



EMPLOYMENT TRIBUNALS

Claimant: Mr S N Andrabi

Respondent: Gerry's Offshore Incorporations Limited

Heard at: East London Hearing Centre (by Cloud Video Platform)

On: 9, 10, 11 and 12 March 2021 (with the parties); 15 March 2021 (in chambers)

Before: Employment Judge Gardiner

Members: Mr P Lowe
Mr M Rowe

Representation

Claimant: Mr A Ohringer (Counsel)

Respondent: Mr J Arnold (Counsel)

JUDGMENT

The judgment of the Tribunal is that:-

1. The Tribunal does not have jurisdiction to determine the Claimant's complaint of detriment for making protected disclosures contrary to Section 47B Employment Rights Act 1996, because it was issued outside the statutory time limits. In any event, the Tribunal concludes that this complaint is not well founded. Accordingly, this complaint is dismissed.
2. The Claimant's complaint of automatically unfair dismissal under Section 103A Employment Rights Act 1996 on the ground that the reason was that he had made protected disclosures is not well founded and accordingly is dismissed.
3. The Claimant's complaint of ordinary unfair dismissal under Section 98 Employment Rights Act 1996 is well founded and succeeds.
4. The Claimant is entitled to a sum equivalent to four weeks pay under Section 38 Employment Act 2002 for failing to provide the Claimant with an up to date

statement of employment particulars, contrary to Sections 1 and 4 Employment Rights Act 1996.

- 5. A Remedy Hearing will be listed to consider the Remedy to which the Claimant is entitled, with a time estimate of 1 day.**

REASONS

1. Mr Andrabi was employed by Gerry's Offshore Incorporations Limited from January 2015 until his employment ended in mid-2018. He brings a claim for unfair dismissal in relation to the circumstances in which his employment ended. He also alleges he suffered pre-dismissal detriments for making protected disclosures; and brings a claim for automatic unfair dismissal on the basis that the principal reason why his employment ended was because of the same alleged protected disclosures. He also seeks a remedy for the alleged failure to provide him with a statement of employment particulars.
2. All his claims are disputed. The Respondent disputes it dismissed the Claimant. It alleges he resigned; and that the resignation was not a constructive dismissal (as the Claimant argues in the alternative). It denies both ordinary and automatic unfair dismissal. It argues that the alleged disclosures do not meet the statutory requirements to amount to protected disclosures; and did not cause any detriment or dismissal. If there was a dismissal, then the Respondent contends the Claimant was dismissed by reason of redundancy or alternatively for some other substantial reason. It contends it did provide the Claimant with a statement of employment particulars.
3. The Final Hearing took place over four days, in a remote hearing held over the Cloud Video Platform. There was an agreed electronic bundle of documents, to which both parties referred in the course of the evidence. The Claimant had prepared a witness statement and was cross examined on its contents. Evidence was given on behalf of the Respondent by Mr Arshad Wali Muhammad ("Arshad"), and by Ms Fizzah Masood. Both were cross examined. A witness statement had been exchanged by Mr Afzal Wali Muhammad ("Afzal") but the Respondent did not call him to give evidence. On instructions, Mr Arnold (counsel for the Respondent) told the Tribunal at the start of the hearing that Afzal was too unwell to give evidence, having recently been discharged from hospital for treatment for high blood pressure. Mr Arnold subsequently produced a medical note confirming Afzal had been hospitalised with this condition. It did not specifically deal with Afzal's fitness to give evidence.
4. When the Tribunal was first informed it was unlikely that Afzal would be well enough to give evidence, Mr Arnold indicated he would not be seeking a postponement. Mr Ohringer, counsel for the Claimant, said that if the Claimant was minded to seek a postponement, his client would not oppose such a course of action. Mr Arnold indicated his clients wanted the matter concluded. In these circumstances, Mr Ohringer asked the Tribunal to draw adverse inferences from the manner in which Afzal's absence was explained, and from the Respondent's willingness to proceed in his

absence. Afzal's health had been the reason why the Final Hearing had previously been postponed. This is a matter to which we will return.

5. At the conclusion of the case, both counsel exchanged written closing submissions (including in the case of Respondent's counsel, a separate statement of legal principles), which they amplified orally, as well as commenting on each other's submissions. There was insufficient time for the Tribunal to deliberate within the four days allocated for the Final Hearing. As a result, Judgment was reserved.

Findings of fact

6. The Respondent is a UK registered company. It is part of a group of companies with more than 12 active businesses, known as Gerry's Group. It is owned in equal shares by five brothers, of which Afzal and Arshad are two. These are the two brothers most closely involved with the matters to which this claim relates. Both are Pakistani nationals and are based in Pakistan, where Gerry's Group has its headquarters. Afzal is the Chairman of the Group and oversees all the divisions within the Group. As Afzal says in his witness statement, he would be involved in all strategic decisions for the Group, and guides the other directors.
7. The two principal activities undertaken by the Respondent in the UK were as follows. Firstly, the Respondent operated several Costa Coffee franchises. Secondly, the Respondent issued visas on behalf of the Pakistan High Commission and its Consular offices in London, Bradford, Birmingham and Manchester. From about 2013 onwards, it did so under a contract with the Pakistan High Commission.
8. The Claimant is also a Pakistani national. From 2003 to 2014, he was employed in various positions in Pakistan by a Pakistan registered company within the Gerry's Group. This company was called Gerry's International Pvt. Limited. The Claimant's role was to manage its airline division from his base in Karachi.
9. The Respondent's visa issuing operations in the UK had been started by an individual named Muhammad Aamir Taj ("Mr Taj"). Mr Taj is an important individual in relation to the events to which this claim relates. Despite that, he has not been called to give evidence and the reason for this has not been specifically explained. Latterly (and apparently currently), his role was that of Vice-President (Projects). However, for much of the Claimant's employment, Mr Taj was apparently not engaged by the Respondent under an employment contract. Rather he performed services for the Respondent in return for regular remuneration. The focus of his role appeared to be on liaison between the Respondent and the Pakistan High Commission in the UK to assist with the visa issuing business.
10. The Tribunal was told that by 2014, the UK visa issuing business was not operating effectively. At the time, the Claimant had the role of General Manager for Gerry's International Pvt. Limited in Pakistan, where he reported to Arshad. Arshad also had responsibility for the visa issuing business operated by the Respondent in the UK. Impressed by the Claimant's performance in his role in Pakistan, Arshad persuaded

the Claimant to take on a new role, working for the Respondent. Arshad wanted the Claimant to manage the visa issuing business.

11. In agreeing to take on this role, he ceased to be employed by Gerry's International Pvt. Limited and became employed by the Respondent. His role was designated that of Vice President. He moved to the UK with his family, namely his wife and two children. He did so under a five-year Intra-company Transfer visa. The Claimant understood that this visa could not be extended and would lapse on the fifth anniversary. The Respondent agreed to pay the Claimant in sterling. His salary was £4000 a month.
12. The only paperwork issued to the Claimant in his new role was a Letter of Promotion. This stated that "based on your sustained performance and our assessment of your capability to take up higher responsibilities, we are pleased to inform you that you are being promoted as "Vice President" for [the Respondent] with effect from 1 January 2015, your new position will be based at our office in the United Kingdom".
13. He was not issued with a new employment contract, nor was he issued with a statement of employment particulars as required by UK law. The Respondent's position is that his terms and conditions continued to be governed by his contract with Gerry's International Pvt. Limited, notwithstanding the change in the identity of his employer. The Respondent has asked that the Tribunal do not make any findings as to the terms of his contract with the Respondent, particularly as to termination. This is because the parties have a contractual dispute, which is pending in the civil courts, as to the financial consequences arising from the end of the Claimant's employment.
14. Whilst noting the need to limit our findings to the issues before this Tribunal, we must make findings as to the terms of the Claimant's employment contract where this is required by the issues we need to decide in these proceedings.
15. So far as the duration of the contract is concerned, we find that this was a fixed term contract for a period of five years. This is because, at its inception, both parties knew that the Claimant was only permitted to remain in the United Kingdom for a maximum period of five years. It was not possible to continue performing the Claimant's role of managing the operation of the visa issuing business in the UK from outside the United Kingdom.
16. The Respondent argues that the Claimant was a peripatetic employee or was at least based in both London and Pakistan. We disagree. It is clear from the Letter of Promotion, that the Claimant would be based in the Respondent's London office. This is confirmed by the Certificate of Sponsorship for the Claimant's visa, which refers to the Claimant's main work address as 253 High Street, Stratford, London E15 2LS, and then lists other addresses in London, Birmingham, Bradford and Manchester.
17. So far as the notice period was concerned, the Claimant was entitled to the minimum period of notice prescribed in the Employment Rights Act 1996. This was one week for each year of continuous service. By the time of the Claimant's departure, he had been working in the United Kingdom for over three years and so would be entitled to a

minimum of three weeks' notice. There is an argument, which we do not need to resolve, that the Claimant's notice was actually 12 weeks, if the Claimant can rely on his prior service from 2003 to 2014, with Gerry's International Pvt. Limited.

18. The Claimant was not specifically issued with a written job description. His visa application summarised the Job Description in the following terms:

“The company requires services of a senior level employee equipped with the necessary work knowledge and expertise to function as a Key Focal person in the UK and act on behalf of the Group Chairman and the BOD. The executive will facilitate strategic decision making, remodel business framework, set operational benchmarks, strategic targets, implement policy improvements and work with other senior executives to ensure business growth, review financial control systems and suggest changes. The representative will evaluate strategic acquisitions & identify potential business opportunities. Liaison with diplomatic missions, government officials and strategic partners and hold meetings, roll out new projects and assign/approve required resource – negotiate agreements/contracts and ensure accuracy and minimize risks. The executive will represent the company at public & official forums oversee the company's interest in the UK and furnish monthly reports to Group BID and the Group Chairman.”

