

EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8002185/2025 (V)

Final Hearing – Dundee ET (in person) on 22-26 June 2026

Employment Judge Tinnion

Mr. C. Reilly	**Represented by** **Mr. R. Bradley, Advocate**
The University of Dundee	**Represented by** **Mr. E. Gilligan, Solicitor**

JUDGMENT

1. The Claimant's claim of 'automatic' unfair dismissal under s.103A of the Employment Rights Act 1996 is not well founded and is dismissed.

2. The Claimant's claim of 'whistleblowing' detriment under s.47B of the Employment Rights Act 1996 is not well founded and is dismissed.

REASONS

Introduction

1. By an ET1 attaching Grounds of Claim presented on 8 September 2025 following ACAS early conciliation, Claimant Mr. C. Reilly brought two claims against the Respondent, his former employer The University of Dundee (**University**): first, 'automatic' unfair dismissal under s.103A of the Employment Rights Act 1996 (**ERA 1996**), premised on the Claimant having been constructively dismissed at a meeting on 1 July 2025; second, 'whistleblowing' detriment under s.47B of ERA 1996 relating to a post-termination detriment. By an ET3 attaching Grounds of Resistance dated 8 October 2025, the University denied both claims.

2. A preliminary hearing for case management was held on 11 December 2025. The final hearing was held on 22-26 June 2026. Both parties were legally represented. A joint production bundle of 755 pages was provided – references in square brackets are to that bundle. The Tribunal heard witness evidence from the following: the Claimant;

Prof. Nigel Seaton, Elise Gallagher, Gregory Colgan, Richard Maconachie, Dr. Alison Ramsey, Grant Hill, and Roderick Isles. The Tribunal was satisfied all witnesses sought to give their genuine best recollection of events. Due to time running short, the parties made closing submissions in writing on 10 July 2026, with judgment reserved.

Issues

3. The issues were discussed with the parties and settled at the outset of the final hearing. Appendix 1 hereto sets out the issues the Tribunal was asked to consider.

Findings

4. The findings of fact in this Judgment were made on the balance of probabilities based on the evidence presented at the final hearing and inferences drawn from that evidence (or lack thereof). Those findings were limited to those necessary to decide the Claimant's claims – a point of importance given the matters noted at paras. 80 and 88 below.

5. Claimant. The Claimant is a senior finance professional who for just over 1 week in late June 2025 was the University's Interim Chief Finance Officer (one of several in that or equivalent posts in the preceding 12 months). Following a successful application, by letter dated 9 June 2025 and attachment Elise Gallagher, then 'Director of People' (ie, head of HR) wrote to the Claimant setting out the main terms of his full-time appointment as Interim Chief Financial Officer (**CFO**) – his start date was 23 June 2025, his salary was £185,000 p.a., his term was until 23 December 2026, and his duties and responsibilities were to be those reasonably required of him by the Interim Principal (at the time, Prof. Shane O'Neill). At the time of his appointment, the Claimant had substantial experience at various universities, but no prior experience at Dundee.

6. Respondent. The Respondent is the well-known Scottish university based in Dundee. At all relevant times the University's principal governing body has been the 'Court of the University of Dundee' (**Court**). Court membership included the Chair of Court, the Principal, staff council members, student representatives, and co-opted lay members.

7. Funding. At all relevant times, the University's main sources of funding came from (1) tuition fees for undergraduate and graduate students (sometimes paid directly, sometimes by SAAS for Scottish students, sometimes by the Student Loans Company for other UK students) (2) research grants/contracts (3) grants from Scottish government body the Scottish Funding Council (**SFC**) (4) student accommodation/ residents (5) commercial activities (6) private donations. Of these sources, SFC funding was historically one of the most important. The University was legally accountable to the SFC for how it spent SFC funding. The SFC, in turn, was legally accountable to the Scottish Parliament for its own funding/spending decisions. The SFC was (and is) a recipient of substantial public monies (at the relevant time approaching £2 billion per annum), and as such was at all relevant times subject to numerous legal duties as well as numerous "good practice" non-legal duties concerning how that money was allocated and spent.

8. Financial crisis. It is a matter of public record, and not in dispute, that in 2024 and 2025 the University was in the midst of a major financial crisis threatening its ongoing solvency and operational viability. It is also not in dispute that this crisis was, to a significant extent, one of its own making. On 19 March 2025 in testimony to the Scottish Parliament's Education, Children and Young People's Committee, Interim Principal Prof. O'Neill attributed the crisis to (1) inadequate financial discipline and control of investment decisions (2) weak compliance (3) a lack of financial accountability in financial control (4) inadequate oversight at executive level (5) inadequate oversight at 'court' level (ie, the University's own internal decision-making body) (6) a failure to address the structural deficit caused by an imbalance in the organisation (the need to cross-subsidize the University's particularly research-heavy focus). Neither party disputed these were many of the key reasons why the University was in the dire financial straits it found itself.

9. The University engaged financial advisers AAB to perform a review for the period 1 August 2019 – 31 October 2024 to establish if there had been a failure of financial reporting to the (University) Executive Group and Court and review the University's assessment of cash movements over the preceding 4 years. In April 2025, AAB issued their report, their summary of which concluded (1) internal financial reporting documentation presented to the Executive Group and Financial and Policy Committee in 2023/24 was not of adequate detail to set out the University's financial challenges and position (2) cash reporting was inconsistent throughout, with most papers omitting cash reporting, significant capital expenditures continuing to be incurred during a period of operational challenges having a pronounced impact on cash balances, with high levels of unbudgeted operating expenses.

10. In 2024-2025, Ernst & Young **(E&Y**) were the University's external auditors (a role they had performed for nearly a decade). The University's financial year ran from 1 August to 31 July. E&Y was unable to complete its audit of the University's accounts for financial year 2023-24 in 2024 or the first quarter of 2025. By a "*very serious*" letter to Court dated 16 April 2025, E&Y summarised the matters affecting their ability to complete the 2023-24 accounts and potentially affecting their ability to continue as auditors: (1) incomplete/inaccurate responses to governance inquiries (2) inaccurate or incomplete responses from management during the audit process (3) possible misrepresentation by management regarding the financial status and future prospects of the University, including negotiations with lenders about covenants attached to the University's Bank of Scotland credit facility (4) submission of an inaccurate 'going concern' assessment that could not be reconciled with internal evidence available to management at the time of drafting or supported by management evidence during the internal audit challenge (5) evidence suggesting senior management had been aware of these issues but not taken appropriate, timely action to address them (6) information showing that other issues had been raised to senior management and others charged with governance but not addressed (7) individuals stated information pertaining to the University's financial position had been suppressed, including by senior management.

11. Public disclosure of financial position. On 12 November 2024, the University's financial situation was disclosed to Court. On 13 November 2024, the University publicly announced it was facing a financial crisis, estimating its anticipated deficit at roughly £25 – 30 million. The SFC were informed.

12. Leadership/management changes. The University's financial crisis precipitated or coincided with significant management change (outsiders described it as turmoil). In November 2024, Director of Finance Peter Fotheringham resigned, replaced by Helen Simpson (Interim Director of Finance). In December 2024, Principal Iain Gillespie resigned, replaced by Prof. O' Neill. In late 2024, Wendy Alexander (Vice-Principal International) resigned. In February 2025, Amanda Millar (Chair, Court) resigned.

13. Court meeting (3 June 2025). A Court meeting was held.

14. Gillies Report (19 June 2025). The SFC commissioned Prof. P. Gillies (former Principal and Vice-Chancellor, Glasgow Caledonian University) to establish why the University's financial position had deteriorated so seriously and suddenly. Prof. Gillies prepared a report for the SFC dated 19 June 2025 which (summarising) concluded the main causes of the financial failure were largely specific to the University, and included (1) poor financial judgment, inadequate management and reporting (2) poor monitoring of financial sustainability KPIs (3) senior leadership's lack of agility in responding to a fall in income (4) weak governance relating to financial accountability by the Court. Prof. Gillies concluded these failings were compounded by a top-down, hierarchical style of leadership and management, a lack of transparency/clarity regarding financial data, and a culture in which challenge was actively discouraged.

15. The publication of the 'Gillies Report' had an immediate impact. On 19 June 2025, Prof. O'Neill resigned as Interim Principal and Vice-Chancellor, leaving the University leaderless. Exercising his power as Chair of Court, and after consulting the SFC, Dr. Iain Mair asked Prof. Nigel Seaton (then Provost) to step up to act as Interim Principal and Vice-Chancellor pending the appointment of a permanent Principal and Vice-Chancellor. Prof. Seaton accepted, and on about 20 June 2025 took on those roles on an interim basis. Prof. Seaton had little time to prepare before he attended Court on 23 June 2025 in his new senior leadership capacity.

