EMPLOYMENT TRIBUNALS

Claimant **Respondents**

Mr N S Mumtaz **v** **1. Venus TV Global Limited**
2. Mrs R Ali (in respect of 3300252/2017 and 3324904/2017 only)
3. Mr T Ali

Heard at: Watford **On**: 20 to 30 August 2018
(28,29 and 30 August in chambers)

Before: Employment Judge Manley
Mrs A Brosnan
Mr A Scott

Appearances
For the Claimant: In person assisted by Mr Dar (Friend)
For the Respondent: Mr Brotherton, Consultant

Interpreter: Mr Butt

RESERVED JUDGMENT

1. The claimant was dismissed by reason of redundancy and that dismissal was not unfair.

2. The claimant made three public interest disclosures between 16 October 2014 and 27 May 2015 that he reasonably believed were in the public interest.

3. The claimant was not subjected to detriments by the respondents on the grounds of having made those protected disclosures.

4. The making of those protected disclosures was not the reason or principal reason for his dismissal and he was therefore not automatically unfairly dismissed.

5. The claimant was not subjected to any less favourable treatment because of his religion and his claim for direct discrimination fails.

6. The claimant made two protected acts under s27 Equality Act 2010 which were not made in bad faith. Those protected acts were the employment tribunal claims made on 22 January 2016 and 10 February 2017.

7. The claimant was not subjected to any detriments nor was he dismissed because he had done those protected acts.

8. There were no unauthorised deductions of the claimant's wages.

9. Most of the claimant's claims were presented in time but some of his alleged detriments for public interest disclosure were presented out of time.

10. The claimant's claims fail and are dismissed.

REASONS

Introduction and issues

1. These three claims were consolidated and a number of preliminary hearings held to clarify matters and prepare a list of issues. Various orders have been made and the list of issues has been the subject of several clarifications, including some during the course of this hearing.

2. At a preliminary hearing on 14 September 2017 a complete list of the issues was drawn up. It appears below as amended during this hearing:

> **"The issues**
>
> I now record that the issues between the parties which will fall to be determined by the tribunal (incorporating, where relevant, those identified by EJ Heal in her order of 31 March 2017) are as follows:
>
> **8. Unfair dismissal claim**
>
> 8.1 Was the claimant dismissed for a fair reason, namely redundancy or some other substantial reason, namely a business reorganisation?
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> 8.2 If so did the employer:
>
> 8.2.1 give as much warning as possible of impending redundancies so as to enable the Claimant to take early steps to inform themselves of the relevant facts, consider possible alternative solutions and find alternative employment in the undertaking or elsewhere; and
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> 8.2.2 adopt a fair selection pool; and
>
> 8.2.3 engage in meaningful consultation as to the best means by which the desired management result could be achieved fairly and with as little hardship to the Claimant as possible; and
>
> 8.2.4 consider alternative employment?
>
> 8.3 Does the respondent prove that if it had adopted a fair procedure the claimant would have been fairly dismissed in any event? And/or to what extent and when?
>
> **9 Public interest disclosure claim/s**

9.1 In relation to claim number 3322367/2016, did the claimant say or write the following?

9.1.1 The e-mail of 16 October 2014 which referenced evasion of tax money laundering and late payment of wages, or the laundering of money in the form of Mr. Ali sending bags of cash to Dubai, or that Mr. Ali laundered several tranches of £10,000 through the claimant's bank account;

9.1.2 In the grievance hearing with Kim Nicholl on 4 June 2015 the claimant referenced illegal residential premises causing the discharge of detergents and chemical waste into the canal. (According to the respondent's note the claimant said, 'he made a flat behind and all the dirty water goes into the canal. They don't care')

9.1.3 The email of 23 April 2015 making allegations of wrong doing including money laundering and evasion of tax, paying dozens of staff cash in hand, and damage to the environment;

9.1.4 The email of 27 May 2015 in which the claimant alleged that Mr. Ali did not have earth wiring and damage to the environment.

9.2 In relation to claim numbers 3300252/2017 and 3324904/2017, the claimant relies on those disclosures (in paragraph 9.1 above) repeated in his claim form in respect of claim number 3322367/2016 (his first claim) presented on 22 January 2016.

9.3 The respondent disputes that repeating the alleged disclosures in the claimant's first ET1 claim form amounts to a further protected disclosure within the meaning of s43B ERA 1996. The respondent also disputes that this amounted to the disclosure of information.

9.4 The first respondent accepts that the e-mails were sent and that the remark in 9.1.2 was said, to the extent recorded in its note.

9.5 In any or all of these, was information disclosed which in the claimant's reasonable belief tended to show one of the following?

9.5.1 A criminal offence had been committed;

9.5.2 A person had failed to comply with a legal obligation to which he was subject;

9.5.3 The health or safety of any individual had been put at risk;

9.5.4 The environment had been put at risk; or

9.5.5 That any of those things were happening or were likely to happen, or that information relating to them had been or was likely to be concealed?

9.6 If so, did the claimant reasonably believe that the disclosures at 9.1.4 and 9.2 above were made in the public interest? (The first respondent concedes that the other alleged disclosures were made in the public interest, if proved.)

9.7 If so, the first respondent accepts that the disclosures made to 'the employer'.

9.8 Were any protected disclosures made in bad faith so as to impact on any compensation to be awarded?

10 Detriment complaints

10.1 If protected disclosures are proved, was the claimant, on the ground of any protected disclosure found (save for the alleged protected disclosure referred to at paragraph 9.2 above), subject to detriment by the employer or another worker in that,

10.1.1 On 20 July 2015 the claimant was denied a religious holiday-to be deducted from annual holiday and the time not being carried forward;

10.1.2 on 1 August 2015 Mr. and Mrs. Ali monitored the claimant by the use of viber to record attendance, unlike other staff;

10.1.3 on 4 August 2015 the claimant was instructed to train Pakistani staff and was told they will be doing his job 100%;

10.1.4 on 10 August 2015 the claimant was moved from the first-floor management office to the ground floor office for junior staff

10.1.5 on 10 August 2015 the claimant was taken away from technical jobs, such as producing break patterns, sending EPG to Sky, managing and centralising password systems, looking after Local Area Network and coordination with service providers such as IQ Broadcast, C3 Limited Zeus, Sky and Digitex and given very low skilled job and responsibility for non-technical matters;

10.1.6 on 10 August claimant being denied full access to the IT Systems such as removal of the claimant's access to centralised passwords;

10.1.7 on 8 October 2015 the claimant was issued with a verbal warning;

10.1.8 on 3 November 2015 the warning was upheld and the discrimination complaints were not upheld.

10.2 If the alleged protected disclosure at paragraph 9.2 is a qualifying protected disclosure, was the claimant, on the ground of that protected disclosure found, subject to detriment by the employer or another worker as identified in paragraph 14.4.1 to 14.4.23 below?

11 Automatic Unfair dismissal for making a protected disclosure (s103A ERA)

11.1 If the alleged protected disclosure at paragraph 9.2 is a qualifying protected disclosure, was the making of that protected disclosure the principal reason for the dismissal?

11.2 Because the claimant has more than two year's qualifying service the tribunal will have to consider the following issues when determining whether the claimant was automatically unfairly dismissed:

11.2.1 Has the claimant produced sufficient evidence to raise the question whether the reason for the dismissal was the protected disclosure?

11.2.2 Has the respondent proved its reason for the dismissal, namely redundancy or business reorganisation?

11.2.3 If not, does the tribunal accept the reason put forward by the claimant or does it decide that there was a different reason for the dismissal?

12 Section 13: Direct discrimination because of religion

12.1 For the purposes of this complaint and the necessary protected characteristic, the claimant relies upon his belief in Islam or being a Muslim, which is accepted by the respondents.

12.2 Have the respondents subjected the claimant to the following treatment falling within section 39 Equality Act, namely:

12.2.1 forcing the claimant not to work on Fridays.

12.3 Have the respondents treated the claimant as alleged less favourably than it treated or would have treated a hypothetical comparator?

12.4 If so, has the claimant proved primary facts from which the Tribunal could properly and fairly conclude that the difference in treatment was because of the protected characteristic?

12.5 If so, what is the respondents' explanation? Do they prove a non-discriminatory reason for any proven treatment?

13 Section 27: Victimisation

13.1 Has the claimant carried out a protected act? The claimant relies upon the following:

13.1.1 his complaint about the denial of benefits and delayed or late payment of salary compared to Mrs. Ali to the first respondent's Human Resources consultant on 4 June 2015;

13.1.2 the lodging of claim number 3322367/16;

13.1.3 his grievance dated 3 June 2016 and associated appeal;

13.1.4 the lodging of claim number 3300252/17.

13.2 The respondents do not accept that the act described in 13.1.1 above amounts to a protected act because it was not implied that there was a contravention of the Act. The respondents do accept that the acts described in paragraphs 13.1.2 to 13.1.4 are potentially protected acts but dispute that they were made in good faith so as to qualify as protected acts.

13.3 If the act referred to in paragraph 13.1.1 is proven to be a protected act, have the respondents, or either of them, carried out any of the treatment set out in paragraph 13.3.1 because the claimant had done a protected act?

13.3.1 Mr. Ali shouting 'why are you coming to him, why don't you come to me' at Bilal on 7 October 2015.

13.4 In respect of the admitted protected acts (paragraphs 13.1.2 to 13.1.4 above), have the respondents, or any of them, carried out any of the treatment set out in the sub paragraphs below because the claimant had done the protected act(s)?