19. The Tribunal considers this is likely to be a generic form of wording which would have been used in order to persuade the UK immigration authorities of the seniority of the proposed role and why it was important to Gerry's Group for a visa to be issued. It does not specifically relate to the week-by-week duties that the Claimant was performing whilst working in the role, which were largely operational, rather than strategic.
20. In order to understand more about the proposed role, the Claimant travelled to the UK on various occasions during 2014 and met with Mr Taj.
21. Even before he started the UK role, the Claimant appeared to have formed an adverse impression of Mr Taj. In May 2014, he was sharing his negative views on Mr Taj with Arshad, and asked Arshad to treat them as confidential, because he did not want Afzal to think he was lobbying against Mr Taj. The Claimant described him as a “madari” – which we were told means “clown”, adding “he knows how to lie in situations” [74]. From the immediate context, we find that the reference to “madari” was intended as a criticism.
22. From the start of 2015, both the Claimant and Mr Taj had responsibility for the successful operation of the visa issuing business. Mr Taj's role was never specifically defined. The dividing line between his responsibilities and those of the Claimant were unclear. As a consequence, and given their different personalities, they often clashed over how the operation should be conducted. By way of example, on 21 July 2017, the Claimant told Afzal that Mr Taj appeared to consider the Claimant was a threat to his 'territory' and repeated this in a message sent to Arshad the following day [144].

23. The difficulties were compounded by different reporting lines. The Claimant reported to Arshad, but Mr Taj reported to the Chairman (Afzal). When the Claimant raised his concerns about Mr Taj's role with Arshad, Arshad did not consider it within his power to identify the source of the problem, and then implement a solution. The Tribunal finds that Mr Taj was highly regarded by Afzal, who was both the Group Chairman as well as the Chairman of the Respondent. Mr Taj was rightly regarded by Arshad as the Chairman's representative in the UK. Therefore, Arshad did not have the power or the influence to curb Mr Taj's working practices directly, but only insofar as he could influence him through Afzal.
24. Geographical factors and competing demands on Arshad's time were further explanations for Arshad's passive approach to the unresolved conflict between the Claimant and Mr Taj. Unlike Mr Taj and the Claimant, Arshad was not based in the UK, but in Pakistan. He travelled to the UK only occasionally. Even then, a major reason for several UK trips was for medical treatment, rather than to keep a close eye on UK operations. In addition, Arshad had significant responsibilities for other business ventures within Gerry's Group. He was responsible for 16 different businesses worldwide. The result was that the time he could devote to operational issues within the visa issuing operation was limited.
25. As a result, when the Claimant raised a concern about Mr Taj's conduct, Arshad's general response was to tell the Claimant to resolve his differences with Mr Taj. It is unclear to the Tribunal whether he took the Claimant's concerns to his brother Afzal. If he did, then the Tribunal does not find that effective action was taken to settle the ongoing dispute.
26. It was clear to the Claimant that Mr Taj had established good relationships with key officials in the Pakistan High Commission, and the Consular Offices. Mr Taj was not someone who always chose to follow established protocol. As Arshad himself put it in his oral evidence, he was "*a bit rough*". The manner in which he dealt with others has already been the subject of consideration in an earlier Employment Tribunal Judgment 3201087/2013, by a panel chaired by Employment Judge Goodrich. The panel criticised his treatment of staff and was a reason for the Respondent losing the case. This judgment had been sent to the parties in February 2014.
27. At some point, the Claimant started to suspect that Mr Taj was potentially engaged in corrupt practices to maintain his good relationships with Pakistan High Commission officials. However, this suspicion was not triggered by a particular event. Rather it was based on the Claimant's assessment of Mr Taj's character and the closeness of his relationships with embassy officials.
28. On 11 November 2015, the Claimant was contacted by Mr Taj on his mobile phone. Mr Taj asked him for £2000 to be provided urgently. Mr Taj said that the money was required to reimburse him for an airline ticket bought for a senior embassy official and to buy a gift for another embassy official based in Bradford. Mr Taj refused to provide further explanation and stressed the importance of reimbursing him the following day.

29. As a result, the Claimant sent an email to Afzal seeking authorisation. This is said to be the first protected disclosure. It was worded as follows:

“Reference to my discussion with [Mr Taj], he is pressing me on the below two amounts to be released, kindly advise your consent on both the amounts, whether or not they are to be released:

1. Air ticket for Mirza – GBP1000 (he has already sent me a copy of the ticket)
2. Gift GBP1000 – Bradford (as CG just had a son, he thinks we should send this as a present on the occasion).”

30. It was put to Arshad that Mr Mirza was the Acting High Commissioner for Pakistan. Arshad claimed not to know, but this point was not subsequently challenged by the Respondent. CG stood for Consul General in the Bradford Consular Office. Arshad sought to explain to the Tribunal that the gift to the Consul General was a cultural norm. He said that, within Pakistani culture, it was normal to give generous gifts on the birth of a child. In the event, Afzal did not agree to authorise a gift of £1000. He said that £500 would be a better gift. He said both amounts should not exceed £1500 [320].

31. The Respondent's contract for issuing visas on behalf of the Pakistan High Commission was subject to review. The Respondent had a clear financial interest in the contract continuing for as long as possible. On the evidence before the Tribunal, it was not clear who would make the decision as to whether it should be extended. Arshad believed this was the responsibility of the Pakistan Government. The Claimant's evidence was that at the time, he believed Mr Taj was attempting to influence this decision by making financial inducements to those embassy officials who may be influential in determining whether the Respondent continued to provide this service. He did not express this belief to Afzal in the email seeking authorisation because, as he explained when questioned, it would be counterproductive given the strong relationship between Afzal and Mr Taj.

32. The Claimant would have had authority to authorise such payments himself, if he considered that they were appropriate. The Tribunal finds that his decision to refer the matter to the Chairman, rather than to Arshad, is indicative of the Claimant's concerns about the propriety of making such payments. The Claimant believed that they were inappropriate. In his evidence, Arshad explained that the purpose for the which payments were requested was a normal business practice. He told the Tribunal, and we accept, it was common for the Respondent to book flights for others, including employees of the Pakistan High Commission, and then be subsequently reimbursed. The Respondent is a licensed travel agency that can sell travel tickets. We accept that it was a culturally accepted practice to give a financial gift on the birth of a child.

33. In March 2016, Mr Taj rang the Claimant demanding that the manager of the Bradford office, Mr Qazafi, be removed. The reason given by Mr Taj was that there had been a complaint from the Consul General about Mr Qazafi. Neither the Respondent's witness

statements nor the documents in the bundle evidence any complaint from the Consul General. The Claimant's evidence, which we accept, was he asked Mr Taj for further evidence about the complaint, but this was not provided during the course of this call.

34. This is the context in which the Claimant alleges he made his third disclosure, although it was the second disclosure in time.
35. On 18 March 2016, prompted by Mr Taj's demand, the Claimant messaged Arshad to tell him he was going to send Mr Qazafi "on forced leave, making Hassan make shift-in-charge, until one week when we send him the transfer letter" [117]. This was clearly only part of a more extensive communication between the Claimant and Arshad on the subject of Mr Qazafi and his removal. However, the Claimant's evidence as to what he said to Arshad, when and by what means, is vague. In his statement, the Claimant says this (at paragraph 8.13):

"I debated with [Arshad] on how the company was not being fair in its decision on Qazafi, I explained that the position taken by the company was simply wrong, I explained that legal obligations were not being met by the company and that employment laws were being breached."

36. Arshad's evidence was equally general, but he did accept (at paragraph 23 of his witness statement) that the Claimant had told him that Mr Taj was creating an issue and wanted Mr Qazafi removed.
37. On the factual evidence before us, we conclude that the Claimant did tell Arshad that Mr Taj wanted Mr Qazafi removed from the Bradford office and transferred to Glasgow, that the Claimant disagreed with this decision as he thought it was unfair was in breach of Mr Qazafi's employment contract.
38. Later that day, the Claimant visited the Bradford office to speak to Mr Qazafi personally and tell him about the complaint. During a conference call with Mr Taj made by the Claimant in the Bradford office, Mr Qazafi maintained his innocence, suggesting Mr Taj was exaggerating matters. At Mr Taj's instigation, the Claimant indicated Mr Qazafi could be transferred to Glasgow. The Claimant suspended Mr Qazafi, pending further investigation.
39. Prompted by his suspension, Mr Qazafi emailed the Claimant, to record a conversation that had taken place between himself, the Claimant and Mr Taj on 10 November 2014. In that conversation, as Mr Qazafi remembered it, Mr Taj had threatened him, saying "as I have recruited you, I can send you home". The obvious inference is he was sending this to the Claimant in March 2016, because Mr Qazafi feared that Mr Taj was in the process of carrying out his previous threat.
40. On 23 March 2016, the Claimant wrote to Mr Qazafi, telling him he was being transferred from Bradford to set up a new office in Glasgow. The letter stated that this office had to be made functional by the third week of April. He would be given five days paid leave from 4 to 8 April and would be formally expected to take charge of the office on 11 April 2016. In response, on 31 March 2016, Mr Qazafi raised a formal grievance.

He said that it was unreasonable to expect him to relocate his family to a different country at such short notice, particularly as he was from the Bradford area and his children were in local schools.