16. Financial Recovery Plan. It was common ground in 2025 that the University urgently needed a credible financial recovery plan (**FRP**) acceptable to key stakeholders. What was not common ground was who should prepare it and how it should be procured. However, there was a deadline – the SFC had asked the University to submit its FRP to it by 6 August 2025. On 26 May 2025, the University Audit and Risk Committee considered a paper giving three options regarding the procurement of the FRP: first, a desktop comparison of the suppliers on the CCS Restructuring and Insolvency Services Framework Agreement; second, a competition between those suppliers; third, an open tender process. Allan Tough (Head of Procurement) was asked to prepare a paper for consideration at the 23 June 2025 Court meeting.

17. Mr. Tough and Rose Jenkins (Director of Estates) prepared a paper (**Procurement Paper**), and on 20 June 2025 emailed it to Helen Simpson (Interim Director of Finance), Susan Young (Head of Financial Accounting) and Julie Lynch. Their paper considered four options: first, awarding a no-bid contract to a supplier, which would not comply with procurement regulations but would enable the instruction and work to be done by the 6 August 2025 deadline; second, a 'desktop evaluation, which possibly might enable the work to be done by the deadline but would likely not comply with

procurement regulations; third, a "framework mini-competition" which would likely take 1-2 months and miss the deadline; and fourth, an open tender process which would meet procurement regulations but would not meet the deadline. For the reasons set out in the paper, their conclusion was that it was impossible to award the contract through a competitive process and also meet the 6 August 2025 deadline, and the only viable option open was to make a direct award to PriceWaterhouseCoopers (**PWC**). This was their recommendation to Court.

18. Court meeting (23 June 2025). By email on 20 June 2025, Alison Ramsey circulated papers for consideration at the 23 June 2025 Court meeting, including an agenda listing the Procurement Report and Gillies Report for discussion. The meeting took place on 23 June with attendees present both in person and virtually. Dr. Mair acted as Acting Chair. Prof. Seaton attended as Interim Principal and Vice-Chancellor. The Claimant attended as Interim CFO. The Procurement Report was discussed. Helen Simpson and the Claimant argued in support of its recommendation to instruct PWC to prepare the FPR the SFC had requested by 6 August 2025. Prof. Seaton spoke against that proposal, arguing it would be better for the University to author its own FRP to survive with external expertise sought where required rather than incur the cost of instructing PWC in circumstances where the procurement regulations would not be met. Court's ultimate decision – with which the Claimant vehemently disagreed – was to follow Prof. Seaton's recommendation and prepare the FRP 'in-house'. Court resolved to reject the proposal to instruct PWC, and allowed Prof. Seaton to progress the FPR internally with the involvement of external parties.

19. Protected disclosures. It is in the circumstances described above that in the early hours of 30 June 2025 (01.37am), the Claimant sent a lengthy email to Prof. Seaton and Dr. Mair quoted below (the wording underlined in bold identifies the 10 protected disclosures the Claimant alleges he made to Prof. Seaton and Dr. Mair in this email):

"*Dear Nigel and Ian*

I have a number of concerns I wish to raise with you both. I watched the sessions on 25/06 at the Scottish Parliament where the former chair of court, the former COO and the former Director of Finance were questioned. It was clear from the discussion there had been a level of hubris and arrogance by the previous principal Iain Gillespie.

I watched part of the discussion on 26/06 with Iain Gillespie. One of the SMP's stated the chair of the Dundee court, the COO and the Director of Finance were all out of their depth-which was blatantly obvious to anybody watching. The previous [D]irector of Finance, Peter Fotheringham is now unemployed and his reputation shredded - he may not work again.

[PID #1] At the court meeting on Monday the court papers and agenda were changed to exclude the finance directors report prepared by Helen Simpson No explanation was given as to why the agenda had been changed and this report excluded. One of the key points made yesterday was that financial information had not consistently been presented to the court. Given the

financial situation at Dundee I am concerned the finance report was unilaterally withdrawn on the instructions of who? Helen Simpson fortunately, did insist upon giving a brief verbal financial update.

At the meeting the first item on the agenda was the procurement of a consultancy firm to help with the next version of the financial recovery report to go to the Scottish Government discussion on 6 August.

Nigel - you opened the discussion on this with a very clear recommendation the financial recovery plan could be prepared internally that you are an engineer and this was just about process. In a one- to-one meeting with yourself the following day, you advised that the numbers were not that important, it was a vision of what university would look like, that would be important – I fundamentally disagree.

[PID #2] You were both of the opinion that the financial recovery plan could be prepared internally (with help offered by yourself Ian) and did not need the help of PwC. It came across that this position had been agreed by yourselves before the meeting started. There is a risk this could be seen as demonstrating hubris and arrogance.

[PID #3] This recommendation to prepare the recovery plan internally was not discussed with either Helen Simpson or myself prior to this recommendation being given to the court.

I am astonished, that either/both of you consider this is acceptable. It is highly unusual for a CEO and a chair, to make a recommendation such as this to a Court/board without consulting either the outgoing or the incoming chief financial officer. The court are aware that the finance team has a lot of vacancies and indeed is depleted and worn out, it is running on empty. The parliament sessions have shown the limitations of the previous [D]irector of Finance (Peter Fotheringham), and the threadbare finance team and the depleted and low quality executive, The finance team does not have the capacity and expertise to prepare a quality financial recovery plan – this is a specialist skill, and needs an independent approach not an internal view. The finance team are already flat out and are now expected to produce the financials recovery plan, this is unrealistic and doomed to failure when so many executives and governors have left the university recently.

[**PID #4] The accounts for 2023/24 are not yet completed with considerable work still to be done to complete the accounts. There will be considerable difficulties in getting both the management and governance responses and representations, given that so many of the governors and executives have left. It is likely that at minimum, a major uncertainty will be given as an audit opinion, hopefully not a full qualification of the accounts. I will need to ensure that I take proper professional & legal advice before signing these accounts, an indemnity from the SFC may be required. The current financial year will be ending shortly, and the process for the 2024/25 accounts will need to start**

[PID #5] Both Helen Simpson and myself in our verbal responses advised that in our opinion PwC were essential to produce the next iteration of this

report, this advice was ignored. I will look to confirm these responses have been recorded correctly in the minutes.

For me PwC would be required in order to:

1 – provide a credible financial/University recovery plan to the SFC and Scottish government. This will require the "badge" of one of the top four accountancy firms. EY and KPMG are conflicted. Only PwC or Deloitte could provide this and realistically it would take considerable time for Deloitte to get up to speed, so not a viable option.

[**PID #6] I do not think that the 6th of August is an achievable deadline due to the recent exodus of executive and governors, and whilst not ideal, I think it would be sensible to ask the SFC for a delay, otherwise it will be too rushed and of low quality**.

[PID #7] 2 – This plan will be essential for EY our auditors to be able to review, stress test and form an opinion with regard to the University going concern, to move the accounts for year ended 31st of July 2024 to a point where they can be signed and filed.

Without the help of PwC, we will not get anywhere near a going concern analysis which can be stress tested to the satisfaction of EY. There are already significant issues outstanding to get to a set of accounts that can be confirmed by EY – a considerable number of representations are required from the governors and management for 2023/24, many of which have left the University. I will require legal advice and consideration of officers indemnity insurance before I will sign the accounts.

3 – To assist the University in its aim to achieve external loan finance as required by the Scottish government. Without a 'badge' to underwrite the numbers, no bank will provide finance, and even then they will want to do their own considerable due diligence on the numbers and their likely achievability - I have confirmed this with QMPF corporate finance advisors based in Edinburgh and the Bank of Scotland who had provided the £40 [million] revolving credit facility (RCF). Obviously any external finance will be limited with regard to the amount of borrowing from the Scottish government, and if the £40 million additional finance announced this week was in the form of loans this would have a direct impact on the amount of potential borrowing that Dundee could pursue.

4 – It is highly unlikely that the Scottish government will accept an internal preparation of the financial recovery plan as part of the agreement to provide short-term finance to the University, especially given there has been a significant exodus of executive and governors, a new chair, interim principal and CFO. It is very likely that the Scottish government will scrutinise the financial numbers with intense due diligence. I am aware the Scottish government is in the process of preparing a tender with an expected value of £1m (at heavily discounted rates) for a big 4 firm to audit the recovery plan numbers.

[**PID #8] At our 1 to 1 meeting on Tuesday, Nigel you advised that what was required for 6 August was not really about the numbers it was more about the vision of where the University is going to. My opinion is that the financial plan numbers will be the key focus of the SFC**.

5 – The University does not have corporate recovery skills for the preparation of the recovery plan numbers. Any numbers put forward solely by an internal team will look amateurish to the Scottish government and their advisers, and will not confirm the future receipt of the significant funds already earmarked. It will need to be clarified if this funding is in the form of loans, as this will immediately limit the amount of financing that potentially might be available.

[PID #9] 6 – As part of the handover from Helen I spoke with Jason Higgs the PwC recovery partner. His opinion was that even utilising the services of PwC and the extent of their people and considerable expertise in this area, the delivery of a robust comprehensive recovery plan will not be achievable by 6 August and would require 3 months.

