



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr A Watts

**Respondent:** London Borough of Havering

**Heard at:** East London Hearing Centre (in public; by video)

**On:** 19, 20, 21, 25 and 26 April 2023

**Before:** Employment Judge Klimov

**Members:** G Forrest  
S Jeary

**Appearances:**  
For Claimant: Mr J Merry (Lay representative)  
For Respondent: Mr D Moher (Solicitor)

## JUDGMENT

All Claimant's claims fail and are dismissed.

## REASONS

### Background and Issues

1. By a claim form dated 22 September 2021, the Claimant brought claims for breach of contract/notice pay and victimisation. The Respondent presented a response denying all the claims and contending that the Claimant was not an employee of the Respondent, but an agency worker, and therefore the Tribunal did not have the jurisdiction to consider the Claimant's claim for breach of contract.
2. On 18 July 2022, there was a case management preliminary hearing before Employment Judge Beckett. The following list of issues was settled at the hearing:

#### ***The Issues***

*50. The issues the Tribunal will decide are set out below.*

**Preliminary Issue Contract of Employment/Jurisdiction**

1. *Did the Claimant have a contract of employment with the Respondent?*
2. *If not, does the Tribunal have jurisdiction to hear his breach of contract claim?*
3. *The Respondent says that the Claimant was an agency worker, working through the Adecco agency.*
4. *The Claimant asserts that he was an employee of the Respondent.*

**Alleged Breach of Contract**

5. *If the Tribunal does have jurisdiction, what were the terms of his contract in relation to notice?*
6. *The Claimant argues that he had a fixed term contract, which ran for a minimum of 6 months.*
7. *The Respondent argues that the Claimant's contract entitled him to a minimum of a week's notice.*
8. *Did Ms Chandler's emails of 17 March of 26 March 2021 create a fixed term contract that could not be terminated with notice within the term?*
  - a. *The Claimant says yes.*
  - b. *The Respondent says, no, the Claimant was entitled to a minimum of a week's notice in line with his Adecco terms and/or the in accordance with Section 86 of the Employment Rights Act 1996.*
9. *Was the termination of the Claimant's assignment/contract on 13 August 2021 a breach of contract?*

**Victimisation**

10. *Was the Claimant's interview on 1 5 July 2021 a protected act?*
  - a. *The Claimant says that the protected act was giving a statement to the investigator of Natalie Malupa's grievance.*
  - b. *Were the Claimant's statement given in good faith?*
11. *Was the Claimant treated to his detriment by the Respondent by:*

- a. *Giving him notice at a meeting on 15 July 2021*
  - b. *Pressurising him to complete tasks to the detriment of assisting with grievance and whistleblowing complaints;*
  - c. *Being excluded from team meetings*
  - d. *Being excluded from Team emails*
  - e. *Not being provided with support or reassurance with respect to the Leianne Bayliss matter*
  - f. *Being bombarded with “polite reminder” meetings by Sasha Taylor*
  - g. *Having lies spread about him by Julie Chandler and Sasha Taylor*
3. EJ Beckett ordered the parties to write to the Tribunal and each other by 25 August 2022 if they thought the list was wrong or incomplete. The claim was listed for a final hearing over 5 days on 19 – 21, 25 and 26 April 2023.
  4. On 19 August 2022, the Claimant’s representative, Mr J Merry, wrote to the Tribunal asking to amend the record of the preliminary hearing in respect of the list of issues. In particular, Mr Merry stated with respect to issue 8 that the Claimant did not contest that his contract could be terminated with appropriate notice, but that he was entitled to notice period *“commensurate with other employees working at a similar level to [the Claimant]..”*.
  5. Mr Merry also sought to expand issue 10a by stating that there were more protected acts of the Claimant *“supporting a colleague”* and *“providing information in connection with proceedings being taken by Natalie Malupa under the Equality Act 2010 and giving evidence in connection with proceedings being taken by Natalie Malupa”*. He also sought to add six further detriments to the list fixed by EJ Beckett at paragraph 11.
  6. At the start of this hearing, Mr Merry told me that he had received no response from the Tribunal to his application.
  7. On 14 November 2022, there was a further preliminary hearing in this case together with two claims brought by Ms N Stanton (nee Malupa) – Case Nos: 3205556/2021 and 3202894/2022, before Acting Regional Employment Judge Russell. The Claimant and Ms Stanton were represented by Mr Merry at the hearing. Acting REJ Russell ordered that the three claims be heard together over 5 days on the dates the final hearing of the Claimant’s claim had been listed by EJ Beckett. The Judge recorded that the issues in the Claimant’s claim *“were identified by Employment Judge Beckett and set out in the Summary of the Preliminary Hearing on 18 July 2022”*.
  8. The Claimant did not renew his 19 August application to amend the list of issues, neither at the 14 November hearing, nor thereafter. The Claimant did not seek to correct the record of the hearing on 14 November 2022 and did not

appeal Acting REJ Russell's determination as to the final list of issues in his claim.

9. On the eve of this hearing, the parties applied to the Tribunal to disjoin Ms Stanton's and the Claimant's claims. They asked the Tribunal to proceed with hearing the Claimant's claim only, and to have Ms Stanton's claims re-listed to be heard at a later date. The main reason for that was that 5 days would be insufficient to deal with both claims and it would be undesirable to finish the hearing with both claims part heard.
10. Having discussed with the parties potential issues with separating the two sets of proceedings, I was satisfied that 5 days would not be enough to deal with both claims. I also concluded that the overlap between Ms Stanton's and the Claimant's claims was minimal, and to fairly determine the Claimant's claim there would be no need for the Tribunal to make findings of fact or reach conclusions that could prejudice the parties' position in Ms Stanton's claim. I, therefore, decided that in the circumstances it would be proportionate and in accordance with the overriding objective to proceed and deal with the Claimant's claim at this hearing and to list a separate hearing to determine Ms Stanton's claims. The new dates convenient to the parties were found in mid-August 2023, and the final hearing in Ms Stanton's case has been listed accordingly.
11. The first day of the hearing was the Tribunal's reading time. To clarify the issues in the claim, I ordered the Claimant to provide information confirming what notice period he claims he was entitled to, and for the parties to liaise and send a list of all alleged protected acts and alleged detriments.
12. Responding to my order, Mr Merry confirmed that the Claimant's case was that he was entitled to three months' notice of termination. He also sent a list with additional seven alleged protected acts, six of which were in March – May 2021 (before Ms Stanton raised her grievance alleging age discrimination in June 2021). One of the additional seven alleged protected acts was said to have taken place on 2 August 2021.
13. The Claimant also listed six additional detriments, four of which were essentially the same as the alleged detriment 11(a) – "*being given notice of termination*", one – being subjected "*to unwanted conduct by creating an intimidating hostile, degrading, humiliating and offensive management environment*" – was simply putting a generic label on the pleaded 11(a) – 11(g) detriments (para 152 of the Claimant's Grounds of Complaints), and the final one - *Not dealing with the Claimant's grievance complaints in accordance with the ACAS statutory Code of Practice on discipline and grievance* – was the same as the Claimant sought to introduce with his application of 19 August 2022.
14. Although the Respondent did not object to these additional alleged protected acts and alleged detriments to be included, I decided that this Tribunal was bound by the determination made by Acting REJ Russell on 14 November 2022 about the final list of issues in the claim.