41. The Claimant's uncontradicted evidence is that there was a further investigation into the issue which had prompted the transfer request. Mr Qazafi was not considered to be at fault and the transfer request was cancelled.
42. We find that the Claimant's reluctance to endorse Mr Taj's belief that Mr Qazafi should be moved to Glasgow further worsened the working relationship between the Claimant and Mr Taj.
43. In July 2016, the Claimant considered that Mr Taj was potentially implicated in the failure to account for over £200,000 of income. In that respect, he was not alone. Afzal sent a letter to his brother Anis, who was the Finance Director, which was copied to Arshad and to the Claimant. On 20 July 2016, Afzal wrote:

"After my thorough interrogation on [Mr Taj], I still feel he will not do Namak Harami to this level" [398]

44. We were told 'Namak Harami' means "unlawful activity". The uncontradicted implication of Afzal's choice of wording is that he believed Mr Taj might be involved in unlawful activities at a lower level.
45. On 24 September 2016, Mr Taj rang the Claimant and made a further request. He asked the Claimant to authorise payment for a 3-night stay in a luxury London hotel, at a total cost of £2,100. The hotel booking was for an individual referred to as "Dr". In cross examination, it was put to Arshad that this was "Dr Israr Hussain", who was the Deputy High Commissioner. Arshad said he did not know who this Dr was, nor did he know his role.
46. The Claimant messaged Afzal, as Chairman, on the same day, to ask him to authorise the payment: "[Mr Taj] is asking for 2100 for Dr. hotel booking, kindly advise if authorised. He wants 3 nights in Jumeirah Carlton, Kind regards, Nabil" [340]. This is the second alleged disclosure, although the third in time. Afzal refused to authorise this payment. In a series of WhatsApp exchanges, he referred to the Dr as someone "at the PHC" ie the Pakistan High Commission. Afzal said this [340]:

"First of all, we never permitted such thing to [Mr Taj] any more. Second, he has to recover the money from the dr ... tell him straight nothing would be paid on behalf of the phc."

47. Afzal went on to message "He him self is a big liability on the company". He then sent a message himself to Mr Taj in which he said "I think you are involve with people to eat our money & that is one of the example. I will not pay for any Haram Kari, keep in your mind".

48. The Claimant's response to Afzal on seeing this message was "Very rightly said sir. But I think Amir [ie Mr Taj] is under pressure as he "dr" shares internal information with him. He says he doesn't want to close the channel".
49. Again, if the Claimant had thought that the requested payment for accommodation was appropriate, then he would have been able to authorise this himself. His decision to refer the point to the Chairman indicates he was not willing to do so without the Chairman's approval. On this occasion, the Chairman refused to authorise the payment, regarding a payment for such a purpose in these circumstances as unlawful activity. The Claimant also regarded payment in these circumstances as inappropriate.
50. In October 2017, Mr Taj asked the Claimant to hire a 17 year old, on a part-time basis, named Komal Shahzadi. Her only previous work experience had been working in Poundland in Leyton, as confirmed on the CV she had provided to Mr Taj [490A], which he forwarded to the Claimant. The Claimant's uncontradicted evidence was that Mr Taj told him Ms Shahzadi was the relative of a Pakistan embassy diplomat. This diplomat had asked him to find her work on the Respondent's passport despatch desk which the Respondent operated inside the embassy. Mr Taj also told the Claimant that the company would have to pay her in cash, as this is what the Pakistan diplomat had requested.
51. The Claimant refused to authorise this recruitment as there was no vacancy and he did not consider it appropriate to provide favours for Pakistan government employees. As a result, Mr Taj spoke to Afzal, the Group Chairman, and obtained his authorisation to carry out this recruitment. Given that Ms Shahzadi's recruitment had been approved by the Chairman, the Claimant reluctantly agreed. There was no formal hiring process.
52. The Claimant's case, as set out in the List of Issues, is that the Claimant raised this with both Arshad and with Afzal on 12 October 2017 by speaking by WhatsApp. This is said to be the fourth protected disclosure. In the List of Issues, the Claimant contends he complained to both of them that Mr Taj was appointing employees and paying them in cash without making PAYE deductions. There is no record of any WhatsApp exchange with either Arshad or with Afzal on or around 12 October 2017 on this topic. Nor is there any other document which corroborates this alleged protected disclosure. It is not mentioned in the Claimant's original Details of Claim, which was drafted by solicitors. The only reference to this in the Claimant's witness statement is as follows, at paragraph 9.4. This reads:

"I spoke with the chairman and expressed my concern on this"

53. Even then, the nature of the concern raised is not exactly clear. There is no reference in the Claimant's witness statement to any WhatsApp messages on this subject. In his witness statement, Afzal says he does not remember any such communication from the Claimant. On the balance of probabilities, we do not consider that the Claimant communicated his dissatisfaction with the arrangement in the terms recorded in the List of Issues.

54. After Ms Shahzadi started, the documents suggest she did not regularly work the agreed hours on the days when she was expected to be working. There was insufficient revenue generated from passports issued on the desk to pay her agreed salary. As a result, the Claimant was regularly asked to authorise withdrawals for her pay from the Respondent's bank account. In her text messages pressing for payment, Ms Shahzadi regularly referred to Mr Taj as 'Amir Uncle' who, she said, had agreed to the payments being made. Other documents in the bundle indicate she was paid in cash [467] [468].
55. On 10 January 2018, Mr Taj forwarded to the Claimant a WhatsApp message he had received from Ms Shahzadi, which was in the following terms "Uncle u didn't call me back ... I need my wedges today ... I need them. How can I explain to u ..!". The Tribunal infers that Mr Taj sent this to the Claimant to put pressure on him to authorise payment to Ms Shahzadi.
56. Ms Shahzadi stopped working on 17 January 2018 [458A]. She continued to chase for payment of the remaining sums she considered were owing in relation to the work she had done. On 2 February 2018, the Claimant was asked by her line manager to authorise payment of the balance. On the same day, Mr Taj called the Claimant and expressed his anger that the Claimant was not authorising payment of the remaining sums due to Ms Shahzadi for the work she had done.
57. At about this time, the Claimant learned that his father had been hospitalised in Pakistan. He told Arshad he would have to leave for Islamabad urgently. The following day, 3 February 2018, the Claimant flew to Pakistan, where he stayed for two weeks. During his time in Pakistan, he tried to arrange a face-to-face meeting with the Chairman [380]. He had often done this during previous trips back to Pakistan, even where it had only been for two or three days. Despite repeated requests for a meeting in his text messages to the Chairman, no meeting was offered. The Claimant returned to London on Saturday 17 February 2018.
58. On Monday 19 February 2018, Mr Taj called the Claimant in the morning and asked him to send over a copy of his business card, which he did. That afternoon, in a further telephone call, Mr Taj demanded that the Claimant send an employee to his house to help with some urgent work. The Claimant refused, saying that staff were busy with their regular duties during their scheduled working hours. This provoked a furious reaction from Mr Taj, who accused him of undermining his importance in the company and complained about his refusal to pay Ms Shahzadi. Mr Taj stated: "you don't know what I am capable of doing". The Claimant replied: "then do whatever you can, I don't work for you and cannot facilitate your dirty work".
59. At 16:22, the Claimant messaged Arshad, saying he needed to speak to him about Mr Taj. There was no immediate response. At 16:59, the Claimant sent a WhatsApp message to the Chairman, asking if he could speak to him. At 18:11, Afzal responded, with a text saying: "Amir fired an hour ago", and followed up, by way of clarification, "Fired you". He then texted in Urdu, which translates as "Muhammad Amir Taj ate up the job". The Claimant thought that Afzal was joking and responded flippantly. Afzal

continued the exchange as follows: “You put the right chilli, then the reaction is bound to come”. This exchange, seen in the context of previous WhatsApp exchanges, was not understood by the Claimant as notice that his employment was being terminated. Rather, the Claimant saw it as banter reflecting the increasingly tense relationship between the Claimant and Mr Taj. The Claimant called Afzal to continue the discussion, but the focus of the subsequent discussions was on the Claimant’s arrangements to attend a forthcoming aviation conference in the US.

60. The Claimant’s case is that there was a fifth protected disclosure on the same date, 19 February 2018. The subject of the disclosure is said to be the same as the fourth protected disclosure, namely that Mr Taj was appointing employees and paying them in cash without making PAYE deductions. It is said that this was communicated both in WhatsApp messages and by telephone. We do not find that there was such a communication on or around 19 February 2018. By this stage, Ms Shahzadi was no longer employed. There has been no evidence that any other employee had been appointed by Mr Taj since then. There is no reference to any such communication in the email records on this date, and the Claimant’s own witness statement does not evidence such a communication in clear terms.
61. Arshad had originally intended to travel to the US for the conference but had asked the Claimant to go in his place given his father’s ill health. The Claimant travelled to the US for the conference. Whilst at the conference, the Claimant was photographed with the Global Vice-President of United Airlines, and also discussed setting up a sales desk in the Embassy with someone from the State Department. The Chairman’s response to the photos was “Fantastic! Great Participation”.
62. Whilst at the conference, on 27 February 2018, the Claimant received a call from Mr Taj who asked him to provide the details for the remote log in of security cameras at the visa centres. The Claimant told him the log in details. The following day, the Respondent’s IT department emailed him, asking him to approve the creation of two new email addresses on the company servers. These were for Mr Taj, who was identified as “Vice President”, and for Muhammad Sajjad, who was named as Mr Taj’s personal assistant.
63. The Claimant returned to the UK once the conference had ended. On 5 March 2018, he forwarded a screen shot of this email chain sent by the IT department to Arshad. The Claimant asked him if this structure had his approval and that of the Chairman, Afzal. Arshad replied “No” before adding, over two hours later, “No need to talk”. The Tribunal views his response as an attempt not to become involved in this new organisational development, which was evidently a source of further tension between the Claimant and Mr Taj.
64. On 7 March 2018, the Claimant received a call from Arshad. Arshad told him he should come back to Pakistan. The Claimant asked why and Arshad responded: “It’s not working out”. Whilst there is no contemporaneous record of this conversation, we accept that it took place and the discussion was as the Claimant remembers it. Such a conversation is likely to be a memorable one for him. Arshad accepted in cross-

examination that the conversation probably took place, although had not specifically mentioned it in his witness statement.