Jason offered to use his connections to delay the 6 August date. I think the date of 6 of August is unrealistic, given so many people have departed University in recent weeks, and the SFC and Scottish government should be requested to delay the timeline.

From what I have learned during my first week at Dundee, it is clearly obvious that considerable structural changes are going to be required in order to get the University to a financially sustainable business model and will require huge amounts of reconfiguration of the University which will necessitate compulsory redundancies. It is hard to imagine how sustainable business model can be created from this financial mess. It will also require fast and bold decision-making, not the continual deliberation by a slow-moving University executive group. The court size at Dundee is very large and unwieldy, with varying levels of business acumen which will be essential to implementing a recovery plan. It may be in the short term that a smaller more focused court may be a more appropriate governance arrangements during the implementation of the recovery plan.

The University track record will be examined on what has been achieved to date with regard to what has been presented to the Scottish government in previous iterations of the plan. A considerable number of the items agreed and confirmed in early versions of the plan are now being backtracked internally in the University and the traction against a number of these things has been extremely slow. This will not auger well in front of the SFC and the Scottish government, or indeed a bank when the time comes for loan finance to be negotiated. The first thing we will be asked is what have you done, that you said you would have done by now – if not why not.

[**PID #10] Ian - There is a risk that in getting involved in the preparation of the financial recovery plan as you suggested, you would straddle the boundary between non-executive and executive roles**.

Whilst I understand that PwC are expensive, unfortunately that is the price University has to pay given its current financial status and if Dundee goes into administration those fees will dwarf the PwC fees. In my opinion it would be foolhardy and reckless to move forward without the help of PwC. If there is a way to reduce these costs, either by limiting the scope of what is required, or indeed requesting the Scottish government to ask PwC to provide us with the discounted fees that the government benefit from with PWC, we should aim to limit PwC costs.

Obviously, this is a matter of urgency and will need to be discussed ASAP this week. This will have a bearing as to whether I consider the personal risk is too high and I give notice to terminate my employment. Should this be necessary I will communicate my rationale to, and meet with the Funding Council. I have the skill base to do the job 'in spades', but I do question whether the University of Dundee is ready for the magnitude of change that is going to be necessary to move the university to a financially sustainable university. If I am to continue, we will need to agree ground rules and how we operate to include and discuss the financial implications in every aspect of the University decision-making at this critical time. Kind regards [etc.]" [346-349]

20. The Tribunal makes the following findings about this email: (1) it raised legitimate, important matters for consideration (whether or not it contained protected disclosures) (2) possibly because of the urgency of the matters raised it was not written in a temperate tone - on the contrary, it was written with a surprising degree of vehemence given (a) its audience (Interim Principal Prof. Seaton was to all intents and purposes the Claimant's superior) and (b) the Claimant's limited personal knowledge and experience of the University (having come in from the 'outside' and been in post for barely a week) (3) it flagged up the Claimant's 'fundamental disagreement' with Prof. Seaton's recommendation, which Court had accepted, to prepare the FRP 'in-house' rather than instruct PWC (4) in somewhat 'roundabout' words it clearly accused Prof. Seaton and Dr. Mair of hubris and arrogance (5) at this early juncture, the Claimant was already considering his position and on the verge of resigning if the assurances he deemed necessary were not urgently obtained.

21. Prof. Seaton and the Claimant already had a meeting in the diary scheduled for 1 July. By email to the Claimant on 30 June (at 08.07), Prof. Seaton replied stating "*We clearly have a lot to discuss. You and I are meeting tomorrow. I suggest we extend that meeting to an hour, if we can, so that we can have a full discussion then. Best wishes [etc.*]". The Tribunal accepts a genuine hour-long discussion with the Claimant on 1 July to discuss the issues he had raised in his email was what Prof. Seaton had in mind. By email on 30 June (at 10.19), Dr. Mair acknowledged receipt of the Claimant's email, stating he would let the Claimant and Prof. Seaton discuss it directly. Later that day, Prof. Seaton emailed Helen Simpson's last financial report to Dr. Mair, suggesting it be circulated to Court members. By reply email, Dr. Mair confirmed he was happy to have it circulated, stating there had been no attempt at Court last Monday (23 June) to not have the finance 'view'. By email on 30 June (at 17.44), Alison Ramsey forwarded a copy of Ms. Simpon's last financial report to Court members.

22. Court meeting (30 June 2025). Later on that day, a further Court meeting was held.

1 July 2025 meeting – Claimant's employment terminates

23. Around 4.15pm on 1 July 2025, Prof. Seaton met the Claimant for their scheduled face-to-face meeting at Prof. Seaton's office. No-one else was present. It is Prof. Seaton's alleged conduct at this meeting on which the Claimant relies in support of his claim of constructive dismissal. It is not in dispute that the meeting lasted a matter of minutes – Prof. Seaton says no more than 10, the Claimant says 5 – instead of the hour scheduled. During the meeting, both Prof. Seaton and the Claimant were seated at the corner of a table, the Claimant sitting approximately 1.5 metres away from him. Neither party made a recording of it or took notes at it. Shortly after the meeting was over (within an hour), however, Prof. Seaton did make a written note of his recollection of the meeting which he substantially relies upon as an accurate note. The Claimant did not make his own note of the meeting, and where he disputes Prof. Seaton's note relies upon his own recollection. In cross-examination, neither party suggested to Prof. Seaton or the Claimant that they were not giving the Tribunal their genuine best recollection of this meeting. The Tribunal finds both witnesses' recollection of the meeting to be genuine.

24. For the reasons below, the Tribunal preferred Prof. Seaton's recollection, in particular his note. On that basis, the Tribunal finds that at the meeting the following events occurred: (1) after they had both sat down, Prof. Seaton began by saying he felt the Claimant's 30 June email showed the Claimant had lost confidence in him [Prof. Seaton] as leader, and added while he had sometimes lost confidence in his boss during his career it had never happened in his first few days (2) the Claimant replied he didn't feel his email showed he had lost confidence in Prof. Seaton "*exactly*" (3) Prof. Seaton said he found the Claimant's email rude and antagonistic, and found it strange the Claimant saw himself, after only a few days, as wishing to report the University to the SFC if it did not follow his advice on how the University's financial affairs should be reported (4) the Claimant replied he was direct, reflecting his commercial background (5) Prof. Seaton replied Ian Mair comes from a commercial background, and neither he nor Prof. Seaton had ever received an email like that (6) the Claimant said he wished to leave the University (he did not say "*I resign*") (7) Prof. Seaton said he agreed it would be best for him to leave (8) the Claimant said nothing in response to those words (possibly because he did not hear them) (9) as the Claimant was leaving Prof. Seaton said Elise Gallagher would come to see him (the Claimant) in a few minutes. At the meeting, neither Prof. Seaton nor the Claimant shouted or raised their voice. The meeting was, however, tense.

25. The Tribunal preferred Prof. Seaton's recollection for the following reasons: first, Prof. Seaton's account was based on a near-contemporaneous note whereas the Claimant's was not; second, Prof. Seaton's note recorded the Claimant as saying he wished to leave the University, not that he was resigning (what the Claimant alleges he said). If the Claimant had actually said the words "*I resign*", Prof. Seaton would have heard him say them (they were seated next to each other, the words "*I resign*" are distinctive and memorable) and would have recorded them in his note – not to do so would have been dishonest, and it was not put to Prof. Seaton that he had made a dishonest (as opposed to inaccurate) note; third, the Claimant's incorrect evidence that he had said "*I resign*" at this meeting cast doubt on the reliability of the Claimant's recollection of those other parts of Prof. Seaton's note in dispute; fourth, the Claimant

accepted significant parts of Prof. Seaton's note were accurate, giving some support to Prof. Seaton's case that his note was intended to be a broadly accurate, non-verbatim note of what was said at the meeting. Where Prof. Seaton's witness evidence about what was said differed from what he wrote in his note, the Tribunal preferred the note as more likely to be accurate given its near contemporaneity.

26. The Tribunal did not accept the Claimant's case that at this brief meeting Prof. Seaton shouted at him (or raised his voice) for the following reasons: first, Prof. Seaton denied doing so, and his denial he had not done so was at least as credible as the Claimant's assertion that he had done so; second, the Claimant's evidence in this respect was not corroborated; third, nothing in what Prof. Seaton said at this meeting suggests he lost his temper or had reason to raise his voice; fourth, this was a pre-arranged meeting between seasoned, experienced professionals, and it is unlikely that either of them would have lost their temper in such a short time; fifth, the fact both Prof. Seaton and the Claimant were seated close to each other during the meeting makes it less likely that Prof. Seaton shouted or raised his voice at the Claimant (a common description of two people having a heated argument is a 'stand up argument', there is no equivalent phrase for two seated people); sixth, the picture the Claimant described of Prof. Seaton shouting at this meeting was difficult to envisage – it was easier to accept the meeting was a short, tense, meeting at which the Claimant indicated his intention to resign within a few minutes; seventh, the account the Claimant gave of the meeting on 3 July did not allege Prof. Seaton had shouted at him or raised his voice. For substantially similar reasons, the Tribunal did not accept the Claimant's evidence that Prof. Seaton was "*red in the face*" (an allegation not made in the ET1 paper apart), and found that he was not.

