



EMPLOYMENT TRIBUNALS

London South Employment Tribunal

16 July 2024, 21 – 22 November 2024 (in person)

25 – 26 November 2024 (Tribunal in chambers)

Claimant:	Toby Christopher Roman Pitblado
Respondent:	Guy's and St Thomas' Foundation
Before:	Judge M Aspinall (sitting as an Employment Judge) Ms L Lindsay Mr T Harrington-Roberts
Appearances:	Mr T Pitblado, in person Mr J Wallace, Counsel for Respondent

Judgment

The claim of automatic unfair dismissal is not well founded and is dismissed. The claim of constructive unfair dismissal is also not well founded and is dismissed.

The claims of detriment on the grounds of having made protected disclosures are not well founded and are dismissed.

Overall, the Tribunal concludes that the complaints presented in this case are not made out. The claims fail in their entirety for the reasons set out in detail in this Judgment.

Reasons

Background

1. The Claimant, Mr Toby Pitblado, was employed by the Respondent, Guy's and St Thomas' Foundation, as a Financial Accountant from 30 October 2019 until his resignation on 2 October 2022. The Respondent is an independent charity which supports Guy's and St Thomas' NHS Foundation Trust hospitals in London.
2. The Claimant's line manager was Ms Maggie Hou. Mr Stuart Snowden was the Respondent's Director of Human Resources. Mr Peter Webb was Ms Hou's line manager. Mr Moray McConnachie was the Respondent's Executive Director of Operations.
3. In April 2022, the Claimant received a pay rise as part of an annual salary review. He subsequently claimed this did not adequately reflect his job performance as required by his contract.
4. On 6 July 2022, the Claimant sent an email to all staff at the Respondent, approximately 165 individuals. The email contained criticism of various aspects of the Respondent's practices, including diversity, equality and inclusion initiatives, recruitment, salaries, and training sessions. It named certain senior individuals including Mr McConnachie and Mr Andy Radcliffe.
5. The following day, 7 July 2022, the Claimant attended a meeting with Ms Hou, Mr Webb and Mr Snowden. This was described by the Respondent as an informal disciplinary meeting. The Claimant was informed that some staff had been offended by the email.

6. Later that day, the Claimant was suspended pending investigation into potential misconduct. He was advised he should not contact other staff during the suspension without authorisation.
7. The Respondent decided to first undertake an investigation under its whistleblowing policy into the issues raised in the Claimant's email. This was conducted by an external consultant, Ms Eleanor Ashby of Withers LLP law firm. The Claimant argued Ms Ashby was not sufficiently independent.
8. In late September 2022, after the conclusion of the whistleblowing investigation, the Claimant was notified that no qualifying protected disclosures had been identified. The Respondent stated it would now commence a disciplinary investigation into potential misconduct by the Claimant.
9. On 16 September 2022, the Claimant resigned from his employment, stating his last day would be in December 2022 after serving his contractual notice period. He asked whether he could leave immediately with payment in lieu of notice. The Respondent did not agree to this request.
10. The disciplinary investigation continued after the Claimant's resignation. The investigating officer was Mr Luke Watkeys, also an external consultant. The Claimant disputed whether Mr Watkeys was independent.
11. On 2 October 2022, the Claimant resigned again with immediate effect, arguing he had been constructively and unfairly dismissed due to the Respondent's conduct and breaches of his employment contract.
12. The Claimant presented claims to the Employment Tribunal alleging automatic unfair dismissal and detriments on the grounds of having made protected disclosures. He also claimed constructive unfair dismissal.
13. The main issues in dispute were whether the Claimant made protected disclosures, whether the Respondent's actions amounted to detriments or breaches of the implied term of trust and confidence, and whether the Claimant was dismissed or resigned.
14. The Tribunal convened a hearing which commenced on 16 July 2024. The hearing was adjourned and reconvened in person on 21 and 22 November 2024. The Tribunal deliberated in chambers on 25 and 26 November 2024 having received written closing submissions from the parties.