15. Under the well-known principles in Serco Ltd v Wells [2016] ICR 768 for an employment judge to interfere with an earlier order made by a Judge of equivalent jurisdiction there must be either a material change of circumstances or a material omission or misstatement or some other substantial reason (see paragraph 43 of **Serco**). This principle was reaffirmed by the EAT in other decisions (see, for example, E v X & Anor [2020] UKEAT 20\_0079\_20\_1012, and Poullis v Liverpool Heart and Chest Hospital NHS Foundation Trust [2022] EAT 9).
16. In this case, none of the permissible grounds to vary Regional EJ Russell's decision were present. The Claimant, having made an application on 19 August 2022 to amend the list of issues and having received no response from the Tribunal, did not renew his application at the preliminary hearing on 14 November 2022. He did not ask for the record of the 14 November preliminary hearing to be corrected, he did not appeal Acting REJ Russell's decision on the final list of issues. This suggests that the Claimant has accepted the Judge's determination on the final list of issues.
17. There was no material change in the circumstances between 14 November 2022 and the date of this hearing to allow this Tribunal to go behind the determination made by Acting REJ Russell.
18. Furthermore, the list of additional alleged detriments the Claimant sought to introduce at the start of this hearing was essentially the same as in his 19 August application. However, the seven new alleged protected acts were not included in his 19 August application. Six out of seven alleged protected acts pre-date the allegation of age discrimination made by Ms Stanton. None of them, as pleaded, show any connection with the Equality Act 2010. His seventh alleged protected act was closely linked to the alleged protected act of the interview with Mr Brain Casson on 15 July 2021, recorded in the EJ Beckett's list of issues.
19. To the extent the Claimant's list presented on the first day of the hearing were to be treated as an application to amend, applying the principles in Selkent v Moore [1996] IRLR 661, Chandhok v Tirkey [2015] IRLR 195, and Vaughan v Modality Partnership [2021] ICR 535, and considering the extreme lateness of the application and the fact that the Claimant sought to introduce seven additional alleged protected acts and six additional alleged detriments after all the evidence in the case had been finalised, I decided that allowing such amendments would clearly cause far greater hardship and prejudice to the Respondent than any prejudice and hardship to the Claimant in refusing to add these additional allegations. The Claimant principal complaint of victimisation remained intact. Most of the additional alleged protected acts made little (if any) sense, as they predated two months the allegation of age discrimination made by Ms Stanton, which the Claimant claimed he was supporting. None of them, as pleaded, disclosed any other connection with the Equality Act 2010. The six additional alleged detriments were largely the same as the pleaded alleged detriments expressed in a different way.

20. For these reasons, I decided that it was not open for the Claimant to introduce these additional alleged protected acts and detriments at this very late stage of the proceedings, and the claim must be determined based on the list of issues as recorded in EJ Beckett's case management orders of 18 July 2022, with the clarification provided by the Claimant as to his claim for breach of contract/notice pay.

## Evidence

21. There were two witnesses for the Claimant: the Claimant and Ms Stanton ("NS"). There were four witnesses for the Respondent: Ms L Watkinson ("LW") – the former Head of Public Protection, Ms J Chandler ("JC") – the former Assistant Director - Civil Protection, Ms S Taylor ("ST") – acting Head of Service for Public Protection and from March 2021 until August 2021 the Claimant's direct line manager, and Ms H Massey ("HM") – HR consultant.
22. The Claimant accepted HM's evidence in her witness statement, and she was not called. The Respondent chose not to cross-examine NS. All other witnesses were cross-examined.
23. The Tribunal was referred to various documents in a bundle of documents of 2,224 electronic pages the parties introduced in evidence. References in this judgment in the format (p. xx) are to electronic pages in the bundle. The parties presented the agreed chronology and cast list.
24. Mr Moher for the Respondent presented his final submissions orally. He sent to the Tribunal one authority in support of his submissions - James v Greenwich London Borough Council 2007 ICR 577, EAT. Mr Merry provided written closing submissions, in which he referred the Tribunal to various legal authorities, largely on the question of employment status. He supplemented his written submissions by oral arguments in reply to Mr Moher's submissions. The Tribunal is grateful to both representatives and the witnesses for their assistance.
25. Following the parties' final submissions, the Tribunal took time to deliberate and came to this judgment unanimously. The judgment was announced to the parties orally at the last day of the hearing. Both parties requested written reasons to be provided.

## Findings of Fact

### Commencement of the Claimant's engagement

26. In June 2020, in response to the outbreak of the Covid-19 pandemic, the Respondent set up Public Protection Outbreak Control Team ("the Team"), with the head of the team reporting to LW. The initial set up envisaged one manager (the head of the team) and three officers. The Team was meant to be a temporary unit to deal with public protection issues arising specifically from the Covid-19 pandemic.

27. In June 2020, LW approached the Claimant, whom she had known for many years from the Claimant's past engagements with the Respondent, with an offer to head up the Team. At that time the Claimant was running his own events business, but due to the pandemic the business was temporarily on hold.
28. On 1 July 2020, LW and the Claimant orally agreed the Claimant's role, title (Public Protection Manager), associated duties, remuneration at £60 per hour, normal hours of work (36 hours a week). At the same time LW offered the Claimant three options to be paid: (i) using the Respondent's agency (Adecco), (ii) through an umbrella company, or (iii) directly by the Respondent. The Claimant chose the Adecco option.
29. The Claimant commenced working for the Respondent in that role on 13 July 2020, reporting to LW. The Claimant's role and the title were confirmed in the Respondent's organisation chart.
30. The Respondent provided the Claimant with a laptop, phone, staff car pass, critical worker's parking pass, personal ID card, authorisation letter stating that he was an environmental protection officer of the Respondent, internal email address. The Claimant was given authority to hire staff into his team and to approve expenditure for up to £5,000 on behalf of the Respondent.
31. The Claimant's initial task was to set up the Team to carry out duties associated with assisting businesses to comply with the legal restrictions put in place to deal with the COVID-19 pandemic.
32. On 20 July 2020, Millie Murphy of Adecco emailed the Claimant asking him to complete registration with Adecco. As part of that process the Claimant was asked to complete and electronically sign a Registration Confirmation document. That document was not provided by either party in evidence. The Tribunal makes no findings as to the content of that document. No contractual documents between the Claimant and Adecco were presented by either party in evidence. Prior to this registration the Claimant was not on Adecco books as their agency staff.
33. To get paid for his work the Claimant had to submit time sheets showing his actual hours of work. The timesheets were approved by the Respondent. He was paid at the agreed rate of £60 per hour via Adecco. Adecco had no other involvement in the Claimant's day-to-day work for the respondent.
34. On 20 July 2020, NS joined the Team on secondment from another department, reporting into the Claimant. The Claimant and NS had known each other since mid-2017 from the Claimant's previous work for the Respondent. The Claimant recruited via Adecco other staff into the Team on a temporary basis. The recruited staff reported into the Claimant as the head of the Team.

*New Outbreak Control Service*

35. In or around October/November 2020, the Respondent decided to create a new expanded Outbreak Control Service, which would absorb the Team and include other Respondent's groups dealing with public health protection matters. It was decided that the new Service would be headed by the Head of Outbreak Control, with the Claimant's role ("**Role 6**") and another Outbreak Control Manager role – "**Role 15**") alongside other managerial roles reporting into the Head of Outbreak Control ("**the Head of Service**").
36. In January 2021, JC joined the Respondent as Assistant Director – Civil Protection. JC approached the Claimant to see if he was interested in applying for the Head of Service role. The Claimant said that he was not interested in that role and wanted to remain in his temporary role.
37. In early February 2021, LW asked the Claimant whether he was prepared to stay in his role in the new Outbreak Control Service structure. The Claimant responded in writing stating that there were a number of considerations for him: he hoped to eventually return to his normal work in the events industry, he did not wish to work more than 36 hours a week, and who was going to be appointed as the Head of Service and into other roles in the Service would have a bearing on whether he would be prepared to continue in his role. Meanwhile, he said, he was happy to carry on in his role.
38. In February 2021, the Respondent advertised various posts in the new Outbreak Control Service. The recruitment exercise resulted in ST's appointment as the Head of Service, effective 22 March 2021. Catherine Procter ("**CP**") was appointed into Role 6. NS was appointed into the Team Leader Role, reporting into CP. The Claimant did not apply for any of the available roles.
39. ST's appointment was announced by JC to the Outbreak Control team at a meeting on 2 March 2021. At the same meeting JC said that the Claimant would be returning to his private business at ExCel centre as soon as he could. The Claimant was not present at the meeting, but later was informed of the JC's announcement by a colleague. The Claimant was unhappy about the JC's announcement about him leaving the Respondent soon because his expectation was that he would remain in Role 6 for some time.
40. Later that day, the Claimant had a meeting with LW. The Claimant asked LW for an explanation about JC's announcement and whether he would remain in Role 6. LW said that Role 6 was part of the recruitment process and was the first post that had been advertised.
41. The Claimant was unhappy about this development. He raised the issue with Mark Ansell ("**MA**"), Director of Public Health. MA's intervention resulted in the Respondent offering the Claimant, on 17 March 2021, to say in a newly created role of the Deputy Head of Service, reporting into ST. The Claimant accepted. An increased hourly rate of £72.92 was agreed between the parties.