27. By saying the words "*I wish to leave the University*" the Claimant was there and then intending to, and actually, resigning from his employment by the University with immediate effect, and was immediately understood by Prof. Seaton as having just done so. There was no prior discussion of the Claimant leaving the University's employment before the Claimant said these words, so the Claimant's resignation was a unilateral act, not an agreed outcome of any prior discussion between Prof. Seaton and the Claimant on whether the Claimant should remain in post or not. Based on the Claimant's 30 June email, Prof. Seaton had serious concerns about the viability of his future working relationship with the Claimant, which he raised – reasonably - with the Claimant at the start of the meeting, and finds that when the Claimant announced his resignation, Prof. Seaton immediately (a) thought the Claimant's departure was in everyone's best interests – the Claimant's, Prof. Seaton's, and the University's, and (b) said to the Claimant he agreed it would be best for him to leave. It was technically not "*mutually agreed*" that the Claimant would leave his role at the University – the Claimant's departure was the Claimant's unilateral decision – but that decision was one Prof. Seaton immediately endorsed (and said so verbally, without dissent from the Claimant), hence it was "*mutually agreed*" in the non-trivial sense it was an outcome the Claimant wanted which Prof. Seaton also wanted and immediately agreed with.

28. Shortly after this meeting, Prof. Seaton briefed Elise Gallagher on their conversation. Based on what he told her, by email on 1 July (at 19:07) Ms. Gallagher sent Prof. Seaton a draft letter to the Claimant confirming his departure from the University. She asked Prof. Seaton: "*On reflection from the conversation do you consider mutual*

consent exit or a resignation as most appropriate?" An hour later (20:07), Prof. Seaton replied by email, attaching his note of the conversation:

> "*I'll take a look at that now. Here is my contemporaneous note. I will be guided by you as how best to describe Chris's departure. He did resign, but I agreed with him that it would be best for him to leave. Both are correct, in a way, but is it more of a mutual consent exit? After all, I had in mind before the meeting that it might be better for him to leave, though I did not initiate the discussion of his departure."*

29. The Tribunal finds this email genuinely and accurately summarised Prof. Seaton's understanding at the time of the circumstances in which the Claimant had left the University's employment, namely (i) the Claimant had resigned, and Prof. Seaton knew this (ii) Prof. Seaton had immediately agreed with the Claimant it would be best for him to leave, said so to the Claimant, and the Claimant had not said anything in response (iii) the statement in the above email that the Claimant had resigned and that he had left by mutual agreement were both correct "*in a way*".

30. In the next 2 minutes Prof. Seaton reviewed the draft, and informed Ms. Gallagher by email (at 20:09) that he was happy with the text (which referred to the Claimant leaving by mutual agreement, not by resignation) subject to one minor correction (stating "*ended so soon*" rather than "*ended so promptly*"). Prof. Seaton approved the remainder of the text because he was genuinely satisfied it accurately reflected his understanding of the substance of what had just happened at the meeting. It was not Prof. Seaton's intention to describe the Claimant's departure as mutually agreed in order to suggest that the Claimant had not resigned, nor to suggest (through ambiguous wording) that the Claimant might have been dismissed. Prof. Seaton – an academic engineer by profession, not a lawyer, nor someone familiar with the nuances and understandings of financial services recruitment - was unaware that publicly stating the Claimant had left by mutual agreement might lead some to infer the Claimant had in fact been dismissed.

31. The next day (2 July), the draft letter was updated to reflect Prof. Seaton's update to the wording, signed by Ms. Gallagher (the signature does not say it was "*PP"-ed*), and emailed to the Claimant (cc-ed to Prof. Seaton and Payroll). Consistent with Prof. Seaton's understanding that the Claimant had left by mutual agreement, it stated:

> "*Dear Chris – At your meeting yesterday with Nigel Seaton, Interim Principal, it was mutually agreed that you would leave your role as Chief Finance Officer at the University of Dundee. I write to confirm that you will leave the University with immediate effect and in line with the terms of your contract will be paid one month's salary in lieu of notice. This will be paid in July payroll. I regret that your employment by the University has ended so soon and wish you success in the future*."

32. 2 July 2025. By email on 2 July 2025 (at 10:16), Grant Hill (University Senior Public Affairs Officer) circulated to Ms. Gallagher and others draft announcements to Court and staff regarding the Claimant's departure (it is not clear that the draft was circulated to the University's legal department for its review). Unfortunately, Mr. Hill did not seek

the Claimant's approval of the wording – a step which, in hindsight, was a mistake, albeit an innocent oversight rather than done with malicious intent. If that step had been taken, it almost certainly would have avoided the Claimant's subsequent complaint about the wording of those announcements.

33. On 2 July 2025, the University (under Prof. Seaton's name) sent an internal message to University staff stating (in relevant part):

> "*I am writing to let you know that Chris Reilly, our Interim Chief Finance Officer, has left the University by mutual agreement. We are moving quickly to appoint a new Interim Finance Director who will take us through the next steps of the University Recovery Plan for submission to the Scottish Funding Council. We will share further information about this process with you as soon as possible*."

34. On 2 July 2025, the University (under Dr. Mair's name) sent a similarly worded message to Court members stating (in relevant part):

> "*I am writing to let you know that Chris Reilly, our Interim Chief Finance Officer, has left the University by mutual agreement. The Principal and his team are moving quickly to appoint a new Interim Finance Director who will take us through the next steps of the University Recovery Plan for submission to the Scottish Funding Council. Further information about this process will be shared with you as soon as it is available*."

35. By email on 2 July 2025 (at 12:16), Prof. Seaton forwarded to the Claimant (at his university email address) the text of the internal staff announcement. Shortly after, Mr. Reilly forwarded that email to his personal email address. By email on 2 July 2025 (at 13;59), Grant Hill forwarded the text of the internal staff announcement to Justin Bowie at DC Thompson, the publishers of 'The Courier' newspaper, and other press.

36. The press quickly picked up on the now public announcement of the Claimant's departure. On 2 July 2025 (at 14:26) under the heading "*Interim Dundee University finance chief quits after eight days in job*", The Courier's website published an article stating '*Chris Reilly left his post by mutual consent as a staff merry-go-round at the troubled institution continues*'. Elsewhere it repeated the Claimant had quit, and quoted a source as stating "*It really does nothing to help our confidence that [the finance director] arrived, took one look at the books and walked out of the door*."

37. The Claimant became aware of the press reporting that he had left the University by mutual agreement at some point that afternoon, and by email to Ms. Gallager on 2 July 2025 (at 17:35), objected to the terms of the announcement:

> "*The announcement is incorrect. It was not a mutual agreement that I would resign I resigned due to a lack of confidence in Nigel Seaton and Ian Mair, (both distress appointments) following their manipulation of the court, and the court papers by withdrawing the Finance report from the court papers. They were not prepared to listen to [f]inancial advice from either myself or Helen Simpson - we have collectively over 60 years as Finance Directors between us. Also the continuing*

arrogance and hubris demonstrated by Nigel Seaton and Ian Mair is an issue - that is the last thing the university needs at this moment following the parliamentary sessions which identified this as a big contributor to the financial failure of the UoD I had already sent Sir Paul Grice, Francesca and Richard Maconachie a copy of my Monday email to Nigel Seaton and Ian Mair. The content of this email is highly relevant and I reconfirm the content of the email. It was not rude as you suggested Nigel. Can you please issue a revised internal announcement advising I resigned and advise the Courier accordingly. These are not normal times for the SFC, Dundee University and I would recommend the next CFO of the university is employed by the SFC, paid for by UoD. I would recommend there needs to greater control leveraged from the SFC regarding viability of the financial recovery of UoD Regards [etc.]"

38. That day, the press continued to report on the Claimant's departure. The Times' Scottish edition published an article which stated the University had been plunged into a fresh crisis after its finance chief "quit" 8 days after taking the role . The article quoted the University's announcement's statement that the Claimant had left by "*mutual agreement*". Under the heading "*Dundee University chief finance officer quits after 8 days*", the BBC published an article which stated 'The university said Mr. Reilly had left the role by mutual agreement'. The Herald, Scottish Sun and other press outlets published articles in similar vein.

39. The Tribunal noted that the press at the time did not raise or comment upon there being a difference or contradiction between the Claimant having quit his role and the Claimant having left by mutual agreement. However, it is clear that some members of the public did draw an inference that the phrase 'mutual agreement' meant (or at least might mean) the Claimant had in reality been 'sacked' (comparing the use of that phrase to the circumstances in which football managers sometimes leave their clubs). The Claimant's evidence – which the Tribunal accepted – was that some (although not necessarily all) finance recruitment professionals in his line of work (a) draw a distinction between a genuine resignation of employment and a description of employment having been terminated by mutual agreement, and (b) reading the press' reporting of the University's announcement that the Claimant had left 'by mutual agreement' would, and in this case likely did, infer that the Claimant had not genuinely resigned and had instead left the University because he had been asked to leave (a dismissal in all but name).

