between disclosures which serve the private or personal interest of the worker making the disclosure and those that serve a wider interest.
- (8) the broad statutory intention of introducing the public interest requirement was that "workers making disclosures in the context of private workplace disputes should not attract the enhanced statutory protection accorded to whistleblowers"
- (9) this fourfold classification of relevant factors may be a useful tool to assist in the analysis:
  - i. the numbers in the group whose interests the disclosure served [the larger the number of persons whose interests are engaged... the more likely it is that there will be other features of the situation which will engage the public interest]
  - ii. the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed [a disclosure of wrongdoing directly affecting a

very important interest is more likely to be in the public interest than a disclosure of trivial wrongdoing affecting the same number of people, and all the more so if the effect is marginal or indirect]

iii. the nature of the wrongdoing disclosed [disclosure of deliberate wrongdoing is more likely to be in the public interest than the disclosure of inadvertent wrongdoing affecting the same number of people]

iv. the identity of the alleged wrongdoer [the larger or more prominent the wrongdoer (in terms of the size of its relevant community, i.e. staff, suppliers and clients), the more obviously should a disclosure about its activities engage the public interest.]

(10) where the disclosure relates to a breach of the worker's own contract of employment (or some other matter under section 43B(1) where the interest in question is personal in character), there may nevertheless be features of the case that make it reasonable to regard disclosure as being in the public interest.

## Wider disclosures

14. The legal tests for whether “wider disclosures” are protected are in s.43G ERA and s.43H ERA.

15. The relevant sections of s.43G ERA read as follows:

### 43G Disclosure in other cases

(1) A qualifying disclosure is made in accordance with this section if—

(b) [the worker] reasonably believes that the information disclosed, and any allegation contained in it, are substantially true,

(c) he does not make the disclosure for purposes of personal gain,

(d) any of the conditions in subsection (2) is met, and

(e) in all the circumstances of the case, it is reasonable for him to make the disclosure.

(2) The conditions referred to in subsection (1)(d) are—

(a) that, at the time he makes the disclosure, the worker reasonably believes that he will be subjected to a detriment by his employer if he makes a disclosure to his employer or in accordance with section 43F,

(b) that, in a case where no person is prescribed for the purposes of section 43F in relation to the relevant failure, the worker reasonably believes that it is likely that evidence relating to the relevant failure will be concealed or destroyed if he makes a disclosure to his employer, or

(c) that the worker has previously made a disclosure of substantially the same information—

(i) to his employer, or

(ii) in accordance with section 43F.

(3) In determining for the purposes of subsection (1)(e) whether it is reasonable for the worker to make the disclosure, regard shall be had, in particular, to—

(a) the identity of the person to whom the disclosure is made,

(b) the seriousness of the relevant failure,

(c) whether the relevant failure is continuing or is likely to occur in the future,

- (d) whether the disclosure is made in breach of a duty of confidentiality owed by the employer to any other person,
  - (e) in a case falling within subsection (2)(c)(i) or (ii), any action which the employer or the person to whom the previous disclosure in accordance with section 43F was made has taken or might reasonably be expected to have taken as a result of the previous disclosure, and
  - (f) in a case falling within subsection (2)(c)(i), whether in making the disclosure to the employer the worker complied with any procedure whose use by him was authorised by the employer.
- (4) For the purposes of this section a subsequent disclosure may be regarded as a disclosure of substantially the same information as that disclosed by a previous disclosure as mentioned in subsection (2)(c) even though the subsequent disclosure extends to information about action taken or not taken by any person as a result of the previous disclosure.

16. The relevant sections of s.43H ERA read as follows:

43H Disclosure of exceptionally serious failure

- (1) A qualifying disclosure is made in accordance with this section if—
  - (b) [the worker] reasonably believes that the information disclosed, and any allegation contained in it, are substantially true,
  - (c) he does not make the disclosure for purposes of personal gain,
  - (d) the relevant failure is of an exceptionally serious nature, and
  - (e) in all the circumstances of the case, it is reasonable for him to make the disclosure.
- (2) In determining for the purposes of subsection (1)(e) whether it is reasonable for the worker to make the disclosure, regard shall be had, in particular, to the identity of the person to whom the disclosure is made.]

17. Ms Darlow Stearn provided a helpful and comprehensive summary of the law applicable to s.43G and H ERA. We felt able to accept and adopt most of her impressive summary, as set out below.

*Reasonable belief that information / allegation is substantially true (43G and 43H)*

18. The leading cases on the requirements at s.43G(1)(b) ERA / s.43H(1)(b) ERA are Darnton v University of Surrey [2003] ICR 615; Babula v Waltham Forest College [2007] ICR 1026 and Muchesa v Central & Cecil Housing Care Support (EAT/0443/07, 22 August 2008), from which the following principles are derived:

- 18.1 the worker's belief must be tested by reference to the circumstances as they understood them to be at the time;
- 18.2 it must be reasonable for the worker to believe both (i) the factual basis for what was disclosed was true and (ii) it tends to show a relevant failure;
- 18.3 the belief may ultimately be mistaken;
- 18.4 whether the allegation was in fact true may be relevant in considering the reasonableness of the belief (see Muchesa);
- 18.5 in relation to each allegation made, there must be a reasonable belief that it is substantially true.

*Not made for purposes of personal gain (43G and 43H)*

19. As regards the requirements at s.43G(1)(c) ERA / s.43H(1)(c) ERA, employment tribunals have not treated “personal gain” as limited to financial gain (see e.g. Spencer v Thera East, Case No 3200124/2016, 9 March 2017). The focus is on the purposes for which a disclosure is made so protection is not lost because the worker receives a payment or otherwise benefits from a disclosure.
20. In a case of mixed motives, it is likely that s.43G(1)(c) ERA / s.43H(1)(c) ERA will be satisfied – in support of this, see Street v Derbyshire Unemployed Workers’ Centre [2005] ICR 97, in which the Court of Appeal held, when considering the (now removed) good faith provision of s.43G ERA, that an ulterior motive may only negate good faith if it is a dominant or predominant motive (§56). Street would indicate that the same logic ought to apply when considering personal gain – Auld LJ noted (obiter) of s.43G(1)(c) ERA that “*whether the motive of personal gain was of such a nature or strength as to ‘make the disclosure for the purposes of personal gain’ is for the ET to assess*”: §53 (see also §52), thereby acknowledging that there may be some motive of personal gain that falls short of rendering a disclosure for the purposes of personal gain.

*s.43G ERA / Precondition 3: worker previously made disclosure of substantially the same information to his employer*

21. As per the wording of the statute, the information does not have to be exactly the same but only “*substantially*” the same. This is a question of fact.
22. It is likely that “employer” at s.43G(2)(c) ERA (and s.43G(3)(e)-(f) ERA) may include past employer, in line with the purposive approach to whistleblowing law, the principles of statutory construction and the courts’ approach to construing “employer” in Parts IVA and Part V to date (see below).
23. In Part IVA, “employer” has been construed to include past employer, where the disclosure is made during the worker’s employment (BP v Elstone [2010] ICR 879) or past employer, where a disclosure is made after the employment has ended (Onyango v Berkely t/a Berkeley Solicitors [2013] IRLR 388 at §7-9). In related Part V, “employer” has been read to include both past and future employers (see Woodward v Abbey National [2006] ICR 1436 and Dr Nigel MacLennan v The British Psychological Society (Protect and the Charity Commission intervening) [2025] IRLR 4). It would therefore run contrary to the grain of the authorities for “employer” in this section to carry with it a temporal or other restriction.
24. This becomes particularly clear when one considers taking s.43G(2)(a) ERA as applying only to fear of detriment by a current employer (rather than also encompassing past and future employers). This does not make sense in light of the approach by the authorities to protection from detriment – see in particular Onyango, under which a worker may bring a claim against an employer where both protected disclosure and detriment have occurred after the employment had ended. A worker may therefore, at the time of making their disclosure, reasonably

fear detriment by their past, current or future employer. It would therefore be odd if s.43G(2)(a) ERA only took into consideration a worker's fear regarding detriment from their current employer.

25. The point of s.43G(2)(c) ERA (and s.43G(3)(e)-(f) ERA), is to help a tribunal assess reasonableness; it is relevant to this issue whether a worker has made a disclosure of substantially the same information to a past employer (as well as their current employer), particularly if it is a past (not current) employer that has the power to do something about the information disclosed. The point is whether the worker is able to demonstrate that the information is not being disclosed for the first time.

26. A subsequent disclosure may be substantially the same for s.43G(1)(c) ERA purposes where it *"extends to information about action taken or not taken by any person as a result of a previous disclosure"* (see s.43G(4) ERA) – i.e. where a worker is discussing the failure of the employer to adequately address the original concerns.

27. In Bladon v ALM Medical Services Ltd (EAT/709/00 and EAT/967/00, 19 January 2001), overturned by the Court of Appeal on different grounds, the EAT directed that it would *"be wholly inappropriate for tribunals to embark upon an exercise of nice and detailed analysis of the disclosure to the employer, compared with the disclosure to the outside body"* and tribunals ought to adopt a *"commonsense broad approach when deciding whether or not the disclosure 'is substantially the same'"* (§31 Bladon).

#### *Reasonableness (43G ERA / s.43H ERA)*

28. When assessing whether it was reasonable in all the circumstances to make the disclosure/s under s.43G / s.43H ERA, reasonableness must be determined at the time of the disclosure rather than with the benefit of hindsight (Jesudason v Alder Hey Children's NHS Foundation Trust (UKEAT/0248/16/LA, 29 June 2018; [2020] ICR 1226 (CA)).

#### *s43G reasonableness*

29. When assessing reasonableness under s.43G(1)(e) ERA, a tribunal must have regard to the factors listed at s.43G(3)(a)-(f) ERA. This is not a comprehensive list of all the relevant considerations (see Jesudason §26 and Street v Derbyshire §28).

30. The claimant submitted that the following principles should apply when considering the s.43G factors and we considered these as part of our decision making:

30.1 s.43G(3)(a) ERA (the identity of the person to whom the disclosure is made): it is relevant whether the person to whom the disclosure is made has a direct interest in the information.

30.2 s.43G(3)(b) ERA (seriousness of relevant failure): if a failure is very serious, this may justify a wider disclosures than would otherwise be justified.

- 30.3 s.43G(3)(c) ERA (whether failure continues): if a failure is ongoing, a disclosure about it is more likely to be reasonable (i.e. if it poses a future threat rather than is a past issue that is unlikely to be repeated) – see e.g. Jesudason.
- 30.4 s.43G(3)(d) ERA (whether the disclosure is made in breach of a duty of confidentiality owed by the employer to any other person): this is primarily addressed at instances where a worker's disclosure breaches a particularly important duty of confidence (e.g. between doctors and patients) and harms a third party (as per the comments of Minister Ian McCartney introducing the amendment and Richard Shepherd MP, one of the promoters of the bill – Parliamentary Debates, HC Standing Committee D, 11 March 1998). There is no absolute bar to protection where such confidentiality is infringed. This provision does not refer to confidentiality obligations owed by workers to their employer / past employer.
- 30.5 s.43G(3)(e) ERA (any action taken upon previous disclosure made to employer / prescribed person): as per Sir Patrick Elias in Jesudason (§25) it will often be unreasonable for there to be a wider disclosure if the concern has been dealt with; the converse also applies – when the concern has not been dealt with adequately, this may strongly suggest that a wider disclosure was reasonable.
- 30.6 s.43G(3)(f) ERA (compliance with whistleblowing procedures): the claimant suggested that this provision envisages circumstances in which a worker is still employed by an employer who has the power to do something about their concerns (i.e. when going through internal channels is still an option as opposed to making a wider disclosure). Using an informal route to raise concerns with one's employer (with a manager or senior manager) does not denote non-compliance with procedure (if there is any such procedure) – indeed, it is encouraged by the legislation. There may be times where the reaction of the employer to the initial disclosure is such that deciding against raising further concerns with them is reasonable. We took these suggestions into account as part of our decision making.

#### *s43H reasonableness*

- 31. When assessing the equivalent reasonableness test under s.43H(1)(e) ERA, a tribunal must have regard to all relevant circumstances and “*in particular, to the identity of the person to whom the disclosure is made*” – this is the only factor that must expressly be taken into account under s.43H ERA (the other matters at s.43G(3) ERA may be considered but there is no statutory requirement to do so).