42. On 17 March 2021, JC wrote to the Claimant confirming that the appointment would be for “6 months initially (3 months then a further 3 months contract via Adecco ...)”.
43. On 26 March 2021, ST wrote to the Claimant informing him that CP had 8 weeks’ notice in her then current role, and asking the Claimant to continue in Role 6 until CP start date on 7 June 2021 and then have a week’s handover. ST said that the start date in the Deputy role would be 14 June 2021. However, the Claimant’s new hourly rate of pay of 71.79 was effective from March 2021.
44. On 29 March 2021, NS accepted the Team Leader role starting on 8 April 2021. Leianne Bayliss (“**LB**”) (an external candidate) was appointed into the second Team Leader role. On 31 March 2021, ST announced all the appointments in an email to the team.
45. On 10 May 2021, ST emailed the Claimant to confirm that his contract had been extended until mid-July 2021.

#### NS Grievances<sup>1</sup>

46. On 19 May 2021, NS submitted a formal grievance (“**the May Grievance**”). Her complaint was chiefly about missing out on the opportunity to apply for Role 6, which she alleged was due to “*underhanded / mis-leading practices in relation to the advertisement of and recruitment to the Outbreak Control Manager job (Post no. 6)*”. In her grievance letter she made several other complaints about ST and Michelle Hammond related to NS’s appointment into the Team Leader Role. The May Grievance did not contain any allegations of age discrimination.
47. On 8 June 2021, NS submitted a further grievance (“**the June Grievance**”). In the June Grievance NS expanded on her May Grievance complaints and also made allegations of age discrimination, including as the reason for not being offered Role 6.
48. NS submitted both grievances to the Claimant and the Respondent’s HR shared service centre. Brian Casson (“**BC**”) was appointed by the Respondent to investigate the NS’s grievances.
49. On 15 July 2021, BC interviewed the Claimant as part of his investigation into the NS’s grievances. At the interview the Claimant was supportive of NS and said that he thought that NS had been deceived about Role 6 vacancy. He, however, did not say that NS’s age was the reason for that. The subject of discrimination was not mentioned at the meeting either by BC or the Claimant. At the end of the meeting the Claimant agreed to check his records and send some additional information to BC.

#### Termination of the Claimant’s contract

---

<sup>1</sup> We make minimal factual findings in relation to NS’s grievances, strictly necessary to deal with the Claimant’s claim, to avoid binding the future Tribunal which will be hearing NS’s claims.

50. Later the same day, 15 July 2021, there was a video meeting attended by the Claimant, ST and JC. The Claimant recorded the meeting without telling ST and JC.
51. ST and JC told the Claimant that his appointment would end in four weeks. At that time neither ST nor JC knew that the Claimant had been interviewed by BC in connection of the NS grievances. Neither of them had spoken with BC about his interview with the Claimant before the meeting.
52. On 16 July 2021, ST wrote to the Claimant confirming his end date of 13 August 2021 and setting out key tasks for the Claimant to focus on in the remaining time.
53. On 19 July 2021, the Claimant submitted a formal grievance to Barry Francis, Director of Neighbourhoods, complaining about the termination of his contract. The Claimant said that he believed that the reason for his termination was him being a witness in the investigation into the NS's grievances. He also complained about the instructions he had been given with respect to the LB's complaint, and about ST's presenting inaccurate information to senior managers.
54. On 19 July 2021, the Claimant and ST had a "Touchpoint" telephone meeting. The Claimant recorded the conversation without telling ST. When ST asked the Claimant if he was in agreement with the tasks she had asked him to finish before his departure, the Claimant said that he had completed the first task (the crib sheet) but was going to "*reserve judgement*" on the others because he was "*very very very unhappy*" about the Respondent ending his contract.
55. The Claimant also said that he would do his best to finish the remaining tasks, but he had an outstanding request from BC about information related to the NS's grievance. ST suggested that the Claimant asked for an extension to submit information because the remaining tasks were of high priority in relation to the Covid pandemic. The Claimant said that he would speak with BC, and then asked ST why if Covid was such a high priority the Respondent was "*getting rid of [him]*". ST reminded the Claimant that he had been given four weeks' notice. The Claimant said that he wanted to deal with this issue in writing and ended the call. After the call ST wrote to the Claimant saying that she was unhappy about the way the Claimant spoke to her on the phone.
56. On 20 July 2021, the Claimant emailed some additional information to BC and requested more time, until 30 July 2021, to send in the remaining details. BC responded saying that this would be fine.
57. On 20 July 2021, the Claimant wrote to ST, responding to her 16 July 2021 email. The Claimant said that because the start date of his appointment as the Deputy Head was 8 June 2021 and the appointment was for a minimum term of 6 months, he was expected to work until 8 December 2021 or be paid until that date.

58. On 22 July 2021, Barry Francis wrote back to the Claimant, responding to his grievance letter of 19 July 2021, stating that because the Claimant was not an employee of the Respondent his complaints would be dealt with under the Respondent's whistleblowing policy.
59. On 23 July 2021, the Claimant had a conversation with MA. The Claimant recorded the conversation without telling MA. On the call the Claimant complained to MA about the termination of his contract and told MA that ST was incompetent.
60. On 26 July 2021, the Claimant emailed JC about his conversation with MA. The Claimant complained that MA had told the Claimant that following MA's conversation with JC, he (MA) was left with "*the distinct impression from you that [the Claimant] was a contributor in the cause of the Lianne Bayliss debacle*" and that the Claimant was a "*disruptive influence on the rest of the Outbreak Control team*". The Claimant said that "*[w]e both know the impressions and messages you are giving people are erroneous in the extreme*".
61. On 27 July, 3, 4 and 6 August 2021, ST sent to the Claimant by way of MS Teams Meeting invitations "polite reminders" to complete the remaining tasks before his last day.
62. On 29 July 2021, JC responded to the Claimant's email of 26 July 2021, setting out her record of the conversation she had had with AM, in which AM had told her about the content of his conversation with the Claimant, and refuting the Claimant's allegation that she was giving impressions and messages "*erroneous in the extreme*". JC also expressed her concerns about the allegations the Claimant was making against ST and said that she needed to investigate them.
63. On 2 August 2021, the Claimant had a Teams meeting with ST. The Claimant recorded the conversation without telling ST. The meeting was largely to discuss the status of the outstanding tasks. The Claimant did not raise any complaints on the call about having to finish the tasks or about any other matters.
64. On 5 August 2021, the Claimant and JC had a Teams meeting. The Claimant recorded the conversation without telling JC. The meeting was to discuss the Claimant's concerns about ST. The Claimant said that he had been having meetings with ST about the remaining tasks and their meetings had been "*professional and nothing untoward has happened*".
65. On 10 August 2021, the Claimant had a Teams meeting with ST to complete the handover of the remaining tasks.
66. On 13 August 2021, the Claimant left the Respondent.

Lianne Bayliss ("**LB**") Grievance

67. On 21 June 2021, the Claimant emailed JC raising concerns about LB's behaviour and the negative impact it had on Michelle Hammond (another member of the Outbreak Control Service team). JC requested HR to provide support. A meeting was set up to discuss the situation.
68. On 22 June 2021, the Claimant emailed JC thanking her for the support in relation to the LB's matter.
69. In or around July 2021, LB raised a grievance. The Claimant and Giselle Francis ("GF") (a member of the Outbreak Control Service team) were mentioned in the grievance.
70. On 15 July 2021, on the call between the Claimant, ST and JC, the LB's matter was briefly discussed. JC said that LB was complaining of disability discrimination (failure to make reasonable adjustments) because she had been given too much work, and that the matter may end up in an employment tribunal unless a compromise could be found.
71. On 23 July 2021, during the conversation between MA and the Claimant, MA said that he had had a discussion with JC and the impression MA had been given was that there had been "HR'y type team issues" to which the Claimant had contributed to. The Claimant asked MA:

*"So with respect to what you may or may not have been told... I'm getting the impression that you have been led to believe that because of... and the lady's name is Leianne Bayliss... because of this person's accusations causing HR issues that's the reason for terminating my position in Haverling? Which..."*

to which MA replied:

*"Well..."*

the Claimant then interjected and suggested that it was because of his support of NS.