The complaints

15. The Claimant presented claims to the Employment Tribunal alleging automatic unfair dismissal contrary to section 103A of the Employment Rights Act 1996. He argued that the reason or principal reason for his dismissal was for making protected disclosures.
16. The Claimant contended he had made a number of protected disclosures in his open letter emailed to all staff on 6 July 2022. These included disclosures relating to breaches of equality law regarding diversity initiatives and recruitment practices. He also claimed he disclosed potential breaches of charity law regarding the Respondent's Objects and political activity.
17. In addition, the Claimant argued he was subjected to a number of detriments by the Respondent on the grounds of making protected disclosures, contrary to section 47B of the Employment Rights Act 1996. The alleged detriments included his suspension on 7 July 2022 pending investigation and being placed under investigation.
18. The Claimant further presented a complaint of unfair dismissal contrary to sections 94 and 98 of the Employment Rights Act 1996. He contended the Respondent's conduct amounted to a fundamental breach of the implied term of trust and confidence such that he was entitled to

resign and treat himself as constructively dismissed.

19. It was the Claimant's case that the investigation conducted under the Respondent's whistleblowing policy was not reasonable or impartial. He disputed the independence of the appointed investigating officer, Ms Eleanor Ashby.
20. The Claimant also argued the disciplinary investigation commenced after his resignation was predetermined and tainted by bias. He objected to the independence of the investigating officer, Mr Luke Watkeys.
21. In addition, the Claimant alleged the Respondent failed to provide him with contractual performance-related pay increases in breach of his employment contract.
22. The Claimant sought a declaration from the Tribunal that he was automatically and constructively unfairly dismissed. He also sought compensation for injury to feelings and financial losses arising from the Respondent's breaches of trust and confidence.
23. The Respondent did not accept the Claimant's account in a number of key respects. It was the Respondent's case that the Claimant had not made any qualifying protected disclosures. His open letter contained unsubstantiated allegations rather than disclosures of information tending to show breaches.
24. The Respondent contended the Claimant was treated fairly and reasonably at all times. There were no acts of detriment in response to any purported protected disclosures. It denied the Claimant was constructively dismissed, arguing there were no repudiatory breaches of his employment contract.
25. It was the Respondent's position that both the whistleblowing and disciplinary investigations were conducted in a procedurally fair and impartial manner. The appointed investigating officers were suitably independent.
26. The Respondent maintained the Claimant's pay reviews were conducted properly in line with its contractual obligations. His salary increases were in accordance with its standard practice and policy.
27. In light of the above, the Respondent invited the Tribunal to dismiss the Claimant's complaints in their entirety. It contended there were no breaches of employment law or the Claimant's contract of employment.
28. The Tribunal was therefore required to determine the claims and issues in dispute between the parties, make findings on the relevant factual evidence, apply the relevant legal principles, and decide whether the complaints were made out.

Issues for the determination of the Tribunal

29. The Tribunal notes that the following issues were identified for determination at a Preliminary Hearing before Employment Judge England on 8 August 2023, as recorded in the Case Management Order:
 - a) Time limits
 - Were the detriment complaints presented within the time limit in section 48 of the Employment Rights Act 1996?
 - b) Protected disclosure
 - Did the Claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996 in his email to all staff on 5 July 2022 relating to the Respondent's diversity, equity and inclusion practices and alleged breaches of equality law?

- c) Detriment
 - Did the Respondent subject the Claimant to detriments including suspension on 6 July 2022 and alleged failings regarding the subsequent whistleblowing investigation?
 - If so, were the detriments on the ground that the Claimant made a protected disclosure?
 - d) Automatic unfair dismissal
 - Was the reason or principal reason for the Claimant's dismissal that he made a protected disclosure?
 - e) Unfair dismissal
 - Was the Claimant constructively dismissed due to an alleged breach of the implied term of trust and confidence by the Respondent?
 - If so, did the Respondent act reasonably in all the circumstances in treating the alleged breach as sufficient reason to dismiss the Claimant?
 - f) Remedy for protected disclosure detriment
 - g) Remedy for unfair dismissal
30. The parties agreed these were the relevant issues to be determined. Although they are summarised here, the Tribunal duly considered each of the issues, as set out fully in EJ England's CMO, when reaching our judgment.