65. During this time, Afzal was on a visit to the UK. The Claimant tried to arrange a meeting with him during his visit. Afzal never responded to the Claimant's messages and the Claimant was told he was busy. Despite the Claimant's role as Managing Director of the Respondent, and the duration of Afzal's visit, there was no contact between the Claimant and Afzal during his trip.

66. In the weeks that followed, Arshad provided no further clarification of what he had meant in the 7 March 2018 discussion.

67. On 28 March 2018, a general email was circulated to UK staff by Ms Fizzah Masood. Her email recorded her title as Manager HR for Gerry's International Pvt. Limited It was worded as follows [525]:

"The Management is pleased to inform that Mr Amir Taj has been redesignated as "VP and Advisor to Chairman (Projects)". The above changes will be in effect from April 1, 2018 whereas all other terms and conditions shall remain unchanged.

He has been working with us for the past few years and has proven himself to be a dedicated and enthusiastic member of the team. We earnestly express gratitude towards him and wish him all the best for the endeavors yet to come.

Let's extend our full co-operation to him!"

68. The first the Claimant knew of this proposed restructure was when he received the group announcement. It had not been discussed with him in advance.

69. With no information from Arshad and no communication from Afzal, the Claimant continued to carry out his normal duties. At around this time, the Claimant discovered that the Respondent was advertising for a General Manager to run the Visa Services business. He did not raise this at the time with Arshad or Afzal. The contents of the job advert were not disclosed by either party and so were not included in the bundle.

70. In mid-April 2018, Arshad travelled to London from Pakistan. On 22 April 2018, he met with the Claimant in a café in Knightsbridge. Arshad explained that the reason why the Claimant was required to return to Pakistan was that Gerry's Group was having issues with the Airline Division in Karachi, and they wanted him to take over this Division. He also suggested that the business had not expanded in the UK, which he said was a further factor in the decision. The Claimant disputed that the business was underperforming. He said he had moved his family to the UK, his children were in schools here, and they were going through a vital stage of their education. The Claimant complained that Arshad had not stood up for him with Afzal in his disputes with Mr Taj. Arshad took notes and said he would speak to the chairman.

71. There was a further meeting the following day with Arshad. This took place at the Claimant's home. Arshad said he had spoken to his brother Afzal and passed on what had been discussed the previous day. Despite that, the decision remained unchanged. The Claimant was told he had no option but to accept a transfer to Pakistan, as there was a dire need for him there. The Claimant offered to assist with the Airline Division in addition to his UK duties, for no extra remuneration. He was told that this would not be possible, as the chairman did not want him involved with the UK project under any circumstances. The Claimant asked for specific details about the proposed role in Pakistan, but Arshad did not give him any further information about the role. Arshad told him that if he did not accept the role, then exiting the company would be the only option. The Claimant's impression was that Arshad told him he was willing to give him notice until the end of August. Arshad disputed this. At the end of the conversation, the Claimant asked Arshad to provide him with a formal communication from HR of the decision that had been made in relation to his employment.
72. On 30 April 2018, Mr Taj arrived at the London office, asking where the Claimant was. At the time, the Claimant was in a nearby hotel, conducting a disciplinary hearing. Mr Taj announced to the staff in the office he was being removed and replaced from his position. The Claimant reported this to Arshad in a WhatsApp message [242].
73. On 5 May 2018, the Claimant received an email from Ms Fizzah Masood. It was in the following terms:
- “Greetings
- In regard to your employment at Gerry's, it is under the present circumstances and prevailing conditions, I would like to inform you that as per the management's decision, your services are being transferred and will now be required in Pakistan with immediate effect.
- We wish you all the best.” [531]
74. The email was silent as to where in Pakistan the Claimant was expected to be working, or what his role would be.
75. On 7 May 2018, Ms Masood telephoned to ask the Claimant why he had not responded. On 8 May 2018, the Claimant replied to the 5 May 2018 email. He wrote he had had a discussion with Arshad between 24 and 27 April 2018 and had told him that he would be unable to move back to Pakistan.
76. On 12 May 2018, there was a further telephone call with Ms Masood, in which she told him that the company was expecting his resignation, giving two-months' notice. The Claimant's focus became on securing the best financial terms to his departure, which he now regarded as inevitable. One particular feature was a potential gratuity payment to which he thought he was entitled under his original contractual terms issued in May 2003. This provided that the Claimant was entitled to one month's basic salary for every completed year after five years' continuous service. This clause is at the heart of the civil proceedings, which are currently pending. It is not necessary to adjudicate on

whether that clause persisted after the Claimant's transfer to the UK at the start of 2015. The Tribunal notes that its potential applicability was a factor which was influencing the Claimant's subsequent behaviour in response to Ms Masood's request that the Claimant resign.

77. On 15 May 2018, the Claimant had a heated exchange of WhatsApp messages with Arshad. It was initiated by Arshad who accused the Claimant of referring to labour laws in his discussions with Ms Masood about his entitlement to notice. He said that this was making things difficult. The Claimant replied that Arshad had previously agreed the Claimant could continue working until the end of August. Arshad did not specifically deny promising that the Claimant could work until the end of August, saying: "I told you I will see". He added the Claimant had misunderstood what had been discussed. He did not provide a clear alternative explanation of what he had said about the Claimant's notice period.
78. On 16 May 2018, the Claimant emailed a letter of resignation to Ms Masood [530]. It was worded in conciliatory terms. The Tribunal finds that this was done in an effort to secure the best financial conclusion to the working arrangement. In relation to the notice period, the Claimant wrote that, ideally, he would request to serve a notice period till the end of August which will assist him in rearranging his affairs. He added that he "understood from our discussion that the two-month notice is what has been granted".
79. He said that it had been a very difficult decision to take after 15 years' service. He said that his journey with Gerry's had been "extraordinary and a pleasant one, and if in future there is any need for my services in a position available in the UK, I would like to be considered". Ms Masood replied the following day, accepting his resignation.
80. The Respondent insisted that the Claimant would only be permitted two months' notice. As a result, the Claimant's last day of employment was 16 July 2018, when he completed his hand over to Mr Arshad. His parting email said "You are requested to process the clearance of gratuity and provide me with an approximate value and the date of the final settlement" [529].
81. It has been suggested by the Respondent that the reason why the Claimant was asked to transfer to Pakistan was that he had been underperforming in his UK role. The central documentary evidence relied upon by the Respondent in this respect is a record of the revenue generated by the visa issuing business for the Pakistan High Commission over the years from 2012/2013 to 2017/2018. This shows that annual revenue appears to have fallen from a peak of almost £550,000 in 2015/2016 to around £350,000 in both 2016/2017 and in 2017/2018 (annualising the figure for the first nine months of that period). However, it is not clear whether this fall in revenue has been influenced by structural changes in the market for visas or by the Claimant's particular performance. It is agreed that during the last two years or so of the Claimant's employment, it was possible to obtain a visa online rather than by visiting one of the Respondent's branches. The extent to which this new method of securing a visa significantly eroded the available market is wholly unclear. It is also unclear

whether there was any reduction in the overall demand for visas to visit Pakistan during this period.

82. Although Arshad in his witness statement claims he had had various discussions with the Claimant about the downturn in revenue from this part of the business, there is no corroboration of this within the bundle. It is noticeable that there were frequent WhatsApp conversations between the Claimant and Arshad over the course of the Claimant's employment. We have not been taken to any conversations criticising the Claimant's performance, even though it does appear that the Claimant updated Arshad regularly about the number of visas issued in each office. The first documented reference to problems with the Claimant's performance came once it had been decided that the Claimant was to be asked to return to Pakistan, at the same time as the Claimant is apparently offered the opportunity to head the Airlines Division in Karachi.

83. The Claimant's role was replaced by someone described as a General Manager. He was hired at a salary of £40,000 a year, which was £8,000 lower than the rate paid to the Claimant. There was a dispute as to whether this was a fixed term arrangement for only two or three months or whether it was a permanent role. The Tribunal finds that the person who filled this role was recruited on a permanent basis. This is because no fixed term period was specified in his employment contract, albeit it was oddly referred to as a fixed term arrangement. In addition, the new recruit's employment was ended after about two and a half months, not because this was now the end of a fixed term, but as a result of dissatisfaction with his performance and conduct during "the three-month probationary period".

84. The consequence of this individual's recruitment together with the new role assumed by Mr Taj is that we find there was little if any reduction in the staffing costs during the period from the end of the Claimant's employment in July 2018 to the end of September 2018.

Legal principles

Protected disclosure detriment

85. The three essential features which must be established if a claimant is to succeed in a claim for protected disclosure detriment are:

- a. Establishing that the claimant has made a protected disclosure;
- b. Establishing a subsequent detriment;
- c. Making the necessary causal connection between the protected disclosure and the detriment.

86. Protected disclosures are qualifying disclosures made in circumstances that are deemed to be protected by the Employment Rights Act 1996 ("ERA 1996"). Qualifying disclosures made to the Claimant's employer are qualifying disclosures.