72. The subject of LB came up later in the conversation with the Claimant telling MA that LB could not complete tasks despite support given to her by GF and other members of the team, and that there was no evidence provided to the Claimant about any wrongdoing on his part in relation to LB.
73. In his email of 26 July 2021 to JC the Claimant said that he had had no dealings with LB other than to meet her on the first day when he had given her some tasks, and that no evidence of wrongdoing had been provided to him. This was in the context of the Claimant complaining in the same email that MA had told him that JC had left MA with "*the distinct impression from you that [the Claimant] was a contributor in the cause of the Leianne Bayliss debacle*".
74. On 29 July 2021, JC responded to the Claimant. In relation to the LB issue, she wrote:

*“AW - I have had a conversation with a senior executive of LBH who has informed me that he was left with the distinct impression from you that I was a contributor in the cause of the Leianne Bayliss debacle.*

*The ‘senior executive’ that you are referring to has advised me that what he recalls saying to you, was that it appeared that you were not helping to resolve the situation with the member of staff.*

[....]

*I therefore completely refute your following statement of “We both know the impressions and messages you are giving people are erroneous in the extreme”.*

75. On 30 July 2021, the Claimant replied asking JC, *inter alia*, to tell him “*exactly what [JC] did say to MA in relation to:*
- a) My involvement in the Leianne Bayliss grievance matter;”*
76. On 30 July 2021, JC replied saying that she believed she had addressed all of the Claimant’s concerns but would arrange to meet the Claimant the following week.
77. On 5 August 2021, during a conversation between JC and the Claimant (which the Claimant recorded without telling JC), the Claimant asked JC what she had told MA. JC said that she had already answered that in her email of 29 July. She said that she did not know what MA had said to the Claimant, but what MA had told her about what he recalled telling the Claimant was in her email. JC said that the Claimant did not need to worry too much about that because it did not seem like it was anything untoward. JC said that she had challenged MA on what he had told the Claimant and that what the MA’s response was. The Claimant said that it was “fair enough”.
78. On 27 August 2021, ST wrote to GF informing that LB had withdrawn all grievances against GF and that the HR investigation was complete.

## The Law

### Employment Tribunals’ jurisdiction to consider breach of contract claim

79. The contractual jurisdiction of employment tribunals is governed by S.3 Employment Tribunals Act 1996 (“**ETA**”), together with the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 SI 1994/1623 (“**the Order**”).
80. Under S.3(2) ETA and Article 3 of the Order, for a tribunal to be able to hear a contractual claim brought by an employee, that claim must arise or be

outstanding on the termination of the employee's employment and must seek one of the following:

- damages for breach of a contract of employment or any other contract connected with employment,
  - the recovery of a sum due under such a contract, or
  - the recovery of a sum in pursuance of any enactment relating to the terms or performance of such a contract.
81. Certain further limitations on the type of contractual claims judiciable in employment tribunals are set out in S.3 ETA and in the Order.
82. The employment tribunals' jurisdiction to consider contractual claims is limited to claims by employees and does not extend to claims by workers, including agency employees against an end user, and independent contractors.

### Contract of Employment

83. Section 230(1) of the Employment Rights Act 1996 ("**ERA**") defines 'employee' as '*an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment*'.
84. Section 230(2) of ERA provides that a contract of employment means '*a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing*'.
85. Over the years several legal tests have developed to identify relationship between parties, which should be regarded in law as being under a contract of employment, and how these should be distinguished from those falling outside that category. In making such determination a tribunal must consider all relevant factors. The irreducible minimum for employment relationship to exist requires control, mutuality of obligation and personal performance, but other relevant factors also need to be considered (see Nethermere (St Neots) Ltd v Gardiner and anor 1984 ICR 612, CA, and Carmichael and anor v National Power plc 1999 ICR 1226, HL).
86. The mutuality of obligation is usually expressed as an obligation on the employer to provide work and pay a wage or salary, and a corresponding obligation on the employee to accept and perform the work offered. In essence, mutuality of obligation is the first of the three conditions for a contract of service identified in Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance 1968 1 All ER 433, QBD: '*the servant agrees that, in consideration of a wage or other remuneration, he will provide his own work and skill in the performance of some service for his master*'. This is often described as a '*wage/work bargain*'.
87. One of the requirements of the test for a contract of service laid down by Mr Justice MacKenna in **Ready Mixed Concrete**, is that the employee must have agreed to provide his or her own work and skill in exchange for a wage or other remuneration. He said: '*Freedom to do a job either by one's own hands or by*

*another's is inconsistent with a contract of service, although a limited or occasional power of delegation may not be.*' That is what became known as personal performance requirement.

88. The control element of the employee status test also goes back to **Ready Mixed Concrete**, and since then has been developed and refined by subsequent case law. In summary, control requires that ultimate authority over the purported employee in the performance of his or her work rests with the employer. However, indirect control, which exists by virtue of an employer's right to terminate the contract if the worker fails to meet the required standards of skill, integrity and reliability, is not by itself sufficient. Some elements of more direct control over what the worker does is needed.
89. These three elements (mutuality, personal performance and control), however, are just an irreducible minimum, without which a contract of employment cannot exist. Importantly, the **Ready Mixed Concrete** case also sets down another condition: that the other provisions of the contract are consistent with it being a contract of service.
90. The case law suggests the following are relevant factors a tribunal should consider when deciding whether there are provisions in the contract that are consistent or inconsistent with it being a contract of employment:
  - (i) Who carries financial risk: Payments linked to achieving of a particular result, the right to set the rate charged, participate in the resulting profits, and bearing responsibility for losses will usually point towards self-employment. Conversely, payment of a regular wage or salary is a strong indicator of employment.
  - (ii) Provision of benefits and tools of trade: The provision of benefits such as sick pay, holiday pay and pensions will suggest a contract of employment, while the provision by the worker of their own tools, equipment and premises from which the service is provided will tend to point towards self-employment.
  - (iii) Tax and national insurance: Deductions at source point to employment; gross payments suggest self-employment. However, this will rarely be a conclusive factor.
  - (iv) Organisational integration: The degree to which the worker is integrated into the employer's organisation is a material factor. The more the worker forms part of the organisational structure, and the more he or she is given the powers and responsibilities as other employees, the more likely his or her relationship with the employer will be one of employment.
  - (v) The presence of intermediary companies: Performing services via an intermediary company suggests self-employment. However, this is not a decisive factor. For example, in Catamaran Cruisers Ltd v Williams and ors 1994 IRLR 386, EAT, the EAT held that the fact that the worker had formed a limited company and supplied his services through that company

did not affect his employment status. The EAT stated that there was no rule of law that the importation of a limited company into the relationship prevents the existence of a contract of employment. If the true relationship was one of employment under a contract of service, putting a different label on it would make no difference.

- (vi) Intention of the parties: The parties' stated intention as to the status of their working relationship in law may be a relevant factor, but the courts must always look at the substance of the matter, even if the parties expressly agree on a particular label (see Autoclenz Ltd v Belcher and ors 2011 ICR 1157, SC).

### Agency staff

91. With respect to agency staff, the leading case is James v Greenwich London Borough Council 2007 ICR 577, EAT, where Mr Justice Elias, then President of the EAT, laid down the following guidance to assist tribunals in deciding whether to imply an employment contract between an agency worker and an end-user:
  - (i) the key issue is whether the way in which the contract is performed is consistent with the agency arrangements, or whether it is only consistent with an implied contract of employment between the worker and the end-user,
  - (ii) the key feature in agency arrangements is not just the fact that the end-user is not paying the wages but that it cannot insist on the agency providing the particular worker at all,
  - (iii) it will not be necessary to imply a contract between the worker and the end-user when agency arrangements are genuine and accurately represent the relationship between the parties, even if such a contract would also not be inconsistent with the relationship,
  - (iv) it will be rare for an employment contract to be implied where agency arrangements are genuine and, when implemented, accurately represent the actual relationship between the parties. If any such contract is to be implied, there must have been, subsequent to the relationship commencing, some words or conduct that entitle the tribunal to conclude that the agency arrangements no longer adequately reflect how the work is actually being performed,
  - (v) the mere fact that an agency worker has worked for a particular client for a considerable period does not justify the implication of a contract between the two,
  - (vi) it will be more readily open to a tribunal to imply a contract where, like in Cable and Wireless plc v Muscat 2006 ICR 975, CA, the agency arrangements are superimposed on an existing contractual relationship between the worker and the end-user.
92. On appeal (James v Greenwich London Borough Council 2008 ICR 545, CA) the Court of Appeal agreed with the EAT's approach and confirmed that a



tribunal will only be entitled to imply an employment contract between an agency worker and an end-user where it is necessary to do so to give business reality to the situation, which would not be necessary where agency arrangements are genuine and accurately represent the relationship between the parties.