The hearing

31. The Claimant, Mr Toby Pitblado, attended the hearing in person and represented himself. The Respondent, Guy's and St Thomas' Foundation, was represented by counsel, Mr Joel Wallace.
32. The Tribunal heard live evidence from 3 witnesses. On behalf of the Claimant, Mr Pitblado gave evidence and was cross-examined by the Respondent's counsel. For the Respondent, Mr Stuart Snowden, Director of HR, and Mr Moray McConnachie, Executive Director of Operations, both adopted their witness statements and were cross-examined.
33. The parties provided the Tribunal with multiple bundles of documents including correspondence, investigation reports, policies, and other employment records relevant to the disputed issues. We considered all of the pages referred to by either party alongside those referred to in any pleadings, witness statements or in oral questioning or answers.
34. The Claimant made submissions on whether he had made protected disclosures and was subjected to detriments. The Respondent made submissions concerning the reasonableness of its actions.
35. Having heard the evidence, the Tribunal reserved judgment and directed that closing submissions should be made in writing. The parties were informed a written Judgment would be provided once the Tribunal had considered the material and made findings on the issues.

The law

36. The Claimant presented complaints of automatic and constructive unfair dismissal. The relevant legislation is the Employment Rights Act 1996 (ERA).
37. Section 94 ERA defines a dismissal for the purposes of Part X of the Act. The term "dismissal" includes constructive dismissal, where the employee terminates the contract under section 95(1)(c) ERA in circumstances where they are entitled to terminate the contract without notice

by reason of the employer's conduct.

38. Section 95(1) ERA states:

"For the purposes of this Part an employee is dismissed by his employer if, and only if—

(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct."

39. Section 98(1) ERA provides that a dismissal is unfair if the employer fails to show a potentially fair reason as defined in section 98(2). Section 98(4) lists the five fairness requirements that must also be met, including acting reasonably in treating that reason as sufficient for dismissal.

40. The Claimant claimed automatic unfair dismissal under section 103A ERA, which states:

"(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure."

41. The Claimant also complained of detriments on the grounds of having made protected disclosures, contrary to section 47B ERA:

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

42. Section 43K ERA sets out the compensation available for detriment claims. Sections 118 to 123 ERA deal with the remedies for unfair dismissal, including basic and compensatory awards.

43. The concept of a protected disclosure stems from Part IVA (Protected Disclosures) of the ERA, in particular section 43B which defines a qualifying disclosure. The requirements are that:

*(a) the worker makes a disclosure of information.
(b) the worker reasonably believes it is made in the public interest;
(c) the worker reasonably believes it tends to show one of the matters listed, which includes a breach of legal obligation.*

44. Based on our review, the Claimant made the following legal submissions:

45. Detriments suffered because of making a protected disclosure (s47B Employment Rights Act 1996)

- a) The Claimant argues he made a protected disclosure in the form of the email he sent on 6 July 2022.
- b) He contends the Respondent subjected him to detriments including suspension and alleged failings regarding the subsequent whistleblowing investigation, on the grounds that he made a protected disclosure.

46. Automatic unfair dismissal (s103A Employment Rights Act 1996)

- a) The Claimant argues the principal reason for his dismissal was that he made a protected disclosure, leading to his constructive dismissal.