40. No response having been provided on 2 July, by email on 3 July 2025 (at 09:14) the Claimant chased a response to his 2 July email:

"*Dear Elise & Nigel I do not appear to have received a reply to this email yet. For the avoidance of doubt and to clarify the chain of events: – I emailed Nigel Seaton & Ian Mair with a number of concerns on the morning of June 30, 2025. Nigel's reply to my email to me on the 30th of June advised 'We clearly have a lot to discuss. You and I are meeting tomorrow. I suggest we extend that meeting to an hour, if we can, so that we can have a full discussion then'. I met with Nigel Seaton on Tuesday 1st July at 4:15 pm to discuss my email to Nigel and Ian Mair on 30 June. Nigel opened the conversation by saying that my email to him and Ian Mair*

dated 30 June was unprofessional and rude. He also said that Ian Mair had said it was rude. I stated it was factually correct, not rude, and written in a direct style to avoid any misunderstandings. Because of the provocative stance taken by Nigel Seaton, I then verbally resigned. It was not a mutual agreement, I resigned. The meeting lasted 5 minutes. From accepting the offer at the University, the principal changed, the chair of court changed and the damning Gillies report was published. The attached trail of events (3/07/2025) is clear and your email to me on 2 July at 10:32am clearly states YOUR RESIGNATION confirmation letter. It is unusual for the HR director to pen the letter of resignation of an employee, particularly when the facts are deliberately misrepresented! The letter does not mention resignation and states it was mutually agreed I would leave my role as CFO at the University of Dundee. How can 'your resignation', then become a 'mutually agreed departure?' At 12.16am Nigel Seaton communicated to the University that I had left the University 'by mutual agreement'. This "mutual agreement" has been reported across the Internet by a number of Scottish & National newspapers, on both BBC Scotland and STV. I will be taking legal advice today regarding this chain of events and your incorrect public press release This is a deliberate manipulation of the facts, and I consider this is defamatory to my long-standing professional reputation in the public & private sectors. Kind regards [etc.]"

41. After speaking to Prof. Seaton, who remained of the view that the description of the Claimant having left by mutual agreement was accurate and not misleading, by email on 3 July 2025 (at 20:00) Ms. Gallagher replied to the Claimant as follows:

"*Thank you for your email. I wanted to confirm that the internal communication was made in good faith based on the information available at the time. We continue to disagree with your characterisation of the circumstances surrounding your departure, as well as the assertions made about the conduct of senior colleagues. That said, we are focused on moving forward. Following your comments, the University will not use the phrase 'mutual agreement' in any future references to your departure. We do not intend to issue any further comment on your exit, and we are treating the matter as concluded. I hope this helps draw a line under things in a respectful and professional way. The University recognises this is a period of significant transition, and the new leadership team is committed to guiding the institution constructively through the challenges ahead. Please treat this message as without prejudice. Let me know if you would like to discuss further. Kind regards* [etc.]".

42. From that date on, the University no longer publicly described the Claimant as having left by mutual agreement. The University did not, however, issue a retraction of its previous announcements that the Claimant had left by mutual agreement. The reason it did not do so was because (a) the decision whether or not to do so was made by Prof. Seaton (b) Prof. Seaton decided not to because he remained of the view that the Claimant's departure had been by mutual agreement, hence the previous description of the departure as having been by 'mutual agreement' had not been inaccurate.

43. On 15 July 2025, a Court meeting was held. Prof. Seaton spoke, noted the Claimant's departure, and briefed Court on the recruitment of a replacement.

44. Unhappy with the University's response, the Claimant instructed solicitors. On 15 July 2025, they sent a pre-action letter to the University. By letter dated 17 July 2025, they made a data subject access request to the University, and on 21 and 23 July requested further documents from the University. By letter dated 29 July 2025, the University stated its position on the 2 July announcements it had made regarding the Claimant's departure – the communications describing the departure as by 'mutual agreement' was based on the University's good faith understanding of the position, were made without malice or a reckless disregard for the truth, and once the Claimant objected to the phrase 'mutual agreement' reasonable steps were taken (those steps being not to use that phrase to describe the Claimant's departure going forward).

Relevant law

45. Protected disclosures. Section 43B of the Employment Rights Act 1996 (**ERA 1996**) provides in relevant part:

> *(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) a criminal offence has been committed, is being committed or is likely to be committed,*
> *(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,*
> *(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,*
> *(d) that the health or safety of any individual has been, is being or is likely to be endangered,*
> *(e) that the environment has been, is being or is likely to be damaged, or*
> *(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed …*
>
> *(5) In this Part "the relevant failure", in relation to a qualifying disclosure, means the matter falling within paragraphs (a) to (f) of subsection (1*).

46. In order for a disclosure to be a protected disclosure under ERA 1996: first, there needs to be a 'qualifying disclosure' within the meaning of s.43B; second, it must be made in a manner which accords with the scheme of the Act set out in ss.43C - 43H.

47. ERA 1996 defines disclosure broadly. The worker must disclose information. Cavendish Munro Professional Risks Management Ltd v Geduld [2010] IRLR 38, EAT. In Kilraine v Wandsworth BC UKEAT/0260/15 Langstaff J noted that Tribunals should observe the principle in Cavendish Munro with caution to the extent they must not be 'seduced' into thinking they must decide whether something is either 'information' or an 'allegation' - information may be provided in the course of making an allegation. However, the requirement is still for information to be disclosed.

48. If there is a disclosure, the Tribunal must consider whether the disclosure is a qualifying disclosure. This will depend on the nature of the information disclosed - it is

a question of carefully assessing what was said or written so as to determine whether information was provided (which meets the qualifying criteria in the statute) whether or not an allegation was made as well, or whether what was said does not amount to information because, for example, of the vagueness or lack of specificity.

49. The information disclosed must, in the reasonable belief of the worker, tend to show a relevant failure. Section 43B identifies six things the information must, in the actual and reasonable belief of the worker 'tend to show'. Each of those categories involves some form of wrongdoing. The worker is not required to establish the information disclosed was true - whistleblowers do not have to be right, and may be wrong.

50. The relevant question is not whether the worker reasonably believed a breach of a legal obligation had occurred, was occurring or was likely to occur. Rather, it is a question of asking whether they held a reasonable belief that the information they were disclosing tended to show such a breach had occurred, was occurring or was likely to occur – a similar but subtly different question.

51. When assessing the worker's belief, the test is not wholly subjective. It is the reasonableness of the belief of the particular worker which is being assessed, not the belief of a hypothetical worker. In cases where a claimant relies on s 43B(1)(b) (breach of legal obligation), the source of the legal obligation must be identified before going on to assess the reasonableness of the belief of the employee. In addition, it is necessary that the relevant information must tend to show that a person had failed, was failing or was likely to fail to comply with any legal obligation to which they were subject. In this context, the term 'likely' requires more than a possibility or a risk that the employer might fail to comply with a relevant legal obligation. The information disclosed should, in the reasonable belief of the worker at the time it is disclosed, tend to show that it is probable or more probable than not that the employer will fail to comply with the relevant legal obligation: Kraus v Penna plc [2004] IRLR 260.

52. The worker must actually, reasonably believe they are making the disclosure in the public interest, determined in accordance with the guidance in Chesterton Global Ltd v Nurmohamed [2018] ICR 731. There is no 'bright line' between personal and public interest - any element of personal interest will not necessarily rule out statutory protection. In a case of mixed interests, it is for the Tribunal to determine as a matter of fact as to whether there was sufficient public interest to qualify under the legislation.

53. In Chesterton Global at paras 36-37, Underhill LJ identified four relevant factors: (a) the numbers in the group whose interests the disclosure served (b) the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed (c) the nature of the wrongdoing disclosed – 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 (d) the identity of the alleged wrongdoer.

54. The mental element involves a two-stage test: (i) did the worker have a genuine belief at the time that the disclosure was in the public interest, and (ii) if they did, did they have reasonable grounds for so believing? The claimant's motivation for making the

disclosure is not part of this test. Ibrahim v HCA International [2019] EWCA Civ 207. The necessary belief is simply that the disclosure was in the public interest.

55. If a disclosure is a qualifying disclosure it becomes 'protected' if (among other things) it is made to the employer (s.43(c)(1)(a)).

56. 'Automatic' unfair dismissal. Section 103A of ERA 1996 provides: "*An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure*". Only a worker who is also an employee can bring a claim under s.103A.