13.4.1 On or around 17 May 2016 being told by Mr Ali that he was 'shit stirring' (para 5) (witnessed by Mr Adil and Mr Anil)

13.4.2 Not upholding his grievance on 22 July 2016

13.4.3 On 13 October 2016 suspending the Claimant from work (para 7, 12 and 17) (witnessed by Mr Adil and Mr Anil)

13.4.4 On 31 August 2016 Mr Ali shouted at the Claimant 'leave the office before I force you out.' (para 8) (witnessed by Mr Adil and Mr Anil)

13.4.5 On 13 October 2016 subjecting the Claimant to an unfair disciplinary meeting (para 7 and 12)

13.4.6 From around 9 September 2016, forcing the Claimant to not work Fridays from 1 October 2016 (para 11)

13.4.7 Reducing the Claimant's salary (para 11) on 14 September 2016

13.4.8 Ignoring the grievance submitted on or around 21 October 2016 (para 13)

13.4.9 On or around 13 October 2016, Mr Ali saying to the Claimant in front of others that he had been stealing and cheating and suspending him and suspending him in a demeaning and humiliating way. (para 16/17) (witnessed by Mr Adil, Mr Anil and Mrs Ali)

13.4.10 On or around 13 October 2016 changing the Claimant's passwords, removing him from office and client group chats WhatsApp groups (para 18)

13.4.11 Not allowing the Claimant to be accompanied to a meeting on 13 October 2016

13.4.12 From an unknown date, secretly monitoring the Claimant with software 'net monitor for employee's pro' (para 21/32)

13.4.13 From around 31 October 2016 not sending the Claimant evidence to be used in the disciplinary hearing (para 23)

13.4.14 On 10 August and 1 November 2016 moving the Claimants desk in the workplace repeatedly (para 32) (witnessed by Mr Adil, Mr Anil, Mrs Rukhsana Ali)

13.4.15 In around November 2016 giving the Claimant menial jobs: drawing of all cabling in the cabinets, Mr Ali told the Claimant "I want you to spend 2 weeks on it" and kept chasing the Claimant (para 33/36) (witnessed by Mr Adil and Mr Anil)

13.4.16 On or around 16 November 2016 Mr Ali told the Claimant not to write anything down (para 33) (witnessed by Mr Adil and Mr Anil)

13.4.17 From around November 2016 not returning the Claimant's notebook (para 34)

13.4.18 From 16 November 2016 not making time for the Claimant to conduct the Zohar prayer (para 37)

13.4.19 From November 2016 not giving the Claimant logins and passwords (para 38, 43 and 44) – not agreed

13.4.20 From 23 February 2017 not allowing the Claimant access to CCTV footage (para 39)

13.4.21 From November 2017 not allowing the Claimant to use his email address (para 40) –

13.4.22 From around November / December 2016 Mr Ali instructing junior staff not to take instructions from the Claimant (para 45) (witnessed by Mr Adil and Mr Anil)

13.4.23 On 2 March 2017 dismissing the Claimant.

13.4.24 Terminating the employment contract earlier than the notice given.

13.5 In respect of any of the above alleged and agreed protected acts, did the claimant give false evidence or information, or make a false allegation? If so, did he do so in bad faith so that there was no protected act? (section 27(3))

14 Time/limitation issues

14.1 Are any of the claims identified above potentially out of time, so that the tribunal may not have jurisdiction?

14.2 If any complaint is prima facie out of time but any part of the claim proved is in time, does the claimant prove that there was conduct extending over a period which is to be treated as done at the end of the period? Is such conduct accordingly in time?

14.3 Was any complaint presented within such other period as the employment tribunal considers just and equitable?

14.4 Or, if the complaint arises under the 1996 Act, was it not reasonably practicable for the complaint to be presented in time and was the complaint then presented in such period as the tribunal consider reasonable??

15 Unauthorised deductions from wages

15.1 Subject to the limitation provided by section 23(4A) which prevents a claim being made about a deduction made before the period of 2 years ended with the presentation (22 January 2016) the claim for unauthorised deductions from wages is as follows:

15.2 On or about 1 January 2003 Mr. Ali agreed that the claimant's salary would be reduced and Mr. Ali told the claimant that, 'soon as the company grows, we all will have a chunk.' Mr. Ali indicated that the reduction was temporary. The claimant says that this was a deduction from his wages which was not authorised by the claimant signifying in writing his agreement or consent.

15.3 The respondents say that the claimant was at that time employed by a different company. If so, how has his employment passed to the first respondent: has there been a single or a series of TUPE transfers?

16 Remedies

16.1 If the claimant succeeds, in whole or part, the tribunal will be concerned with issues of remedy.

16.2 There may fall to be considered reinstatement, re-engagement, a declaration in respect of any proven unlawful discrimination, recommendations and/or compensation for loss of earnings, injury to feelings, breach of contract and/or the award of interest".

The hearing

3. There was discussion during the tribunal hearing about some of the allegations in the list of issues. The direct discrimination because of sex which had appeared in the list of issues was withdrawn and is dismissed on withdrawal. We also agreed to an amendment for issue 14.4.24 to be added. The matters we determined are as set out above.

4. The hearing commenced on Monday 20 August 2018. Unfortunately, the parties had been unable to agree a joint bundle of documents, so we had two bundles of documents, the claimant's and the respondents', which were contained within a total of four lever arch files and we had approximately 1,000 pages of documents. Not all these needed to be read but there were relevant documents contained within both bundles and that made some aspects of the hearing rather difficult to manage.

5. We spent the first two days reading witness statements and going through the bundles of documents partly because the claimant and the interpreter had asked not to attend on Tuesday 21 August as it was Eid. We therefore started hearing the oral evidence on Wednesday 22 August. We heard from the claimant, who had submitted a detailed witness statement of 179 paragraphs. We then heard from Mr Ali, who is the Third Respondent and from Mrs Ali, who is the Second Respondent and they were cross examined over the next two days.

6. We also had before us two short witness statements for the respondents; one from a Mr Mirza and one from a Mr Mehmood, neither of whom attended.

7. The evidence was concluded on Thursday 23 August with agreement that the tribunal would hear from the representatives with their submissions the next day. We heard submissions on Friday 24 August and decided, particularly given the wide-ranging allegations and the difficulty of the documents, to reserve our judgment.

The facts

8. As indicated this matter was relatively complex and the factual issues took place over about two and a half years of the claimant's employment which came to an end in March 2017.

9. The claimant gave considerable background in his witness statement, as did Mr Ali. Only some aspects of that background are relevant for the issues to be determined and the facts as stated now are those which the tribunal needed to find to determine the issues as set out above.

Background

10. The claimant has had a long employment history with the two individually named respondents and various companies they have been involved with. Firstly, he was engaged by a company called C2000 Limited in 1997, run by Mr and Mrs Ali. That company was dissolved in 2001. Another company, C2000 Media Limited, was set up and the claimant worked for them on a salary of £30,000.

11. Around 2002 or 2003 a further company TRA UK Limited was formed and in 2003 the claimant agreed to work for that company for a salary of £18,750. It seems the claimant was also named as a director of this company at some time.

12. Around 2012 the claimant's employment moved to the First Respondent Venus TV Global Limited which was set up around 2010. He was retained on the same salary of £18,750 as that he had with TRA UK Limited. The companies carried out different sorts of activities. The final company, the First Respondent, was involved in broadcasting television programmes to the British Asian community.

13. The claimant's job title was Technical Director. For the last few years therefore, the claimant has been working for the First Respondent on a salary of £18,750 until there was a reduction in October 2016 which we will come to. Mr and Mrs Ali are also involved in some other companies in Pakistan some of which have commercial dealings with the First Respondent.

14. By the time with which the tribunal is concerned, the First Respondent had two employees as well as the claimant. Those employees, referred to in the hearing as Anil and Adil were a Graphic designer and an Editor. We understand those two employees to be on zero hours contracts. Mr and Mrs Ali also worked in the business. Our understanding is that they did not receive salaries but had some other director and/or shareholder benefits. At one time the First Respondent had 15 employees but it had reduced to this lower level in late 2014.

15. The First Respondent used several external companies to provide services, particularly the more technical work. These companies were named in the evidence before us. Some of them were able to provide technical help and assistance remotely. The claimant liaised with these companies and was on

hand to deal with matters in the London Office. A call centre in Pakistan was involved in some of the services for the respondent.

16. Over time, the need for someone to carry out technical work at the first respondent's London office had declined. This was partly because that work could be done externally and sometimes remotely by other providers. The claimant did carry out some tasks which could be considered to be "technical" but he also assisted with a number of other matters which might be more accurately described as "administrative". In an email the claimant sent to Mrs Ali in October 2015 he listed the tasks he had carried out (page 781 of the claimant's bundle). The tasks there, which numbered 28, included making reports, running logs, 'chasing' a number of people, re-installing Team Viewer, time sheets and trying to resolve some technical issues.

Events late 2014 - 2015

17. On or around 14 October 2014 there was an incident between the claimant and Mrs Ali, the allegation being that Mrs Ali shouted at the claimant and called him *"a bloody idiot*". Mr Ali apparently tried to calm matters down and discussed it with the claimant but the claimant wrote an email headed "*Letter of Grievance of 16 October 2014"*. This is the first alleged public interest disclosure at 9.1.1. The email raises issues about the claimant's work in general terms.

18. Concentrating on those matters which are alleged to be matters which could be protected disclosures, the claimant raises these concerns;-

> "*You took bags full of cash Dubai",*
> "*You transferred money through my account £10,000 seven times to Pakistan in your and Rukhsana's account at Clifton Kehkastan…..plus cash £1,200 from tenants upstairs*",
> "*Company paying for everything",*
> "*On the other hand we had some time had salaries after more than a year and you justified that….."*

19. On the evidence before the tribunal, nothing of significance immediately followed that grievance although it does seem as though it led to the First Respondent contacting an employment consultancy about preparing documentation for employees. The claimant said that he received a "*Welcome Pack*" on 2 March 2015. This included an employment contract and various other documents. The claimant raised various concerns about that employment contract and his entitlement to holidays etc.

20. Not much progress seemed to be made on the October 2014 grievance above and, on 23 April, the claimant sent another email raising more concerns. That email seems to have arisen out of a conversation or other communication with Mr Ali who was concerned that the claimant was speaking to other staff about the employment contract matter. We make no findings about that.