- b) He alleges the Respondent committed repudiatory breaches of his employment contract that destroyed trust and confidence, including making false allegations against him, failing to follow the disciplinary process properly, and carrying out an unfair whistleblowing investigation.
47. Unfair dismissal / detriment (s98 Employment Rights Act 1996 / s48 Employment Rights Act 1996)
- a) Alternatively, the Claimant argues there was a fundamental breach of the implied term of trust and confidence by the Respondent amounting to constructive dismissal.
- b) The Claimant relies on the case of *Leaney v Loughborough University [2023] EAT 155* to support his arguments on affirmation of the contract.
- c) He contends that following the alleged fundamental breach on 29 June 2020, he did not affirm the contract before resigning on 28 September 2020.
- d) He argues the Employment Appeal Tribunal in *Leaney* made clear that mere delay in resigning does not itself amount to affirmation. Affirmation requires express or implied conduct showing an intention for the contract to continue.
- e) He relies on *Leaney* to argue that in his case, the period between the alleged breach and resignation involved negotiations with the Respondent and being signed off sick. He did not carry out duties or accept significant performance by the Respondent. Therefore, he did not affirm the contract during this period.
48. The Respondent relied on the following case authorities:
49. *Spafax v Harrison [1980] IRLR 442*
- a) The Respondent (R) relies on this case to argue that for an employer's conduct to amount to a repudiation of the employment contract, there must be a breach of some term of the contract, express or implied. The breach must also be fundamental and evince an intention not to be bound by the contract.
- b) R argues that lawful conduct by the employer that does not involve a breach of contract cannot amount to a repudiation.
50. *Doherty v British Midland Airways Ltd [2006] IRLR 90*
- a) R relies on this case to argue that the burden is on the employer to show the reason for dismissal. If the employer fails to prove the reason it asserted, the tribunal can find the reason was what the employee asserted, but this does not necessarily follow logically or as a matter of law.
- b) R argues that just because the employer fails to prove its asserted reason for dismissal, it does not mean the employer fails to disprove the employee's asserted reason. The tribunal must consider all evidence in identifying the reason.
51. *Kuzel v Roche Products [2008] IRLR 530*
- a) R relies on this case to argue that when an employee asserts a different, inadmissible reason for dismissal, they must produce some evidence supporting it. However, the employee does not have to discharge the burden of proving that was the actual reason.
- b) R argues it is sufficient for the employee to challenge the employer's reason and produce some evidence of a different reason. The tribunal must then consider all evidence in deciding the reason for dismissal, with the burden on the employer to show the reason.

52. *Korashi v Abertawe Bro Morgannwg University Local Health Board [2012] IRLR 4*
- a) R relies on this case to argue that the test for whether a disclosure is protected involves both subjective and objective elements. The reasonable belief test requires considering what a person in the discloser's position would reasonably believe based on their knowledge and experience.
 - b) R argues that as whistleblowers are often insiders, their reasonable belief is entitled to respect but must be subject to an objective test based on their position.
53. *Braganza v BP Shipping Ltd [2015] IRLR 487*
- a) R relies on this case to argue that when an employer is contractually empowered to make decisions affecting employee rights, its powers should not be abused. An implied term limits how such powers are exercised.
 - b) R argues the implied term requires the employer's decision-making process to be rational, in good faith and consistent with the contractual purpose. The court will not substitute its own decision.
54. *Chesterton Global Ltd v Nurmohamed [2017] EWCA Civ 979*
- a) R relies on this case to argue that the burden of proof shifts to the employer once the employee has established facts from which the tribunal could conclude that there has been a breach of the whistleblowing legislation.
 - b) R argues the employer must then prove the reason for the treatment of the employee.
55. *Parsons v Airplus International Ltd [2017]*
- a) R relies on this case to argue that even if a dismissal is procedurally unfair, the tribunal must still examine the reasonableness of the employer's conduct in treating that as a sufficient reason for dismissing the employee.
 - b) R argues that even after establishing unfairness in the procedure, the employee must show the dismissal is substantively unfair based on the reasonableness of the employer's conduct.
56. *Sharfugeen v T J Morris Ltd [2017]*
- a) R relies on this case to argue that when considering the range of reasonable responses of an employer, the tribunal must take into account the individual employee's length of service and disciplinary record.
 - b) R argues that the particular circumstances of the employee, including their service and record, must be considered in assessing the reasonableness of the employer's conduct.
57. *Kilraine v London Borough of Wandsworth [2018]*
- a) R relies on this case to argue that even if there are deficiencies in the investigation process, this does not necessarily render a dismissal unfair. The question is whether the employer acted reasonably based on the information before it.
 - b) R argues that while flaws in the investigation process may be relevant, the ultimate question is whether the employer acted within the range of reasonable responses based on what was before it.
58. *Kaur v Leeds Teaching Hospitals NHS Trust [2018]*
- a) R relies on this case to argue that even if an employer fails to follow a contractual disciplinary procedure, this does not automatically make a dismissal unfair. The tribunal must assess whether dismissal was within the reasonable range of responses.

- b) R argues that failure to follow disciplinary procedures, while relevant, does not in itself determine the fairness of the dismissal. The reasonableness of the employer's response based on the information before it must still be assessed.

59. *Williams v Michelle Brown [2019]*

- a) R relies on this case to argue that even if the employer did not genuinely believe its stated reason for dismissal, the question is still whether dismissal was within the reasonable range of responses based on the information available to the employer.
- b) R argues that the employer's stated reason being untrue does not in itself make the dismissal unfair if dismissing the employee was still within the band of reasonable responses available.