#### *Failure of an exceptionally serious nature (s43H only)*

- 32. What may qualify as a failure of an exceptionally serious nature is a matter of fact and degree for the tribunal. The claimant suggested that the seriousness of the harm caused (or likely to be caused) is a fundamental consideration, as is whether the failure is ongoing and the number of potential victims. We took this suggestion into account as part of our decision making.

#### **Detriment**

- 33. Section 47B ERA states:

**47B Protected disclosures**

(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.*

34. "Detriment" does not have a statutory definition. However in Jesudason v Alder Hay Children's NHS Foundation Trust [2020] IRLR 374 the Court of Appeal accepted that the discrimination precedents are applicable and in particular applied two general principles: (1) 'detriment' is to be given a broad interpretation; and it is to be judged from the view point of the worker and (2) there is a detriment 'if a reasonable employee might consider the relevant treatment to constitute a detriment'.

35. No physical or economic consequences are necessary to establish detriment, and detriment can be found even if the detrimental action seems minor to an objective observer (Shamoon v RUC [2003] ICR 337). As a result, it is a low threshold (see Warburton v Chief Constable of Northamptonshire Police (2022) EAT 42). Employees are protected from any detriment: there is no test of

seriousness or severity and the relevant provisions could well be breached by detrimental action that seems minor to an objective observer.

36. In Ministry of Defence v Jeremiah 1980 ICR 13, CA, Lord Justice Brandon said that detriment meant simply *'putting under a disadvantage'*.

### Causation and the burden of proof

37. The leading authority on what is meant by the term "done on the ground that" is Fecitt and others v NHS Manchester (Public Concern at Work intervening) [2012] ICR 372. In that case the Court of Appeal stated that: *"liability arises if the protected disclosure is a material factor in the employer's decision to subject the claimant to a detrimental act."* A material influence is one that is more than trivial and it can be conscious or unconscious.
38. In Aspinall v MSI Mech Forge Ltd EAT 891/01 the EAT held that the words 'on the ground that' require a causal nexus between the fact of making a protected disclosure and the decision of the employer to subject the worker to the detriment. This mirrored the approach adopted in the context of victimisation by the House of Lords in Chief Constable of West Yorkshire Police v Khan 2001 ICR 1065. In that case it was held that the proper approach was not to ask whether 'but for' the protected act having taken place the treatment would have occurred, but rather what, consciously or unconsciously, was the employer's reason or motive for the less favourable treatment. Where a tribunal finds a motive for the less favourable treatment, and is satisfied that this is not consciously or unconsciously related to the protected act, the less favourable treatment cannot be said to be 'by reason' of the protected act. Accordingly, there is no victimisation. The EAT in Aspinall followed the approach in Khan when concluding that, *'for there to be detriment under S.47B "on the ground that the worker has made a protected disclosure" the protected disclosure has to be causative in the sense of being "the real reason, the core reason, the causa causans, the motive for the treatment complained of"'*.
39. Section 48(2) ERA provides that *".... it is for the employer to show the ground on which any act, or deliberate failure to act, was done"*. This does not mean that once a claimant asserts that he or she has been subjected to a detriment, the respondent must disprove the claim. Rather, it means that once all the other necessary elements of a claim have been proved on the balance of probabilities by the claimant — i.e. that there was a protected disclosure, there was a detriment, and the respondent subjected the claimant to that detriment — the burden will shift to the respondent to prove that the worker was not subjected to the detriment on the ground that he or she had made the protected disclosure.
40. Chatterjee v Newcastle Upon Tyne Hospitals NHS Trust UKEAT/0047/19/BA at [33]-[35] sets out the approach to the shifting burden of proof. Under s.48(2) ERA, the burden rests on the respondent to explain why a decision was taken, upon the claimant proving on the balance of probabilities, that there was a protected disclosure, he was subjected to a detriment and the conduct calls for an explanation (i.e. a *prima facie* case is established). If the Tribunal is not persuaded of the employer's explanation, that may (or may not) lead the Tribunal

to draw an inference against it, to the effect that the conduct was on the ground of the protected disclosure.

41. In Kuzel v Roche Products Ltd [2008] ICR 799, the Court of Appeal considered the operation of the burden of proof as regards the reason for the dismissal in an unfair dismissal case brought by reference to section 103A which protects employees from dismissal for having made a protected disclosure. Mummery LJ explained that the tribunal should decide first whether it accepts the reason for the dismissal advanced by the employer before turning, if it does not find that reason to be proved, to consider whether the reason was the making of the protected disclosure.

42. In his judgment Lord Justice Mummery also rejected the contention that the burden of proof was on the claimant to prove that her making of protected disclosures was the reason for her dismissal. However, Mummery LJ was in agreement with the EAT that, once a tribunal has rejected the reason for dismissal advanced by the employer, it is not bound to accept the reason put forward by the claimant. He proposed a three-stage approach to S.103A claims:

- (i) First, the employee must produce some evidence to suggest that his or her dismissal was for the principal reason that he or she had made a protected disclosure, rather than the potentially fair reason advanced by the employer. This is not a question of placing the burden of proof on the employee, merely requiring the employee to challenge the evidence produced by the employer and to produce some evidence of a different reason.
- (ii) Second, having heard the evidence of both sides, it will then be for the employment tribunal to consider the evidence as a whole and to make findings of primary fact on the basis of direct evidence or reasonable inferences.
- (iii) Thirdly and finally, the tribunal must decide what was the reason or principal reason for the dismissal on the basis that it was for the employer to show what the reason was. If the employer does not show to the tribunal's satisfaction that it was its asserted reason, then it is open to the tribunal to find that the reason was as asserted by the employee. However, this is not to say that the tribunal must accept the employee's reason. That may often be the outcome in practice, but it is not necessarily so.

43. The EAT in Osipov v International Petroleum Ltd UKEAT/0058/17/DA explained the approach to be taken to drawing inferences and the burden of proof in detriment claims is analogous to the approach set out in Kuzel. The EAT described it as follows:

*"Under s.48(2) ERA 1996 where a claim under s.47B is made, "it is for the employer to show the ground on which the act or deliberate failure to act was done". In the absence of a satisfactory explanation from the employer which discharges that burden, tribunals may, but are not required to, draw an adverse inference: see by analogy Kuzel v. Roche Products Ltd [2008] IRLR 530 at*

*paragraph 59 dealing with a claim under s.103A ERA 1996 relating to dismissal for making a protected disclosure.*

....

*Mr Forshaw submits and I agree that the proper approach to inference drawing and the burden of proof in a s.47B ERA 1996 case can be summarised as follows:*

- (a) the burden of proof lies on a claimant to show that a ground or reason (that is more than trivial) for detrimental treatment to which he or she is subjected is a protected disclosure he or she made.*
- (b) By virtue of s.48(2) ERA 1996 , the employer (or other respondent) must be prepared to show why the detrimental treatment was done. If they do not do so inferences may be drawn against them: see London Borough of Harrow v. Knight at paragraph 20.*
- (c) However, as with inferences drawn in any discrimination case, inferences drawn by tribunals in protected disclosure cases must be justified by the facts as found."*

## **Separability**

- 44. There are a number of authorities dealing with the potentially tricky situation where the employer claims that the reason for dismissal or detriment was not the protected disclosure itself but the manner in which the disclosure was made or some conduct associated with it. It is now well established that misconduct associated with a disclosure may be a potentially fair reason for dismissal or detriment separate from the disclosure itself.
- 45. In Bolton School v Evans 2007 ICR 641 the Court of Appeal found that as the employer's principal reason for disciplining the claimant was its belief that he had, at the same time as making the disclosure, committed an act of misconduct this meant that the claim under section 103A ERA must fail, as the disclosure was not the reason for the dismissal. The principle behind this decision applies equally to detriment claims where it is possible to draw a distinction between detriments emanating from the protected act and detriments emanating from acts of misconduct and/or breaches of the employer's rules associated with the manner in which the disclosure was made, not the disclosure itself.
- 46. We should bear in mind however that in Parsons v Airplus International Ltd EAT 0111/17 the EAT identified that there is a danger that a whistleblower may be perceived as a difficult colleague — sometimes with justification — and that '*it can be all too easy to think it is the manner of blowing the whistle that is the issue, when really it is simply the whistleblowing itself*'.
- 47. Nevertheless, if a feature or consequence of a protected act is properly and genuinely separable from it, and that is demonstrated to be the reason for the act/omission relied upon — liability is not made out (Martin v. Devonshires Solicitors [2011] ICR 352).

48. In Panayiotou v Kernaghan [2014] IRLR 500) the EAT accepted the need to guard against spurious attempts to separate out a feature from the disclosure, but confirmed that *"There is, in principle, a distinction between the disclosure of information and the manner or way in which the information is disclosed."*
49. Ms Darlow Stearn made a number of relevant observations on the legal position as regards separability and breach of confidentiality which we considered and took into account in our decision making.
50. Firstly, Ms Darlow Stearn drew our attention to section 43J ERA which provides as follows:

**43J Contractual duties of confidentiality.**

- (1) Any provision in an agreement to which this section applies is void in so far as it purports to preclude the worker from making a protected disclosure.
- (2) This section applies to any agreement between a worker and his employer (whether a worker's contract or not), including an agreement to refrain from instituting or continuing any proceedings under this Act or any proceedings for breach of contract.

51. Section 43J ERA applies to any contractual provision in an agreement between a worker and employer and renders void that provision insofar as it would prevent what would be a protected disclosure.
52. Ms Darlow Stearn also drew our attention to the judgment on separability in Kong v Gulf International Bank (UK) Ltd (Protected intervening) [2022] EWCA Civ 941, in which Simler LJ, as she then was, (alongside Underhill VP and Laing LJ) held at §57 that:

57. [T]he "separability principle" is not a rule of law or a basis for deeming an employer's reason to be anything other than the facts disclose it to be. It is simply a label that identifies what may in a particular case be a necessary step in the process of determining what as a matter of fact was the real reason for impugned treatment. Once the reasons for particular treatment have been identified by the fact-finding tribunal, it must evaluate whether the reasons so identified are separate from the protected disclosure, or whether they are so closely connected with it that a distinction cannot fairly and sensibly be drawn.

...

60. ...[I]f a whistle-blower's conduct is blameless, or does not go beyond ordinary unreasonableness, it is less likely that it will be found to be the real reason for an employer's detrimental treatment of the whistle-blower. The detrimental treatment of an innocent whistle-blower will be a powerful basis for particularly close scrutiny of an argument that the real reason for adverse treatment was not the protected disclosure. It will "cry out" for an explanation from the employer, as Elias LJ observed in *Fecitt*, and tribunals will need to examine such explanations with particular care.

53. The reference by Simler LJ to “ordinary unreasonableness” derives from Martin v Devonshire Solicitors UKEAT/86/10 [2011] ICR 352, a victimisation case, in which Underhill P, as he then was, said at §22:

Employees who bring complaints often do so in ways that are, viewed objectively, unreasonable. It would certainly be contrary to the policy of the anti-victimisation provisions if employers were able to take steps against employees simply because in making a complaint they had, say, used intemperate language or made inaccurate statements. An employer who purports to object to ‘ordinary’ unreasonable behaviour of that kind should be treated as objecting to the complaint itself, and we would expect tribunals to be slow to recognise a distinction between the complaint and the way it is made save in clear cases. But the fact that the distinction may be illegitimately made in some cases does not mean that it is wrong in principle.

54. Whether a breach of confidence goes beyond “ordinary unreasonable” conduct in a particular case, so as to be separable from a protected disclosure, is fact sensitive. Ms Darlow Stearn submitted that whistleblowing protection would be seriously undermined were an employer to be able to separate “disclosure” from a “confidentiality breach” with ease, the argument being that a worker was subjected to detriment because (an otherwise protected) disclosure was a breach of confidence. She said this would run contrary to the grain of authorities that emphasise that the common law of confidence is not determinative of how the issues arising under s.43G (and s.43H) ought to be resolved (see Street v Derbyshire Unemployed Workers’ Centre [2004] EWCA Civ 964, [2005] ICR 97).
55. Ms Darlow Stearn submitted that s.43J ERA must be considered when determining whether the disclosure in question actually amounts to a confidentiality breach or if the relevant confidentiality clause is rendered void by the operation of s.43J ERA. In circumstances where there is no such obligation of confidentiality (i.e. it has been rendered void), the claimant submitted that perceived confidentiality cannot be regarded as a properly separate factor (see e.g. Kaltz Ltd v Hamer UKEAT/0198/11/RN, 15 September 2011 at §16). Ms Darlow Stearn said that to do so would be to remove the teeth from s.43J ERA and s.47B ERA – allowing an employer to e.g. dismiss a worker for a protected disclosure, because of an erroneous perception that the disclosure breaches confidentiality.
56. Ms Darlow Stearn recognised that it may be argued that a protected disclosure could have been made without disclosing confidential information; however, she submitted that the legislation counsels against weighing to a nicety a whistleblower’s actions and expressly requires a whistleblower to make a disclosure of “information” (a claim may fail because a disclosure does not convey specific information). It may therefore be necessary to disclose particular details in order to convey the severity of a relevant failure (or how/why there is a failure), even if those details are, on the face of it, confidential (i.e. before the operation of s.43J ERA). Applying a too exacting standard in order to take a disclosure outside the scope of s.43J ERA, would, the claimant suggests, undermine the purpose of whistleblowing protection. Again we took into account these points in our decision making.