93. In ***Cable & Wireless Plc v Muscat*** the Court of Appeal said that in a typical "triangular" case, the employment tribunal had to consider on the whole of the evidence whether the legal consequences of the arrangements between the worker, employment agency and end user included an implied contract of employment between the worker and the end user. The Court went on to hold that the requirement for mutuality of obligation could be satisfied where the obligation to remunerate did not lie on the person having control of the worker's work, so long as the remuneration was being provided by the employer albeit indirectly, and that the existence of a service contract between the employee's company and the agency did not preclude the existence of an implied contract between the employee and the end-user.

Formation of a legal contract

94. The common law generally regards an agreement as having been made when there is an offer made by one party (offeror) and accepted by the other (the offeree). However, such an agreement may still lack contractual force because, for example, its operation is subject to a condition which fails to occur or because it was made without any intention to create legal relations, or for want of consideration.
95. Mance LJ said in *Baird Textile Holdings Limited v Marks & Spencer Plc* [2001] EWCA CIV 274

*"59. ....For a contract to come into existence, there must be both (a) an agreement on essentials with sufficient certainty to be enforceable and (b) an intention to create legal relations.*

*60. Both requirements are normally judged objectively. Absence of the former may involve or be explained by the latter. But this is not always so. A sufficiently certain agreement may be reached, but there may be either expressly (i.e. by express agreement) or impliedly (e.g. in some family situations) no intention to create legal relations.*

*61. An intention to create legal relations is normally presumed in the case of an express or apparent agreement satisfying the first requirement: see Chitty on Contracts (28 th Ed.) Vol. 1 para.2–146. It is otherwise, when the case is that an implied contract falls to be inferred from parties' conduct: Chitty, para.2–147. It is then for the party asserting such a contract to show the necessity for implying it. As Morison J said in his paragraph 12(1), if the parties would or might have acted as they did without any such contract, there is no necessity to imply any contract. It is merely putting the same point another way to say that no intention to make any such contract will then be inferred.*

96. Arrangements made in the private domain of friends, family and other social relationships usually do not amount to contracts because the law presumes that they are not intended to be legally binding. This is in contrast to business transactions where the presumption is that the parties to an express agreement intended to create legal relations.

### Reasonable Notice

97. If there is no expressly agreed period of notice in an employment contract, there is an entitlement at common law to “reasonable” notice of termination. This must not be less than statutory minimum notice but, in some circumstances, could be more. What is “reasonable” notice will depend on such factors as the custom and practice in the area, trade or profession, and the employee’s status and length of service.
98. In *Clark v Fahrenheit 451 (Communications) Ltd* EAT 591/99 the EAT said that determining what is a reasonable length of notice is a mixed question of law and fact and depends on all the circumstances of the case. In that case the EAT held that the employment tribunal in deciding that one-month notice was reasonable correctly took into account the short length of the claimant’s employment and the fact that the claimant herself had authorised employment contracts for fellow director-employees with one month’s termination notice. However, the EAT held that the tribunal erred by not taking into account the claimant’s status and seniority in the company, and by taking into account the financial difficulties of the employer.
99. Section 86 ERA sets out minimum periods of notice required to terminate a contract of employment. Where notice is given by the employer, the notice required is one week for employees who have been continuously employed for at least one month but less than two years, and thereafter one week for each complete year of service up to a maximum of 12 weeks’ notice. Where the express or implied contractual term as to notice is more generous than the statutory minimum, the contractual notice period will prevail.

### Victimisation

100. S.27 Equality Act 2010 (“EqA”) states:
- (1) *A person (A) victimises another person (B) if A subjects B to a detriment because—*
    - (a) *B does a protected act, or*
    - (b) *A believes that B has done, or may do, a protected act.*
  
  - (2) *Each of the following is a protected act—*
    - (a) *bringing proceedings under this Act;*
    - (b) *giving evidence or information in connection with proceedings under this Act;*
    - (c) *doing any other thing for the purposes of or in connection with this Act;*

*(d) making an allegation (whether or not express) that A or another person has contravened this Act.*

*(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.*

101. Section 39(4) EqA provides that an employer (A) must not victimise an employee of A's (B):

*(a) as to B's terms of employment,*

*(b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training, or for any other benefit, facility or service,*

*(c) by dismissing B, or*

*(d) by subjecting B to any other detriment.*

102. Essentially, protection against victimisation is protection against retaliation when someone complains about discrimination or gives evidence or information in connection with discrimination complains. An employee is not protected against victimisation for simply complaining about unfairness. In *Beneviste v Kingston University* EAT 0393/05: the EAT said: '*merely by making a reference to a criticism, grievance or complaint without suggesting that the criticism, grievance or complaint was in some sense an allegation of discrimination or otherwise a contravention of the legislation*' is insufficient to amount to a protected act.

103. As a matter of logic, the protected act must have taken place before the detrimental treatment complained of (s.27(1)(a) EqA). Alternatively, if the claim is put under s.27(1)(b) EqA, the person who subjects an employee to a detriment must have formed a belief that the employee had done or may do a protected act before the detrimental treatment in question.

104. Accordingly, the person who subjects the claimant to a detriment needs to have known that the employee did the protected act or believed that he or he had done or may do the protected act.

105. To determine a complaint of victimisation the tribunal must answer the following three key questions: (1) did the claimant do a protected act (or did the respondent believe that the claimant had done or may do a protected act); (2) was the claimant subjected to a detriment, and (3) if so, whether he was subjected to the detriment because he did a protected act or because the respondent believed that the claimant had done or may do a protected act.

106. As with other types of discrimination and whistleblowing complaints detriment is generally given a broad meaning. The leading case on this issue is *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] UKHL 11; [2003] IRLR 285) where it was decided that in order for a disadvantage to qualify as "detriment", the tribunal must find that by reason of the act or acts complained of a reasonable worker would or might take the view that he had thereby been

disadvantaged in the circumstances in which he had thereafter to work. The test must be applied by considering the issue from the point of view of the claimant. If the claimant's opinion that the treatment was to his or her detriment is a reasonable one to hold, that ought to suffice. While an unjustified sense of grievance about an allegedly discriminatory decision cannot constitute "detriment", a justified and reasonable sense of grievance about the decision may well do so.

107. Finally, the causative test "because of" is not "but for" test. The essential question in determining the reason for the claimant's treatment is what consciously or unconsciously motivated the employer to subject the claimant to the detriment in question? In the majority of cases, this will require an inquiry into the mental processes of the person who is alleged to have subjected the claimant to the detriment. If the necessary link between the detriment suffered and the protected act can be established, the claim of victimisation will succeed.

## Discussion and Conclusions

### Was the Claimant an employee of the Respondent?

108. As noted above, for this Tribunal to have the necessary jurisdiction to consider the Claimant's breach of contract/notice pay claim, it must first determine whether there was a contract between the Claimant and the Respondent, and if so, whether it was a contract of employment within the meaning of s.230(2) ERA.
109. Mr Merry presented detailed written submissions on the Claimant's employment status. In summary, Mr Merry argued that an oral contract had been concluded between the Claimant and the Respondent, when the Claimant had been offered the role by LW. The concluded contract had all the necessary attributes of an employment contract. The Claimant was required to report to work daily. He had to work 36 hours a week as his standard working hours. He had to perform work personally. He was given a laptop, staff car pass, key worker document, identification letter confirming his authority as an environmental health officer of the Respondent. He was required to complete work given to him by the Respondent on a daily and uninterrupted basis. He was bound and had to follow the Respondent's policies and procedures. He had to declare any interests outside his employment with the Respondent. His work was supervised. He had a line manager. He had direct reports and was authorised to hire staff on behalf of the Respondent. He was also authorised to approve expenditures for up to £5,000 on behalf of the Respondent. He was integrated into the Respondent's organisation and appeared on the Respondent's organisational charts.
110. Further, Mr Merry argued, there was no writing or oral express or implied contract between the Claimant and Adecco. Adecco simply administered the payments of the Claimant's wages on behalf of the Respondent.
111. Mr Moher argued on behalf of the Respondent that the Claimant was an agency worker. He was given a choice whether to join the Respondent directly, via Adecco, or via an umbrella company. He chose the Adecco option. His pay was

twice the rate of the equivalent position in the Respondent's roles grading structure. To hire the Claimant as a permanent employee of the Respondent, the Respondent would have had to go through a proper recruitment exercise by advertising the role, interviewing selected candidates and issuing a formal contract of employment to a successful candidate, and none of that had happened in the Claimant's case. The Respondent had an internal payroll department. It would have made no commercial sense for the Respondent to use Adecco as a mere payroll provider and pay Adecco a premium on the Claimant's hourly rate for that service.