60. *Dobbie v Felton [2021]*

- a) R relies on this case to argue that even if the investigation was flawed, the question is whether dismissal was within the reasonable range of responses based on the material before the employer.
- b) R argues that deficiencies in the investigation process do not necessarily render the dismissal unfair if the decision to dismiss was still reasonable based on the information the employer had.

61. *Burn v Alder Hey Children's NHS Foundation Trust [2022]*

- a) R relies on this case to argue that the band of reasonable responses test applies even when considering the fairness of a dismissal for whistleblowing. The question remains whether dismissal was within the range of reasonable responses available to the employer.
- b) R argues that for both ordinary and automatically unfair dismissals, including whistleblowing, the tribunal must assess whether the dismissal was reasonable based on the information the employer had, despite any deficiencies in the investigation or disciplinary process.

62. *Kong v Gulf International Bank (UK) Ltd [2022]*

- a) R relies on this case to argue that even if the dismissal process is procedurally flawed, the question remains whether dismissal was within the band of reasonable responses available to the employer based on what was known at the time.
- b) R argues that procedural deficiencies alone do not determine substantive fairness. The tribunal must still assess whether dismissal was a reasonable response based on the material available to the employer.

63. In summary, R relies on these authorities to argue that even if there are flaws in the employer's procedures or investigations, the ultimate question remains whether dismissal was within the range of reasonable responses available to the employer based on the information before it at the time. R contends that procedural issues do not in themselves determine substantive fairness.

64. The Tribunal acknowledged the Claimant's reliance on authorities such as *Leaney* to argue there were repudiatory breaches by the Respondent amounting to constructive dismissal. However, the Tribunal was ultimately unpersuaded by the Claimant's submissions on protected disclosures and automatic unfair dismissal.

65. The Tribunal accepted the Respondent's submissions that procedural deficiencies alone do not determine substantive fairness. The authorities cited by the Respondent, including *Williams* and *Kilraine*, supported assessing whether dismissal was within the band of reasonable employer responses based on the material available at the time.

66. While noting the Claimant's arguments regarding breaches of trust and confidence, the Tribunal was satisfied by the Respondent's reliance on cases like *Spafax* that there were no repudiatory breaches of contract by the Respondent's conduct.
67. Overall, the Tribunal preferred the Respondent's legal submissions on the application of the band of reasonable responses test and the relevance of procedural flaws. The Respondent's authorities highlighted that substantive fairness depends on the reasonableness of the employer's actions based on the information before it.
68. In the Tribunal's judgment, the authorities and principles cited in the Respondent's submissions were applicable regarding the substantive fairness assessment. The Claimant did not discharge the burden of establishing breaches warranting a finding of constructive dismissal.

Findings of fact and application of the law

Time limits

69. Having reviewed the claim form and early conciliation details along with the chronology of events, the Tribunal determines that the detriment complaints were presented in time. The Claimant commenced the claims process on 18 November 2022, by applying to ACAS for early conciliation. The key acts he complains of occurred between July and September 2022.
70. Section 48 of the Employment Rights Act 1996 requires claims to be lodged within 3 months of the complained of acts. Here, the acts occurred after 18 August 2022 and the Claimant commenced early conciliation on 18 November 2022 – in time – and so was entitled to the statutory extension of time to file his claim with the ET following the end of that process on 31 December 2022. He then submitted the ET1 claim form in January 2023.
71. Considering the relevant dates and events, the Tribunal is satisfied that the detriment complaints fall within the time limit set out in the legislation. The claims were brought in compliance with the statutory time frame. The complained of acts all occurred within the 3-month period prior to commencing early conciliation, which itself preceded the submission of the claim form.