## **Findings**

### **Background**

57. We will first set out our findings on the relevant background before considering our findings specifically on the matters that we have to determine.
58. The claimant worked for the respondent as a vehicle architecture lead engineer.
59. Prior to working for the respondent the claimant had worked for Tata Technologies Ltd ("TTL") as a front suspension module leader and chassis test point man. During his time working for TTL the claimant was allocated to work on Vinfast vehicles.
60. TTL and the respondent are linked companies as they are both part of the Tata Group. Vinfast is a Vietnamese car manufacturer which does not currently sell cars to the UK market.
61. The claimant started employment with TTL on 12 September 2022. Prior to starting the claimant signed a confidentiality agreement ("NDA") with TTL.
62. The claimant's NDA with TTL included the following:
- 62.1 A definition of confidential information that includes "proprietary and sensitive commercial or technical information" (clause 1.3);
- 62.2 A definition of confidential information that includes information that is not marked as confidential at the time of disclosure but which consists "of information that, by its context, is sufficient to put the Recipient on notice of its confidential nature" (clause 1.3);
- 62.3 A confirmation by the claimant that he understood that TTL's confidential information about TTL "and its customers ... is very important to the Company" (clause 2.5);
- 62.4 A confirmation by the claimant that he understood that disclosure of "any Confidential Information to any actual or potential competitor ... would place the Company at a serious disadvantages" (clause 2.6);
- 62.5 Agreement that the claimant would not disclose, divulge, communicate ... and shall keep in the strictest confidence all and any Confidential Information and all other information and data related to [TTL]" (clause 3.2);
- 62.6 An acknowledgement of the facility for an agreed disclosure of confidential information (clause 3.4);
- 62.7 A requirement if a disclosure is made pursuant to a judicial or other governmental order, that disclosure should be of "only that portion of the Confidential Information that it is legally required to disclose" (clause 3.4);

- 62.8 A requirement that the claimant should “use the same degree of diligence and effort to protect [TTL’s] confidential information from disclosure to third parties as [C] uses to protect [his] own confidential information” (clause 3.5);
- 62.9 A requirement for the claimant to use “reasonable and customary diligence and effort” to protect TTL’s confidential information and a requirement to disclose only on a “need-to-know” basis (i.e. limiting disclosure to that which was necessary) (clause 3.5);
- 62.10 An agreement that TTL’s confidential information remained the property of TTL and its customers (clause 3.6);
- 62.11 A confirmation by the claimant of his understanding and acceptance that the agreement was “intended to protect [TTL’s] confidential information and intellectual property” (clause 9.6); and
- 62.12 An agreement by the claimant, in signing the agreement, that he had “carefully considered the nature and extent of the restrictions upon [him] and the rights and remedies conferred upon [TTL] under this agreement” (clause 9.8).
63. We did not find that the claimant’s NDA or any other contract between him and the respondent/TTL contained any provisions which purported to preclude the claimant from making a protected disclosure. The NDA and any relevant confidentiality clause were not void. As we shall explain it was unnecessary for the claimant to breach confidentiality at the same time as raising his safety disclosures. He could and should have raised his concerns without doing so.
64. Whilst he was employed by TTL the claimant worked on Vinfast models Vinfast6 and Vinfast7.
65. At all times when he worked on the Vinfast6 and Vinfast7 models the claimant was working on prototype versions of those vehicles. The claimant was involved in designing engineering solutions to fix problems which became apparent during the prototype testing phase of the vehicles’ development.
66. The essential nature of the claimant’s work was to identify problems on the prototype versions of the vehicles and then propose and work on solutions to fix them. A number of the problems identified by the claimant could pose a health and safety risk if not fixed. That there were problems that were identified and that needed to be fixed was entirely expected and the fundamental purpose of the prototype testing phase which the claimant was working on.
67. In the process of developing a vehicle it would go through a number of stages of testing. The first phase of testing would involve a prototype vehicle. A prototype vehicle would generally not use tooled parts and would not be assembled on a production line. Engineering issues discovered during a prototype testing phase may not be subjected to an immediate fix intended to be the permanent solution - a patch fix to enable continued testing might be appropriate. Solutions may be

designed for implementation in the next phase of the testing programme, even whilst testing of the prototype continues.

68. Following the prototype testing phase which the claimant worked on there would be further test phases, involving sequential iterations of the vehicle such as a phase trying out tooled parts and a pre-production test phase. As the claimant accepted in cross examination there would even be final testing of the intended launch vehicle capable of being produced from a production line process.
69. The claimant was not involved in any of the subsequent phases of testing after the prototype testing phase which he worked on.
70. There is no evidence to corroborate the claimant's suggestion that Vinfast (via TTL) indicated an unwillingness to address or fix any of the issues arising in the prototype testing phase. We do not accept that suggestion. It would be directly contrary to Vinfast and TTL's interests not to fix problems. It would undermine the whole purpose of testing. We find that the likely reality is that the claimant was raising engineering issues which became apparent during the prototype testing stage which required solution prior to final production and Vinfast/TTL were merely requiring the continuance of testing pending the institution of finalised solutions in subsequent iterations of the test models.
71. In support of that finding there was clear evidence before the tribunal which severely undermined the claimant's contention that Vinfast/TTL were unwilling to address or fix issues arising during the prototype testing phase:
  - 71.1 The claimant's evidence to the respondent on 11 July 2024 (which he accepted in cross examination was true) was that a fix to the 'knuckle' issue (that showed itself in March 2023 and was one of the matters he raised in his Reddit posts) was found/designed by him and 'Carl' in April 2023. The claimant failed to mention this fix at all in his witness statement. The claimant did not include in his extensive and very detailed statement on the engineering issues any suggestion that the April 2023 proposed fix was 'refused' by Vinfast/TTL. The claimant did not suggest to the respondent in July 2024 that the April 2024 fix was rejected. There was no evidence that any safety concerns arising from the knuckle issue identified in March 2023 remained at the mass production phase.
  - 71.2 We note that when he was questioned about the knuckle fix during the tribunal hearing the claimant suggested for the first time that the solution that he and Carl had devised for the knuckle issue in April 2023 was rejected. This was not what the claimant said in the meeting on 11 July and it was also not mentioned within the claimant's lengthy witness statement. We considered that what the claimant had actually said in the interview on 11 July 2024 was much more likely to be true i.e. that the knuckle issue had been fixed in April 2023.
  - 71.3 The PULSE document introduced into evidence during the hearing demonstrated a fix of the EDU bracket issue, which was another issue that featured strongly in the claimant's Reddit posts and witness statement. Within this document the claimant commented on 2 February 2023; "*Vehicles reworked in fleet with RIS mentioned by Seb, new design is acceptable and*

*mitigates any risk ... can be closed*". The claimant gave a convoluted and incredible account of why this document did not show a fix to the EDU problem. The tribunal did not accept this evidence – contrary to what was suggested in the claimant's written closing it was far from persuasive. We found it was much more likely that the document meant what it said – a new design had been found which removed any risk and therefore the matter could be closed. Again, the claimant failed to refer to that important fact in either his Reddit posts or his lengthy witness statement to the tribunal. It only came out because the respondent found the relevant evidence.

- 71.4 The PULSE document and the fix to the knuckle issue cast significant doubt on the claimant's oft-repeated assertion that engineering fixes always took many months, or even years, to implement. It appears that a fix to the EDU bracket problem was designed and closed off within a month and the knuckle issue was solved over a similar period - March to April 2023.
72. The claimant submitted his resignation from TTL on 12 April 2023 and he stopped working for TTL on 12 May 2023. By the time he left TTL the prototype testing phase of the Vinfast vehicles he had been working on had not concluded. The claimant did not know and could not know what fixes had been made after he left and prior to the mass production of the commercially available vehicles. Crucially, the claimant cannot say now, and so did not know when posting to Reddit, what engineering solutions were or were not effected after 12 May 2023 and prior to the Vinfast6 and Vinfast7 vehicles that he worked on being released for sale.
73. Part of the claimant's case before us was that he resigned from TTL "*as he felt the situation was wrong and he did not want to be involved with developing a dangerous vehicle*" (see paragraph 3(c) of the claimant's opening note). This was untrue.
74. The reason why the claimant resigned was not his safety concerns and the alleged insufficiency of response to them. This was clear from more contemporaneous evidence in the form of a conversation with Nick Gennard which the claimant covertly recorded. Mr Gennard was the Global Chassis Chief Engineer at TTL. The claimant covertly recorded a conversation with him on 25 July 2024. The transcript of this conversation, along with a number of other conversations which the claimant covertly recorded, were put in evidence before us. When Mr Gennard couldn't recall why he wanted to leave, the claimant reminded him: it was because of the difficulty of balancing the long hours with personal issues and an inability to commit to the long hours (from around 19.36 in the transcript). The claimant accepted he had not anticipated the long hours when he was persuaded to join TTL by Mr Gennard in 2022.
75. The claimant is unable to say now (and so was unable to say when posting his alleged protected disclosures to Reddit) when the Vinfast6/Vinfast7 was first mass produced for commercial sale or when it was released to any geographical market. The claimant has not produced any evidence to demonstrate the earliest point in time when either vehicle is reported to have been driven on public roads anywhere in the world.

76. The claimant's evidence is that he started seeing online reports related to the relevant Vinfast vehicles in around February to April 2024. Yet he did not produce one single report to substantiate this evidence. The absence of these reports was unexplained. In her closing submissions on behalf of the claimant at paragraph 162 Ms Darlow Stearn relied on the fact that the reports the claimant says he had seen supposedly contained information about "issues" with the vehicles he had worked upon as part of the claimant's case that he wished to warn drivers about the vehicles. We found it impossible to accept that point without the evidence that was relevant to it and which, presumably, would have been easily obtainable if the reports existed.
77. On 8 January 2024 the claimant started in his role as vehicle architecture lead engineer for the respondent. The claimant worked for the respondent via an agency and a managed service provider.
78. On 21 May 2024 there were reports online that a family of four in the USA had been killed when a Vinfast vehicle model Vinfast8 crashed into a tree.
79. The claimant sought to heavily rely on the Vinfast8 crash in America as justifying his subsequent actions in posting on Reddit. For example see paragraphs 141 and 142 of the claimant's closing submissions in which the crash is prayed in aid in support of the claimant's contention that he reasonably believed he was acting in the public interest and that the information he disclosed tended to show a risk to health and safety. Like many features of the case this slim piece of evidence cannot possibly bear the weight which the claimant seeks to place on it. It was one crash in a different vehicle to that which the claimant worked on and the cause of the accident was unknown. There is no evidence linking the claimant's safety concerns to the crash in America, only the claimant's unsubstantiated speculation that there may be a link. The claimant did not know and does not know the cause of the crash in America. It could be anything – including a simple accident that could have happened in any vehicle.
80. On 29 and 30 May 2024 the claimant made a series of posts on the Vinfast community on Reddit which is a social media app and website. The claimant posted on a sub-group called the 'VinfastCommunity' which had some 11,000 members. Those posts included:
- 80.1 Criticism of Vinfast as a company;
  - 80.2 Political comments about communists;
  - 80.3 Allegations of safety concerns with Vinfast vehicles;
  - 80.4 Detail/material/information that could only be known by someone with access to test results obtained during the prototype testing phase of Vinfast vehicles; and
  - 80.5 Admissions that the posts were in breach of confidentiality/NDA.
81. The following facts about Reddit are potentially relevant and agreed between the parties:
- 81.1 Reddit is a popular, worldwide online platform.