112. The reason to use Adecco, Mr Moher argued, was to enable the Respondent to bring in staff on a short-term basis and have flexibility around their engagements. The Claimant knew that because he himself hired staff into his team via Adecco. The Claimant was happy with that arrangement because he knew he was paid more than what he would have been able to get if employed directly by the Respondent. He was invited to apply for the available permanent roles but declined, because he wanted to remain in his temporary role as an agency worker and paid at a higher rate. He never complained about his employment status during the entire period of service and only raised the issue after he had been given termination notice. The Claimant now wants "his cake and eat it" and that is impermissible.
113. Finally, Mr Moher argued, there was no intention to create employment relations between the Claimant and the Respondent and therefore there was no contract between the Claimant and the Respondent. There is no business necessity to imply a contract because there were two express contracts between the Respondent and Adecco and between Adecco and the Claimant. The Claimant was paid his wages by Adecco. He had to submit timesheets to be paid. He was not entitled to sick pay or paid holidays by the Respondent. When the Claimant negotiated with LW his engagement he was acting as an agent for Adecco. Mr Moher referred the Tribunal to ***James v Greenwich London Borough Council*** in support of his arguments.
114. In reply, Mr Merry said that there was no evidence before the Tribunal that there was a contract between the Claimant and Adecco. He also argued that the fact that the Respondent breached its recruitment policies in hiring the Claimant did not mean that there was no contract of employment created as a result. The Claimant was not on Adecco books before he was approached by LW with the job offer. The Claimant's case was very different to ***James*** because in ***James*** the claimant was registered with her agency and supplied to the Council as a suitable agency worker at the Council's request.
115. We agree with Mr Merry's submissions. We find that this case is properly distinguishable from ***James***. The Claimant's case is not that a contract of employment should be implied to explain his relationship with the Respondent. His case is that there was an express oral contract concluded between the parties. We agree. There was an offer and acceptance and consideration. All essential terms, such as the Claimant's duties, hours of work, remuneration were agreed by the parties. There was also intention to create legal relations.

116. Whether or not there was intention to create employment contract is a relevant factor when deciding what type of contract the parties have entered into. However, whether the parties intended to create employment relationship or not is immaterial for the determination of the question whether a legally binding contract has been created. All that is required is that the parties intended to create legal relations. It is undoubtedly so. The Claimant would not have been performing work for the Respondent and the Respondent would not have been paying for such work if the parties had not intended for that arrangement to be legally binding.
117. Therefore, unless the relationship between the Claimant and the Respondent could be properly explained by some other contractual arrangement not involving a direct contract between the Claimant and the Respondent, the only possible conclusion open to this Tribunal is that there was a direct legal contract (partly oral, partly in writing through email exchanges between the parties) between the Respondent and the Claimant.
118. The Respondent argues that there were two express contracts between the Respondent and Adecco, and Adecco and the Claimant, which explain the relationship between the Claimant and the Respondent. However, except for the fact that the Claimant was paid via Adecco and an email asking the Claimant to sign "Registration Confirmation" form (p 399), which form we have not seen, the Respondent presented no evidence to support its contention that the Claimant had a contract with Adecco.
119. The Claimant told the Tribunal that he had attempted to obtain the paperwork from Adecco via a data subject request, but Adecco had failed to provide any contract to him. In any event, it is the Respondent's case that there was such a contract. The Respondent could have asked Adecco to produce that contract (if necessary, asking the Tribunal to make a disclosure order) or call Millie Murphy or other Adecco staff as witnesses to explain the arrangements Adecco had with the Claimant.
120. Mr Moher essentially invites us to find that what sat behind that Registration Confirmation was a contract of employment between the Claimant and Adecco terminable on one week notice. We see no proper evidential basis upon which we could make such a finding. In the absence of any concrete evidence, it would be wrong and impermissible for this Tribunal to speculate on what kind of arrangement the Claimant might have had with Adecco.
121. We also consider that there are no proper grounds for us to imply an employment contract between the Claimant and Adecco. That is because the Claimant's relationship with Adecco could be perfectly explained by the fact that the Respondent used Adecco to pay staff the Respondent wished to hire on a short-term basis.
122. We do not accept Mr Moher's submission that the Claimant was acting as agent for Adecco when agreeing his employment with the Respondent. There was no evidence of any such arrangement presented to us. In fact, when the Claimant negotiated his contract with LW he was not even registered with

Adecco, let alone being given any authority to enter into any contract on behalf of Adecco.

123. Equally, whether it made commercial sense for the Respondent to use Adecco to pay the Claimant's wages when it had an internal payroll facility is neither here nor there. Whether it was a good or bad business for the Respondent is not a relevant consideration for this Tribunal. "*The Chancery mends no man's bargain*" (Lord Nottingham in *Maynard v. Mosely* (1676) 3 Swanst. 651, 655).
124. The Respondent chose to use Adecco to pay the Claimant, most likely to avoid having to go through the policy mandated recruitment process and to be able to pay the Claimant a higher salary than the corresponding rate in its internal salary scale. However, that by itself is not sufficient to find that there was a contract of employment, (or, for that matter, any other type of contract), between the Claimant and Adecco. If the Respondent intended for there to be such a contract, and for it not to have any direct contract with the Claimant, it simply has failed to give legal effect to such intended tripartite relationship, or, at any rate, it has failed to produce satisfactory evidence to show the existence of such contractual relationship.
125. Now, having decided that there was a direct contract between the Respondent and the Claimant, we need to consider whether that contract was one of employment or of some other kind.
126. We agree with Mr Merry's submissions that all the essential elements of a contract of employment were present in the arrangement between the Claimant and the Respondent. We accept that the irreducible minimum for an employment contract was clearly established. The question is then whether there were other factors which are inconsistent with this being a contract of employment.
127. The main factors pointing away from that being a contract of employment are the facts that the Claimant was paid via Adecco, he had to submit timesheets showing his actual hours worked, he was not paid sick leave or holiday pay by the Respondent. It is also of relevance that the Claimant was offered three options of how to be paid, including direct payment by the Respondent, and he chose to be paid via Adecco.
128. However, these factors, in our judgment, are insufficient to outweigh all other factors listed above (see, in particular, paragraph 109 above), which firmly point towards the contract between the Claimant and the Respondent being one of employment. The way the contract was being performed by the parties, in our view leave little doubt that the relationship between the parties was of a kind one would expect to see between an employer and its employee.
129. Furthermore, it is of some significance that the way the relationship between the Claimant and the Respondent came about was not by the Respondent contacting Adecco and asking Adecco to find a suitable candidate for the role in question, but by the Respondent approaching the Claimant directly, offering him the job and negotiating all essential terms with the Claimant directly, with

Adecco being introduced later. The Respondent wanted to employ the Claimant and not any person with a certain set of skills Adecco might have on its books.

130. Adecco was simply a mechanism for the Respondent to go around its usual recruitment process to bring the Claimant on board as soon as possible, and to pay him a higher salary above its internal pay scale. In that sense, whatever the arrangements between the Claimant and Adecco were, they were superimposed on the already created employment relationship between the Claimant and the Respondent. The Claimant had commenced working for the Respondent before he even registered with Adecco.
131. The fact that the Claimant's role was always meant to be temporary and both parties understood it as such, does not mean that the relationship between the parties could not have been one of employment. There is no reason in law why an employee could not be hired on a fixed-term contract or be dismissed with minimum statutory notice.
132. Finally, when the Claimant was given the role of the Deputy Head of Service, except for agreeing a new rate, hours of work and indicating the likely duration of the role, there were no other changes negotiated to alter the nature of the created employment contract.
133. For all these reasons, we find that the Claimant was an employee of the Respondent. It follows that this Tribunal does have jurisdiction to consider his breach of contract claim.