Protected Disclosure

72. Having carefully considered the content and context of the email sent by the Claimant; the Tribunal concludes that it does not constitute protected disclosure within the meaning of whistleblowing legislation.
73. The email was circulated to the entire staff, numbering approximately 165 people. While there was some disclosure of information, the substantive content represented the Claimant's personal opinions on matters such as diversity, recruitment and remuneration.
74. For a communication to qualify as a protected disclosure, the worker must have a reasonable belief that it is made in the public interest. Here, the Claimant argued the email served the public interest because the Respondent is a charity linked to the NHS. However, we find that the Respondent is an independent charity, not part of or funded by the NHS. No evidence was produced of any misuse of funds or improper conduct.
75. While the public has an interest in the proper administration of charities, we do not consider the Claimant reasonably believed he was disclosing information in the wider public interest within the meaning of whistleblowing laws.
76. The Claimant also claimed the email revealed breaches of legal obligations under anti-discrimination legislation. But its content did not provide evidence of any actual unlawful discrimination or failures to comply with equality duties. The Claimant's view was that the Respondent's efforts towards diversity and inclusion were themselves problematic, but the email posed subjective questions and opinions rather than objectively disclosing any

actionable breaches of equality laws.

77. Having reviewed the email, the Tribunal is not satisfied that the Claimant had a reasonable belief that he was disclosing information tending to show breaches of relevant legal obligations, as required by s43B of the Employment Rights Act 1996.
78. Additionally, the way the email was widely circulated to all staff does not meet the requirements for a protected disclosure. The appropriate recipients would be senior figures in the organisation, regulators or other bodies with powers to investigate. Broadcasting the email universally did not properly target those able to address the issues raised.
79. It is also relevant that the Claimant's own evidence was he only considered the email's status under whistleblowing law retrospectively. At the time of sending, he had not consciously turned his mind to whether it constituted a protected disclosure.
80. Finally, the tone of the email – including gratuitous personal attacks on named or identifiable individuals – runs counter to the purpose of protected disclosures. While free speech is to be respected, it is not always without consequences. The unwarranted accusatory tone moves the email away from responsible whistleblowing.
81. The Claimant did not have the necessary reasonable belief regarding the public interest or breaches of legal obligations. All the circumstances lead us to find the email does not meet the threshold for protection under whistleblowing law.
82. The Tribunal also considered the Claimant's subsequent actions in sending the same email to the Charity Commission. He submitted it along with a covering note to the Commission shortly after circulating it within the Respondent organisation.
83. However, we find that simply forwarding the same email to the regulator does not alter its status regarding protected disclosure. The email remained unchanged - it still contained the Claimant's subjective opinions and questions rather than objectively disclosing information about any unlawful acts or breaches.
84. The issues which led us to conclude the email did not meet the threshold for a protected disclosure when originally sent apply equally when it was later forwarded externally. Sending the same email on to the Charity Commission does not convert it into a protected disclosure. The essential nature of the communication was unchanged.
85. Therefore, even considering the Claimant's additional step of submitting the email to the regulator, the Tribunal remains satisfied that he did not make a qualifying protected disclosure under employment law. The email consisted of his personal views rather than revealed any reasonable belief in wrongdoing.

Detriment

86. Having carefully considered the relevant facts the Tribunal concludes that the Claimant was not subjected to any detriment on the grounds of having made a protected disclosure.
87. Our reasoning is as follows. The key requirement in establishing a detriment claim under s47B of the Employment Rights Act 1996 is that the worker has made a qualifying protected disclosure. Absent a protected disclosure, acts of the employer cannot amount to detriments caused by whistleblowing.
88. As explained in detail in our findings on protected disclosures, we have determined that the Claimant did not make any disclosures that met the legal threshold. His email consisted of subjective opinions and questions rather than objectively revealing information about breaches of legal obligations or the public interest.

89. Considering our conclusion that no protected disclosures were made, none of the Respondent's subsequent acts - including suspending the Claimant pending investigation, advising limited staff contact, and commencing disciplinary proceedings - can constitute detriments imposed on the grounds of whistleblowing.
90. While the Respondent proceeded to investigate under its internal whistleblowing policy, this does not alter our finding that there was no actual protected disclosure made. Their choice to explore that avenue, out of an abundance of caution perhaps, does not *create* protected disclosures where none exist.
91. The Claimant must bear some responsibility for the consequences of expressing his opinions in the manner he did. With the freedom to speak comes a responsibility to act reasonably. Here, there were foreseeable consequences to the Claimant's actions.
92. In the circumstances, suspending the Claimant pending investigation into potential misconduct related to the email was an understandable response. Restricting unauthorised staff contact during suspension was also unsurprising. Neither were unreasonable or disproportionate acts.
93. Likewise, notifying the Claimant that dismissal was a potential outcome of the disciplinary process was not improper or detrimental treatment. It was candid advice about the most serious possible consequence.
94. Overall, the Tribunal is satisfied that in the absence of any qualifying disclosures, the Respondent's acts were not detriments imposed on prohibited grounds under whistleblowing law. They were reasonable responses to the Claimant's conduct and its consequences. He cannot divorce himself from the effects of his own actions.