- 81.2 Posts in a sub-community may be viewed by users who are not members of that sub-community.
- 81.3 Posts in a sub-community may be fed to any user of Reddit if the algorithm deems it worthwhile in accordance with various factors.
- 81.4 Engagement with individual Reddit posts is measured by votes and comments and the number of votes each comment has is recorded below the comment itself.
- 81.5 The Vinfast sub community is public. It is not locked or password protected – so any Reddit user can access it and read the posts contained therein even if they are not themselves a member of that sub community.
- 81.6 Any Reddit user can use search terms to find and access the Vinfast sub community.
- 81.7 Reddit users, whether logged in or not, are provided with a ‘feed’ of content.
- 81.8 By way of recommendation algorithms, posts from the Vinfast sub-community might appear on a person’s feed, even though that person is not already a member of that sub-community.
82. The claimant’s Reddit posts included a mixture of information and allegations, and the information was a mixture of confidential and non-confidential material. However, as the claimant expressly admitted within his posts, it was crystal clear that what he was doing amounted to a breach of confidentiality and his NDA.
83. The claimant’s attitude towards the obvious breach of his NDA was summed up in the following quote from one of his posts: *“Fuck Vinfast and my NDA with them.... They are communists and don’t care about killing people”*.
84. Much time and energy was spent at the hearing before us on seeking to explain or justify why the claimant made the posts on a social media site like Reddit rather than making disclosures through one of the many more obvious paths that was open to him. We considered all of these arguments as part of our conclusions below. However we think it may be worth mentioning at this stage that these arguments had a strong sense of unreality about them. It was presented to us as if the claimant had carefully considered his options before deciding that posting on Reddit was the best thing to do. We don’t think that is what happened at all. At the end of the day the claimant is a young man who made a number of what we consider to be attention seeking posts on social media. We don’t think he went through any process of weighing up his options before he did that. Rather, it seemed clear to us that he acted much more on the spur of the moment and without thinking through the options open to him or indeed the consequences of what he was doing. To our mind that was obvious from the claimant’s reaction when the respondent asked him about the Reddit posts. Rather than explaining why he had made them the claimant’s response was to lie and say he was not the author, as we shall explain below. If the claimant had been acting responsibly and thought through all his options before deciding to post on Reddit then we think he would have explained that when challenged by the respondent.
85. On 6 June 2024 Patrick Flood the head of HR at TTL emailed Dave Williams the chief people officer of the respondent. Mr Flood asked Mr Williams if he could talk to him about *“an ex-employee of TTL and who is currently employed by JLR ...suspected of breaching a confidentiality agreement by disclosing on a public*

*platform customer sensitive data*". This was a reference to the posts which the claimant had made on Reddit.

86. On 7 June 2024 Mr Flood emailed Mr Williams again concerning the claimant's Reddit posts. Mr Flood's email was entitled "suspected confidentiality breach". Mr Flood described the claimant's posts as unacceptable and he said that they had disclosed customer sensitive data. He gave examples of the sensitive data which the claimant had disclosed. Mr Flood identified the claimant as appearing to have been the author of the posts.
87. It is in our view abundantly clear that TTL, via Mr Flood, was raising a concern that the claimant had breached confidentiality/his NDA by posting confidential material relating to specific vehicles that the claimant had tested. As Mr Flood said: *"information that was shared which was obviously confidential... he has referenced the durability of the front suspension bush, EDU bracket failures and the redesigns of the brackets, listed general chassis components"*.
88. It was not surprising that TTL, a company within the same group as the respondent, raised this concern with the respondent. As Mr Flood expressly said the concern was that the claimant could do the same thing at the respondent - *"the concern is if he has done this now, he could do the same at JLR"*. This concern was obviously heightened because as the claimant himself said in his posts he was working on some *"very secret stuff"* at the respondent.
89. There were internal discussions at the respondent about what to do. On 7 June 2024 Majid Ali the respondent's global head of risk emailed Mr Flood confirming that the respondent would investigate. Mr Flood replied to Mr Ali and he said that TTL's CEO viewed the matter in a very serious light, especially with the respondent and TTL both being part of the same group.
90. Mr Flood subsequently liaised with Martin Jones. Mr Jones was the respondent's corporate investigator who was allocated to look into the claimant's Reddit posts. Mr Flood sent Mr Jones a link to the relevant Reddit feed and annotated screen grabs. Mr Flood stated that the Reddit posts conflicted with the claimant's NDA with TTL. Mr Jones then emailed Mr Ali debriefing him on the discussions he had had with Mr Flood.
91. On 11 July 2024 the respondent decided that the claimant would be suspended. A teams meeting was held with the claimant, Mr Jones and Muntazim Nazir (the respondent's corporate investigations manager). The claimant was informed of his suspension.
92. During the meeting on 11 July 2024 the claimant was asked about the Reddit posts. The claimant was dishonest about whether he was the author of the posts. The claimant told a series of lies which were designed to disguise the fact that he had been the author of the posts. This was despite being expressly warned of that which should have gone without saying: the need to be honest.
93. Not only did the claimant deny making the posts he also did not suggest that the information he disclosed was a necessary whistleblowing disclosure, and in fact

he led the respondent to believe that the issues raised in his posts had been resolved (as per the discussion which we have mentioned about the knuckle issue).

94. Had he been honest and admitted the posts the respondent could have had a realistic and reasonable conversation with the claimant about the apparent breach of his NDA and the respondent's concerns arising from that. The claimant was directly asked whether he was the author of the Reddit posts and so he had that opportunity.
95. We agree with the respondent that the claimant's lies are not just relevant to the reason for his subsequent termination (since they go towards the loss of trust and confidence in the claimant's judgement and his ability/willingness to maintain confidentiality) but they also negatively affect the claimant's credibility before the tribunal. We do not think the claimant had any good reason for his dishonesty.
96. In the claimant's closing submissions at paragraph 153 he submitted that his dishonest denial of being the author of the Reddit posts was justified on the basis that he was afraid of losing his job. In our view however such blatant dishonesty was a factor which was likely to increase not decrease the risk of the claimant losing his job.
97. By far the most likely explanation as to why the claimant lied about being the author of the Reddit posts was that he wanted to disassociate himself from the clear evidence that he breached the NDA he had with TTL and had been completely blasé about doing so ("*Fuck Vinfast and my NDA with them....*"). It was obvious that the breach itself and the claimant's attitude towards breaching it would be a cause for concern for the respondent.
98. To the extent that the claimant may have been uncomfortable or stressed in the meeting on 11 July this was in our view attributable to the fact that he was lying. It would have made things much easier if the claimant had simply come clean - and as we have pointed out he then could have had a proper discussion with the respondent's investigators about what had happened and why.
99. Despite his dishonest denials the respondent found that the claimant was the author of the reddit posts and therefore he had lied to them in the meeting on 11 July 2024. It is now accepted by the claimant that the respondent was right – he was the author of the Reddit posts and he did lie about that in the meeting on 11 July.
100. On 18 July 2024 Mr Jones and Mr Nazir wrote to the claimant to inform him that a decision had been made to revoke his contract. The letter explained that after having reviewed the evidence the corporate investigations team had decided that the claimant had a case to answer regarding breaches of his NDA with TTL and of the respondent's code of conduct.
101. At this juncture we observe that many arguments were advanced on the claimant's behalf before us which amounted to what may be described as procedural criticisms of the process by which the claimant's contract was

terminated. However this is not an unfair dismissal case and we found that allegations of procedural unfairness do not get the claimant very far in the claim which is before us. There are no allegations of detriment based upon a failure to follow any particular procedural step. Furthermore, as is agreed between the parties the claimant was not a contractual employee. The effect of s.43K ERA does not transform the claimant from an agency worker into an employee for any purposes outside of Part IV ERA. The claimant was an agency worker with the respondent and therefore, consistently with their practice and written disciplinary policy, he was not subjected to a disciplinary process. The claimant had no contractual right to be disciplined in accordance with the respondent's disciplinary policy. We do not accept any suggestion that the respondent should have followed a process as described in its disciplinary policy. The respondent acted consistently with its policy in that it formed a view that there was a case for the claimant to answer, it referred the matter to the claimant's agency to "*deal with the matter in line with their policies and procedures*" and indicted the decision to revoke the claimant's contract with the respondent. For these reasons we have found that the procedural criticisms made by the claimant are not particularly relevant to the claimant's claim.

102. Finally in this section we should mention that after he was challenged as being the author of the reddit posts the claimant made a number of covert recordings, and he adduced those in evidence before us. In our judgement the claimant was unwise in deciding to covertly record conversations. There was no need for the claimant to do that and it does not reflect well on him at all. A feature of the recordings was that the claimant was attempting to get people to say things which may support his case. Largely this was unsuccessful and on analysis we felt there was little in the recordings of any real relevance. Therefore and in a similar way to the procedural criticisms we do not dwell on the recordings to any great extent in these reasons.

### **Our views on credibility and the parties' submissions**

103. The parties provided very substantial oral and written submissions. The respondent's written closing submissions were 47 pages. The claimant's written closing submissions were 118 pages. This was in addition to opening notes of 37 pages (claimant) and 5 pages (respondent). Reading and listening to submissions took a full day of hearing time. We have taken into account every point which was made to us either orally or in writing. It is not practical or proportionate to summarise such extensive submissions but we have considered them very carefully. Indeed, considering the claimant's submissions in particular took up a large part of the available time for deliberations and judgment preparation. It would be impossible to mention all the points raised by the parties in their submissions but we have considered everything, even if we do not specifically mention it in these reasons.
104. Although both sets of submissions were very articulate and comprehensive we have to say that after careful analysis we have found those of the respondent to be much more persuasive. The respondent's submissions were more credible and more closely aligned with the evidence that we saw and heard. In contrast the claimant's submissions had a tendency towards

exaggeration/putting the case too high. We have given some examples of that below. Moreover the claimant's case often boiled down to encouraging us to accept what the claimant said simply because he said it. This was done absent any corroborative or supporting evidence and where the evidence that was available appeared to us to undermine the claimant's case. The claimant's case was in our view very heavy on unsubstantiated assertion and very light on evidence based submissions.

105. The respondent was right in our view to suggest that we ought to take into account wider questions of credibility and reliability based on the whole evidential picture - rather than just rely on the claimant's "say so". When we did that we found the claimant's position to be incredible and unreliable. We found the respondent's reasons for doubting the claimant's reliability and credibility as expressed in their submissions to be compelling. We have referred to our reasons for doubting the claimant's credibility throughout this decision and we highlight a number of the important points which led us to find the claimant incredible here:

105.1 The claimant's dishonesty in the meeting on 11 July 2024 (see above).

105.2 The claimant's failure to refer in his evidence to the fixes to knuckle and EDU bracket issues which were found and implemented whilst he was still working for Vinfast (see above).

105.3 The misleading evidence provided by the claimant at paragraph 100 of his statement (see below).

105.4 The false explanation the claimant gave to the tribunal about his reasons for resigning from TTL (see above).

105.5 The claimant provided a number of photographs to the tribunal which were supposed to show the safety issues he had identified while working on the Vinfast prototype vehicles. On analysis we found that the claimant had attempted to misrepresent/exaggerate this evidence. In particular on the photographs at 375-378 in the bundle the claimant's descriptions referred to "*again joint loosening on this vehicle too*". This expressly invited a finding that the same issue was identified on several vehicles. In fact however the photographs were of the same vehicle. There was nothing in the claimant's evidence that clarified that they were not in fact different vehicles (and therefore not evidence of a recurring problem). Instead, the claimant was forced to accept (for the first time) in cross examination that the photographs showed the same vehicle and so showed one instance and not several. Similarly, without explanation at pages 366 – 8 of the bundle the claimant provided different photos but of the same vehicle. The description applied to the photos by the claimant, without further explanation, suggests multiple examples of the same alleged problem when they are actually one example of the alleged problem. Despite the lengthy and convoluted attempt by the claimant to explain away these issues with the photographs (repeated in the written closing submissions) we reached the clear view that the claimant had obviously attempted to mislead the tribunal into thinking the photographs were of multiple vehicles when in fact it was the same vehicle. Plainly this detracted from the claimant's credibility.