Qualifying disclosures

87. So far as is relevant to the present case, qualifying disclosures are defined as follows, under Section 43B:

- (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) ...
 - (d) That the health or safety of any individual has been, is being, or is likely to be endangered;
 - (e) ...
 - (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.

88. The starting point is that the disclosure must be a “*disclosure of information*” made by the worker bringing the claim. That disclosure must have two features. Both are based on the belief of the worker, and in both cases that belief must be a reasonable belief. The first is that at the time of making the disclosure the worker reasonably believed the disclosure tended to show wrongdoing in one of five specified respects in Section 43B(1); or deliberate concealment of that wrongdoing. The second is that at the time of making the disclosure, the worker reasonably believed the disclosure was made in the public interest.

89. In *Kilraine v London Borough of Wandsworth* [2018] ICR 1850 Sales LJ noted that allegations could amount to disclosures of information depending on their content and on the surrounding context. He set out the following test for determining whether the information threshold had been met so as to potentially amount to a qualifying disclosure: the disclosure has to have “*sufficient factual content and specificity such as is capable of tending to show*” one of the five wrongdoings or deliberate concealment of the same. It is a matter “*for the evaluative judgment of the tribunal in the light of all the facts of the case*” (paras 35-36).

90. The Tribunal needs to assess whether, given the factual context, it is appropriate to analyse a particular communication in isolation or in connection with others. In *Norbrook Laboratories (GB) Ltd v Shaw* [2014] ICR 540 (EAT), Slade J (at para 22) said that “*an earlier communication can be read together with a later one as embedded in it, rendering the later communication a protected disclosure, even if taken on their own they would not fall within Section 43B(1)(d)*”. Whether or not it is correct to do so is a question of fact.

91. In *Kilraine*, one of the alleged protected disclosures was made using these words : “*There have been numerous incidents of inappropriate behaviour towards me, including repeated sidelining, and all of which I have documented*”. In itself, this lacked sufficient factual content and specificity. The oblique reference to other documented instances did not incorporate other documents by reference. In *Simpson v Cantor Fitzgerald Europe* [2020] ICR 236, the EAT upheld the ET’s decision not to aggregate

37 communications to different recipients in order to assess whether there was a protected disclosure.

92. So far as the reasonable belief that the disclosure tends to show wrongdoing, there are two separate requirements. Firstly, a genuine belief that the disclosure tends to show wrongdoing in one of the five respects (or deliberate concealment of that wrongdoing). Secondly, that belief must be a reasonable belief. If the disclosure has a sufficient degree of factual content and specificity, then that belief is likely to be regarded as a reasonable belief (*Kilraine* at paragraph 36). In *Twist DX v Armes* UKEAT/0030/20/JOJ at paragraph 95, Linden J said “the fact that an employer appreciates that there is a concern about actual or potential breaches of legal obligation may support the worker’s case that they reasonably believed that the information disclosed tended to draw attention to such concerns, but a worker may reasonably hold such a belief of the employer’s understanding”.
93. The belief has to be that the information in the disclosure tends to show the required wrongdoing, not just a belief that there is wrongdoing (*Soh v Imperial College of Science, Technology and Medicine* EAT 0350/14). What is reasonable within Section 43B involves an objective standard and its application to the personal circumstances of the discloser. A whistleblower must exercise some judgment on his own part consistent with the evidence and the resources available to him (*Darnton v University of Surrey* [2003] IRLR 615, EAT). So a qualified medical professional is expected to look at all the material including the records before stating that the death of a patient during an operation was because something had gone wrong (*Korashi v Abertawe Bro Morgannwg University Health Board* [2012] IRLR 4 at paragraph 62). However, the disclosure may still be a qualifying disclosure even if the information is incorrect, in that a belief may be a reasonable belief even if it is wrong: *Babula v Waltham Forest College* [2007] ICR 1026.
94. In relation to each of the five prescribed types of wrongdoing, there is a potential past, present or future dimension. For instance, in relation to breach of a legal obligation, the reasonable belief must be that the information disclosed tends to show that a person has failed, is failing or is likely to fail to comply with any legal obligation. So far as future wrongdoing is concerned the phrase “is likely to” has been interpreted as meaning more than a mere possibility. In *Kraus v Penna* [2004] IRLR 260 the EAT held that to be a qualifying disclosure, the information disclosed should tend to show, in the claimant’s reasonable belief, that failure to comply with a legal obligation was “*probable or more probable than not*”.
95. So far as criminal offences under Section 43B(1)(a) are concerned, it is not necessary that the criminal offence believed by the worker to have been committed even exists, let alone has been breached. It is sufficient that the worker reasonably believes that a criminal offence has been committed: *Babula*. In that case the claimant reasonably believed that the subject of the disclosure had committed an offence of incitement to religious hatred, when there was no such offence at the time. For the same reason, to amount to a qualifying disclosure, it is not necessary that the worker spells out the precise criminal offence that they have in mind.
96. So far as breaches of a legal obligation under Section 43B(1)(b) are concerned, any legal obligation potentially suffices, including breach of an employment contract: *Parkins v Sodexo* [2002] IRLR 109]. Employment Tribunal cases have held that a wide

range of legal obligations are potentially applicable. A belief that particular conduct amounts to discrimination is a “breach of a legal obligation”.

97. In assessing whether a worker believed that there has been a breach of a legal obligation and whether that belief is a reasonable belief, potentially relevant evidential considerations are whether the concern about actual or potential breaches of legal obligation is stated or obvious or apparent as a matter of common sense. However, there is no rule requiring that one or more of these features need to be present: *Twist DX Limited v Armes* UKEAT/0020/20/JOJ at paragraph 97.
98. In *Kilraine v London Borough of Wandsworth* [2018] ICR 1850, the disclosure in issue related to an occasion when the worker had raised a child safeguarding issue and claimed to have received an inadequate response. The tribunal held that this did not tend to show breach of a legal obligation, and this was upheld in the Court of Appeal. As the Court of Appeal noted, nothing in the Particulars of Claim or the witness statement indicated that the claimant had a particular legal obligation in mind. It was only later that her representative suggested a potential breach of the Children Act 2004 and the Education Act 2002.
99. Section 43B(1) also requires a claimant to have a reasonable belief that the disclosure was in the public interest. This requirement has two components – first a subjective belief, at the time, that that the disclosure was in the public interest; and secondly, that the belief was a reasonable one.
100. What amounts to a reasonable belief that disclosure was in the public interest element was considered by the Court of Appeal in *Chesterton Global Limited v Nurmohamed* [2018] ICR 731. The Court of Appeal considered that a disclosure could be in the public interest even if the motivation for the disclosure was to advance the worker’s own interests. Motive was irrelevant. What was required was that the worker reasonably believed disclosure was in the public interest in addition to his own personal interest. So long as workers reasonably believed that disclosures were in the public interest when making the disclosure, they could justify the public interest element by reference to factors that they did not have in mind at the time.
101. Underhill LJ, giving the leading judgment, refused to define “public interest” in a mechanistic way, based merely on whether it impacted anyone other than the claimant or whether it impacted those beyond the workforce. Rather a Tribunal would need to consider all the circumstances, although the following fourfold classification of relevant factors was potentially a “useful tool”:
 - a. The numbers in the group whose interests the disclosure served – although numbers by themselves would often be an insufficient basis for establishing public interest;
 - b. The nature and the extent of the interests affected – the more important the interest and the more serious the effect, the more likely that public interest is engaged;
 - c. The nature of the wrongdoing – disclosure about deliberate wrongdoing is more likely to be regarded as in the public interest than inadvertent wrongdoing;

- d. The identity of the wrongdoer – the larger or more prominent the wrongdoer, the more likely that disclosure would be in the public interest.

102. Underhill LJ said that Tribunals should be cautious about concluding that the public interest requirement is satisfied in the context of a private workplace dispute merely from the numbers of others who share the same interest. In practice, the larger the number of individuals affected by a breach of the contract of employment, the more likely it is that other features of the situation will engage the public interest.

Detriment

103. There is a detriment if a reasonable person would consider the treatment to be a detriment, even if there is no financial loss as a result. An unjustified sense of grievance does not amount to a detriment.

104. Dismissal by a worker or agent of the employer can constitute an unlawful detriment under Section 47B(1A) for which the employer will be vicariously liable under Section 47B(1B). This is so notwithstanding the wording of Section 47B(2), which excludes dismissal by the employer from the scope of a detriment complaint under Section 48 (*Timis v Osipov* [2019] ICR 655).

Causation

105. Section 47B ERA 1996 is as follows:

- (1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act on the ground that the worker has made a protected disclosure.

106. Section 48 ERA 1996 is as follows:

- (1A) An employee may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of section 47B.
- (2) On a complaint under subsection (1A), it is for the employer to show the ground on which any act or deliberate failure to act, was done.

107. The effect of these sections is that it is for the worker to prove, on the balance of probabilities that there was a protected disclosure, that there was a detriment and the employer subjected the claimant to the detriment. If so, then the burden shifts to the employer to show the ground on which the detrimental act was done: Section 48(2) ERA. If a Tribunal rejects the reason advanced by the employer, then it is not bound to accept the reason advanced by the worker, namely that it was on the ground of a protected disclosure: it is open to the Tribunal to find that the real reason for the detriment was a third reason.

108. The Tribunal must consider what, consciously or unconsciously, was the employer's motivation for the detrimental treatment. Causation will be established unless the protected disclosure played no part whatsoever in its acts or omissions: *Fecitt v NHS Manchester* [2012] ICR 372, CA. The result is that there will be a sufficient causal connection if a protected disclosure was one of several reasons for the detriment, even if it was not the predominant reason. This is so even if the alleged detriment is dismissal by a worker or agent, for which the Respondent is being held

vicariously liable under Section 47B(1B). It is enough if the protected disclosure was a material influence, in the sense of being more than a trivial influence. There is no need to consider how a hypothetical or real comparator would have been treated. It is irrelevant whether the employer appreciated at the time that a disclosure was protected (*Croydon Health Services NHS Trust v Beart* [2017] ICR 1240).