57. No period of qualifying continuous employment is required to bring an unfair dismissal claim under s.103A.

58. The Tribunal must identify the reason or the principal reason for dismissal. If the fact that an employee made a protected disclosure(s) was merely a subsidiary reason to the main reason for dismissal, the employee's claim under s103A will fail. In a case in which a claimant alleges they made multiple protected disclosures, the Tribunal should ask itself whether, taken as a whole, the established protected disclosures were the principal reason for the dismissal. El-Megrisi v Azad University [2009] EAT 0448/08.

59. Constructive dismissal. Section 95(1)(c) of ERA 1996 provides that for the purpose of Part X (Unfair Dismissal) an employee is dismissed by their employer if the employee terminates the contract under which they are employed (with or without notice) in circumstances in which they are entitled to terminate it without notice by reason of the employer's conduct. In Salisbury NHS Foundation Trust v Wyeth [2015] UKEAT/ 0061/15, the EAT accepted an employee may bring a claim of unfair dismissal under s.103A relying on a constructive dismissal. One of the circumstances in which an employee may lawfully terminate their contract without notice is when their employer has committed a repudiatory breach of an express or implied term of the contract. Absent an express contractual term to the contrary, an employment contract will normally contain an implied term imposing a duty on both employer and employee not to, without reasonable and proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee. Malik v BBCI [1998] AC 20 (HL). A breach of an implied contractual term of trust and confidence by the employer will normally constitute a repudiatory breach of contract, entitling (but not obliging) the employee to resign without notice and claim constructive dismissal. An employee may lose their right to resign in response to an employer's breach of the implied duty of trust and confidence if, after the breach but before resignation, the employees engages in conduct which had the effect of affirming the continued existence of their contract. Absent affirmation, however, in order to resign and establish they have been constructively dismissed the employee need only resign in response, in whole or part, to the breach – provided they do so, it is not necessary for the breach to be the sole reason, effective reason, or even most important reason, for their resignation. It is sufficient if the breach forms part of the reason for resignation.

60. 'Whistleblowing' detriment. Section 47B of ERA 1996 provides:

> *(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).*
>
> (2) *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*.

61. The concept of detriment is broad. In Shamoon v Chief Constable of RUC [2003] UKHL 11 (cited in Jesudason v Alder Hey Children's Hospital [2020] EWCA Civ. 73), Lord Hope explained something is a detriment if a reasonable worker would or might take the view that the relevant treatment or conduct was in all the circumstances to their detriment. The test is one of materiality – it does not require proof of actual physical, financial or economic consequence. Although broad, the concept of detriment is not unlimited – eg, an unjustified sense of grievance will be insufficient.

62. Causation. In Fecitt v NHS Manchester [2011] EWCA Civ. 1990, the Court of Appeal held that for the purposes of a s.47B of ERA 1996 claim, causation is established if the protected disclosure was a material factor or influence on the detrimental treatment or conduct – it does not have to be the sole or even principal reason. In para. 43 of Augustine v Data Cars Ltd. [2026] UKSC 30, the Supreme Court cited with approval the test for causation set out in Fecitt.

63. Resignation. An employee resigns when by words or conduct they give their employer notice that they are terminating their contract (whether with or without a period of notice). Where the resignation is said to have occurred by words said (whether in writing or verbally), ordinarily the words of resignation must be actually communicated to and received by the employer in order to be effective (in the same way an employer's words dismissing an employee must ordinarily be communicated to and actually received by the employee in order to effect the dismissal). Edwards v Surrey Police [1999] IRLR 456 (there must be communication by words or conduct sufficient to inform the other party that the contract is at an end). The resignation takes effect on the employer's receipt of the relevant words of resignation, not (in cases of written communications) when the employer actually reads those words. Potter v RJ Temple plc [2003] UKEAT/0478/03 (when employee resigned by fax with immediate effect, effective date of termination was when fax was received at employer's office even though no-one read fax at the time). Where words of resignation are ambiguous, but the employee intended by those words to resign and the employer understood those words to constitute a resignation at the time, the resignation will be effective notwithstanding the ambiguity. Resignation (like dismissal) is a unilateral act – it does not require the employer to consent to or accept the resignation in order for the resignation to take effect and end the relevant employment contract.

64. Termination by mutual agreement. An employer and employee may terminate an employment contract by agreement. In cases of dispute, whether or not they have genuinely done so or not is a question of fact and degree. Per Sir John Donaldson MR in Martin v Glynwed Distribution Ltd. [1983] ICR 511, when determining whether employment was terminated by the employer or employee, the question is "*Who really terminated the contract of employment*?". If, considering the realities of the situation, an employee's contract was genuinely terminated by mutual agreement, the employee was not dismissed. Birch v University of Liverpool [1985] IRLR 165 (termination by freely given mutual consent of employer and employee does not amount to dismissal).

65. Tribunal's duty to decide issues. A Tribunal is not required to consider and reach a decision in respect of each and every issue which potentially arises for determination in a case. It is sufficient if, in its judgment, the Tribunal addresses and gives reasons for its decisions in respect of those issues which are sufficient to dispose of the relevant claims. Per Judge Stout in Tarbuc v Martello Piling Ltd. [2026] EAT 58:

> "*where a party seeks the ET's ruling on an issue that emerges from an objective analysis of the statements of case (and falls within its jurisdiction) the ET has a duty to address that issue. This is the core function of the tribunal. That does not mean that the ET has to resolve every issue that is raised in a case. Sometimes a party will not press all the claims that have been pleaded; the ET is not obliged to*

address those which are raised but later abandoned: see Mensah v East Hertfordshire NHS Trust [1998] IRLR 531. And the ET needs only decide enough to reach a conclusion on the claims that have been pressed." (para. 36)

'Automatic' Unfair Dismissal Claim: Discussion / Conclusions

66. For the reasons set out below, the Tribunal holds that the Claimant's claim of unfair dismissal under s.103A of the Employment Rights is not well founded.

67. First, the set of issues to which this claim gives rise are set out in the list of issues in Appendix 1, paras. 1-13.

68. Second, in order to decide this claim, it is not necessary to consider and decide all of those issues. It is common ground that at their meeting on 1 July 2025 Prof. Seaton did not dismiss the Claimant using express words of dismissal (eg, "*you are dismissed*, "*leave the University and do not come back*", etc). The unfair dismissal claim is pleaded, and rests entirely upon, the Claimant having been constructively dismissed by Prof. Seaton's words and conduct at the meeting on 1 July, which the Claimant says was (a) a breach of an implied *Malik* contractual term of trust and confidence in his contract, which (b) he timely resigned in response to. In order to decide this claim, therefore, it is sufficient for the Tribunal to decide (i) what happened at this meeting (ii) whether the Claimant's contract contained an implied term of trust and confidence (iii) if it did, whether Prof. Seaton's conduct at this meeting which the Claimant has pleaded breached that implied term did so or not, and (iv) if it did, whether the Claimant timely resigned in response to that breach or not.

69. Third, the Tribunal's primary findings regarding Prof. Seaton's conduct at the 1 July 2025 meeting are set out at paras. 23- 27 above.

70. Fourth, on Appendix 1, Issue 7 – "*Was the Claimant's employment terminated by mutual agreement?"* - the Tribunal concluded it was terminated by the Claimant's unilateral act of resignation at that meeting, not by mutual agreement. A resignation takes effect when it is received by the employer. Potter v RJ Temple plc. When the Claimant verbally told Prof. Seaton "*I wish to leave the University*", in context those words were not ambiguous, that information was immediately received by Prof. Seaton (he heard the Claimant say those words), and upon hearing them Prof. Seaton immediately, reasonably and correctly understood those words to be a verbal resignation. When the Claimant said those words, there had been no prior discussion between the Claimant and Prof. Seaton on the subject-matter of whether the Claimant should remain in the University's employment or not – a matter which had undoubtedly been on both their minds, but which neither explicitly raised during the course of their short conversation. Because this particular subject-matter was not even discussed at the meeting, the Tribunal concluded that at this meeting Prof. Seaton did not agree with the Claimant before the Claimant resigned that the Claimant should resign – neither suggested it before the resignation, before the resignation neither had agreed with any such suggestion. The Tribunal accepts the University's case that after the Claimant had resigned (but only after), Prof. Seaton immediately agreed this was the right outcome (for the Claimant and the University), and verbally expressed his

agreement with that outcome. But that conduct (a) did not somehow 'convert' the Claimant's resignation into anything other than what it was - a resignation, and (b) no more effected a termination of the Claimant's contract by mutual agreement than an express dismissal of the Claimant by Prof. Seaton at this meeting followed by the Claimant's immediate concurrence with his dismissal would have effected a mutually agreed termination. Applying Martin v Glynwed Distribution, if the question is 'who really terminated the Claimant's contract of employment?', the Tribunal unhesitatingly concludes it was the Claimant who did so, not the University.

71. Fifth, because there was no express term in the Claimant's contract to the contrary, the Tribunal concluded that from its formation the Claimant's contract contained an implied term of trust and confidence imposing a duty on the University not to, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee. The University accepted this in para. 2.31 of its closing submissions.