Was the Respondent in breach of contract?

134. In his written closing, Mr Merry submitted that *"if the tribunal rules that the Claimant was an employee of the Respondent organisation, he wins this part of his case and then can expect to be compensated for as loss of holiday pay sickness benefits having his grievance investigated properly and a responsible severance payment for loss of his position."*
135. In closings I again confirmed with Mr Merry that the only breach of contract claim in front of this Tribunal was one of notice pay, being the Claimant's contention that the Respondent was in breach of contract by terminating the Claimant's employment on four weeks' notice, when he was entitled to three months' notice. Mr Merry accepted that.
136. It appears that initially the Claimant's claim was that the Respondent was not entitled to terminate his employment until the expiry of the minimum period of six months after him assuming the Deputy Head role. Consequently, there various questions put to the witnesses during the hearing to ascertain whether the start date was March 2021, when the Claimant started to receive a higher hourly rate to reflect additional responsibilities, or 14 June 2021, the date stated in ST's email of 26 March 2021.
137. However, in light of Mr Merry's admission (see paragraphs 4 and 12 above) that the Claimant accepts that his contract was capable of being terminated by



Respondent on notice, however the length of notice should have been three months and not four weeks, the start date of his Deputy position is irrelevant.

138. Mr Merry argued that four weeks' notice was insufficient considering the Claimant's position in the organisation and therefore three months' notice was more appropriate.
139. Mr Moher argued that the Claimant's statutory notice was one week. The Claimant knew that his contract was temporary. He knew that it could be ended on one week notice because he was hiring staff via Adecco and that what the Respondent's contract with Adecco stated. There were no discussions between the parties on notice because both parties knew it was one week. Therefore, in the circumstances, four weeks' notice was more than sufficient.
140. It was common ground that there was no express agreement on the length of termination notice by either side.
141. As stated above the law implies the right to receive "reasonable notice". In determining the length of reasonable notice, the tribunal must consider all relevant factors, including custom and practice, the employee's status and position in the organisation, length of service.
142. In the present case, we find the following factors are of relevance. The Claimant was not on a permanent contract of employment. He was a temporary employee and that was clearly understood and accepted by both sides. This was the Claimant's clear preference (see paragraphs 36, 37 above). The very nature of his role was temporary, and its longevity was largely driven by how long the Covid pandemic measure would be in place. His role at the Respondent was senior, but still some levels below the Respondent's top executives. His statutory notice at the time of termination of his employment was one week.
143. We heard no evidence on what customary notice period in the Respondent's organisation for someone at the Claimant's level was. The Claimant said in his evidence that he knew someone at the authority who had three months' notice in his contract. This, however, is insufficient for us to use that person as a "comparator" for this purpose. We heard no evidence on who that person was, their position in the organisation, whether they were on permanent or temporary contract. It is certainly insufficient to show that there was custom and practice at the Respondent's organisation to give minimum three months' notice.
144. Furthermore, the Claimant knew that being paid via Adecco, the typical arrangement was that the Respondent could terminate "agency staff" on a week's notice. He, himself, hired "agency staff" into his team on that basis.
145. Finally, when ST wrote to the Claimant on 10 May 2021 (p. 654) that his contract was extended until mid-July, the Claimant did not protest that it was less than three months', nor did he point out to ST that he expected to be given three months' notice at the end of the extended term.

146. Considering all these factors, we find that four weeks' notice was reasonable, and there are no grounds to imply longer notice into the Claimant's employment contract with the Respondent.
147. It follows, that the Respondent was not in breach of contract by terminating the Claimant's employment contract by giving him four-week notice. Accordingly, the Claimant's claim for breach of contract fails and is dismissed.

*Victimisation*

*Did the Claimant do a protected act?*

148. The first question we must answer is whether the Claimant's interview with BC on 15 July 2021 was a protected act withing the meaning of s.27(2) EqA.
149. Mr Merry confirmed on the first day of the hearing that the Claimant relies on ground 27(2)(d) – "*making an allegation (whether or not express) that A or another person has contravened this Act*". Initially, Mr Merry said it was (b) – "*giving evidence or information in connection with proceedings under this Act*", but that was clearly wrong (as was accepted by Mr Merry) because at the time of the interview there were no active proceedings under the Act. NS initiated her claim on 23 August 2021.
150. The Claimant's victimisation claim is not that he was subjected to the alleged detriments because the Respondent believed that he may give evidence or information in connection with a future claim by NS against the Respondent, or that he may make an allegation of contravention of the Act at some future point in time. His case is that he was victimised by the Respondent for giving a statement to BC at the interview on 15 July 2021, which, Mr Merry says, was the Claimant making an allegation that the Respondent has contravened the Equality Act.
151. However, in his evidence, in response to the Tribunal's question, the Claimant said that he had made no such allegations at the interview. This is plainly true, as can be seen from reading the transcript of that interview. The Claimant said that he thought, perhaps mistakenly, that protection against victimisation applied irrespective whether any allegations of discrimination was made. That is wrong as a matter of law, as explained above (see paragraphs 102). We make no criticism of the Claimant. It is not uncommon for litigants not to appreciate that the term "victimisation" has special legal meaning, which is different from how this word may be used in every day non-legal language.
152. This admission by the Claimant essentially defeats his claim for victimisation.
153. However, for the sake of completeness, we considered whether anything he said at the interview on 15 July, or indeed his attendance of that interview *per se*, could properly be described as "*doing any other thing for the purposes of or in connection with this Act*" (ground 27(2)c).

154. We take into account the fact that the interview was in relation to NS's grievances. NS's June Grievance included allegations of age discrimination. The Claimant received the June Grievance and would have been aware of those allegations.
155. However, reading the transcript of that interview there is simply not a single reference to NS being discriminated because of her age or her age being a factor in her missing out on Role 6. Neither BC, nor the Claimant mention anything of that kind. In fact, NS's age is not mentioned at all either expressly or by implication.
156. Furthermore, when the Claimant was specifically asked by BC about his comments, observations or thought on the content of the grievance, he does not say anything that could reasonably be described as doing something "*for the purposes of or in connection with*" the Equality Act. He makes no reference whatsoever to the NS's allegations of discrimination.
157. The closest it comes to that is when the Claimant refers of the ST's comment about Role 6 being "*a too much of a jump*" for NS. However, he makes no suggestion that this comment was in any way influenced by NS's age. He simply states that he disagrees with that statement. He says that NS is a "consummate professional", hard-working and conscientious employee. Later the Claimant says that NS was the best candidate for the role. He, however, does not refer in any way to NS's age as a possible reason for her not being offered the role. He does not suggest that any discriminatory motivation was involved in the decision not to offer her Role 6.
158. Furthermore, later in the interview the Claimant alleges that NS was deceived. He says the issue with Roles 6 and 15 being advertised was "*not a confusion, but a deliberate deceit*". BC then asks him why the Respondent or an individual within the Respondent would do such a thing.
159. The Claimant answers as follows: "*I don't know the answer to that Brian, so I don't know why I was asked to stay on and then someone took a decision that I should leave in April, I do know that I was kept on because of the direct intervention of a member of the senior leadership team, who basically said I won't tell you what it said, but.*"
160. In essence, his answer is "*I don't know*", and then he shifts the subject away from NS and complains about his situation. He does not expressly or even implicitly refer to NS's age as a potential reason for the alleged "deceit".
161. In short, we do not see any connection whatsoever between what the Claimant said at that interview and the Equality Act.
162. To the extent it could be said (and that was not how the Claimant ran his victimisation claim) that mere attendance of a grievance investigation interview where one of the allegations in the grievance is of age discrimination is sufficient for such attendance to be considered doing a "*thing for the purposes of or in connection with the Act*", even when the discrimination allegations are

not discussed in any way at the interview, it would seem that such a case (if it were advanced on that basis) would be doomed to fail on causation.