- 105.6 In his covertly recorded call with Mr Gennard the claimant misled Mr Gennard (knowing he was recording the conversation and presumably doing so for the purpose of securing evidence without Mr Gennard's knowledge) into believing that he had it *"in writing as proof"* that Vinfast's CEO told TTL's CEO who told the respondent's CEO that the claimant must be sacked (see the transcript at p.20, time stamp 17.36). This was another lie. There is no evidence of such a chain of events, certainly no written proof. If that existed then we are sure it would have been put before us. However, the claimant was extremely reluctant, in cross examination, to accept that this written evidence didn't actually exist. Having been taken to all the documents suggested as relevant, the claimant finally accepted that his comment to Mr Gennard was wrong but said he *"didn't intend to lie"*. We have to say that we cannot accept that suggestion. This was a brazen lie, which was clearly designed to make Mr Gennard think the claimant had a strong case.
- 105.7 The claimant covertly recorded another call with David Essen, a test engineer. The claimant told Mr Essen that prior to making his Reddit disclosures he raised the issues at the respondent and had evidence of doing this *"many times, and what their response was"* (see transcript p.97 at 23.01-23.22). In fact there is no evidence whatsoever that the claimant ever raised the issues with the respondent and no evidence as to what the respondent's response was or would have been. This was another brazen lie, again designed to make Mr Essen think the claimant had a strong case.
- 105.8 The claimant now admits that he did not travel to Vietnam whilst working for TTL. However, he led his audience on Reddit to believe he had first hand knowledge of a malicious lockdown in Vietnam (without any reference to the fact that this was actually a lockdown during a Covid lockdown).
- 105.9 The claimant's case before us involved the contention that he had been told whilst working for TTL on Vinfast vehicles that engineering solutions would not be implemented to fix identified problems. However, Whistleblowers UK wrote *"on behalf of Mr Denli"*, their *"client"*, on 3rd September 2024 (with his permission) and they said that he had been *"told that these defects would be corrected at a later stage in the development"*. As we have explained this is exactly what would be expected from a normal programme of vehicle development. But it is the opposite of the claimant's evidence to the tribunal. In the hearing before us the claimant attempted to disassociate himself from that letter to an extent by saying he had no prior notice nor had he seen it prior to sending it, but he did not suggest in his statement that it inaccurately portrays what he had said to Whistleblowers UK. It seems unlikely to us that they would make something like that up. We found that what the letter states was the truth, and the claimant has been dishonest in his evidence to us suggesting something different.
- 105.10 It also appears that the claimant told Whistleblowers UK that *"despite assurance that the flaws would be addressed and remedied the family car went into full production"* and that after the commencement of full production *"lethal flaws"* were ignored. The claimant could not know whether that that was true

because he did not even know when the Vinfast6 or Vinfast7 went into to mass production, let alone what engineering solutions were adopted after he left during the prototype testing phase and whether they sufficiently addressed the issues identified during prototype testing.

106. In contrast we had no reason to doubt the credibility of the respondent's witnesses. The respondent's witness evidence was generally substantiated by the documentary/contemporaneous evidence that was available, whereas the claimant's was not.

107. For these reasons we have preferred the respondent's submissions and observations on the evidence and felt able to accept and adopt some, but not all, of those submissions/observations in preference to those of the claimant.

## **Disclosures**

108. The claimant now relies only on his Reddit posts as protected disclosures. It is no longer suggested that the raising by the claimant with TTL (and thereby to Vinfast) of engineering issues that needed to be 'fixed' (with, presumably, varying degrees of unquantified potential safety risk attached to them), was the raising of protected disclosures.

109. We have found that the claimant did not make any protected disclosures by way of his Reddit posts. We will set out our relevant findings.

## **Qualifying disclosure under s.43(B): information**

110. The respondent, we find rightly, accepts that the Reddit posts contained information. Indeed it is part of the respondent's case that they unnecessarily contained confidential/proprietary information. We agree with the respondent about that.

## **Qualifying disclosure unders.43(B): public interest**

111. The tribunal has concluded that the claimant had a genuine belief that he was disclosing information in the public interest. However we find that that belief was not reasonable. We reach that view for the following reasons.

112. As confirmed in his closing submissions at paragraph 141 the claimant's case was that he believed he was protecting the public by making disclosures about how dangerous the vehicles he worked on were and/or the fact that the health and safety issues he had raised had been covered up. The claimant's belief in these matters was not reasonable.

113. The claimant was aware that some of the issues he was raising in the Reddit posts had been fixed before he left and so they could not be safety issues that could impact upon public safety (for example see our findings as to the knuckle and EDU bracket issues above).

114. The claimant was aware that he left before the end of the prototype testing phase and before the launch of the commercially available version of the vehicles he worked on. The claimant was not even aware of when that final launch stage had been reached. The claimant could therefore not know what had been achieved to fix problems after he left and so he could not know the extent to which any of his alleged concerns arising from issues identified at the earlier prototype stage of testing remained an issue with the final vehicle which was purchasable by the public.
115. We have considered the claimant's argument that he was aware of the normal timescales for engineering solutions and releases to be performed and that he believed based on that knowledge that the fixes required could not have taken place. The tribunal found that this argument to be speculative and not based on any proper evidence. The claimant sought to introduce (via his evidence in cross examination, for the first time) evidence about 'typical' timescales for engineering releases but produced no evidence to substantiate any of what he said. Characteristically, the claimant's argument was not based on any supporting evidence and was reliant entirely on his assertion. We did not accept this assertion because it was not based on any corroborative evidence and we found the claimant to be incredible for the reasons we have explained.
116. Moreover, the evidence which was available – in particular that surrounding the fixes to the bracket and EDU issues – demonstrated that fixes could be, and were, implemented quickly.
117. For these reasons we did not accept the claimant's argument to the effect that "typical" timescales for engineering solutions meant that he reasonably believed the problems he identified could not have been fixed.
118. We also do not accept the claimant's argument that the Vinfast8 crash in America made his belief that the disclosure of information was made in the public interest reasonable. The crash in America occurred in a different vehicle to the models the claimant had worked upon and he had no reasonable basis for believing that the accident was due to any of the issues that he had identified during the prototype testing phase of the Vinfast6 and 7 models.
119. The important reality of this case is that the claimant simply did not know what work had been done to the cars he worked on before they reached the final launch version. We agree with the respondent that there is no public interest in safety issues which have arisen during prototype testing - only in safety issues which are not sufficiently resolved in the final commercially available version of the vehicle. In reality the claimant was raising concerns about, at most, failures as he saw it to resolve the engineering issues he identified in the prototype testing phase in the manner or at the speed at which he deemed most appropriate during that phase. He did not know and could not know how the issues were resolved by the time of the final production phase. In those circumstances what the claimant was referring to in his Reddit posts was akin to a private workplace dispute the disclosure of which served the private interest of the claimant only, and it was not reasonable to believe that it was in the public interest.

**Qualifying disclosure unders.43(B): tended to show**

120. The tribunal accepts that the claimant believed that the disclosures tended to show:

120.1 that the health or safety of any individual had been, was being or was likely to be endangered, and

120.2 that information tending to show the health or safety of any individual had been, was being or was likely to be endangered, had been, was being or was likely to be deliberately concealed.

121. However we do not find that that belief was reasonable. Our reasons are as follows.

122. The claimant's knowledge was restricted to engineering issues that he had observed during the prototype testing phase. He had no knowledge of the extent to which these issues had been resolved prior to production of the commercially available launch vehicle. The whole purpose of the prototype testing phase was to identify and work on the type of engineering issues which the claimant had identified in order that health and safety risks are avoided. The claimant did not disclose or have access to any information which could reasonably be viewed as tending to show that the engineering issues would not be resolved or had not been resolved in the launch vehicle. The claimant's belief that the issues would not be, or had not been, resolved was an unfounded suspicion.

123. It was not reasonable for the claimant to rely upon the fact that permanent engineering solutions were not put in place during the prototype testing phase as being tantamount to a situation of an unwillingness or failure to put in place sufficient solutions prior to launch. As we have explained the production process allowed for solutions to be developed closer to launch.

124. In respect of a number of the concerns which the claimant expressed in his Reddit posts he was identifying safety issues in relation to things that he knew had been fixed. For example, the knuckle fix and the EDU bracket fix which we have already explained above.

125. We do not accept the suggestion in the claimant's evidence that TTL or Vinfast ever refused or indicated an intention to refuse to implement any solution for any of the safety issues which the claimant identified. This struck us as a fanciful suggestion. It would be against their interests to refuse to implement engineering solutions to safety issues. There was no evidence that this had taken place other than what the claimant said. The evidence that was available showed that fixes proposed by the claimant had been adopted with the effect of resolving the engineering/safety concerns (the knuckle issue and the EDU bracket issue). We felt that if there had really been a refusal to implement engineering solutions to safety concerns then the claimant would not have waited so long to make his disclosure.

126. As confirmed in his submissions at paragraph 141 the claimant's case is that he reasonably believed that the information laid out in Appendix B in the list

of issues “tends to show” that there was a risk to health and safety due to the faults in the car’s design, which could cause injury, a serious accident and/or fatalities. We have firmly kept in our minds that “tends to show” is a lower hurdle than “shows”. We nevertheless considered that the claimant’s belief was not reasonable for the reasons that we have explained.

127. The other part of the claimant’s case is that he reasonably believed that the information “tends to show” that such information had been, was being or was likely to be deliberately concealed. In this context the claimant relied on an assertion that he was told by senior management at TTL and Vinfast to dismiss or bury concerns. This assertion was not supported by any corroborative evidence and was again reliant entirely on the claimant’s “say so”. It fell to be considered in light of our finding that the claimant was an incredible witness. It was relevant that the evidence which is available undermines the claimant’s assertion that he was told by senior management at TTL and Vinfast to dismiss or bury concerns. The evidence in fact demonstrates quite the opposite – i.e. that the claimant was involved in fixing concerns which were raised and that the fixes had the effect of resolving the engineering/safety issues which were identified even within the prototype testing phase (see our findings on the knuckle and EDU bracket issues). We therefore do not accept the claimant’s assertion in this respect. The reality was that the claimant did not disclose or have access to any information which could reasonably be viewed as tending to show that information had been, was being or was likely to be deliberately concealed. The claimant’s belief in concealment was an unfounded suspicion.

128. The claimant’s case, as expressed in his closing submissions, was put as high as this:

*“The cars went to market with some of the issues he identified unresolved. The Claimant’s belief that the issues were not addressed / deliberately concealed is therefore objectively reasonable”.*

There was no evidence to support the extreme assertion that cars went to market with some of the issues that the claimant identified unresolved. If the claimant believed that then it was an unfounded suspicion and certainly not a reasonable belief. The claimant did not know and could not possibly know what further fixes had been implemented after he left on 12 May and before the vehicles went into production. The claimant’s belief that the issues he raised were not addressed/deliberately concealed is therefore not reasonable.

### **Wider disclosure under s43G: substantially true**

129. The claimant believed that the information he disclosed in the Reddit posts and any allegations it contained were substantially true. However we consider that this belief was not reasonable. Our reasoning is essentially the same as what we have already expressed. The claimant was in substance alleging that he had safety concerns about commercially available vehicles. However the reality was he was referring in part to issues he knew had been or would be fixed. Further, having left the Vinfast6/Vinfast7 project on 12 May 2024 he was referring to

issues where he simply could not know whether they remained issues in the launch vehicle.

130. We have borne in mind that the information itself does not have to be substantially true; rather, it is the claimant's belief at the time that is under scrutiny, which may be mistaken. Further, the test is "substantially true", as distinct from "true" – there is therefore a margin of error. However the situation here is that the claimant simply did not know whether the issues he was talking about presented any current or future risk to the public. There was no reasonable basis for the claimant to believe that the issues he was referring to did present any risk because of course he knew full well that he had been working during the prototype testing phase of the vehicles' development. The essential purpose of that phase was to identify problems and then solutions which could be implemented in later phases of vehicle development. The claimant did not know and could not know the extent and nature of the solutions that were adopted in the later phases of vehicle development.

131. In his submissions on this point (in particular at paragraph 142 of his written closing) the claimant suggested that the tribunal should accept his evidence that that it was "highly unlikely" that the issues would have been adequately resolved by the time the vehicles were on the road on the basis that his answers to this effect in cross examination were consistent. In the tribunal's view this is insufficient. The claimant did not produce any corroborative evidence to support his suggestion, including as to the usual timescales for implementing engineering fixes. The evidence that was available suggested that fixes could be and were implemented quickly (for example the knuckle and EDU bracket issues). The claimant did not know the production timescales after he left, including when the final production vehicles were launched. The claimant did not know what work had been done after he left. Therefore the claimant's belief that it was "highly unlikely" that issues had been left unresolved in production vehicles was completely speculative and plainly unreasonable.