Limitation

109. So far as is relevant, sections 48(3) and 48(4) ERA 1996 provide as follows:

- (3) An employment tribunal shall not consider a complaint under this section unless it is presented-
 - (a) Before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failure, the last of them, or
 - (b) Within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.
- (4) For the purposes of subsection (3)-
 - (a) Where an act extends over a period, the “date of the act” means the last day of that period and-

110. In *Arthur v London Eastern Railway Limited (trading as One Stansted Express)* [2007] ICR 193, Mummery LJ said that there must be some relevant connection between the acts within the three-month period and those outside the period. The mere fact that they were all acts alleged to have been committed against the claimant would not by itself be sufficient. Were the acts committed by different perpetrators organised or concerted in some way and why did they act as they did? Mummery LJ did not rule out the possibility of a series of apparently disparate acts being shown to be part of a series or to be similar to one another in a relevant way by reason of them all being on the ground of a protected disclosure (paragraph 35).

111. In *Royal Mail Limited v Jhuti* UKEAT/0020/16/RN Simler J at paragraph 34 said that whether or not there is a relevant connection is a question of fact. All the circumstances surrounding the acts will have to be considered.

Dismissal

112. In *Hogg v Dover College* [1990] ICR 9 a teacher was told by his headmaster that he could no longer continue as a department head and would be offered fewer teaching periods at a considerably reduced salary. The EAT held that the effect of the letter informing him of the changes was to amount to a dismissal. The issue was whether the contract under which the teacher was employed (in the role of department head) was terminated, not whether the relationship of employer and employee is terminated.

113. Section 95(2) Employment Rights Act 1996 provides that “an employee shall be taken to be dismissed by his employer for the purposes of this Part [Part X Unfair

Dismissal] if the employer gives notice to the employee to terminate his contract of employment and at a time with the period of notice the employee gives notice to the employer to terminate the contract of employment on a date earlier than the date on which the employer's notice is due to expire, and the reason for the dismissal is taken to be the reason for which the employer's notice is given".

114. An employee can be dismissed by an enforced resignation. As stated in *Martin v Glynwed Distribution Limited* [1983] ICR 511, the question is:

"Whatever the respective actions of the employer and employee at the time when the contract of employment is terminated, at the end the question remains the same "Who really terminated the contract of employment?"

Constructive dismissal

115. If the Claimant was not dismissed by the Respondent, we need to go on to consider whether the Claimant resigned in circumstances amounting to a constructive dismissal. This requires addressing three questions:

- a. Was the Respondent in fundamental breach of the employment contract? Here the Claimant relies upon the implied term of mutual trust and confidence, arguing that the Respondent without reasonable and proper cause, conducted itself in a manner calculated and likely to destroy or seriously damage the relationship of trust and confidence (*Mahmud v BCCI* [1997] ICR 606)
- b. Did fundamental breach of contract play a material part in the Claimant's decision to resign? (*Wright v North Ayrshire Council* [2014] ICR 77, para 18)
- c. Did the Claimant affirm the contract following the alleged repudiatory breach and before the point at which he resigned?

Unfair dismissal

116. The Respondent must identify the reason or principal reason for the dismissal. As explained in *Kuzel v Roche Products Limited* [2008] ICR 799:

"It is necessary for the tribunal to identify the reason or principal reason for the dismissal. This is a question of fact for the tribunal to be established by direct evidence or inferences from primary facts established by the evidence. The reason for dismissal consists of a set of facts which operated on the mind of the employer when dismissing the employee. They are within the employer's knowledge"

117. In *Royal Mail Group Limited v Jhuti* [2020] ICR 731, the Supreme Court stated that identification of the reason for a dismissal should be approached in a broad and reasonable way in accordance with industrial realities and common sense. If a person in the hierarchy of responsibility above the employee determined that the employee

should be dismissed for one reason by hid it behind another, and invented, reason, it was the court's duty to penetrate through the invention and hold that the reason for the dismissal was, in fact, the hidden reason.

118. In *Kuzel v Roche Products Limited* Mrs Justice Simler DBE set out the correct approach to the burden of proof, at paragraphs 58-60:

- a. The employee must produce some evidence to suggest that his dismissal was for the principal reason that he made a protected disclosure.
- b. The burden then shifts to the employer to show that the dismissal was for a potentially fair reason.
- c. If the employer fails to show the reason for the dismissal, then the employment tribunal may draw an inference (where such inference is appropriate) that the true reason for the dismissal was that suggested by the employee.
- d. It may be open to the tribunal to find that, on a consideration of all the evidence in the particular case, the true reason for dismissal was not that advanced by either side. In brief, an employer may fail in its case of fair dismissal for an admissible reason, but that does not mean that the employer fails in disputing the case advanced by the employee on the basis of an automatically unfair dismissal on the basis of a different reason.

119. If the reason or the principal reason for the dismissal is that the Claimant has made one or more protected disclosures, then the dismissal will be automatically unfair, under Section 103A ERA 1996.

120. Under Section 98(2) ERA 1996, there are a number of potentially fair reasons for dismissal. These include the two reasons relied upon by the Respondent, namely redundancy or some other substantial reason justifying dismissal. Redundancy is defined in Section 139 ERA.

121. Even if the Respondent satisfies the Tribunal that the dismissal was for a potentially fair reason, it is still necessary to show that the dismissal was fair in the present case. This depends on whether in the circumstances the employer acted reasonably in treating that reason as a sufficient reason for the Claimant's dismissal, and that the Respondent followed a reasonable procedure in advance of the dismissal decision (Section 98(4)).

122. Where redundancy is the reason for the dismissal, then an employer would be expected to follow a redundancy procedure, and engage in meaningful consultation. As was summarised in *King v Eaton (No1)* [1996] IRLR 199:

"Fair consultation means (a) consultation when the proposals are still at a formative stage; (b) adequate information on which to respond; (c) adequate

time in which to respond; (d) conscientious consideration by an authority of a response to a consultation”.

Conclusions

Protected disclosures

First disclosure

123. The email sent by the Claimant to Afzal on 12 November 2015 contained sufficient factual specificity to amount to a disclosure of information. It specified that Mr Taj wanted the Respondent to pay for two particular items – a flight for ‘Mirza’, and a gift for the Consulate General in the Bradford Office. It specified the amount that was requested for each item. Although it stated Mr Taj was pressing for the request to be granted, it did not make any allegations of impropriety about the purpose of the request. However, it was asking for Afzal’s consent to the release of these funds for this purpose, even though the Claimant could have authorised these sums himself.

124. At the time the email was sent, the Claimant believed that the payment request might well be an attempt to bribe these officials by offering them large gifts. Therefore, the Claimant genuinely believed that the information in his email tended to show a criminal offence was being committed or was likely to be committed. That is why, rather than authorise the payment himself, he sought authorisation from the Respondent’s chairman.

125. This belief was not a reasonable belief, based on the information available to the Claimant at the time. Although Mr Taj’s behaviour had been criticised in the Reasons of the Goodrich Tribunal, he had not been found to be engaging in corrupt practices. Other than the Claimant’s negative assessment of Mr Taj’s character and the apparent closeness of his relationships with embassy officials, there was no specific basis for his belief - apart from the details of the particular requests which the Claimant was referring to Afzal for his approval. These particular requests were readily explicable by reference to the Respondent’s practice of arranging flights, on occasions; and by reference to the cultural practice within the Pakistani community of making a financial gift on the birth of a child. We note the Claimant requested that the sums be authorised without making any allegation that the purpose of these payments was improper, indicating a degree of reticence to make such an allegation on the information available; and Afzal was willing to authorise both items, albeit limiting the gift to the Consulate General to £500 rather than the £1000 sought.

126. Therefore, we do not find that the first disclosure was a qualifying disclosure as defined by Section 43B. As a result, it was not a protected disclosure.

Third disclosure

127. We consider the third alleged disclosure next, given it is the next disclosure chronologically. This occurred in March 2016. We find the Claimant disclosed information to Arshad about Mr Taj’s attempts to transfer Mr Qazafi from the Bradford office to the Glasgow office at short notice, which he regarded as a breach of Mr Qazafi’s employment contract, as he told Arshad. We find that the Claimant believed this was a breach of a legal obligation, namely the terms of the Claimant’s employment

contract. This was a reasonable belief given that the Claimant's role was based in Bradford and it was not realistically possible to commute from Bradford to Glasgow; and given the lack of notice given to Mr Qazafi about the transfer request. We have not seen the terms of Mr Qazafi's employment contract, and so do not know whether the Claimant's belief was correct. However, his belief was still a reasonable belief, even if it was wrong.

128. We do not find the Claimant reasonably believed this disclosure was in the public interest. It concerned only Mr Qazafi's employment contract. No other legal obligations were potentially impacted by the facts disclosed by the Claimant. Applying the guidance given in *Chesterton* as to what amounts to a reasonable belief in the public interest, the Claimant did not have such a reasonable belief at the time the disclosure was made.