21. The 23 April 2015 email is the third alleged public interest disclosure (9.1.3) and it raises several matters over three pages. We quote only those parts which appear to be relevant in relation to the issues as drafted. The claimant wrote:

> *"This is same as you took me to bank to transfer money, without any prior information or agreed, just order and I get to follow to save my job",*
> *"My slashed salary for last 12 years and paying salary after even a year or 2 to 3 months delay as normal and your promises",*
> *"You took all cash as 'Money Laundering' and invest outside UK. You bought several properties and invest in different projects and get huge monthly "undeclared" income",*
> *"We also discussed about the companies you liquidate and become debtor reopens new same business to avoid creditors",*
> *"I also indicate your INLAND REVENUE tax frauds",*
> *"Dozens of students and visitors worked for you on "cash in hand".*

There is also one reference of relevance where the claimant said*, "You are well aware about Secure working environment Damage to the Environment".*

It says nothing further about that.

22. There were some exchanges of emails about investigating the grievance and Mr Ali, on behalf of the First Respondent, wrote to the claimant on 8 May 2015 informing the claimant that there would be an investigation by an "*impartial HRFace2Face Consultant*". Further correspondence then took place about that. The claimant said that he wanted the two grievances referred to above to be dealt with at any subsequent meeting.

23. A further email was sent by the claimant on 27 May, with the subject matter of "*Meeting 1 June 2015*". This is the alleged public interest disclosure at 9.1.4 and raises several matters over seven pages. Most of these appear to be to do with the claimant's employment and, perhaps, with matters he has raised earlier. In relation to the issue before the tribunal the claimant relies on this comment:-

> "*Health and safety issues in working environment.*
> *There is no proper Ground (Earth) in electric wiring. Having electric shock when touching equipment"*

24. There was a meeting on 4 June 2015 with Ms Kim Nicol, an external investigator for Face2face. The tribunal have seen the notes from that meeting and they extend to 30 pages. It was at this meeting that the second alleged protected interest disclosure (under 9.1.2) and the first of the protected acts for the victimisation claim (issue 13.1.1) is said to have occurred. We therefore only read those parts which are relevant to either the alleged public interest disclosure or protected act.

25. Early in the meeting the claimant is recorded as saying this "*He gave more salary to Mrs Ali, on time and always held my wages*". He further complained that Mr Ali made various promises about the claimant's own salary. Specifically, with respect to different arrangements for Mrs Ali the claimant said this *"I just need to ask if Mrs Ali is not your wife would you have given her all these benefits like good salary, company car, mobile, flexible hours, gym leisure, medical insurance and so on*" and went on, "*My argument is we*

are both employees". He is recorded as adding "*Of course you are the owner of the company and you can do anything*".

26. When Ms Nicol asked the claimant whether Mr and Mrs Ali can pay what they want as they are the directors, subject to being within the law, minimum wage and so on, the claimant replied, "*Legally, yes, but I feel it unfair in the longer term*". He did not suggest an act of sex discrimination. He complained about his salary being paid late.

27. In relation to the specific incident raised in 9.1.2, the relevant part appears at page 331 (R bundle) and reads *"He made a flat behind and all the dirty water goes into the canal. They don't care".* There is no other information about that contained within that discussion.

28. The only other matter which it is necessary to refer to at this point, is that at that meeting, the claimant makes a complaint about a matter involving Mr Bilal. The claimant said that Mr Ali "*defamed me to staff*" and went on:-

> *"My colleague, Mr Bilal, came to me with a problem with* the *phone downstairs. They come to me with technical issues. He came from his room which is next to mine. Mr Ali said* "*Why are you going to him, come to me? He is discouraging people to come to me*".

29. It is worth mentioning that here because, in the list of alleged detriments at 13.3.1, this is an incident which is said to have happened on 7 October 2015 whereas it is recorded here as a complaint the claimant makes in June 2015 so it must have pre-dated this discussion and cannot have happened in October.

30. The claimant continued to raise concerns, and, on 27 June 2015, he sent a detailed document to his MP where he said he was making a disclosure in the public interest. The respondent's evidence, which we accept, is that they were unaware that the claimant had gone to his MP about these matters. The Grievance Report on 13 July 2015 suggested a meeting with a third party might assist and help restore the working relationship. Ms Nicol did not uphold any part of the grievance.

31. On 20 July 2015 Mrs Ali sent an email to the claimant which reads as follows:

> *"Dear Nadeem,*
>
> *You were absent from work on Friday 17 July.*
>
> *Going forward please could you ensure that any days taken off are first requested by email and subsequently approved by management before holiday is taken.*
>
> *This will allow us to record their number of paid days taken off.*
>
> *This is the formal procedure if you require any days off."*

32. The claimant replied shortly after and said *"From the last 18 years of job, I am taking day off on 2 Religious days of EIDs, if Eid day doesn't come on*

Weekend." He referred to this being discussed at the grievance meeting. Mrs Ali replied to the claimant "*Eid is not a Public Bank Holiday. It has to request as day off. Therefore I have counted this as part of your holidays"*. The claimant replied to that alleging that this was a change to his job because he had always taken Eid as holiday. Later that day the claimant stated that he was appealing the outcome of the grievance and continued to raise issues about holiday and other matters.

33. Mrs Ali explained in her witness statement that the First Respondent's policies and procedures had been formalised after the claimant had brought his grievance and it had been identified via the external consultants that there was a lack of formal contracts for employees.

34. The respondents used Viber and WhatsApp for staff to confirm whether they are present at work or not. Mr Ali's evidence was that the claimant joined the Viber group on 23 November 2014. Mr Ali himself used it as did the employees as a method of keeping in touch. Mr Ali wrote to staff on 1 August 2015:-

> "*Dear all,*
>
> *Please all staff when start work and leave text on Viber or WhatsApp. This is official. Thank you".*

In his witness statement, Mr Ali explained that the respondents needed to know whether people were in the building, particularly so they would know who was available "*if things went wrong*" with television programmes. The tribunal accept this was something which applied to all staff (with the exception of Mrs Ali), and that it was a reasonable way of ensuring the respondents knew of everybody's whereabouts.

35. On 30 July 2015 a grievance appeal meeting was held, with a different Face2face consultant.

36. In August 2015 the claimant complained about several matters. The claimant alleges (at issue 10.1.3) that he was "*instructed to train Pakistani staff and was told they will be doing his job 100 percent*". It does appear that, around this time, the claimant was asked to give some training to staff based in Pakistan, working for another (but possibly connected) company. The claimant wrote by email to Mr Ali on 4 August 2015:

> *"As per your advice I had again trained to Hatif about Running order and ASrun Log to digitex. So he will now process running order and Asrun Log.*
>
> *I will indeed supervise them, if any issue and keep an eye how it's going".*

37. Mr Ali responded on 5 August "*Thanks. We should used call centre 100%. Main admin work and supervise from London*". To which the claimant responded "*Mr Ali, You are welcome. Trained to Mr Moiz as well and he sent log file this morning*".

38. This exchange shows that the claimant had been giving some training and/or advice to staff in Pakistan which Mr Ali had either instructed him to do or was aware of. There was nothing in those emails which suggests any unhappiness about this having occurred, but it does indicate a reduction in the claimant's work, although he was clearly still supposed to supervise. The email does not say "*They will be doing your job 100%*" but rather that they should be *"used 100%*". The call centre opened in Pakistan in 2002 and had about 12 people. Although it was legally a separate company, the First Respondent was paying for services from that company.

39. The First Respondent leased the premises where staff were based at the Liberty Centre in Wembley and the tribunal has seen a copy of the lease agreement. This was signed in February 2006. That indicates that the First Respondent company could use the ground floor and were also permitted to use the first floor. As we understand it, the landlord was applying for a change of use to residential property and Mr Ali explains this in his witness statement. In summary, the landlord asked the First Respondent to vacate the first floor for a reduction in rent.

40. In around August 2015, this process started with the claimant moving from the first floor to the ground floor where Anil and Adil were already based. Anil and Adil were not "junior" staff as the claimant suggests. The tribunal accepts that were treated as equals with different roles. Mr and Mrs Ali thought that they would also have to move from the first floor but there were delays in the landlord getting the necessary approval and, in fact, this did not occur until 2016.

41. In his evidence, the claimant suggested that Mr Ali was involved in talking to builders about some of the renovations and that there was a flat used by one of the employees of the First Respondent for some time in that building. The respondents' evidence is that the First Respondent was only a leaseholder and it had no responsibility for any renovations or works and knew nothing about any issues about wastepipes. The claimant has not shown that any of the respondents was involved in any building work or where wastepipes might be.

42. The claimant also alleges that his technical tasks were reduced in this period and that he was denied full IT access. There is no very clear evidence of the reduction in the claimant's technical tasks, but it does seem as if that did occur over time as set out above. The claimant did not have specific technical qualifications, but he did have, in part, some of the responsibilities for what might be called technical issues as we have mentioned above. In light of the further training being given to the call centre in Pakistan, that would seem to have reduced a little bit further.

43. The claimant was not denied access to IT systems. At some point in time, although the tribunal is not clear when this occurred, Mr and Mrs Ali did remove the claimant's access to their own personal email accounts. There was no evidence that the claimant was excluded from any other part of the system.

44. In September 2015 the claimant wrote an email at just after 10pm to Mr and Mrs Ali as follows:

> *"Dear Rukhsana,*
>
> *As you are well aware tomorrow is Eid and I will be off on Eid Day. I forgot to send you email earlier due to busy on job*".

45. This was not in line with the procedure which had been outlined by Mrs Ali in July about giving notice of holiday (see paragraph 31). The claimant was invited to a disciplinary meeting for failing to follow the holiday request procedures.