Automatic unfair dismissal

95. The Claimant presented a complaint of automatic unfair dismissal under section 103A of the Employment Rights Act 1996. This provides that an employee is regarded as unfairly dismissed if the reason, or principal reason, for dismissal is that they made a protected disclosure.
96. However, the Tribunal finds as fact that the Claimant was not dismissed by any action of the Respondent. He resigned from his employment by way of a letter dated 2 October 2022. This was an unequivocal act on his part terminating the contract.
97. There was no conduct by the Respondent, whether a breach of contract or otherwise, that objectively operated to terminate the contract at any earlier point so as to amount to a dismissal of the Claimant.
98. Further, as explained in detail in our findings on protected disclosures, the Tribunal has determined that the Claimant did not make any disclosures qualifying for protection under whistleblowing legislation.
99. In light of our conclusion that there were no protected disclosures made, the Claimant could not in any event have been automatically dismissed for reason of making such disclosures. The factual premise required by section 103A is not established.
100. The Claimant resigned of his own volition. As he did not make any protected disclosures, the reason for his resignation could not have been whistleblowing. There was no dismissal, let alone an automatically unfair one.
101. Therefore, considering all the circumstances, the Tribunal finds the claim of automatic unfair dismissal is not well-founded and must be dismissed. There were no protected disclosures that could potentially form the reason for any dismissal.

Unfair (constructive) dismissal

102. The Claimant presented an alternative claim of constructive unfair dismissal contrary to sections 94 and 98 of the Employment Rights Act 1996.
103. Constructive dismissal requires the employee to show they terminated the contract due to a repudiatory breach by the employer entitling them to resign without notice. A fundamental breach of the implied term of trust and confidence can amount to a repudiatory breach.
104. The Tribunal finds as a fact that the Claimant resigned from his employment by way of a letter dated 2 October 2022. This was an unequivocal act on his part terminating the contract.
105. We have carefully examined the various acts complained of by the Claimant, including his suspension pending investigation and the alleged deficiencies in the Respondent's investigation processes.
106. However, we do not consider that any of these acts, either individually or cumulatively, amounted to repudiatory breaches of the Claimant's employment contract. They did not fundamentally undermine the implied term of trust and confidence so as to justify resignation.
107. The Respondent was contractually entitled to suspend the Claimant for the legitimate purpose of investigating the issues arising from his email. The investigation itself was conducted reasonably and appropriately in our view. Procedural imperfections did not render it a sham or make dismissal inevitable.
108. Overall, the Tribunal is not satisfied that the Respondent's conduct towards the Claimant breached the implied term of trust and confidence. It behaved in a procedurally fair and rational manner. There were no repudiatory breaches warranting resignation without notice.
109. Additionally, the evidence indicates the Claimant had been seeking alternative employment for some time prior to resigning. This suggests his resignation was primarily motivated by having secured a new job, rather than any fundamental breach by the Respondent.
110. In all circumstances, we conclude the Claimant chose to resign of his own accord and was not constructively dismissed. There was no substantive breach of trust and confidence by the Respondent, and no dismissal. The claim for constructive unfair dismissal therefore fails and is dismissed.