72. Sixth, the Tribunal reminded itself of the basis upon which the Claimant's ET1 paper apart pleaded that the University, through Prof. Seaton's conduct at the 1 July 2025 meeting, had breached the implied term of trust and confidence:

> "*At that meeting [on 1 July 2025], Mr. Seaton admonished the Claimant for being "rude" and "unprofessional" in raising his concerns (in his email of 30 June 2025) and was generally hostile to the Claimant and stated the Claimant had lost confidence in him*." [25, para. 9]

73. Seventh, the Tribunal was satisfied Prof. Seaton did not at any point engage in conduct "*calculated*" to destroy or seriously damage the relationship of trust and confidence between the Claimant and the University. It was Prof. Seaton's decision to extend the length of his pre-arranged meeting with the Claimant on 1 July 2025 to an hour, and he did so in order to have sufficient time to properly discuss the issues the Claimant's 30 June 2025 email raised. That was his intention before the meeting, and also his intention at it - there was no basis to suggest that Prof. Seaton changed his mind about its purpose. What transpired at the meeting was the product of what each participant spontaneously said at it in response to what the other said.

74. Eighth, the context of the 1 July 2025 meeting is important. The Tribunal accepted that in working life it is sometimes necessary to have frank, challenging conversations about difficult, hotly disputed subject-matters. Sometimes those conversations are between people with differing personalities, working styles, backgrounds, and professional expectations. In the context of the University's financial crisis, in circumstances where there was a destabilising regular turnover of senior staff, the Tribunal was satisfied that it was necessary for the Claimant and Prof. Seaton, neither of whom had been in their new posts for more than a fortnight, neither of whom really knew each other, to talk to each other in a frank, honest way about the Claimant's 30 June 2025 email and the issues it raised.

75. Ninth, at the 1 July 2025 meeting, Prof. Seaton did say that he found the Claimant's 30 June 2025 email rude and antagonistic (not rude and unprofessional). It was not a breach of the implied term of trust and confidence for Prof. Seaton to say that because

he had reasonable and proper cause to do so – in the Tribunal's judgment, the following passages in the email were rude and antagonistic (unnecessarily so):

> "*. It was clear from the discussion there had been a level of hubris and arrogance by the previous principal Iain Gillespie …*
>
> "*I am astonished, that either/both of you consider this is acceptable. It is highly unusual for a CEO and a chair, to make a recommendation such as this to a Court/board without consulting either the outgoing or the incoming chief financial officer …*
>
> *You were both of the opinion that the financial recovery plan could be prepared internally (with help offered by yourself Ian) and did not need the help of PwC. It came across that this position had been agreed by yourselves before the meeting started. There is a risk this could be seen as demonstrating hubris and arrogance"*

76. Any doubt that in this email the Claimant was accusing Prof. Seaton and Dr. Mair of hubris and arrogance was removed by the Claimant's email to Ms. Gallager on 2 July, in which he stated: "*They were not prepared to listen to [f]inancial advice from either myself or Helen Simpson - we have collectively over 60 years as Finance Directors between us. Also the continuing arrogance and hubris demonstrated by Nigel Seaton and Ian Mair is an issue."* Even in the context of 'challenging' conversations, there was no good reason for the Claimant to accuse Prof. Seaton – who had agreed to step up as Interim Principal at extremely short notice in order to address the leadership crisis which arose following Prof. O'Neill's sudden resignation – of hubris and arrogance. That accusation was rude, intemperate and antagonistic. It was reasonable for Prof. Seaton to raise this at the 1 July meeting, not least because there was little prospect of the Claimant and Prof. Seaton ever being able to establish a viable working relationship – an absolute necessity, given the University's financial crisis and the need to plot a workable path forward – if the Claimant was going to continue making gratuitous, offensive personal remarks like this.

77. Tenth, at the meeting Prof. Seaton did not say the Claimant had lost confidence in him [Appendix 1, Issue 9(b)]. Since the alleged pleaded conduct did not occur, it cannot have breached the implied term of trust and confidence. What Prof. Seaton did say was that he felt the Claimant's 30 June email showed the Claimant had lost confidence in him [Prof. Seaton] as leader, adding while he had sometimes lost confidence in his boss during his career it had never happened in his first few days. The Tribunal accepted this was a genuine concern of Prof. Seaton's at the time, and concluded he had reasonable and proper cause to say this because it was reasonable for him to interpret the Claimant's email as calling into doubt the Claimant's trust and confidence in him as the University's senior leader. Particularly telling was the Claimant's response to Prof. Seaton's statement, which was to say he didn't feel his email showed he had lost confidence in Prof. Seaton '*exactly*"'. If this was not what the Claimant had said "*exactly*" in his email, it was certainly a position which the Claimant implicitly accepted his email had come close to approaching.

78. Eleventh, Appendix 1, Issue 9(c) alleges Prof. Seaton was "*hostile*" to the Claimant at the 1 July meeting. The Tribunal has made its findings of fact about what Prof. Seaton said to the Claimant at the meeting, the physical manner in which he said it (seated, not shouting or raising voice), who he said it to (an experienced, seasoned finance professional), and the context in which he said what he said. In the Tribunal's judgment, it is not correct (as a matter of fact) or appropriate (as a matter of judgment) to describe Prof. Seaton's conduct as having been "*hostile*". What Prof. Seaton did and said at the meeting – and sought to do – was have a frank conversation with the University's new finance leader on difficult subject-matters, including their future working relationship. The Claimant and Prof. Seaton's professional expectations were far apart, and it was a bad augury that on the relatively technical issue of who should procure the FRP required by 6 August 2025 the Claimant felt the need to express his view that it must be PWC in a vehement, non-collegial way.

79. Twelfth, applying the foregoing, the Tribunal rejected the Claimant's case that the University breached the implied term of trust and confidence in the Claimant's contract by the conduct referred to at Appendix 1, Issues 9-11. Because there was no breach of the implied term of trust and confidence, the Claimant did not resign in response to a breach of the implied term of trust and confidence [Appendix 1, Issue 12]. The Claimant's resignation was not one in which s.95(1)(c) of ERA 1996 applied, ie, one in which the Tribunal was required to treat the Claimant as having been dismissed by the University because he terminated his contract in circumstances in which he was entitled to terminate it without notice by reason of the University's conduct. The Claimant was not constructively dismissed, and since he was not actually dismissed either, the Claimant's s.103A claim is not well founded.

80. Thirteenth, given the conclusions above and the way in which the Claimant has pleaded his s.103A claim, it was not necessary for the Tribunal to decide whether each of the 10 protected disclosures the Claimant alleges he made in his 30 June 2025 email were legally protected disclosures or not [Appendix 1, Issues 1-6], and the Tribunal, relying on Tarbuc v Martello Piling Ltd., exercised its right not to do so. Whether it needs to decide that issue in the context of the Claimant's other 'whistleblowing' claim is addressed below.

Whistleblowing' Detriment Claim: Discussion / Conclusions

81. First, addressing Appendix 1, Issue 15, it is not in dispute that on 2 July 2025 the University did internally represent the termination of the Claimant's contract as having been "*by mutual agreement*". See paras. 31 (private letter to Claimant), 33 (internal announcement to staff), 34 (internal announcement to Court members) above.

82. Second, still addressing Appendix 1, Issue 15, it is also not in dispute that on 2 July 2025 the University did represent to the press that the termination of the Claimant's employment had been "*by mutual agreement*". See para. 35.

83. Third, addressing Appendix 1, Issue 16, the Tribunal accepted that by internally and externally representing on 2 July 2025 that the termination of the Claimant's

employment had been by mutual agreement, the University did subject the Claimant to a detriment. On 2 July 2025, the Claimant unquestionably did - and a reasonable worker would - take the view that the description of his departure as having been by "*mutual agreement*" without the University stating or making clear at the same time, in the same document, that the Claimant had resigned was to his detriment. The Tribunal refers to its findings at para. 39 above – members of the public actually did infer, and some finance recruitment professionals likely inferred, that the Claimant had been dismissed by the University or asked to leave, not left by a genuine mutual agreement.