46. The claimant asked for a postponement and the meeting was therefore held on 6 October 2015 before Mr Ali. At that meeting there was a discussion about the need to give notice and the problems of being clear when the Eid Festival would be. Mr Ali decided to give a verbal warning:

> *"I consider your explanation to be unsatisfactory because you responded to Mrs Ali email dated 20 July, where she clearly explained that any days as taken off are requested by email and subsequently approve by management before holiday is taken".*
>
> Concluding
>
> *"Having carefully reviewed the circumstances I have decided that a verbal warning is the appropriate sanction"*

He asked the claimant to follow the procedure for holidays as in the contract and employee handbook.

47. The claimant appealed that verbal warning on 15 October 2015. The appeal was to be dealt with by a Mr Imran Butt, who is known to the respondents. He does not work for them although he may have some professional connections. The claimant objected to Mr Butt, but Mr Butt did hear the appeal on 29 October. There does not seem to be anything in writing directly from Mr Butt with respect to that meeting or his deliberations and it is Mr Ali who sent a letter that that appeal was not successful. It is slightly confusing because Mr Ali may well be writing on behalf of Mr Butt, but it is not entirely clear. In any event, several reasons were given, all of which were entirely reasonable, for why the appeal was not upheld.

Events in 2016

48. On 22 January 2016 the claimant presented an employment tribunal claim alleging public interest disclosure detriments and sex discrimination. With respect to the sex discrimination complaint the claimant says that "*Mr Ali is given more salary to Mrs Ali on time and always holds my wages and delayed*". It goes on to mention several other benefits which he believes Mrs Ali has. He complains about the contract not reflecting his seniority but says nothing else in that tribunal claim which indicates facts which would support a complaint of sex discrimination.

49. In March 2016 the claimant was informed that Brent Council served an enforcement notice on the premises where the First Respondent was a

tenant. The respondents were not aware of that enforcement notice. It was with respect to various breaches of planning control.

50. On 17 May 2016 there was a discussion between Mr Ali and the claimant. It was recorded by the claimant and notes of that recording appear in the respondents' bundle. It is recorded that Adil and Anil were also present but whether they were present during the whole discussion is unclear as there is only "OK" recorded by Adil at the very beginning.

51. This is the first one of the allegations of victimisation detriments that the claimant brings (13.4.1). He alleges that Mr Ali said that he was "*shit stirring*". In his witness statement Mr Ali denied that he had used these words as he believed it was out of character but, having now seen the transcript, he accepts that he must have said it. It is worth reading that small section of the recording at page 614 of the respondents' bundle. 'T' is Mr Ali and 'N' is the claimant in the transcript and it reads as follows:

> *"T: You could have picked the phone up and asked instead of shit steering it. Stop this.*
>
> *N: I didn't get, what do you mean this shit steering?*
>
> *T: Going somewhere else. I am paying you salary.*
>
> *N: What do you mean by "Shit steering?" I didn't get that.*
>
> *T: You going sending emails to the peoples.*
>
> *N: To Hatif? Hatif is our staff.*
>
> *T: Ya…staff, exactly, but I am the one who giving this information. You should ask me.*
>
> *N: There is no matter.*
>
> *T: You should ask me directly why we are going from Viber to WhatsApp. You could ask me direct. Why you asking Hatif?"*

52. The tribunal accepts that this was the content of the discussion and that Mr Ali did use those words.

53. On 3 June 2016 the claimant put in a complaint about this phrase ('Shit stirring') being used by Mr Ali. This is raised as an alleged protected act under the victimisation claim at 14.1.3. The claimant raised several other matters including that Mr Ali was responsible for *"verbal assault, shouting, baseless accusing and blaming, where I lost my dignity at workplace*". He also complained that he was "*badly demeaned and humiliated*". He referred to a "*protected disclosure*". At one point the claimant said that Mr Ali showed anger to "*further demean and humiliate me as a punishment in discrimination"*. There is no reference to his religion or indeed race, sex or any other protected characteristic.

54. Mr Butt held a meeting with the claimant about his grievance on 5 August 2016. The claimant brought a trade union representative, Mr Scoggins, with him to that meeting. Notes of the meeting were in the respondents' bundle with annotations by the claimant. The tribunal has read those notes and see no reference to Equality Act protected characteristics although there is fairly wide-ranging discussion about the claimant's various concerns about the workplace.

55. Mr Butt produced a short outcome for that grievance on 30 August 2016. He said that he had carried out a full investigation and that he could not find sufficient grounds to substantiate the grievance. The claimant was told of his right to appeal.

56. On 31 August the claimant raised a further grievance about Mr Ali having allegedly having said "*Pick your stuff and leave the job*", and "*You should leave before I force you out*". In his evidence at the hearing, Mr Ali said that he was speaking to the claimant who was resisting carrying out some work and that he then said, "*Leave the work*". He denies saying "*Before I force you out".*

57. The tribunal finds, on a balance of probabilities, that Mr Ali did not say "*Before I force you out*". Mr Ali denies it and he would have been very unwise to make such a comment as there were clearly significant difficulties with his employment relationship with the claimant. It is possible that the claimant misunderstood his comment on "*Leave the work*" as something that might mean that he should leave the workplace. In any event, the claimant did not leave but complained about the comment.

58. The claimant appealed the grievance outcome by email of 2 September. He made several references to being bullied and harassed but again, made no reference to any Equality Act protected characteristic or comparisons on those grounds.

59. Mr Munir Khan with whom the respondents were connected, but who was not employed by them, was to hear that appeal but the tribunal cannot see, nor were they taken to, any outcome from that process.

60. There was a security breach of the First Respondent's computers around August or September 2016. This led them to increase security by putting various pieces of software on the computer, including something called "*Net monitor*". Although the claimant showed the tribunal several text messages which appear to suggest it was only his computer that had this software, the tribunal completely accept that it was on everyone's computer, particularly as this would be the only way for such software to be effective. The tribunal accepts the computers were networked and there was no singling out of the claimant with respect to that computer security measure.

61. Around this time, the First Respondent was facing financial difficulties and it was felt that there was a need to change some of the working days. The first email the tribunal has been taken to is that sent by the claimant to Mrs Ali on 4 September where he referred to a meeting on 2 September. He said, "*You want to swap my working day from Friday to Sunday"*. He asked questions in relation to that about changes to his employment contract and pay.

62. On 5 September 2016, Mrs Ali responded as follows:

> *"Due to the business and financial pressures we are looking to swap Friday for Sunday for the foreseeable future. This is a change in terms and conditions to your contract but we have compelling business rationale for requesting this! Due to financial pressure we are unable to offer any extra pay! We are looking at around 3 months period and will review after 3 months."*

63. The claimant responded setting out his unhappiness about working Sundays, particularly in relation to his parental responsibilities. Ms Ali responded that they were consulting other staff and concluded "*As you are not able to work Sundays then we will have to give your Fridays off*". The claimant responded that he was unhappy about having his hours cut and asked her to consider other staff's parental responsibilities.

64. On 9 September, Ms Ali responded as follows:-

> *"In response to the company facing further trading difficulties with a loss of the paid live Sunday morning show leaving us with only one hourly paid show and, as there are currently no live shows from the London studio during day time in the week, we are forced to look at alternative staff working patterns. We will be meeting with all staff to discuss options and already have two staff members who have agreed to a reduction in hours. As part of this rationalisation we requested you to take Fridays".*

65. The claimant responded, "*Am I off on Friday? Or you want me to come?"* and she replied, "*As from 1 October 2016 we would like you to take Fridays off".* The claimant then asked about his pay and Mrs Ali stated that the new *salary* would be £15,000. This works out as a monthly amount of £1,250 subject to tax and National Insurance. The claimant complained about that reduction as well as an earlier reduction which was in 2003 from £30,000 to £18,750.

66. There was no discussion in those emails about any praying on Friday or any other day.

67. On 13 October 2016, a few significant events took place. Mr Ali gave evidence that he went from his office on the first floor to the ground floor and he noticed that the claimant was writing in a notebook. When he asked the claimant about this, he was not satisfied with his answer and so he took the notebook from him and went back upstairs. He then called the claimant to go upstairs and the claimant did attend, bringing Anil and Adil with him. Mr Ali took exception to this as he did not believe that it was necessary for them to attend. The claimant recorded that conversation and the transcript appears in his bundle of documents. Again, Anil and Adil did not speak during any discussion. In fact, the meeting did not really take place because Mr Ali did not want to have it in the presence of the other two people. Indeed, he told us that a live show was happening and that they, or at least one of them, would be needed downstairs.

68. At some point in that discussion, Mr Ali accepts that he said something to the effect that the claimant was "*cheating*" time with the company because he

was writing in a notebook rather than carrying out work for the respondent. Mr Ali decided to suspend the claimant and he confirmed that in a letter in which he said, "*It is alleged that you have refused to cooperate and have meeting relating to your work and refusing to action a reasonable management instruction*". The letter reminded the claimant that suspension on pay was not a disciplinary action and that it needed to be done for "*further investigations*". The claimant was asked to attend what was said to be "*a disciplinary hearing*" on 31 October. Matters of concern were said to be the claimant's refusal to take direct orders, refusing to have a meeting, using and writing a personal diary during work hours.

69. The document which Mr Ali referred to as the "diary" was taken from the claimant. This has been variously referred to as a diary and a notebook. Mr Ali believes that it was the property of the First Respondent whereas the claimant's evidence is that it was a personal notebook although, on his evidence, he used it for recording work related matters. Mr Ali decided to remove the claimant from the Viber/WhatsApp group during the period of his suspension.

70. The claimant sent an email on 21 October which raised the incident of 13 October 2016 as an additional incident to the grievance presented on 31 August. He complained about the suspension and disciplinary meeting.

71. A disciplinary hearing (or an investigation meeting) was held on 9 November 2016 with Mr and Mrs Ali, the claimant and Mr Scoggins. The notes were in the bundle. It appears there was a fairly wide-ranging discussion during that meeting. It is not necessary to go in to detail about that meeting. What was discussed were matters on 13 October.