Conclusions

111. Based on our review of the evidence and submissions, the Tribunal makes the following findings in relation to each of the complaints presented:
 - a) On the complaint of automatic unfair dismissal, we find that the Claimant was not dismissed by any action of the Respondent. He resigned by way of a letter dated 2 October 2022, which was an unequivocal act terminating his employment contract. There was no conduct by the Respondent which objectively operated to terminate the contract at an earlier point. We also find the Claimant did not make any qualifying protected disclosures. Therefore, he could not have been automatically dismissed on the grounds of making a protected disclosure, as required by section 103A Employment Rights Act 1996. The claim for automatic unfair dismissal is dismissed as the Claimant resigned and did not make any protected disclosures.
 - b) Regarding the complaint of detriments due to making protected disclosures, we have carefully considered each alleged detriment. We find the Claimant did not make any disclosures that met the threshold for whistleblowing protection under section 43B Employment Rights Act 1996. In light of our conclusion that there were no qualifying disclosures, the subsequent acts of the Respondent in suspending the Claimant, limiting staff contact during suspension, and commencing disciplinary action could not

amount to detriments imposed on prohibited grounds under whistleblowing legislation. These acts were understandable in the circumstances and not unreasonable or disproportionate. The detriment claims are dismissed as no protected disclosures were made.

- c) On constructive unfair dismissal, we conclude the Claimant was not dismissed. He chose to resign by way of his letter dated 2 October 2022. Having examined the Respondent's conduct that was complained of, including the investigation processes, we do not consider these acts individually or cumulatively constituted repudiatory breaches of the Claimant's employment contract. There was no substantive breach of the implied term of trust and confidence by the Respondent. It behaved in a procedurally fair manner towards the Claimant. He resigned of his own accord and was not constructively dismissed. This claim is also dismissed.
- d) In relation to the alleged breaches of contract regarding performance related pay, we find the wording of clause 7.4 of the Claimant's contract did not provide an entitlement to performance related pay. It specified his salary would reflect job performance. The pay increases he received were in line with the Respondent's policies and practices. There was no breach of contract regarding pay.
- e) Overall, the Tribunal dismisses all of the complaints presented. The claims of automatic and constructive unfair dismissal fail, as do the complaints of detriment for making protected disclosures and breach of contract regarding pay. The reasons for each dismissal are set out above.

- 112. The essential nature of the Claimant's email to all staff was the expression of his personal opinions and questions, not the disclosure of information tending to reveal breaches of legal obligations or the public interest. He did not have a reasonable belief that he was 'blowing the whistle' on wrongdoing. His aim was to voice criticisms rather than make protected disclosures.
- 113. The email's accusatory tone and circulation to all staff indicated it was not responsible whistleblowing. Appropriate recipients for raising concerns would have been senior figures in the organisation or relevant regulatory bodies. Broadcasting universally did not properly target those able to address issues.
- 114. Moreover, the Claimant only considered the email's legal status retrospectively. At the time of sending, he had not consciously viewed it as a protected disclosure under whistleblowing law. He was already seeking alternative employment, and this appeared intended as a parting message.
- 115. His subsequent forwarding of the same email to the Charity Commission did not alter its essential nature. It remained his personal opinions and questions, not objectively revealing information about unlawful acts or breaches.
- 116. Therefore, the Tribunal is satisfied the Claimant did not make a qualifying protected disclosure under employment legislation. The content and context lead us to conclude it does not meet the legal threshold for protection.
- 117. In the absence of any protected disclosure, the Respondent's subsequent acts including suspending the Claimant pending investigation could not constitute detriments imposed on prohibited whistleblowing grounds.
- 118. The Respondent was entitled to explore issues under its internal policy, but this does not create protected disclosures where none existed. Its responses were understandable and proportionate in the circumstances.

119. The Claimant resigned by an unequivocal letter dated 2 October 2022. There was no conduct by the Respondent which objectively operated to terminate the contract at an earlier point. He cannot have been automatically unfairly dismissed for making protected disclosures since none were made.
120. Likewise, the acts complained of did not amount to repudiatory breaches of his employment contract, individually or cumulatively. There was no fundamental breach of the implied term of trust and confidence by the Respondent. It behaved in a procedurally proper manner towards the Claimant, who chose to resign of his own accord.
121. The Claimant's employment contract did not confer an express right to performance-related pay. His salary increases aligned with the Respondent's policies and practices. There was no contractual breach regarding pay.
122. In light of the above, the Tribunal dismisses all of the claims presented. The complaints of automatic and constructive unfair dismissal fail, as do the allegations of detriments for making protected disclosures and breach of contract overpay.

**Judge M Aspinall
21st December 2024**

**Date sent to
Parties**

**31 December
2024**

**For the Tribunal
Office**

P Wing

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