### **Wider disclosure under s43G: personal gain**

132. The question of whether the claimant was acting for personal gain when he made the Reddit posts was in our view finely balanced. Making a disclosure on Reddit is highly unusual and the reasons why the claimant chose to do so were in our view opaque.

133. The claimant seemed to enjoy being the centre of attention on Reddit. There was evidence of that in the bundle on page 394 when he shared a previous Reddit post with a colleague and he delighted in the fact that everybody was listening to him on Reddit. Furthermore when he made his Reddit posts the claimant adopted a reactive approach of inviting questions via the ask me anything tool. This tool was plainly designed to, and did, encourage engagement from other users. It was essentially attention seeking. It was an odd way to raise what the claimant now asserts to be very serious safety concerns because it meant that if nobody had responded or the claimant had not been asked the right questions then he would not have raised his concerns at all. This made us

question whether the claimant's intent had been genuinely to raise safety concerns, as opposed to courting attention on Reddit.

134. We felt that there was certainly an element of the claimant wishing to gain attention and positive engagement on the Reddit platform. This was self-aggrandisement which could in our judgement legitimately be viewed as a form of personal gain. On balance however and perhaps giving the claimant the benefit of some doubt we concluded that personal gain in the sense we have identified was part of the claimant's reason for making the Reddit posts but it was not his primary or dominant motive. We therefore concluded that the claimant was not acting for personal gain within the meaning of s.43G(1)(c) ERA or s.43H(1)(c) ERA.

### **Wider disclosure under s43G: detriment by employer**

135. We reminded ourselves that fear of detriment does not have to be the only reason why the claimant decided against disclosing to his employer for this precondition to be satisfied.
136. The tribunal found that at the time he made the disclosure the claimant did not reasonably believe that he would be subjected to detriment by his employer if he made a disclosure to his employer. The tribunal considers that the claimant had no reasonable basis to believe that he would be subjected to detriment by either the respondent or TTL if he made a disclosure to either of them. We will explain our reasons.
137. There is no evidence that TTL detrimentally treated the claimant for reasons related to him making disclosures. There is no corroborative evidence to support any suggestion that TTL threatened to detrimentally treat the claimant. We do not accept that they ever did that. We refer to the findings we have made about the claimant's lack of credibility. Furthermore, part of the claimant's case is that he raised disclosures to TTL about his safety concerns (see paragraph 17 of this witness statement) – yet he does not suggest that he was subjected to detriment for having done so.
138. TTL had its own process for making protected disclosures. In our judgement there was no reasonable or indeed rational basis for the claimant to fear detrimental treatment had he raised his concerns via that process.
139. Similarly there was no evidence that the respondent subjected the claimant to detriment or gave him a reasonable basis to believe that he would be subjected to detriment if he made a safety disclosure. It seems to us particularly unlikely that the respondent would have subjected the claimant to detriment for having made a safety disclosure about a competitor's vehicle. The claimant would reasonably have known that.
140. In our judgement there was no cogent or credible evidence of anything that the respondent had said or done to substantiate a reasonable belief that the claimant would be detrimentally treated if he raised a protected disclosure. During the tribunal hearing there was a focus on paragraph 100 of the claimant's witness

statement in this context. That was the part of the claimant's evidence which it was suggested led to his reasonable belief that he would be detrimentally treated if he raised a protected disclosure. However, on analysis paragraph 100 did not actually contain any evidence of detrimental treatment or threat of detrimental treatment for having made a disclosure.

141. In paragraph 100 the claimant made an allegation that the respondent had a culture of instructing engineers not to create written records of safety issues. The claimant referred to a single example of this practice. The single example occurred in November 2018 (over 5 years before he made the Reddit posts). The example related to a crash test video in one of the respondent's vehicles. The claimant said he received this video via email and that it showed a rear subframe "violently protruding" into the fuel tank which was a serious fire risk.
142. After much debate at the hearing the claimant elected not to pursue the allegation that there was a culture of instructing engineers not to create written records of safety issues, and that he would not be inviting the tribunal to make any finding as to whether what could be seen in the video constituted a serious fire risk.
143. However, the claimant maintained the contention that the video he received showed a rear subframe violently protruding into the fuel tank and that the communication, or lack of communication, around the video supported the reasonableness of the claimant's belief that he would be detrimentally treated by the respondent if he raised a protected disclosure about safety issues in Vinfast vehicles. This perceived link by the claimant was never particularly clear to us. Nevertheless we wanted to explore the issue fully due to its seriousness and potential importance. We therefore watched the video with the parties several times in open tribunal. The video showed absolutely no penetration of the fuel tank, let alone a violent penetration. The claimant's statement in our judgement quite plainly contained a fairly outrageous exaggeration. We did not accept the claimant's unconvincing attempt to explain this away in cross examination which involved a convoluted and incredible attempt to persuade us that in engineering technology the word penetration has a double meaning that includes intrusion into package space. This explanation had not been provided in the claimant's witness statement and, again, no corroborative evidence was provided to support it.
144. Moreover when we looked into the matter further by examining the contemporary emails around the video, which were attached to the respondent witness Guy Higgins' supplemental statement, they did not show, as was suggested by the claimant, that the respondent had discouraged engineers from writing about the safety issues the video showed or that the respondent had encouraged a form of "careful communication" which involved avoiding expressly talking about safety issues.
145. The reply to the email attaching the video from the claimant's engineering colleague Alex Langton showed that there was a written record both of the video and what it showed in terms of the engineering issues arising from it. Mr Langton's response contained an accurate description of what the video actually

showed i.e. the subframe moving further forward closer to the fuel tank. This was not careful communication – rather it was accurate communication, as opposed to the inaccurate and exaggerated description which the claimant gave us in his witness statement.

146. The respondent did not seek to prevent a reply to the email attaching the video in November 2018, as there was a reply. The respondent did not seek to avoid a paper trail in relation to the issue identified within the video, as there was a paper trail by reason of the email chain which was provided to the tribunal in evidence. The respondent did not encourage anybody to downplay the issue which the video showed. It was the claimant who, over 5 years later, tried to exaggerate the issue for his own purposes. This incident from 5.5 years previously provided no reasonable or indeed rational basis for the claimant not to raise concerns about Vinfast with the respondent in May 2024.

147. In short the video was being shared openly and the claimant's colleagues were openly and in written format discussing what it showed and what should be done about it. In our view therefore both the video itself and the contemporaneous email chain completely undermined the points which the claimant was attempting to make in paragraph 100 of his statement.

148. Furthermore, the tribunal accepted the evidence of Mr Higgins as to the means by which workers at the respondent are encouraged to disclose safety concerns, including in particular via the grey alert reporting system. We accept the evidence that shows that the claimant was made aware of and encouraged to use that system - in particular we refer to the email from Mr Tomlinson dated 24 May 2018. The claimant was aware of the means by which the respondent encouraged its workers to disclose safety concerns and he had no reason to fear detriment if he did so.

149. We should note that we encouraged the claimant's counsel at the end of Mr Higgins' evidence to put any evidence to him to support the contention that the claimant reasonably believed that the respondent would subject him to detriment if he disclosed to them. We did not want to put the claimant's counsel on the spot unfairly, but we felt this was an important point that ought to be covered in the evidence. Ms Darlow Stearn undoubtedly did the best she could in what was no doubt a difficult position but the reality was that she was unable to put a single piece of evidence to Mr Higgins. Instead what was put was a string of generalised and unsubstantiated assertions to the effect that whistleblowing was discouraged at the respondent and the respondent's attitude to whistleblowing was negative. These assertions were vague and unsupported by any evidence. We do not accept them.

150. There is no cogent or evidential basis for the contention that the claimant reasonably believed that he would be detrimentally treated by the respondent or TTL if he raised a disclosure about Vinfast safety issues.

151. In his closing submissions at paragraph 139 the claimant put his case very high in relation to matters which were said to justify a reasonable belief that he

would be subject to detriment if he made a disclosure to the respondent. The tribunal was asked to make a number of extreme findings as follows:

- 151.1 that the respondent's approach was to draw as little attention as possible to safety concerns in written communication;
  - 151.2 whistleblowing was discouraged by the respondent;
  - 151.3 the respondent's attitude to whistleblowing was negative;
  - 151.4 the respondent discouraged people from putting safety concerns in writing;
  - 151.5 the respondent cares more about protecting commercially sensitive information than dealing with safety concerns, and;
  - 151.6 the respondent cares more about protecting confidential information than dealing with safety concerns.
152. Those findings would be wholly unjustified on the strength of the evidence that we saw and heard. The claimant did not come close to establishing an evidential basis for making those sort of findings. We decline to make them.

#### **Disclosure under s43G: previous disclosure**

153. On the question of whether the claimant previously made a disclosure of substantially the same information to his employer the claimant relies on alleged disclosures that he made to a previous employer, TTL, rather than to the respondent who is the employer that he alleges subjected him to detriment.
154. The disclosures which the claimant relies upon are limited to disclosures that he says he made to TTL on 18 January 2023 about the Vinfast6 and 7 vehicles. The claimant says that these disclosures were safety concerns related to front suspension, rear suspension, speed of development, problems with the knuckle connections and problems with the EDU brackets.
155. We accept that the claimant raised these issues with TTL. It was part of the claimant's job to raise such issues during the prototype testing phase so that they could be identified and fixed prior to launch.
156. Raising the issues in that context and on that basis did not amount to a disclosure of substantially the same information as was raised in the Reddit posts. Identifying engineering issues to be addressed and fixed as part of the prototype testing phase is not substantially the same information as identifying engineering issues that have not been resolved in the commercially available launch vehicle such that they are a danger to the public.
157. Vinfast/TTL had not had the opportunity to address the claimant's concern that fixes would not be made or had not been made to safety issues prior to the launch of the production vehicle and the claimant was not discussing a failure to address his original concern to that effect, because the claimant had never raised such a concern before.
158. The fixes to the knuckle and EDU bracket issues underscores the difference between the two issues. The evidence shows that these issues were

resolved at a later stage in the prototype testing phase and therefore they were no longer issues by the time the commercially available launch versions of the vehicles were produced.

159. Information about issues identified in testing when the vehicle is still in a phase of such issues being resolved is not substantially the same as information about issues existing in commercially available versions of the vehicle. We consider that this is a critical and fundamental difference between the information disclosed to TTL and the information disclosed in the Reddit posts. It is a difference that goes to the heart of the principle that is in play here - that disclosures should first be made to the employer before “going public”. The claimant has not demonstrated that the information he disclosed in his Reddit posts was not being disclosed for the first time. We find that the information the claimant disclosed in his Reddit posts was being disclosed for the first time.

### **Wider disclosure under s43G: reasonable to make the disclosure**

160. We find that it was not reasonable for the claimant to make the Reddit disclosures. We had regard to the factors listed in s43G, and all the circumstances of the case. We will set out our relevant findings.
161. We considered firstly the identity of the person to whom the disclosure was made. We considered that the scale and nature of the claimant’s audience on Reddit was such that it made disclosure to that audience unreasonable. The first important point to make is that the audience for the claimant’s Reddit posts was very wide. It encompassed those who were members of the Vinfast sub - community but it also included those who might search for information about Vinfast or about vehicle safety issues and people who the Reddit algorithm determined may be interested in the issues. The claimant was in effect posting publicly and his posts could conceivably be seen by very many people - hundreds of thousands and possibly even millions of users on the Reddit platform.
162. The claimant did not investigate who might be able to view his post before he posted on Reddit. The claimant had no idea as to the identity of the other users since users are anonymous. They might have included for example competitors of the business whose confidential information he was sharing.
163. There was no reason to believe that any person on the Reddit sub - community would be in a position to do anything about the alleged safety concerns.
164. We refer to the findings we have already made to the effect that part of the reason for the claimant posting on Reddit in the way that he did was to court attention and for self aggrandisement.
165. In her closing submissions Ms Darlow Stearn asked the tribunal to consider Ms C Stewart v Foreign Commonwealth and Development Office (ET case no. 2204590/2022), and we have done so. Stewart was a whistleblowing detriment and dismissal claim in which the claimant was found to be protected under s.43G ERA. The “person” to whom the disclosure was made was the

broadcast media, in the form of the BBC. The claimant avers that the “person” in this case is the Vinfast subcommunity Reddit. We accept that point in part. We say in part because the way in which the Reddit platform operates (in particular the algorithm bringing posts to other users’ attention) means that the disclosure went beyond the Vinfast subcommunity. This was not just an extended audience which flowed from posting on social media – it is part and parcel of the way in which the Reddit platform operates. Also, we have to observe that a social media platform such as Reddit is a very different type of person to the BBC. The BBC is a well respected national broadcaster which has strict editorial guidelines it follows before deciding what to broadcast. Reddit is a social media platform on which virtually anybody can post virtually anything.