163. It would be incredible indeed if the Respondent, having instructed the Claimant to attend an investigatory interview, then subjected the Claimant to a detriment not for what he said at that interview, but for the Claimant's attending the interview, as instructed. There is simply no evidence in front of us to come to such a highly improbable conclusion.
164. Therefore, even considering the Claimant's interview by reference to subsection (c) of s.27 – "*doing any other thing for the purposes of or in connection with this Act*", we do not find that any statement that the Claimant made at that interview could be properly described as him doing a thing for the purposes of or in connection with the Equality Act.
165. For these reasons, we find the Claimant did not do a protected act within the meaning of s.27(2) EqA. Therefore, his claim for victimisation fails on this first hurdle.

*Was the Claimant subjected to a detriment because of a protected act?*

166. However, if we are wrong on our conclusion that the Claimant did not do a protected act, based on the evidence in front of us we find that none of the alleged detriments had anything to do with the Claimant's attendance of the interview or any statement he made at the interview, or indeed his general support of NS.

*Detriment 11 (a). Giving him notice at a meeting on 15 July 2021*

167. We accept JC's and ST's evidence that they did not know that the Claimant had an interview with BC on 15 July, and that they had not spoken with BC about the Claimant's interview before they gave the Claimant notice on 15 July.
168. We are also satisfied with their evidence that the reason for ending the Claimant's engagement was that ST felt she was comfortable to continue in her role without the Claimant's support and financial pressures on the Council meant that it had to cut back on spending. It was always a temporary role and at some point, it had to come to an end. This had nothing to do with the Claimant's interview with BC or his support of NS in general.

169. Therefore, detriment (1a) falls on causation.

*Detriment 11(b). Pressurising him to complete tasks to the detriment of assisting with grievance and whistleblowing complaint*

170. The Claimant accepted in cross-examination that he had been given an extension to provide his feedback on investigation. He provided his feedback and there was no problem with that. There was nothing else he needed to do with respect to the investigation (see paragraphs 49, 55 and 56 above). Additional information the Claimant was asked to provide following his interview

with BC was not onerous. Once he has done that, no further assistance was required from him.

171. The Claimant was asked by ST to complete certain tasks before his departure. He accepted he needed to finish them. It had nothing to do with his interview with BC or his general support of NS. The ST's and JC's evidence on this issue were not challenged by Mr Merry in cross-examination. The Claimant himself in his witness statement (at paras 185 and 186) accepts that "*the completion of these tasks was beneficial to the Respondent*" and that the tasks "*were important*". He complains that if those tasks were so important for the Respondent why did the Respondent decide to end his employment? This, however, is very different to his allegation that the Respondent somehow pressurised him to complete those tasks as a way of avoiding him from assisting the investigation.

172. Therefore, we find that this allegation of detriment simply falls on the facts.

*Detriment 11(c). Being excluded from team meetings*

173. The Claimant's evidence on being excluded from team meetings is unsatisfactory. He does not say what meetings he was excluded from, when those meetings took place and why he says he should have been invited to them. In cross-examination the Claimant said that he could not recall if he ever complained about being excluded from team meetings.

174. Therefore, we find that the Claimant has failed to establish this fact.

*Detriment 11(d). Being excluded from Team emails*

175. The Claimant's evidence on this alleged detriment is equally unsatisfactory and insufficient to establish this as a fact. He says in his witness statement that he does not have an extensive list of the emails from which he was excluded because he was not a recipient of them. He then refers to an email from ST of 5 August 2021 "*concerning her derogatory treatment of some staff*". However, that email is not in the hearing bundle. He does not explain what that email was about and how it proves that he was being excluded from team emails.

176. Accordingly, we find that the Claimant has failed to prove this fact.

*Detriment 11(e) Not being provided with support or reassurance with respect to the Leianne Bayliss matter*

177. The Claimant complains that, unlike GF, he was not provided with written confirmation that LB had withdrawn her allegations against the Claimant. He claims that it was because of his support of NS. He does not say that it was because of his interview with BC. The Claimant does not explain why he makes this connection. The Claimant presented no evidence that LB had in fact withdrawn her allegations against him, but the Respondent still refused to confirm that fact. We also note that ST sent her email to GF confirming that LB had withdrawn her allegations against GF on 27 August 2021, after the

Claimant had left the Respondent's employment. The Claimant does not explain on what basis he was expecting a similar confirmation email even though he was no longer employed by the Respondent.

178. JC gave evidence about support she gave to the Claimant in relation to the LB matter (at para 125-129 of her witness statement), which evidence was not challenged in cross-examination. Contemporaneous documents in the bundle show that the Claimant was grateful for the JC's support (p 778).
179. Therefore, we find that the Claimant was in fact provided with support and reassurance with respect to LB matter. We also find that there is no evidence from which we may sensibly conclude that the reason that the Respondent did not send confirmation that LB had withdrawn her allegations against the Claimant (if, in fact, she had done so) had anything to do with his interview with BC or his general support of NS.
180. Accordingly, this alleged detriment fails on the facts and on causation.

*Detriment 11(f) Being bombarded with "polite reminder" meetings by Sasha Taylor*

181. This was the only alleged detriment Mr Merry chose to cross-examine the Respondent's witnesses on. We are satisfied with ST's evidence on this issue. ST was clear in her answers that the reason she sent to the Claimant several "polite reminders" was simply her way of tracking the progress of the tasks the Claimant had to finish before he left. We accept her evidence that it is her usual way of task management with her staff. She did not single out the Claimant in that treatment. We also accept her evidence that everybody was working in a high-pressure work environment dealing with public health issues arising from the pandemic, and it was very important for the Respondent that those tasks were done on time, as indeed the Claimant accepts in his witness statement (at paragraphs 185 and 186). We find nothing unreasonable about that.
182. We also find that being sent four reminders in a space of two weeks about various agreed tasks an employee had to finish by a certain date cannot be sensibly described as "being bombarded" or reasonably regarded by a reasonable employee as a detriment. We find that the Claimant simply resented being reminded, and in particular being reminded by ST, that he had to finish these tasks and that his contract was going to end soon. This, in our view, was an unjustified sense of grievance on the Claimant's part.
183. Finally, we find that ST sending her reminders had nothing to do with the Claimant's interview with BC or his general support of NS. The only reason ST sent those reminders was to make sure that the tasks she had asked the Claimant to complete before he left were progressing.
184. Therefore, we find that this was not a detriment, and, in any event, there is no causal link between ST sending her polite reminders and the Claimant's interview with BC or his general support of NS.

*Detriment 11(g). Having lies spread about him by Julie Chandler and Sasha Taylor*

185. The Claimant says that the clearest evidence of JC and ST “spreading lies” about him he was able to obtain was during his call with MA on 23 July 2021. He complains that it was “manifestly untrue” what JC told him about what MA had told her following MA’s conversation with the Claimant and what MA had actually told the Claimant at that conversation.
186. Our findings of fact on this issue are recorded in some detail at paragraphs 59, 60, 62, 64 and 71 - 77 above). To the extent the Claimant complains that JC incorrectly summarised to him what MA had told the Claimant at their meeting, JC was not at that meeting, and the Claimant did not provide JC with a transcript of his call with MA. Therefore, JC could only relay to the Claimant what MA had told her about what he (MA) had said to the Claimant on their call. JC explained all that to the Claimant in her email of 30 July and again during their conversation on 5 August. It appears the Claimant accepted and what satisfied with JC’s explanations.
187. We also do not see how JC sending an email to the Claimant with her answers to his questions without copying anyone else or having a direct conversation with the Claimant could be sensibly described as JC “spreading lies”. How ST fits into all of that, as ST “spreading of lies”, is equally puzzling.
188. If the Claimant complains that based on what MA told him at that meeting shows that JC and ST were “spreading lies” about him, we find nothing in the transcript of the Claimant’s conversation with MA, which on a fair reading could possibly indicate that.
189. Both JC and ST denied “spreading lies” about the Claimant. Their evidence on this issue was not challenged in cross-examination. We accept their evidence and find as a fact that they were not “spreading lies” about the Claimant.
190. Accordingly, this alleged detriment fails on the facts.

*Overall conclusion on victimisation*

191. For all these reasons, we conclude that the Claimant’s claim for victimisation is not well founded and must be dismissed.

**Employment Judge Klimov  
Date: 1 May 2023**