129. As a result, this was not a qualifying disclosure, and so was not a protected disclosure.

Second disclosure

130. The WhatsApp communication on 24 September 2016 alleged by the Claimant to be his second disclosure is a disclosure of information. It contains sufficient factual specificity such that it is capable of being information tending to show Mr Taj was committing a criminal offence. It disclosed Mr Taj had asked the Claimant to authorise a payment of £2100 for three nights' accommodation in the Jumeirah Carlton Hotel. This was accommodation for the "Dr", which we have found was Pakistan's Deputy High Commissioner. Although there was no allegation of impropriety in the communication itself, the fact that authorisation was being sought from Afzal was an indication that the Claimant was questioning the propriety of the payment.

131. By the time of this message, the Claimant's view of Mr Taj and his practices had not changed. He still believed that Mr Taj was engaged in improper conduct in his dealings with embassy officials. As his message on [341] explained, he believed that payments made to the Dr were in return for internal information that he was providing to Mr Taj. When the Claimant asked Afzal to authorise payment of three nights' accommodation in a luxury London hotel, he believed that Mr Taj may well be committing a criminal offence, namely an attempt to bribe a senior official at the Pakistan High Commission.

132. This was a reasonable belief. By this point, the Claimant's belief in Mr Taj's improper practices had been reinforced by the Chairman's comment about Mr Taj in his email of 20 July 2016. This was: "I still feel he will not do Namak Harami to this level". The Claimant's belief about the suspicious nature of the request to pay for hotel accommodation was shared by Afzal, the Respondent's chairman. He said that "we never permitted such thing to [Mr Taj] any more", before adding "he has to recover the money from the dr". The latter comment implied that, without reimbursement, this payment would be improper. Afzal went on to describe Mr Taj as "a big liability on the company". Afzal's concerns were also revealed by the message he sent to Mr Taj and chose to copy to the Claimant "I think you are involve with people to eat our money & that is one of the example. I will not pay for Haram Kari, keep in your mind". As stated in Twist DX at paragraph 95, the employer's response to the disclosure may indicate that the belief is reasonable.

133. Given that the Claimant reasonably believed that Mr Taj was attempting to bribe officials within the Pakistan embassy, the Claimant reasonably believed that making this disclosure to the Respondent's chairman was in the public interest. The nature of the wrongdoing that the Claimant believed was taking place, and its potential implications for the way that Pakistan conducted its visa issuing business in the UK, obviously satisfied the public interest requirement as explained in *Chesterton*. Although specifically identifying only one person involved (Mr Taj), the allegation implied that others were also involved in the various embassy buildings. Any improper practices may have impacted more widely on those organisations involved or potentially involved in issuing visas and the recipients of those visas.

134. Therefore, we find that this second disclosure was a protected disclosure.

Fourth disclosure

135. We have rejected the Claimant's factual allegation, as set out in the List of Issues, that the Claimant made a complaint on 12 October 2017 about Mr Taj appointing employees and paying them in cash without making PAYE deductions. As a result, the allegation that this was a protected disclosure fails.

Fifth disclosure

136. We have rejected the Claimant's factual allegation that there was any disclosure which was capable of amounting to a protected disclosure on 19 February 2018. As a result, the allegation that this was a protected disclosure fails.

Conclusion on alleged disclosures

137. Only the disclosure labelled the "second disclosure" amounts to a "qualifying disclosure" under Section 43B and therefore amounts to a protected disclosure as made to the Claimant's employer. Therefore, it is capable of founding a detriment claim or an automatically unfair dismissal claim. It is accepted that the automatically unfair dismissal claim is within time. There is a live issue as to whether the detriment claim has been issued outside the prescribed period.

Limitation in relation to detriment claims

138. The time limit for bringing proceedings in relation to the alleged detriments is three months from the date of those acts, or the last of them if they form part of a series of acts. For acts extending over a period, it is the last day of that period. Here ACAS Early Conciliation was initiated on 3 October 2018 and the Certificate was issued on 17 November 2018. The proceedings were issued on 29 November 2018. As a result, any act or failure to act before 4 July 2018 is outside the primary limitation period.

139. We conclude that the three alleged detriments form part of a series of similar acts. The first alleged detriment is "From 7 March 2018, being required to leave the UK earlier than expected supposedly to take up work in Pakistan". Given the wording, this potentially includes all events occurring after 7 March 2018 as recorded in our findings of fact above, to the extent that they relate to the future of the Claimant's role in general or any particular indication that the Claimant should relocate to Pakistan. That

said, neither party has sought to sub-divide this detriment into discrete incidents in that way. Rather both parties have dealt with it as a matter of generality. The second alleged detriment is the email from Ms Masood on 5 May 2018 in which the Claimant was told he was required to take up a role in Pakistan with immediate effect. The third detriment, intended to be the last of the three, is described as “being dismissed by the individual(s) behind the decision”, although no date is given or event is identified as the point at which dismissal took effect.

140. The common link is that they all concern incidents that indicate that the Claimant’s role as Managing Director with responsibility for the UK visa business would not continue, but rather that the Claimant will work in the future in Pakistan. The parties have essentially proceeded on the basis that the detriment claims concern events leading to the Claimant’s dismissal and the dismissal itself. Therefore, we can treat the detriment claim as being essentially synonymous with the dismissal claim, such that the last event in the series of similar acts is when the dismissal decision was taken.

141. Time in relation to the detriment claim runs from the date of the act which amounts to the Claimant’s notice of dismissal, not from the later date when the dismissal takes effect (as is the case with the unfair dismissal claim).

142. Therefore, it is necessary to decide when the Claimant was dismissed, if the Claimant establishes he was in fact dismissed, rather than resigning as the Respondent alleges. If the date on which the dismissal decision was taken was before 4 July 2018, then the detriment claims are out of time. It is not suggested on behalf of the Claimant that it was not reasonably practicable for him to issue proceedings within the primary limitation period, such that time should be extended.

Dismissal

143. We conclude that the Claimant’s employment ended when he was dismissed by the Respondent, rather than as a result of the Claimant’s resignation. The dismissal was effected by Ms Masood’s email of 5 May 2018. Earlier communications between the Claimant and the Respondent about the Claimant’s future in his role were not sufficiently clear to amount to notice that his employment was being terminated.

144. The email of 5 May 2018 made it clear that the Claimant’s role as Managing Director of the Respondent had no future, in requiring the Claimant to return to Pakistan “with immediate effect”. Read in context, we conclude that the words “with immediate effect” did not end the employment relationship instantaneously. This was particularly in circumstances where the Respondent wanted the Claimant to return to Pakistan to take up an alternative role with the Airlines Division, working for a different legal entity – but had yet to create the role in Pakistan for the Claimant to perform. Rather this communication amounted to a dismissal on notice, where the period of notice was not specified in the letter of 5 May 2018. This interpretation of the letter is supported by subsequent events. On 12 May 2018 Ms Masood asked for the Claimant’s resignation, which is consistent with her earlier communication of 5 May 2018 amounting to giving the Claimant notice. Thereafter the parties discussed the applicable period of notice, whilst the Claimant continued in his role and continued to be paid for performing the role.

145. The employment relationship did not continue as a result of the Respondent

contemplating that there would be a different role for the Claimant in Pakistan. Applying the principle in *Hogg v Dover College*, the Respondent was giving notice that the role of Managing Director of the Respondent was being terminated, which was the contract under which he was employed.

146. The Claimant's purported resignation was sent after notice of dismissal was given, and therefore it did not supersede the notice of dismissal already given. Read in context, it was in response to Ms Masood's subsequent request that the Claimant submit his resignation. The Claimant chose to go along with this request, expressing his termination as a resignation, in an attempt to secure the gratuity payment to which he believed he was entitled. Even if the end date of any notice period given in the resignation email was earlier than the period of notice inherent in the communication of 5 May 2018 (which is unlikely), by reason of Section 95(2) ERA 1996 the Claimant is taken to be dismissed by the employer, and the reason for the dismissal is the reason for which the employer's notice is given.
147. If we are wrong in our analysis of the communication from Ms Masood on 5 May 2018, then we conclude that the Claimant's resignation was a forced resignation, which is tantamount to a dismissal (*Martin v Glynwed Distribution Limited* [1983] ICR 511).
148. Therefore, we do not need to consider whether the resignation amounted to a constructive dismissal.

Effect on the detriment claims

149. The effect of our decision as to the date of dismissal is that the protected disclosure detriment claims are out of time. The last act in the sequence culminating in the Claimant's dismissal occurred on 5 May 2018. ACAS was first asked to start the Early Conciliation process five months later, almost two months outside the primary limitation period.
150. We still need to consider whether the single protected disclosure was the reason (or where more than one, the principal reason) for the Claimant's dismissal in order to decide the automatically unfair dismissal claim. In case we are wrong about the detriment claim being time barred, we will also consider whether it formed any part of the reason for the dismissal.

Reason for dismissal

151. We find that the dismissal decision was taken by Afzal, not by Arshad as the Respondent contends. Afzal had been responsible for the indications before that point that the Claimant would have to return to Pakistan. He was the Chairman of the Respondent and was the person by whom all significant decisions were taken. In terms of his authority over key decisions, it is relevant to note that the Claimant sought authority from Afzal, rather than from Arshad, to make the payments requested by Mr Taj. At the end of the discussion between the Claimant and Arshad on 22 April 2018, Arshad said he would discuss the Claimant's position with his brother Afzal. At the start of the second meeting the next day, Arshad confirmed he had spoken to Afzal and the Respondent's position remained as set out the previous day.
152. In an unfair dismissal claim, it is for the employer to show the dismissal was for a

potentially fair reason (Section 98(1) ERA 1996). Further where the dismissal is alleged to a detriment on the ground that the Claimant has made a protected disclosure, then the burden is on the Respondent to show that the protected disclosure formed no part of the reason for the Claimant's dismissal (Section 48(2) ERA 1996).