84. Fourth, addressing Appendix 1, Issue 17 - did the Respondent subject the Claimant to the detriment on the ground that he had made one (or more) protected disclosure? – the Tribunal's conclusions on the 'chain of causation' which led to the University making the aforementioned "*by mutual agreement*" representations were as follows:

    a. at the 1 July 2025 meeting, the Claimant told Prof. Seaton he wished to leave the University, words which the Claimant intended to be, and Prof. Seaton immediately understood to be, a resignation;
    b. on hearing those words, Prof. Seaton immediately agreed the Claimant leaving the University was in the Claimant's interests, Prof. Seaton's interests and the University's interests;
    c. Prof. Seaton immediately expressed his agreement with the Claimant's resignation, stating he agreed it would be best for him (the Claimant) to leave;
    d. the Claimant did not reply to that statement – possibly because he did not hear it – and did not dispute or express any contrary view to Prof. Seaton;
    e. Prof. Seaton's genuine understanding after the meeting concluded was that the Claimant had resigned his employment and had left the University by mutual agreement (ie, with the University's agreement);
    f. Prof. Seaton is not an employment lawyer, and on 1-2 July 2025 saw no contradiction between describing the Claimant's employment as having ended by resignation and having ended by mutual agreement – he did not think that the former ruled out the latter, or the latter the former (a view which the press coverage on 2 July 2025 also seemed largely to adopt);
    g. when he reviewed Ms. Gallagher's draft private letter to the Claimant stating he had left by mutual agreement on 1 July 2025, Prof. Seaton was content for that description of the circumstances of the Claimant's departure from the University to be used because he was genuinely satisfied at the time that it was an appropriate description and was not misleading (see para. (f) above);
    h. on 1-2 July 2025, Prof. Seaton was unaware that members of the public and finance recruitment professionals, reading a description that the Claimant had left the University "*by mutual agreement*", might infer that the Claimant had been in reality dismissed or asked to leave;
    i. neither on 1 July 2025 nor 2 July 2025, before the internal and external "*by mutual agreement*" representations were made, did anyone advise Prof. Seaton that this description of the circumstances in which the Claimant had left the University was wrong, inaccurate, misleading, or inappropriate;
    j. because nobody gave Prof. Seaton that advice, and because Prof. Seaton was content that the "*by mutual agreement*" description was appropriate, Prof.

Seaton authorised the use of that description to describe the circumstances in which the Claimant had left the University;

k. pursuant to that authorisation, on 2 July 2025 the University duly used that description in its private letter to the Claimant, its internal messages to staff and Court members, and its public press announcements.

85. In light of the above, the Tribunal's conclusion was that the Claimant's 30 June 2025 email – including the 10 protected disclosures which the Claimant alleges he made in that email - played no causal role whatsoever in the University representing internally and to the press that the termination of the Claimant's employment had been "*by mutual agreement*". Posing the question - did the Respondent subject the Claimant to the detriment on the ground that the Claimant had made one (or more) protected disclosure? – the Tribunal's answer was an unequivocal "*no*". For the avoidance of doubt, the Tribunal's conclusion on causation was reached on the assumption most favourable to the Claimant, namely that all ten disclosures were protected disclosures. Even on that assumption, the causation element was not established.

86. In para. 17 of his Closing Submissions, the Claimant submitted:

> "*The claimant invites the tribunal to find that he was subjected to the detriment on the ground that he had made one or more of the protected disclosures. Section 47B will be infringed 'if the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's treatment of the whistleblower.' (Fecitt and others v NHS Manchester (Public Concern at Work intervening) [2012] I.C.R. 372 (CA). In the context of the resignations of Tricia Bey (Chair of Court) and Shane O'Neill (Interim Principal & Vice-Chancellor) on 19 June 2025 and the termination of employment of Helen Simpson on 30 June the respondent had a vested interest in portraying the claimant's departure in a light favourable to it. That portrayal was unfavourable to the claimant. That portrayal was materially influenced (more than trivially) by the information contained in the email of 30 June. A cause of the detrimental portrayal was the content of the email of 30 June*."

87. The Tribunal was not satisfied that part of Prof. Seaton's motivation - the key decision-maker so far as this detriment is concerned – in approving the "*by mutual agreement*" representations was to portray the Claimant's departure in a light favourable to the University and made no finding of fact to that effect. But even if that is wrong and it was, the Tribunal struggled to understand how that motivation was said to have been materially influenced by the Claimant's making of any of the 10 protected disclosures alleged (whether taken individually or collectively) or, indeed, any other part of the 30 June email. The Tribunal was not satisfied that it was, and concluded that it was not.

88. Fifth, given the conclusions above, it was again not necessary for the Tribunal to decide whether each of the 10 protected disclosures the Claimant alleges he made in his 30 June 2025 email were legally protected disclosures or not (Appendix 1, Issues 1-6), and the Tribunal, relying on Tarbuc v Martello Piling Ltd., exercised its right not to do so. Even if the Claimant was right to allege that all 10 disclosures were protected disclosures, the Tribunal was satisfied that the Claimant's making of those disclosures

were not a material influence on Prof. Seaton's decision to permit the "*by mutual agreement*" representations on 2 July 2025, and in fact had nothing to do with that decision. The sequence of events, and cause, for the "*by mutual agreement*" representations on 2 July 2025 were those recited at paras. 84(a)-(k) above.

89. Sixth, given the conclusions above, the Claimant's claim under s.47B of ERA 1996 is not well founded.

Date sent to parties: 16 October 2026

APPENDIX 1 (LIST OF ISSUES)

Preliminary Issue: Protected Disclosures

1. Did the Claimant make one or more protected disclosures under s.43B ERA 1996? The Claimant relies on 10 passages (numbered PIDs 1-10) in his e-mail to Prof. Seaton and Dr. Mair sent at 01.37 on 30 June 2025.
2. Did PIDs 1-10 email disclose information?
3. If they did, at the time of the disclosure did the Claimant have a genuine belief and reasonable belief that the information so disclosed tended to show that the Respondent had failed, was failing, or was likely to fail to comply with legal obligations to which it was subject, namely those obligations codified in the Scottish Code of Good HE Governance including:
    (a) its obligation to act responsibly in managing its finances
    (b) its obligation to share necessary financial information or documents with its governing body or the SFC to ensure full transparency and accountability
    (c) its obligation to take necessary actions to address any financial challenges (including following expert advice when needed);
    (d) its' management's obligation to act in the Respondent's best financial interests, including ensuring good governance, hearing the advice of its Interim CFO and outgoing Director of Finance. having a properly resourced finance function and the appointment of a leader with appropriate experience in finance
    (e) its obligation not to breach the terms and conditions of the grant of payment to the Respondent from the SFC set out in the Financial Memorandum with Higher education institutions (1 December 2014) and applicable to Respondent's governing body and its designated officers, being: -
        i. compliance with the principles of good governance set out in the Scottish Code of Good HE Governance;
        ii. to be open and transparent with the SFC and other stakeholders, and to give, or be prepared to give, a public justification of its decisions in relation to the use of public funds
        iii. to plan and manage its activities to remain sustainable and financially viable
        iv. to hold a sound system of internal management and control, including an effective internal audit service
4. If not, at the time of the disclosure did the Claimant have a genuine belief and reasonable belief that information tending to show these things had been, was being, or was likely to be deliberately concealed, namely: -
    (a) the Respondent was withholding financial information and reports from the Court and the SFC;
    (b) Mr Mair objected to the appointment of recovery experts, PWC, instead suggesting he personally be involved in the preparation of a recovery plan (despite this being outside of the remit of his non-executive role and with the potential to compromise his independence as Chair of the Court);
    (c) Mr Seaton and Mr Mair disregarded due process in an effort to persuade the University's governing body that there should be no Financial Recovery Plan

version 2 without consulting either the outgoing Director of Finance or the incoming Chief Finance Office.

5. At the time of the disclosure, did the Claimant have a genuine and reasonable belief that the disclosure of the information in PIDs 1-10 was in the public interest?
6. Did the Claimant disclose the information to the Respondent?

Claim 1 – 'Automatic' unfair dismissal (s.103A Employment Rights Act 1996)

Constructive dismissal

7. Was the Claimant's employment terminated by mutual agreement? The Respondent avers that it was. The Claimant avers that it was not.
8. If not did the Claimant's contract contain an implied term of trust and confidence imposing a duty on the parties not to, without reasonable and proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee?
9. If it did, at his meeting with the Claimant on 1 July 2025:
   (a) did Prof. Seaton admonish the Claimant by saying his 30 June 2025 email was "*rude*" and "*unprofessional*";
   (b) did Prof. Seaton say the Claimant had lost confidence in him;
   (c) was Prof. Seaton hostile to the Claimant?
10. If yes, was that conduct calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee?
11. If it was, did Prof. Seaton have reasonable and proper cause for that conduct?
12. If he did not, did the Claimant resign in response (in whole or at least part) to the aforementioned conduct or for some other reason?

Unfair dismissal

13. Was the reason (or principal reason if more than one) for the dismissal – ie, Prof. Seaton's conduct at the 1 July 2025 meeting, which was a dismissal because the Claimant accepted it and terminated his contract – that the Claimant had made one (or more) protected disclosure in his 30 June 2025 email?

Claim 2 – Whistleblowing detriment (s.47B Employment Rights Act 1996)

14. Did the Claimant make one (or more) protected disclosure (see paras. 1-6 above).
15. If he did, did the Respondent, both internally and to the press, represent the termination of the Claimant's employment as having been "*by mutual agreement*"?
16. If it did, did the Respondent thereby subject the Claimant to a detriment?
17. If it did, did the Respondent subject the Claimant to the detriment on the ground that the Claimant had made one (or more) protected disclosure (see paras. 1-6 above)?