72. Mr Ali is recorded as having said as follows:

> *"On 13 October I saw Mr Nadeem write in a book. I asked him what he was writing. He said, "this is my personal diary". I said, "you are not supposed to do any personal work here at all". We explained to him about seven or eight times within a year "Do not do any personal work here". He said, "I'm not doing personal work" the last few times. He said, "You're accusing me making me do this and that I am not doing any personal work". So, when I asked him "What is this" the diary was lots of pages he said, "I'm writing this then I plan to do the work". I said "Who told you to do this"…….Then I asked him to stop altogether making reports"*

73. Mr Ali said that he stopped him writing and then took the notebook away. There then appears to have been considerable discussion about whatever it was that was written in the notebook. The respondents say that they have now lost that notebook. At some point it appears that it may well have been scanned into a work computer but it has not been before the tribunal for us to be able to say definitively, what was written in it and what was not. There is a dispute about whether that notebook contained matters which were personal about the 'comings and goings' of Mr and Mrs Ali and whether it made reference to some matters which were more work related. The tribunal are satisfied that it certainly contained some matters which seemed to be irrelevant for the claimant's work about attendance by Mr and Mrs Ali at work.

74. In any event, after that meeting Mr Ali wrote the letter dated 13 November 2016. He said that he had completed the investigation and said:

> *"I am pleased to report that having listened to your explanations and made further enquiries, there is not, on this occasion, any case to answer and the matter is now closed. Your suspension is lifted with immediate effect and you are expected to return to work on 16 November 2016".*

He repeated that the suspension was not disciplinary action.

75. The claimant raises concerns here about what happened after he returned from suspension in November 2016. These are included in the alleged victimisation detriments from 13.4.14 onwards. He complains that his desk was moved on three occasions. The tribunal are satisfied that the desk was moved on at least two occasions. The respondents' explanation for this is that Mr and Mrs Ali were now being moved from the first floor to the ground floor and it was therefore necessary to move desks around to make room for them. It is possible that the desk the claimant was asked to work at might have had slightly less room than one of his others. The claimant has not disputed that Mr and Mrs Ali were moving downstairs and we accept the respondents' explanation for why his desk needed to be moved.

76. The claimant was also asked, during these office adjustments, to sort out the computer cabling. His case is that this is "*a menial task*". However, in view of the various tasks the claimant carried out and the fact that his job title was Technical Director, the tribunal cannot find why he objected to this particular task being requested of him. It is an entirely reasonable request in the circumstances of a very small number of employees.

77. Mr Ali asked the claimant not to write anything down in the notebook and accepts that he did not return the notebook which it is now said is lost.

78. The claimant also complains (at issue 13.4.18) about time not being allowed for Zohar prayer. The tribunal has not been taken to any documents where this was ever mentioned. The claimant has accepted that he was allowed to pray whenever he wanted to and that he has never been prevented from praying. There is no evidence whatsoever that there was any difficulty with Zohar prayer or, indeed, any other prayers when the claimant attended work. Mr and Mrs Ali are also Muslim and this was not a matter that has been raised with them.

79. The claimant also alleges (at issue 13.4.19) that he was not given log-ins or passwords on his return in November 2016. Mrs Ali wrote an email to the claimant on 16 November, which makes it clear that that is not the case. She wrote as follows:

> *"Dear Nadeem,*
>
> *The new passwords for info and Nadeem are given to you in person this morning.*

> *Can you make sure all emails are sent from info@venustv.tv. Please use this in your signature for return mail as well".*

80. The claimant is also concerned (at issue 13.4.21) that he was asked to use the info@venustv email address rather than his own. The explanation the respondents give for this is that they wanted emails coming into the business to be seen by others in case one person was not at work and action needed to be taken. This is an entirely reasonable instruction.

81. There is an allegation that "*junior staff*" were instructed to not to take instructions from the claimant (issue 13.4.22). The claimant's evidence on this is not particularly clear. As we understand it, the claimant alleges that someone in the call centre in Pakistan told him that there had been a text message from Mr Ali which had said something to the effect that they should not pass on jobs to others. The claimant said that this is what the call centre told him and that he took it to mean something to do with himself. It appears that the extent of this allegation which is, in part accepted by Mr Ali, is that Mr Ali did say that people should report to him directly when he had given an instruction. He did not accept that he had said anything about not reporting to the claimant. He accepts that he would have said something like "*If I give a job, report back to me".*

82. The claimant alleges that in February 2017 (issue 13.4.20) he was not allowed to access CCTV footage. The tribunal is not able to fully understand this allegation. We heard evidence and accept that the CCTV camera could be seen by anyone. It is possible that it was less easy for the claimant to see it once his desk had been moved but he could move to see it, if he needed to.

Events in 2017

83. The claimant presented a further employment tribunal claim on 10 February 2017. From the tribunal file it seems that the copy claim form and documents were sent to the respondents on 14 February 2017, but we have no evidence as to when it was received by them. That claim form made an allegation of religious discrimination. In the grounds of complaint, the claimant referred back to the whistleblowing complaints and the previous claim which included a complaint of sex discrimination.

84. With respect to any alleged religious discrimination it says only this:

> *"Alternatively this was a breach of the Equality Act 2010 because the claimant did take around 45 minutes off every Friday lunchtime for religious Friday prayer service (call Jumma). Shortly before this unilateral instruction to take Fridays off, Mr Ali had already been critical of the claimant going for Friday prayers".*

85. Mr Ali denied that he had ever commented on the claimant going for Friday prayers. The claimant has been unable to show any instance when such criticism was made and had never mentioned it before this ET1 in spite of having brought several grievances.

86. Also in February 2017, the First Respondent, through the second and third respondents, decided that they needed to start thinking about redundancies.

This was largely because the First Respondent was not doing well financially, with reducing profits and less business generally. They had reduced hours for all staff including the claimant in October 2015. There was less work, partly because live broadcasting during the day and at weekends had stopped being carried out in the UK. One contract with IQ broadcasting was coming to an end.

87. There was therefore a meeting with Mr and Mrs Ali and the claimant on 16 February 2017. The record of the meeting reads:

> *"I am afraid to inform you that the Company is going through a difficult period due to a downturn in work.*
>
> *There has been a decline in technical work as the software company's Phoenix, Globecas, C3 Limited, IQ Broadcast, Digitext TV. These companies are paid monthly maintenance for all technical support.*
>
> *Unfortunately, we anticipate having to make redundancies in the near future. It is likely your position technical Director is at risk of redundancy".*
>
> *I would like to point out this situation is a result of*
>
> *There are currently no live shows from London, at one time there were 4 to 5 live shows during the day from London. All weekend live shows has declined and London studios do not open on Saturdays. On Sunday London office opens for 4 hours for the editor to work.*
>
> *Fridays employees have been reduced in hours. Instead of 3 only 1 employee comes in.*
>
> *Our offices were 2 floors which have moved onto ground floor."*

88. The claimant was informed that there would be a further consultation meeting and, by letter of 20 February 2017, some of these reasons for redundancy were repeated by Mr Ali. The claimant was told that there was to be a period of consultation for about a week. The letter went on:

> *"Over this period I will meet and formally consult with you to discuss alternatives whereby your employment could be protected. I would also ask you to personally consider and put forward alternative proposals and suggestions at our consultation meetings which you feel are relevant with the aim of avoiding redundancy."*

89. It was pointed out that this was not formal notice of redundancy and it was said there would be a meeting on 22 February 2017.

90. In fact, that meeting took place on 28 February 2017 when the claimant was again accompanied by Mr Scoggins. That meeting was held with Mr Butt. Notes of the meeting appear in the respondents' bundle. The difficulty with reading those notes is that the speakers are not identified by name although

we think we have made sense of who was saying what at what point. Mr Butt gave a detailed explanation of the reduction in business although the claimant takes issue with some of that information. The claimant did not raise, in that meeting, any suggestion that he should be put in a pool for selection with Anil and Adil nor does he raise any suggestions for alternatives to redundancy or alternative employment.

91. By letter of 2 March 2017, the claimant was informed that his employment would terminate by redundancy on 27 May 2017, giving the appropriate 12 weeks' notice. He was given a breakdown of his entitlement and told that he could appeal. There was further explanation in that letter about why redundancy was felt to be necessary, focussing on the reduction in work

92. The claimant appealed by email of 6 March 2017. He repeated that he did not believe that his technical work has decreased and that there was still plenty of work for him to do. He said that he was being replaced and that work is being given to "*new staff*" because of what he heard from the call centre in Pakistan. He alleged that the dismissal was connected to matters that he had raised.

93. There was an appeal meeting on 14 March 2017 with a Mr Afzal Akram, who introduced himself to the claimant as an independent person, giving details of his background in business and the community. The notes of the meeting were in the bundle. It indicates that the only people present were the claimant and Mr Akram. It is a detailed meeting with considerable discussion about the previous meetings. The claimant repeated that he did not believe the redundancy was fair and that there was sufficient work for him to do and said that he believed that it was victimisation because Mr and Mrs Ali wanted to "*get rid of him*". The claimant had prepared a fairly lengthy document which Mr Akram looked at during the meeting. He understood that the claimant was saying that it was an unfair redundancy.

94. Mr Akram then prepared a short report which we have seen. In summary he said that he could not find any evidence that the redundancy was not true or unfair. He says, "*Nothing Mr Mumtaz said during the meeting provided me with any evidence and no firm evidence was provided by him either".* He looked at the background and concluded that the redundancy decision was taken in a proper and fair manner.

95. Mrs Ali wrote to the claimant by letter of 24 March 2017 as follows:

> *"You appealed against the decision of the redundancy consultation where dismissal by reason of redundancy was confirmed on 3 March 2017.*
>
> *Your appeal hearing was held on 14 March 2017 by an impartial consultant engaged for this purpose.*
>
> *Please find attached the report of the consultant which represents my decision."*

96. The claimant was therefore on notice but not attending work. The claimant had been asked to attend on certain dates for the appeal hearing. It seems

there were some difficulties because the claimant said he had booked holiday. As stated he did, however, attend the appeal hearing.