153. We start by considering the reason advanced by the Respondent. The Respondent contends that the reason for the Claimant's dismissal was redundancy, alternatively some other substantial reason justifying dismissal. This was identified by the Respondent as "a reduction in the work he was required to do, combined with work for him to do elsewhere for which he was better suited (requiring a business reorganisation)" (Mr Arnold's Skeleton Argument para 108). If so, then the dismissal would have been taken for a potentially fair reason; and unless influenced by the protected disclosure, the protected disclosure detriment claim would fail too on its merits.
154. Despite the burden of proof being on the Respondent in relation to both types of complaint, this is a case where the Respondent has not called the decision maker to provide evidence as to his reason for his dismissal decision. We have read Afzal's witness statement, which is relatively short and expressed in surprisingly general terms, given the extent Afzal's involvement in many of the disputed factual issues. The weight we can give to what he does say in his evidence is very limited, given that he has not been cross examined on its contents.
155. We are not persuaded, on the balance of probabilities, that there was a redundancy situation, or that this was the reason for the Claimant's dismissal.
156. We reject the Respondent's assertion that the reason for the Claimant's dismissal was that his role was redundant. The visa issuing business for which he was responsible continued to operate. Therefore, there was an ongoing need for the responsibilities in his role. There is no evidence that these responsibilities were transferred to Mr Taj, who had a different job title to that of the Claimant and had always had a separate role within the Respondent's business, even if not on a formal basis. The Claimant was replaced by an individual who was appointed on a permanent basis, apparently to continue with the Claimant's responsibilities. Although that individual may have been on a lower salary than that of the Claimant, the Respondent has not shown that the total expenditure on salaries within the visa issuing business was lower. The recruitment of Mr Taj, with effect from 1 April 2018, would have created an additional ongoing overhead for the visa issuing business. The result is that there is likely to have been little if any reduction in staffing costs from June 2018 onwards, even with the Claimant's departure.
157. Nor do we consider that the Claimant was dismissed for some other substantial reason justifying dismissal. We are not persuaded, on the balance of probabilities, that the reason for the Claimant's removal was as the Respondent alleges. He was not given any proper justification for why, as is alleged, there was now a reduction in the work he was required to do in the UK. In fact, despite his attempts to discuss matters with Afzal, both on the Claimant's visit to Pakistan in early 2018, and when Afzal visited the United Kingdom, such a meeting had been refused. No clear role was provided for the Claimant to perform in Pakistan, nor was he ever told the terms and conditions which would apply to such a role, including the pay. The facts indicate that the Respondent's priority was to remove the Claimant from his role as Managing

Director of the Respondent, rather than to transfer him to another role in Pakistan.

158. However, even if we reject the reason asserted by the Respondent, we are not bound to accept the reason for the dismissal advanced by the Claimant.

159. The Claimant alleges that the reason or part of the reason for his dismissal was that he had made protected disclosures. This is how Mr Ohringer put his case in closing submissions:

“It is clear from the chronology and the evidence that the Claimant was subject to the detriments and was required to leave his position with the Respondent because he would not allow Mr Taj to continue to conduct the Respondent’s business in an unlawful manner. The Claimant’s protected disclosures obstructed Mr Taj. That is why Mr Taj ‘fired’ the Claimant and why the process of removing the Claimant was then taken up by Afzal and Arshad” (at paragraph 91)

160. This submission, in its reference to “the chronology”, presupposes that the Claimant has established he made protected disclosures close to the time in February 2018 when there were references in WhatsApp messages to the Claimant being dismissed. We have found that only one of the alleged protected disclosures was a disclosure of information that satisfied the requirements of Section 43B ERA 1996 to be a qualifying disclosure, and thus a protected disclosure. This was a disclosure which was made to Afzal on 24 September 2016, roughly 18 months before the date on which he was given notice of dismissal, and just under 18 months before references to Mr Taj firing the Claimant are recorded in the WhatsApp messages.

161. There is no specific evidence to link this 24 September 2016 protected disclosure with the dismissal decision. There is evidence that Afzal agreed with the Claimant at the time that it would be wrong for the Respondent to pay £2100 for three nights’ accommodation in line with Mr Taj’s request. This suggests Afzal is most unlikely to have been prompted by this disclosure to have retaliated against the Claimant. Far from being upset at the Claimant for making this disclosure, the evidence is that Afzal was upset with Mr Taj for requesting this payment. There is no evidence that Afzal’s view of this protected disclosure changed at a later date, such that it could conceivably be any basis for the Claimant’s dismissal.

162. We infer that the real reason why the Claimant was dismissed by Afzal was because he had been finally persuaded to do this by Mr Taj. From 1 April 2018, Mr Taj had a specific role within the Respondent, namely that of Vice-President and Adviser to the Chairman (Projects). In the light of subsequent events, the wording of the messages that the Claimant received from Afzal on 19 February 2018 takes on additional significance. At 18:11 on that date, Afzal messaged: “[Mr Taj] fired an hour ago”, and followed up, by way of clarification, “Fired you”. Afzal then texted in Urdu, which translates as “Muhammad Aamir Taj ate up the job”. This is clear evidence that Mr Taj was looking to remove the Claimant from his role of Managing Director. His attempt to get the Claimant dismissed on that occasion was unsuccessful.

163. On 30 April 2018, Mr Taj had arrived at the Respondent’s offices whilst the Claimant was absent, and announced to the staff that the Claimant was being dismissed. This incident provides compelling evidence not just that Mr Taj knew of the

Claimant's imminent dismissal but that he agreed with it. The indiscrete way in which he chose to announce it to the office (even before there had been any formal communication the Claimant) is a proper basis for us to infer that he was influential in achieving the Claimant's dismissal. What was different by April 2018 was that by this stage Mr Taj had a specific role within the Respondent's organisation. That role gave him greater authority. We infer that, by that point, Afzal did not consider that the Claimant's performance was sufficiently strong to justify standing in the way of Mr Taj's strongly held views that the Claimant should go. Mr Taj regarded the Claimant as an impediment to the way in which he wanted to operate within the Respondent.

164. In so acting, we do not consider that Mr Taj was motivated to any extent by the Claimant's protected disclosure to Afzal in September 2016, eighteen months earlier. Afzal had himself reacted strongly against this request to authorise the Respondent's funds for this purpose. Even in the absence of evidence from Mr Taj, there is no proper basis for inferring that Mr Taj still had that incident in mind by April 2018, if he ever did. Whilst we infer that Mr Taj's frustration with the Claimant had been growing over time, the last straw which prompted him to want the Claimant removed was the incident at paragraph 58 above. This culminated with Mr Taj threatening the Claimant "you don't know what I am capable of doing". We do not consider that Afzal's decision was manipulated to any extent by Mr Taj's view of a single protected disclosure 18 months earlier.

165. Therefore, we do not consider that the protected disclosure was the reason or the principal reason for the Claimant's dismissal. We do not consider that the Claimant suffered detriment on the ground that the Claimant had made a protected disclosure.

Fairness of dismissal

166. The Claimant's dismissal was an unfair dismissal, in circumstances where the dismissal decision was taken for an unfair reason. Furthermore, no fair or appropriate process was followed before the Claimant was dismissed.

Polkey/Contributory fault

167. Given that the dismissal was for an unfair reason, the issue of *Polkey* does not arise for determination. Regardless of the procedure that was followed, a dismissal instigated by Mr Taj would always be an unfair dismissal.

168. We do not find that there was any contributory fault on the part of the Claimant which contributed to the dismissal, and which would merit any reduction under either Section 122(2) or Section 123(6) ERA 1996.

ACAS uplift

169. This was not a redundancy dismissal. Therefore, the Respondent was required to follow the procedure set out in the ACAS Code of Practice. No procedure was followed in the present case, and no right of appeal was offered when notice of dismissal was given. As a result, we find that the Tribunal's discretion is engaged to consider whether to make an uplift to the compensation which is due to the Claimant, under Section 207A Trade Union and Labour Relations (Consolidation) Act 1992. Whether to make such an uplift, and if so, the appropriate percentage uplift, will be determined at a

remedy hearing.

Statement of employment particulars

170. There is a dispute as to whether the Claimant's personnel file has gone missing and if so, whether it was removed by the Claimant. On the balance of probabilities, it is unlikely that the only version of any statement of employment particulars would have been in such a file, without an electronic copy being retained on the Respondent's computer system or that of Gerry's Group in Pakistan. If such an updated statement of employment particulars was created at the time by the Respondent's HR function in Pakistan, it is likely to have been sent as an attachment to an email; and that email is likely to still be accessible. There are emails in the Tribunal file from 2014, before the Claimant started his UK role. No clear evidence was provided by any of the Respondent's witnesses confirming that a statement of employment particulars was ever prepared when the Claimant started his role with the Respondent.

171. As a result, we conclude that the Claimant was not provided with any statement setting out the particulars of his employment in the role he was engaged to perform for the Respondent, albeit that he did have an earlier Offer Letter in relation to his previous role with Gerry's International Pty. Limited. As a result, so far as his role with the Respondent was concerned, the Claimant's previous Offer Letter did not accurately state the new identity of the Claimant's employer, the rate of his remuneration in the UK, and his place of work in the UK. It may have also failed to comply with the requirements of Section 1 and 4 in other respects. As a result, the Tribunal must make an award of two weeks' pay and may, if it considers it just and equitable, make an award of four weeks' pay. In all the circumstances, we consider it would be just and equitable to make an award of four weeks' pay. There was no good reason advanced why the Claimant was not issued with an updated statement of employment particulars upon starting his UK role for the Respondent.

Employment Judge Gardiner
Date: 16 April 2021