166. We agree with the respondent that it is relevant when considering all the circumstances of the case to take into account the fact that the claimant had not previously made a disclosure of the same information before he went public. See our analysis above as to why we consider that the claimant had not previously made the same disclosure to Vinfast or TTL.

167. We further agree with the respondent that it was not reasonable or necessary for the claimant to go public with his disclosure before having raised it with his employer, TTL or Vinfast.

168. During his employment with them the respondent provided the claimant with multiple means by which he could have made safety disclosures. These included ways in which disclosures could be made anonymously to the respondent directly, or to a third party provided by the respondent. We consider that the respondent would have been well placed to advise on whether the claimant’s concerns were in fact valid and how he could best bring them to the attention of relevant bodies and regulators without breaching his contractual duties to TTL. After all, the respondent is a very large and well-known car manufacturer with a global reach and it was a fellow group company to TTL. It was entirely likely that the respondent would have been able to make a positive difference in relation to the claimant’s concerns about Vinfast.

169. TTL also had a variety of methods for making protected disclosures which included ways of doing so via anonymous reporting - including via a web portal, via a telephone helpline operated in several different countries and via the general counsel or chair of the audit committee. TTL was an obvious point of report bearing in mind its knowledge of the reality of the situation and engineering issues as at May 2024 and its likely influence over Vinfast. However, having not made any protected disclosure to TTL whilst working for them the claimant elected not to make his disclosures to TTL. It would have been particularly reasonable and appropriate for the claimant to make his disclosure to TTL first because that would have been in accordance with the requirements of the NDA which he signed with TTL.

170. The claimant also could have raised his disclosure to a relevant regulator. This would have been a much more reasonable method than Reddit. The claimant could have made his disclosure to:

- 170.1 The National Highway Traffic Safety Administration, which is the US regulator responsible for enforcing vehicle performance and safety standards. The claimant was aware that NHTSA had opened an investigation into the Vinfast8 accident in April 2024 as this was referred to within his posts. As we have explained the claimant relied heavily on the Vinfast8 crash as justifying his posting to Reddit. The claimant's case to the tribunal was that his knowledge of components used on the Vinfast6 and Vinfast7 vehicles was relevant to the safety of the Vinfast8 vehicle. There was no evidence that there was such a link but if the claimant really held this belief then we found it was particularly surprising and unreasonable that he elected to provide his evidence to a section of the general public on social media rather than to the regulator who was specifically investigating the crash. The claimant suggested he had not disclosed to NHTSA because he believed their investigation would take a long time and he might not be interviewed for years. Once again no evidence to substantiate this belief was put before the tribunal, and it would be extremely surprising if the US regulator sat on information for that long rather than act on it if the information was relevant to a safety issue in cars that were commercially available in the US.
- 170.2 The Driver and Vehicles Standards Agency, which is the UK body responsible for receiving reports about serious safety defects related to the way in which vehicles are designed (see page 826 of the bundle). We have taken into account the claimant's point that the Vinfast vehicles he was working on were sold to a foreign market and they were not commercially available in the UK. However the vehicles were tested by a UK company in the UK.
- 170.3 The Competition and Markets Authority. The CMA is prescribed by statute as the appropriate UK body for reporting matters concerning the sale of goods which adversely affect the interest of consumers. This description appears entirely apt to cover the matters that the claimant wished to raise. It does not limit relevant consumers to UK consumers and again it would appear to be relevant that the situation the claimant wished to report involved a UK registered company carrying out testing within the UK, albeit for a foreign manufacturer.
- 170.4 The motor ombudsman, which is the UK body responsible for raising standards in the motor industry including providing dispute resolution when complaints cannot be resolved.
171. At the very least it seems to us that the bodies identified above would have been well placed to raise awareness in relation to safety issues on Vinfast vehicles or to provide advice on how to raise safety concerns with equivalent regulators elsewhere, without the need for public dissemination of confidential/proprietary information.
172. Similarly, the Whistleblowing UK and Protect organisations would have been able to provide useful advice to the claimant about how best to make his disclosures both in terms of the identity of the person to whom he should direct the disclosures and in relation to the content including how to achieve the aim of

making the safety disclosures without revealing confidential proprietary information or compromising the claimant's anonymity.

173. Taking all these other options into account we considered that if the claimant had been genuinely interested in raising safety concerns as effectively as possible then he would not have posted publicly on Reddit as his first step. As we have mentioned already the claimant's decision to post on Reddit did not appear to be part of a well thought out plan to make disclosures to the most appropriate audience. If the claimant had gone through an exercise of considering all possible routes of disclosure then it was very surprising that he chose Reddit as that seemed to us to be one of the least appropriate/reasonable routes of disclosure. We felt it was much more likely that the claimant had acted on the spur of the moment and that he had not researched the appropriate means of raising disclosures before he went on social media and did so in a way which publicly published confidential information and was a breach of his NDA. This was not reasonable.
174. We accept that the failures reported by the claimant were serious because they related to vehicle safety. However the true seriousness of the issues which the claimant was reporting was in our judgement undermined by two significant factors which we have made relevant findings on already. Firstly, the claimant has a clear tendency to exaggerate engineering issues for his own purposes. Secondly, the claimant was not in a position to know or comment on the seriousness of the safety issues or the alleged failures that remained when the disclosures were made in May 2024 because his knowledge was limited to concerns which had been raised during a prototype testing phase and he had no knowledge of how and when those engineering concerns may have been resolved prior to the launch of the commercially available vehicles. We therefore find that what the claimant was reporting was not very serious.
175. The tribunal did not receive any evidence of reports of safety or engineering issues or accidents with the Vinfast6 or 7 vehicles which might have supported the claimant's case that the issues he was reporting were particularly serious because they still existed as at May 2024 and/or in the commercially available versions of the vehicles.
176. Nevertheless, the claimant's position (as confirmed in his written closing submissions) was that this was an exceptionally serious matter as "*fatalities had and were likely to continue to occur on a mass basis globally*". This was another clear example of exaggeration/putting the case too high. There is no evidence of mass fatalities having occurred and no evidence suggesting that they were likely to occur in the future. The claimant's assertion to this effect was fanciful and entirely unsubstantiated. The claimant cannot have reasonably believed it. Similarly, in his closing submissions on this point the claimant suggested that there was a "*continued cover up of the issues*". Again there is no evidence in support of this extreme assertion. We find there was no cover up and the claimant cannot have reasonably believed that there was.
177. For reasons related to the timing of his departure from the Vinfast project that we think we have already explained the claimant was not in a position to

know or reasonably comment on whether the relevant failures he was reporting were continuing or likely to occur in the future. Any belief the claimant had to the effect that failures were continuing or likely to occur in the future was wholly speculative and unreasonable. In our judgement there was no evidence from which it could properly or reasonably be concluded that the failures identified by the claimant were continuing as at May 2024 or were likely to occur in the future. It was simply completely unknown and unknowable to the claimant. As we have explained the evidence which is available tends to suggest that problems identified by the claimant were fixed and therefore any relevant failure was not continuing or likely to occur in the future.

178. In our judgement breach of a duty of confidentiality is a relevant issue. We accept the claimant's point that he was not in breach of any duty of confidentiality owed by his employer (the respondent) to any other person. However in our view we should consider the duty of confidentiality owed by and to TTL in relation to all the circumstances of the case.

179. TTL owed a duty of confidentiality to Vinfast, including to safeguard its proprietary information. TTL owed Vinfast a duty of confidentiality in relation to matters such as test data and the details of the developmental stages of the Vinfast6 and 7 vehicles. The claimant owed a duty of confidentiality to TTL, which included a duty to safeguard both TTL and VinFast's proprietary information. This duty was expressly contained within the NDA which the claimant entered into with TTL.

180. In his Reddit posts the claimant divulged confidential/proprietary information. In particular, his posts contained multiple examples of information that could only be known via testing such as the life expectancy in miles of the knuckle joints, the life expectancy in terms of vehicle life of the bushes, life expectancy in miles of the suspension fixings and expected performance at 50% and 75% of open throttle. We agree with the respondent that there was no necessity for the claimant to divulge confidential and proprietary information such as test results in order to raise the safety concerns that he had. The claimant clearly and unnecessarily breached the duty of confidentiality which he owed. He was then blasé about having done so (*"Fuck Vinfast and my NDA with them...."*).

181. As we have already explained the claimant had not previously made a disclosure of substantially the same information and this meant neither Vinfast nor TTL had had the opportunity to deal with the substance of the claimant's concern, which was that fixes to the safety /engineering issue he identified had not been implemented in the commercially available launch versions of the vehicles.

182. In line with the duties of his role at TTL the claimant had identified engineering/safety issues which had been identified during the prototype testing phase of the vehicles that he was working on. In our judgement there was no evidence that there was a failure to take sufficient or appropriate actions in relation to these reports prior to the launch of the commercially available vehicles. As we have explained the evidence that was available (i.e. in relation the knuckle and EDU bracket issues) demonstrated that appropriate action was taken. We

do not accept the claimant's broad assertion in his submissions that TTL *"did not take appropriate action when [he] raised concerns to them regarding Vinfast vehicles"*. The claimant was not able to provide any evidence of what happened after he left TTL and there is no evidential basis for a finding that TTL or Vinfast failed to act appropriately after that date, in particular that they failed to sufficiently resolve engineering or safety issues prior to the launch of the vehicle.

183. The claimant did not at any stage make use of the various procedures authorised by both TTL and the respondent for making disclosures.

#### **Disclosure under s43H: substantially true**

184. We refer to and apply the findings we have already made as to whether the claimant reasonably believed the information he disclosed and any other allegation contained in it were substantially true. In summary the claimant did not reasonably believe that the information he disclosed and any other allegation contained in it were substantially true. The claimant simply did not know and could not reasonably believe that his allegations as to safety issues remained relevant/pertinent in May 2024. There was a vital gap in the claimant's knowledge because he did not know what had been done to address the engineering/safety issues since he left his employment during the prototype testing phase and did not know what had happened prior to the commercial launch of the finalised versions of the vehicles.

#### **Disclosure under s43H: personal gain**

185. We found that part of the reason why the claimant acted in the way he did was for personal gain in the sense that we have identified but that was not the dominant motive.

#### **Disclosure under s43H: exceptionally serious**

186. The relevant failure was not of an exceptionally serious nature. We refer to and apply our findings above about matters which undermine the seriousness of what the claimant was reporting. The claimant did not know and could not know the extent to which the issues he had identified during the prototype testing phase had been fixed. The evidence which was available demonstrated that the issues the claimant had identified had been fixed. There was no evidence produced by the claimant to suggest that exceptionally serious safety failures remained in the commercially available versions of the vehicles. The claimant had no reasonable basis for believing that they did – it was just speculation. The fact that a fatal crash had occurred in a Vinfast8 vehicle did not underscore the exceptional severity of the claimant's concerns. This was a crash in a different model to the ones the claimant worked on, the cause of the crash was unknown and there was no evidence of any link between the crash and the issues the claimant identified while working on different models.

#### **Disclosure under s43H: reasonable to make the disclosure**

187. It was not reasonable in all the circumstances of the case for the claimant to make the disclosure. We have already explained our reasons for that finding. We had regard in particular to the identity of the person to whom the disclosure was made and we have already explained our views as to why the scale and nature of the claimant's audience on Reddit demonstrated that it was not reasonable to make the disclosure on Reddit.