97. Mrs Ali was concerned that the claimant had been unco-operative and she wrote the email which appears at page 589 of the claimant's bundle. It is dated 26 April 2017 and starts as follows:

> *"Dear Nadeem*
>
> *I am writing to inform you that due to deterioration of our relationship we have decided to bring forward the redundancy and terminate your employment from today".*

98. Later in that email Mrs Ali refers to the claimant having taken part in a trial for an alternative position, but this must be a mistake and may well come from a template provided by a consultant. In any event, when Mrs Ali was cross examined on this, she said she could not understand why she referred to a deterioration in the relationship but that she thought the employment should be brought to an end so that the claimant could look for work or go on holiday given the discussions they had had about this when trying to arrange the appeal. Although Mrs Ali's evidence on this aspect was not very satisfactory the tribunal accept that it made no difference to the claimant who still received the same amount of notice pay and had an earlier termination date.

Law and submissions

99. Public Interest Disclosure - Section 43A Employment Rights Act 96 (ERA) defines a 'Protected Disclosure as a qualifying disclosure (as defined by s43B) which is made by a worker in accordance with any of sections 43C to 43H.

Section 43B ERA 96 provides:

> *[(1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the following—*
>
> *(a) that a criminal offence has been committed, is being committed or is likely to be committed,*
>
> *(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,*
>
> *(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,*
>
> *(d) that the health or safety of any individual has been, is being or is likely to be endangered,*
>
> *(e) that the environment has been, is being or is likely to be damaged, or*

> *(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed.*
>
> *(2) For the purposes of subsection (1), it is immaterial whether the relevant failure occurred, occurs or would occur in the United Kingdom or elsewhere, and whether the law applying to it is that of the United Kingdom or of any other country or territory.*
>
> *(3) A disclosure of information is not a qualifying disclosure if the person making the disclosure commits an offence by making it.*
>
> *(4) A disclosure of information in respect of which a claim to legal professional privilege (or, in Scotland, to confidentiality as between client and professional legal adviser) could be maintained in legal proceedings is not a qualifying disclosure if it is made by a person to whom the information had been disclosed in the course of obtaining legal advice.*
>
> *(5) In this Part "the relevant failure", in relation to a qualifying disclosure, means the matter falling within paragraphs (a) to (f) of subsection (1).*

100. Pursuant to s43C ERA a qualifying disclosure is made in accordance if the worker makes the disclosure to their employer. When considering whether there has been a 'disclosure' within the meaning of s43(B)(1) we must consider whether the employee disclosed 'information'. It is not sufficient that the employee has made an 'allegation' – (Cavendish Professional Risks Management Ltd v. Mr. M Geduld [2010] IRLR 38). The claimant must show that he reasonably believed the disclosure was in the public interest. There is no requirement to show that the breach actually occurred.

101. Guidance is provided to tribunals hearing public interest disclosure cases in Blackbay Ventures Ltd T/A Chemistree v Gahir UKEAT/450/12. It is suggested that each disclosure should be separately identified; that each failure to comply with a legal obligation or health and safety allegation should be separately identified; that the legal obligation may need to be identified; that the issue of whether the disclosure had a reasonable belief that it was in the public interest and, where detriment is alleged, that the detriment should be identified. These steps are those identified in the legal issues set out above.

102. S103A ERA provides that

> *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.*

103. It is for the employer to show the principal reason for dismissal as it is for "ordinary" unfair dismissal.

104. Section 47B ERA provides that a worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer on the ground that the worker has made a protected disclosure. Section 48 (2) ERA provides that on a complaint under section 47 B :- "*it is for the employer to show the ground upon which any act, or deliberate failure to act was done*".

105. The tribunal must decide what caused the detriments (if any are found) and the dismissal. Helpful guidance in assessing causation is provided in the Court of Appeal's judgment in Fecitt v NHS Manchester [2012] ICR 372 where it was said:

> "*section 47B will be infringed if the protected disclosure materially influences (in the sense of being more than trivial influence) the employer's treatment of the whistleblower".*

106. 'Ordinary' Unfair Dismissal – the relevant sections of ERA here are those at s98 (2) where the potentially fair reasons for dismissal are set out and one of which is '*that the employee was redundant*". The burden of proving the reason rests on the respondent.

107. The definition of redundancy is at s139 ERA. The relevant part for this case reads:-

> "*the fact that the requirements of that business-*
>
> *(i) for employees to carry out work of a particular kind, or*
> *(ii) –*
>
> *have ceased or diminished or are expected to cease or diminish".*

108. If the employer shows the potentially fair reason, the tribunal must then consider, with the burden of proof being neutral, whether the dismissal was fair or unfair under s98 (4) ERA which reads:-

> "*Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)-*
>
> *a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and*
>
> *b) shall be determined in accordance with equity and the substantial merits of the case"*

109. In redundancy processes, there are a number of well established procedures which are usually considered to be fair. These include giving adequate warning to affected employees, consulting with affected employees and any

representatives and agreeing selection procedures if possible. Alternatives to redundancy should be considered as well as any alternative posts.

110. The claimant also brings complaints under Equality Act 2010 (EQA). The relevant sections for his claims of religion or belief and victimisation are ss13 and 27 EQA. The time limits for bringing discrimination complaints is set out in s123 EQA. These read as follows:-

> *"**13 Direct discrimination***
>
> *(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.*
>
> *(2) -*
>
> ***27 Victimisation***
>
> *(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.*
>
> *(4) This section applies only where the person subjected to a detriment is an individual.*
>
> *(5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.*
>
> ***123 Time limits***
>
> *(1) Proceedings on a complaint within section 120 may not be brought after the end of—*
>
> *(a) the period of 3 months starting with the date of the act to which the complaint relates, or*

> *(b) such other period as the employment tribunal thinks just and equitable.*
>
> *(2) Proceedings may not be brought in reliance on section 121(1) after the end of—*
>
> *(a) the period of 6 months starting with the date of the act to which the proceedings relate, or*
>
> *(b) such other period as the employment tribunal thinks just and equitable.*
>
> *(3) For the purposes of this section—*
>
> *(a) conduct extending over a period is to be treated as done at the end of the period;*
>
> *(b) failure to do something is to be treated as occurring when the person in question decided on it.*
>
> *(4)-".*

111. In essence, for all claims the tribunal must make findings of fact and then apply the correct tests. For the direct discrimination complaints, namely less favourable treatment contrary to section 13 EQA, the tribunal is mindful that it is unusual for there to be clear, overt evidence of direct discrimination and that it should consider matters in accordance with section 136 EQA. The tribunal accepts the guidance of the Court of Appeal in Igen V Wong [2005] IRLR 258 which confirms that given by the EAT in Barton v Investec Henderson Crosthwaite Securities Ltd [2003] IRLR 332, concerning when and how the burden of proof may shift to the respondent, as modified and clarified in other recent cases. When making findings of fact, we may determine whether those show less favourable treatment and a difference in religion. We bear in mind the ratio of the House of Lords in Zafar v Glasgow City Council [1998] IRLR 36 to the effect that the test we should use to establish whether there has been less favourable treatment is not whether there was treatment which was less favourable than that which would have been accorded by a hypothetical reasonable employer in the same circumstances. The test is: are we satisfied, on the balance of probabilities that this respondent treated this claimant less favourably than they treated or would have treated an employee with a different religion. We are guided by the decision of Madarassy v Nomura International plc 2007 IRLR 246 reminding us that unfair treatment and a difference in protected characteristic does not, on its own, necessarily show discriminatory treatment. If we are satisfied that the primary facts prove a difference in religion and less favourable treatment, we proceed to the second stage. If the answer here is that we could so conclude, the burden shifts to the employer. At the next stage, we look to the employer for a credible, non-discriminatory explanation or reason for such less favourable treatment as has been proved. In the absence of such an explanation, proved to the tribunal's satisfaction on the balance of probabilities, the tribunal will conclude that the less favourable treatment occurred on the grounds of the claimant's religion.

112. There are also allegations of discrimination by way of victimisation, contrary to section 27 EQA. Here the burden rests upon the claimant to prove that he

has performed one or more of the "protected acts" defined at section 27 (1) b). This is the first stage and requires the appropriate findings of fact and conclusions. Thereafter we move on to the second stage and determine whether there have been any detriments because the employee had committed the protected act(s). The tribunal must decide why the respondents took the action they took when assessing whether it was because the claimant had carried out protected acts. This is a question of subjective intention. Everything set out above in respect of the shifting of the burden of proof and the drawing of inferences applies here too.

113. Finally, the claimant brings a claim for unauthorised deduction of wages under Part 11 ERA. S13 ERA provides that an employer shall not make unauthorised deduction of wages unless a worker has previously signed consent or the deduction is required by statutory provision or the worker's contract.

Conclusions

Public interest disclosure claims

114. The tribunal first determines the public interest disclosure complaints. The initial question arising under issue 9.1 is whether the claimant did say or write the matters between issues 9.1.1 and 9.1.4.

115. We therefore look first at issue 9.1.1 and consider whether what was written whether it amounts to information which in his reasonable belief tended to show one of the following as set out at issues 9.5.1 to 9.5.5 (criminal offence, failure to comply with a legal obligation etc).

116. As far as the first alleged public interest disclosure of 16 October 2014 is concerned, we have quoted the relevant contents of that and we find that it contains information which, in the claimant's reasonable belief, tended to show a criminal offence or breach of a legal obligation and/or concealment. We say this because it contains factual information on a number of matters around possible tax evasion, possible money laundering and sending cash and removing money from the claimant's bank account. These are matters for which the claimant has provided some evidence and we are satisfied that the claimant had a reasonable belief that those matters were in the public interest. That was a qualifying disclosure.

117. We then turn to the second public interest disclosure at issue 9.1.2 which concerns what was said at the grievance hearing on 4 June 2015. The matter raised there relates to alleged illegal residential premises, discharge of detergents and waste, and the comment about dirty water in the canal. Our findings of fact make it clear that that appears to have been said. However, we are not satisfied that it amounts to information rather than a mere allegation. Nor do we find that it was, in the claimant's reasonable belief, tending to show either a health and safety concern or that there was damage to the environment. There was no real basis for the allegation. That was not a qualifying disclosure.

118. Turning then to the third alleged public interest disclosure at issue 9.1.3 in relation to the email of 23 April 2015. The tribunal finds that this email, part

of which we have quoted in our facts, does contain sufficient information to support a finding that the claimant did have a reasonable belief that it tended to show a criminal offence, failure to comply with a legal obligation or that matters were likely to be concealed. Much of it is a repeat of matters raised in the October 2014 email. The claimant had a reasonable belief both in the tendency to show those matters and that it would be in the public interest. That is a qualifying disclosure.

119. Finally, in relation to public interest disclosure issue 9.1.4, that is the email of 27 May 2015, we do find that it contains sufficient information about the earth wiring and electric shock. We find that information, in the reasonable belief of the claimant, tended to show that the health and safety of an individual had been put at risk. We do not find that there was any connection to the environment in that email, but we find that the claimant reasonably believed the information on earth wiring was in the public interest. That is a qualifying disclosure.

120. The tribunal therefore move on to consider the matters which are alleged to be detriments arising from the disclosures we have found which, as indicated above, are the first, third and fourth alleged disclosures. All the alleged detriments post-date those disclosures.

121. We follow the numbering in the list of issues and determine whether the claimant was subjected to the following detriments on the ground of any of the protected disclosures.

10.1.1 *On 20 July 2015 the claimant was denied a religious holiday-to be deducted from annual holiday and the time not being carried forward;*

122. The claimant was not denied a religious holiday as he had already taken it. It was deducted from his entitlement. Mrs Ali explained that formalising of their procedures followed the claimant's grievance. However, the tribunal does not find that the claimant being informed of the procedures was on the ground of him having complained about various matters as referred to above. The fact that the claimant had made qualifying disclosures was not the reason for the requirement for him to give notice and/or for the taking of any Eid days to come out of his entitlement. Even if we are wrong about that, the claimant is clearly out of time with respect to that allegation as this was a matter which occurred on 20 July 2015. It was reasonably practicable for him to bring that claim in time even if it was causally connected (which we have found it was not).

10.1.2 on 1 August 2015 Mr. and Mrs. Ali monitored the claimant by the use of viber to record attendance, unlike other staff;

123. The claimant has not succeeded in showing that his attendance was recorded unlike other staff. His activities were recorded in the same way as other staff and Mr Ali. He has not shown that the request to use Viber was to his detriment and it is not on the ground of any qualifying disclosures made by him.

10.1.3 *on 4 August 2015 the claimant was instructed to train Pakistani staff and was told they will be doing his job 100%;*

124. As our findings of fact make clear, the claimant might well have been asked to train the staff at the call centre in Pakistan but he was not told that they will be doing his job 100 percent. Mr Ali only said that they should be used 100 percent. The claimant cannot show that this is to his detriment and he is even less able to show that it was on the ground of any protected disclosures.

10.1.4 *on 10 August 2015 the claimant was moved from the first-floor management office to the ground floor office for junior staff*

125. The claimant was moved from the first floor to the ground floor but this is nothing to do with junior or senior staff. The tribunal has accepted the reasons given by the respondents for that move. The move was not to his detriment and it had no connection whatsoever to any qualifying disclosures.

10.1.5 *on 10 August 2015 the claimant was taken away from technical jobs, such as producing break patterns, sending EPG to Sky, managing and centralising password systems, looking after Local Area Network and coordination with service providers such as IQ Broadcast, C3 Limited Zeus, Sky and Digitex and given very low skilled job and responsibility for non-technical matters;*

126. The claimant has not given any clear evidence that he was "*taken away from technical jobs*". Some of the more technical aspects of his work may well have moved, some of them because of advances in technology. To a limited extent, he did pass on some work to the call centre in Pakistan as previously stated. The tribunal cannot find that this was to his detriment as the respondents continued to find work for him to do. However, we are prepared to accept that the claimant may well have perceived it to be to his detriment and it certainly, in the subsequent 18 months, led to his redundancy. We therefore consider whether it was on the ground of any qualifying disclosures. We can find no evidence of any causal connection between any reduction in his technical work and issues he had raised. The respondents have shown business reasons unconnected with those issues for how matters were arranged. It was a continuing process over many years and was not on the ground of any disclosures.

10.1.6 *on 10 August claimant being denied full access to the IT Systems such as removal of the claimant's access to centralised passwords;*

127. The claimant has not shown that he was denied full access to IT systems. The only change was that he did not have the passwords for Mr and Mrs Ali's email accounts. That is not to his detriment and is a reasonable step to take. Even if the claimant could show it was to his detriment, it had no connection to any qualifying disclosures.

10.1.7 and 10.1.8
on 8 October 2015 the claimant was issued with a verbal warning;
on 3 November 2015 the warning was upheld and the discrimination complaints were not upheld.

128. The claimant was issued with a verbal warning which was upheld. This was to the claimant's detriment. However, the tribunal is not persuaded that it was on the ground of any qualifying disclosures. It was an entirely separate matter. It was about the reasonable request and rule that the claimant give notice of holiday. He did not do so and the warning was not on the ground of the qualifying disclosures.

129. We proceed then to determine the detriments raised at other points in the list of issues. We first consider the matter of Bilal at issue 13.3.1. This is a slightly confusing allegation as it is said to be on 7 October 2015. As stated at paragraph 38, the claimant complained about this when he met Ms Nicol in June 2015 so it could not have happened as late as October. In any event, the tribunal accepts Mr Ali's evidence that he wanted people to report back to him where the matter was something which he had given instructions on. The tribunal does not accept that Mr Ali shouted. The claimant has failed to show any detriment and certainly no connection to any qualifying disclosures.

130. We then turn to the other matters listed between 13.4.1 and 13.4.24. We leave the question of dismissal and early termination of employment till later. We intend to deal with these by dealing with those matters which are entirely separate and then grouping together those which appear to have connections.

13.4.1 *On or around 17 May 2016 being told by Mr Ali that he was 'shit stirring' (witnessed by Mr Adil and Mr Anil)*

131. Mr Ali did say that the claimant had been "*shit stirring*". We accept that that was a detriment, but we do not find that it was on the grounds of him having made a protected disclosure. The comment was made because Mr Ali believed the claimant was speaking to other staff about the employment contracts, not a matter raised as one of the qualifying disclosures.

13.4.2 *Not upholding his grievance on 22 July 2016*

132. The grievance was not upheld although the date was not 22 July but 30 August 2016. That was to the claimant's detriment. We do not find that there is any causal connection between Mr Butt not upholding the grievance and any qualifying disclosures. It cannot be said that an adverse outcome was because disclosures had been made.

13.4.4 *On 31 August 2016 Mr Ali shouted at the Claimant 'leave the office before I force you out.' (witnessed by Mr Adil and Mr Anil)*

133. The tribunal have found that this was not said but that Mr Ali did say "*to leave the work"* which the claimant may have misinterpreted. We do not believe that was a detriment, but accept that the claimant might well have believed he was being asked to leave the office. The question is therefore whether that comment was on the ground of any of the qualifying disclosures. Taking the comment in the context of that short discussion, the tribunal finds that it had nothing to do with disclosures made more than a year earlier. The same is true of alleged detriments we now move on to consider. There is a considerable delay between any detriments found and the making of the disclosures which makes it less likely that there is a causal connection.

13.4.6 and 13.4.7

From around 9 September 2016, forcing the Claimant to not work Fridays from 1 October 2016

Reducing the Claimant's salary on 14 September 2016

134. These two alleged detriments concern Mrs Ali telling the claimant not to work on Fridays and then reducing his salary. These matters did both occur and the tribunal accept that they were to the claimant's detriment. The real question for us is whether these were on the ground of the claimant having made qualifying disclosures. Again, these disclosures were about 15 months before this event. We are satisfied by the clear explanation given to the claimant at the time, that there was less need for people to work on Fridays and one other employee was also not working on Fridays. Clearly, a reduction in salary was a detriment but we are not satisfied that was causally connected to the disclosures. It was because of the needs of the business.

13.4.3; 13.4.5; 13.4.9; 13.4.10; 13.4.11; 13.4.13

On 13 October 2016 suspending the Claimant from work (witnessed by Mr Adil and Mr Anil)

On 13 October 2016 subjecting the Claimant to an unfair disciplinary meeting

On or around 13 October 2016, Mr Ali saying to the Claimant in front of others that he had been stealing and cheating and suspending him and suspending him in a demeaning and humiliating way. (witnessed by Mr Adil, Mr Anil and Mrs Ali)

On or around 13 October 2016 changing the Claimant's passwords, removing him from office and client group chats WhatsApp groups

Not allowing the Claimant to be accompanied to a meeting on 13 October 2016

From around 31 October 2016 not sending the Claimant evidence to be used in the disciplinary hearing

135. These all relate to the incident on 13 October 2016. Some of those matters were detriments and some not. The claimant was suspended on that day and that was to his detriment. He was invited to a disciplinary meeting which, perhaps, should have been better described as an investigation meeting. That was also to his detriment. We accept that the comment made by Mr Ali that the claimant was cheating the company was to his detriment. We accept that he was removed from the WhatsApp group whilst he was on suspension but we do not find that that was to his detriment. We accept that he was not allowed to be accompanied at the discussion on 13 October but that was not a formal meeting and was not a detriment. We accept that the copy notebook was not sent to the claimant before the disciplinary meeting and that was a detriment.