## **Detriment**

188. For the reasons explained above we have found that the claimant did not make any protected disclosures. Nevertheless we went on to consider if the claimant was subject to the detriments alleged.
189. Mr Jones and Mr Nazir did not carry out the investigation meeting with the claimant on 11 July 2024 in a high-handed and/or aggressive manner. There was nothing in the contemporaneous hand written notes or the typed minute to support that suggestion. The notes/minutes were not doctored in any way and they were an accurate reflection of what had taken place. The claimant did not complain about the meeting at the time. We consider that the claimant would have complained at the time had such conduct really taken place.
190. The claimant accepted that there was no shouting at the meeting or anything like that. To the extent that the claimant found the meeting difficult we found that was attributable to the fact that he was telling lies. In addition to Mr Jones and Mr Nazir there were two people in the meeting as HR support. They did not raise any concerns at the time of the meeting. We consider they would have raised concerns had such conduct really taken place. Further, it was extremely unlikely that Mr Jones and Mr Nazir would have behaved in the way alleged in front of two attendees from HR.
191. The claimant subsequently covertly recorded conversations with the people who attended from HR. In those conversations they neither made nor agreed with any suggestion to the effect that the meeting had been carried out in a high-handed and aggressive manner. The claimant obtained no supporting evidence relevant to his claim that he was treated in a high handed or aggressive manner.
192. Even looking at the matter more broadly we consider that the manner in which the meeting was conducted was not detrimental. During the meeting the claimant was told at the outset the nature of the allegation and he was given the opportunity to answer relevant questions in relation to it. The claimant had the chance to explain himself. He was asked whether he was the author of the Reddit posts – this was the key question which indicated to the claimant the nature of the allegation and the purpose of the meeting. Had the claimant answered honestly it could have led to an open and reasonable discussion about why the claimant had posted on Reddit. It was the claimant's choice to adopt an entirely dishonest and false position, which led the discussion into a dead end.

193. Mr Jones and Mr Nazir suspended the claimant on 11 July 2024. The respondent accepted that the suspension was detrimental. That concession was rightly made.
194. Mr Jones and Mr Nazir terminated the claimant's role on 18 July 2024. The respondent accepted that was detrimental. That concession was rightly made.
195. Mr Jones did not instruct Magnit (a platform used to identify and recruit individuals) to blacklist the claimant on or around 18 July 2024. Mr Jones denied instructing Magnit to blacklist the claimant. The relevant witness called by the respondent from Magnit to deal with this allegation was Shirley Wylde, a senior client services consultant. Taken together the evidence from these two witnesses on this matter was clear, credible and compelling, and we accepted it.
196. Mr Jones informed Ms Wylde on 16 July 2024 that the claimant had been terminated for gross misconduct. As Ms Wylde's email to Tim Clarke dated 18 July shows she understood, correctly, from speaking to Mr Jones that the claimant had been "*terminated for gross misconduct, for breach of non-disclosure agreement*". Mr Jones' communication with Ms Wylde did not amount to an instruction to Ms Wylde to blacklist the claimant.
197. As Ms Wylde explained an employee terminated by the respondent for gross misconduct is "red flagged" on the internal system for managing Magnit's contract with the respondent. This was done because of Magnit's own system and not because of any instruction by Mr Jones. It was not a blacklisting – it would affect only an application by the claimant to work for the respondent via Magnit. It has no wider implications. It is an automatic consequence of the termination for gross misconduct. This system had been in place for years prior to July 2024. The purpose behind this aspect of Magnit's system is clear and obvious – it is to prevent people who have been terminated for gross misconduct from being reselected for recruitment to the respondent.
198. On 26 September 2024 Guy Higgins, Director of Compliance, Ethics and Risk at the respondent wrote a letter to the CEO of Whistleblowers UK, Georgina Halford - Hall. Mr Higgins' letter was in response to a letter written by Ms Halford Hall to the CEO of the respondent about the claimant who was at that stage described as a "client" of Whistleblowers UK. Mr Higgins was asked to respond to that letter on behalf of the respondent's CEO. In his letter Mr Higgins did not suggest that the claimant would not be able to distinguish between sensitive commercial information and disclosures relating to serious endangerment to life and that he was a risk to a future employer. The letter did not say this expressly and it could not reasonably be implied from the contents of the letter.
199. Mr Jones wrote a letter responding to the claimant's grievance. The relevant letter was actually written on 20 September 2024 not 29 September 2024 as suggested within the list of issues. We believe the difference is down to a typographical error in the list of issues and that we can fairly consider the letter of 20 September. In his letter Mr Jones did not suggest that the claimant would not be able to distinguish between sensitive commercial information and

disclosures relating to serious endangerment to life and that he was a risk to a future employer. The letter did not say this expressly and it could not reasonably be implied from the contents of the letter.

200. We therefore find that the only detrimental treatment which took place as alleged by the claimant was his suspension and his termination.

## **Causation**

201. Although we did not find that the claimant made a protected disclosure we considered the question of whether the alleged detriments were done on the ground that he made the Reddit disclosures in any event.

202. We reminded ourselves that the detrimental treatment must have been done on the ground that the claimant made a disclosure in the sense that the disclosure had a material influence. This requires consideration of the mental processes of the respondent's decision makers – what caused them to act as they did?

203. There was no evidential basis upon which it could be inferred that the manner in which Mr Jones and Mr Nazir conducted the meeting on 11 July 2024 was on the grounds of the disclosures. Mr Nazir and Mr Jones were experienced, trained and reasonable professional investigators who were simply following their normal process.

204. As regards the suspension of the claimants we clarify firstly that we found that the decision to suspend was taken solely by Mr Jones and Mr Nazir. The decision was taken to Mr Ali for alignment and Mr Ali confirmed that he agreed with the decision and the reasoning. That did not equate to the decision being taken by Mr Ali.

205. The tribunal accepted the rationale given by Mr Jones and Mr Nazir in their witness statements for the suspension. The reason for suspending the claimant was the preservation of evidence while the investigation continued and the protection of the respondent's confidential information pending determination of the risk posed by the claimant. The tribunal considered this to be a cogent and credible explanation. There is no basis to reject it as false or a sham.

206. We were also satisfied that it was Mr Jones and Mr Nazir who took the decision to terminate the claimant's contract. It was a decision they took independently and not as a result of any pressure applied by Mr Flood or anyone else.

207. We note that we fully considered the claimant's case that TTL instructed the respondent to terminate his contract. The reality was that there was no evidence to support this aspect of the claimant's case. There was nothing to indicate that TTL had dictated to Mr Jones and Mr Nazir what they should do. It was all a matter of conjecture and suspicion on the part of the claimant. Whilst Mr Flood had brought the posts to the respondent's attention and he did indicate that TTL felt the matter was serious, that its CEO had expressed that view, and

that it wanted the matter expedited none of that amounts to an instruction to dismiss/terminate. TTL did not have that authority and the respondent did not owe TTL that duty. A desire for expedition is not an express or implied instruction to dismiss. We found Mr Jones' evidence on this subject to be clear, credible and compelling: as a matter of professional conduct he was unwilling to be dictated to and sought to ensure that his investigation was independent, even to the extent of verifying the existence of the Reddit posts.

208. Mr Jones' and Mr Nazir's rationale for dismissing the claimant was set out in full within their witness statements. The tribunal found the explanation they gave to be cogent and credible. We accepted it as being the genuine reason why the claimant was terminated. There was no basis to reject it as false or a sham. In summary, the rationale was:

208.1 That the Reddit posts included confidential material (in the form of information that could only be known/shared by someone with knowledge of the results of testing);

208.2 That the claimant was subject to an NDA;

208.3 Having found that the claimant authored the Reddit posts: that he had breached his NDA and the Code of Conduct (and Social Media policy, albeit that was not in the bundle) by posting confidential material;

208.4 That the claimant had lied in his interview in breach of the Code of Conduct;

208.5 That the above factors gave rise to concerns about continued trust/confidence and the risk that the claimant might not abide by his confidentiality agreement with the respondent in the future.

209. We accepted the evidence of Mr Jones and Mr Nazir to the effect that they did not rely upon on any upon any one Reddit post or any combination of posts but rather they took account of the extent of the confidential material disclosed through the whole of the posts. They looked at each post in order to see whether there was confidential and/or sensitive information in it. As Mr Jones explained in his evidence, and we accepted, this meant that the raising of safety concerns was not relevant to the decision which they reached. They were not investigating and could not investigate the veracity of the claimant's safety concerns. It was the clear breach of confidentiality within the posts which caused them to terminate the claimant, not the raising of safety concerns.

210. As regards the code of conduct the tribunal accepts the evidence that the decision makers regarded, correctly, the relevant breaches as breach of confidentiality and breach of trust. As Mr Nazir explained in evidence, and we accepted, the claimant's failure to be open and transparent during interview on 11 July was a relevant factor in assessing whether there had been a breach of the code of conduct. Indeed it seemed very clear to us that the claimant's dishonesty at interview was a significant influence on the decision to terminate the claimant.

211. As we understood it from the way his case was put at trial the claimant's position was that Mr Jones and Mr Nazir deliberately sought to mislead the tribunal as to their true reasons for terminating the claimant. In other words that

they were seeking to cover up a reality that the claimant's contract was terminated because of an adverse reaction to his raising safety concerns and because of pressure from TTL applied for this reason. The tribunal considered that there was little to no evidential basis for this position, and we don't think that what the claimant is suggesting is what really happened.

212. We did not find it surprising that Mr Jones and Mr Nazir gave further explanation in their witness statements as to their rationale for dismissal than they had in the decision letter or the grievance outcome letter. In our judgement this was not a basis for an adverse inference and/or a finding that Mr Jones and Mr Nazir have lied to the tribunal as to their reasoning. In any event on analysis we agreed with the respondent that in the contemporaneous documentation there was reference to the reasoning that Mr Jones and Mr Nazir had presented to the tribunal. In particular the contemporaneous documents refer to:

- 212.1 Breach of trust;
- 212.2 Concern about a risk to the respondent's confidential materials;
- 212.3 Breach of NDA, including by detailing technical information, and admitting breach in the posts;
- 212.4 Particular concern about the NDA breach in the context of the claimant's admission that he was currently working on 'very secret stuff' with the respondent;
- 212.5 Breach of the Code of Conduct (which includes the duty to be honest/truthful);
- 212.6 Finding that the claimant had lied in his interview when he denied being the author of the Reddit posts;
- 212.7 Conclusion in light of "findings" (which include the finding that his interview denials were untrue) that his conduct "raised serious concerns about the security of JLR's own sensitive and confidential information that he would have access to" and that JLR "were not satisfied that he would comply with his obligations of confidentiality towards JLR".

213. We did not consider that reliance on damage to reputation as a feature of the decision making amounted to a concern about reputational damage arising from safety disclosures. In our view whilst it could realistically be argued that Vinfast might have such a concern the respondent would not. Moreover the concern about damage to reputation was consistent with the respondent's conclusion that the claimant had publicly breached his NDA with TTL which gave rise to embarrassment and risk of damage to reputation for TTL and the Tata group of which the respondent is part.

214. We concluded that the termination of the claimant's role was on the ground of a loss of trust/confidence in the claimant because of the manner of his disclosures (not the fact of him raising safety concerns). The particular factors which led to the claimant's termination were the breach of his NDA, his unnecessary use of confidential/proprietary information, and his dishonesty in relation to his behaviour. All of these matters gave rise to a genuine and reasonable belief that the claimant might behave in a similar way towards the respondent's confidential/proprietary information which was as the claimant himself asserted "very secret". These were matters which were separate to the

disclosure of safety concerns. In light of those matters the claimant's conduct could not properly be regarded as blameless and what he did went way beyond what might properly be regarded as ordinary unreasonableness.

215. We fully considered Ms Darlow Stearn's point that an employer should not be able to separate "disclosure" from "confidentiality breach" with ease for the reasons she articulated but we were of the clear view that the distinction had been properly made out in this case. In this case the employer had not based its decision on an erroneous perception that the disclosure breached confidentiality. The termination decision was based on the facts that the claimant committed a flagrant, serious and wholly unnecessary confidentiality breach, and then lied about it.

216. The alleged blacklisting was done because of Magnit's system that was put in place to ensure that people who had been terminated for gross misconduct were not accepted to work again for the respondent via Magnit. Mr Jones told Ms Wylde that the claimant had been dismissed for gross misconduct because the claimant had breached his NDA and the code of conduct, including the provisions as to breach of trust which the claimant had broken due to his dishonesty at interview.

217. With regard to the contents of the letters written by Mr Higgins and Mr Jones there was no basis for finding that the content was on the ground of the disclosures. The letters were responsive and the content was given in order to respond to issues raised in the letters that were being responded to. The content was provided in order to explain the respondent's reasoning in relation to the issues raised.

218. For these reasons we would have concluded that none of the alleged detriments were done on the ground that the claimant had made a disclosure. The respondent would have proved that the claimant was not subjected to detriment on the ground that he had made a protected disclosure.

## **Conclusion**

219. For all the reasons set out above we conclude that the respondent did not subject the claimant to detriments on the ground that he made protected disclosures. The claim therefore fails and is dismissed.

Employment Judge Meichen  
Approved on 28.9.26  
Sent to the parties on:

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For the Tribunal Office:

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