136. We now consider all those matters together and decide, where there were detriments, whether they were on the ground of the qualifying disclosures. We cannot find this to be the case for several reasons. We therefore considered this with care, bearing in mind that some detriments have been found. We have decided, on examining the evidence and hearing the witnesses that the detriments found had nothing to do with what the claimant had raised as disclosures about 18 months previously. On the claimant's case, he was writing matters down which concerned work only. In his evidence he sometimes said that it was personal work and sometimes that it was not. Mr Ali took the view that it was personal. However, what was being written down appeared to be matters which were a mixture of work related matters but also were details about when other people were in the office and so on. We can see why Mr Ali might be concerned but we can also see why the claimant felt that he might need to record some items of work related matters in writing. In any event, we have taken the view that it was not on the grounds of any public interest disclosures. There is no causal connection.

13.4.12 *From an unknown date, secretly monitoring the Claimant with software 'net monitor for employee's pro'*

137. This is the installation of net monitoring which we have found was not specific to the claimant. It was not to his detriment nor on the grounds of any qualifying disclosure made the previous year.

13.4.14; 13.4.15; 13.4.16; 13.4.17; 13.4.18; 13.4.19; 13.4.20; 13.4.21 and 13.4.22

On 10 August and 1 November 2016 moving the Claimants desk in the workplace repeatedly (witnessed by Mr Adil, Mr Anil, Mrs Rukhsana Ali)

In around November 2016 giving the Claimant menial jobs: drawing of all cabling in the cabinets, Mr Ali told the Claimant "I want you to spend 2 weeks on it" and kept chasing the Claimant (witnessed by Mr Adil and Mr Anil)

On or around 16 November 2016 Mr Ali told the Claimant not to write anything down (witnessed by Mr Adil and Mr Anil)

From around November 2016 not returning the Claimant's notebook

From 16 November 2016 not making time for the Claimant to conduct the Zohar prayer

From November 2016 not giving the Claimant logins and passwords

From 23 February 2017 not allowing the Claimant access to CCTV footage

From November 2017 not allowing the Claimant to use his email address

From around November / December 2016 Mr Ali instructing junior staff not to take instructions from the Claimant (witnessed by Mr Adil and Mr Anil)

138. We then turn to matters which the claimant states occurred in November 2016 (apart from the allegation at 13.4.20 which is said to be February 2017). All

these are matters where we have made clear in findings of fact. The claimant's desk was moved as is common in office moves. We are satisfied by the respondents' explanation for the move. Even if it was a detriment, it was not on the grounds of earlier qualifying disclosures.

139. We do not find that the claimant was given menial jobs. Any work that was given to him was appropriate and meant that he was retained in employment. There was no detriment there. The claimant has not satisfied us that he was prevented from conducting Zohar prayer or that he was not allowed log-ins or passwords or that he could not see CCTV footage. The claimant cannot therefore show any detriments in relation to those matters.

140. Nor is it a detriment for the claimant to be asked to use a generic email address rather than one in his name. It was a reasonable request. The tribunal is not satisfied that there were any instructions from Mr Ali that the staff should not take instructions from the claimant.

141. The notebook (diary) was not returned to the claimant and that could amount to a detriment. However, there is no causal connection between that and the qualifying disclosures made many months earlier.

13.2.24 *Terminating the employment contract earlier than the notice given.*

142. Although the claimant suffered no financial losses as a result of the early termination, we find that the email sent by Mrs Ali was a detriment because she referred to "a *deteriorating relationship".* That comment was not connected to the much earlier qualifying disclosures but related to the difficulties of arranging an appeal hearing.

143. The issues at 13.4.1 and 13.4.24 are also raised as victimisation detriments so we consider those as detriments under Equality Act 2010 once we have made our findings on the protected acts.

Victimisation

144. We therefore look at victimisation next under issue 13.1 and decide whether the claimant has carried out a protected act under those proposed between issue 13.1.1 and 13.1.4. We find, as the respondents accepted, that the ET claims at 13.1.2 and 13.1.4 were protected acts. The first one presented on 22 January 2016 raised issues of sex discrimination and the second one in February 2017 raised religious discrimination questions. Although those claims were not particularly meritorious with one being withdrawn and the other being ultimately unsuccessful, we do not find they were false and therefore made in bad faith. Those ET claims therefore did amount to protected acts.

145. However, the tribunal does not find that the matters raised in issues 13.1.1 and 13.1.3 are protected acts. We say this because neither of those alleged protected acts does the claimant complain about anything which links to protected characteristics so as to give him the protection of Equality Act 2010. In the meeting with Ms Nicol on 4 June (issue 13.1.1), he simply said that he was not paid as much as Mrs Ali and then immediately conceded that that was not illegal as she was the Director. With respect to the grievance of 3

June (issue 14.1.3), the claimant raised a large number of matters but there is nothing in that which relates to any protected characteristics. We have read the grievance and associated documents, and although the claimant raised a number of matters and concerns about what he believed to be protected disclosures, he did not reference any protected characteristic or suggest some difference in treatment related to a protected characteristic. These are not matters raised under the Equality Act and are not protected acts.

146. Because there are two protected acts, we need to deal again with those matters between 13.4.1 and 13.4.24, previously considered as alleged qualifying disclosure detriments. We have already made findings about issue 13.3.1 which fails on the facts and, in any event, does not apply because 13.1.1 is not a protected act (see paragraph 145).

147. We have already found that none of those matters raised between 13.4.1 and 13.4.24 (not including the dismissal) were on the ground of the claimant having made a qualifying disclosure.

148. The question now arises whether those that did occur, occurred because the claimant had brought employment tribunal claims. All those between 13.4.1 and 13.4.22 post-date the first ET claim and issue 13.4.23 and 13.4.24 post-date the second ET claim. Again, we went through these in some detail and we do not need to repeat what we have already said. The claimant bears the initial burden of proving the facts which could indicate less favourable because he had alleged discrimination. He does not shift the burden of proof to the respondents here. Even if he did, we can find no causal connection between those allegations and such treatment he has shown to have occurred. They bear little or no relation to the claimant's protected acts which are limited to one allegation of sex discrimination against Mrs Ali, (subsequently withdrawn) or the religious discrimination allegation which was not made until 10 February.

149. We did consider 13.4.23 and 13.4.24 (the dismissal and the early termination) with particular care, given the proximity of the dates between the second ET claim and the dismissal. We accept that the claimant shifts the burden of proof for those matters. However, we accept the respondents' explanations for the treatment, namely the need for redundancy and a decision on early termination which had no impact on the claimant. Neither was on the grounds of the protected acts.

Unfair Dismissal

150. We now move on to considering dismissal. We look first at the question of automatic unfair dismissal (section 103A ERA) under issue 11. We first consider under 11.2.1 "*whether the claimant has produced sufficient evidence to raise the question whether the reason for dismissal was the protected disclosure"*. We find that the claimant has produced sufficient evidence. We have found there were three protected disclosures and it therefore necessitates some investigation into what the respondents decided when making him redundant.

151. We turn then to issue 11.2.2 "*whether the respondent has proved its reason for dismissal, namely redundancy or business reorganisation*". Taking all the evidence into account, we are satisfied that there was a continuing reduction in work which affected the claimant's position. We have found that there was a reduction in hours for all members of staff. There had been a reduction over the years from 15 members of staff to 3, and the other two members of staff were on zero hours contracts. Those members of staff were carrying out work which the claimant could not do in design and editing. We have found that the claimant's technical jobs were reducing and had continued to reduce over time, partly because they could be carried out elsewhere and partly because of advances in technology. There was a reduction in the need for employees to carry out the work which the claimant had carried out. The definition of redundancy under s.139 of the Employment Rights Act is met and there was therefore a redundancy situation. The claimant cannot succeed in his claim of automatic unfair dismissal as his qualifying disclosures were not the reason or principal reason for his dismissal.

152. For completeness, we should say that we do not accept that the dismissal was a detriment arising from a protected act as alleged at issue 13.1.23. The claimant presented two ET claims and there was really no evidence that the respondents acted in response to either claim before taking the decision they did. Although the timings made us consider this with some care, we are satisfied of their explanation relating to the reduction in work and financial pressures.

153. We turn then to make findings under issue 8 with respect to "ordinary" unfair dismissal. We have already found that the First Respondent dismissed for a fair reason under s.139 ERA.

154. We therefore consider matters under issues 8.2.1-8.2.4. First, we do think that there was sufficient warning although there could have been longer warning, given that the reduction was over some time. Given the size of the employer's business and the claimant's knowledge of the situation, the warning was sufficient. The claimant did not suggest the selection pool and there is no evidence that one would have assisted. The claimant was the only one with the job title of Technical Director and there was no need to put him in a pool with other people whose skills he did not have, nor did they have his, as far as we are aware. There was consultation at one short meeting and then further consultation at a meeting where the claimant was accompanied. He did not suggest any other outcome or anything which would lead to him not being made redundant. There was no alternative employment available nor did the claimant suggest any. The tribunal is satisfied that a fair procedure was adopted and that the dismissal was not unfair.

Religious Discrimination

155. There remains the claim under issue 12 which is the allegation of less favourable treatment because of religion. This can be answered shortly. The claimant was told not to attend work on Fridays. The claimant has not shown this is less favourable treatment connected to his religion. There was no mention of religion during that discussion or any other. There was a mention by the claimant of parental responsibilities on Sundays. Neither the claimant nor the respondents made any reference to praying and it had no connection

to it. The burden of proof does not pass to the respondents. Even if it did, we are more than satisfied with the respondents' explanation for the change which was based on business reasons and had no connection whatsoever to the claimant's religion.

Unauthorised deduction of wages

156. We must first consider issue 15.1 which refers to the two year time limit. The claimant cannot succeed in this claim. His salary was reduced around 2003. He was then transferred under TUPE Regulations. On the evidence before the tribunal, he did not complain to the respondents about it until 2014. Having worked for many years without complaint and continued to do so until dismissal, the claimant affirmed the contract and it is not an unauthorised deduction of wages. He is not entitled to any further payments.

Time limits

157. Finally, in relation to time limitation questions in issues 14.1 to 14.4, these findings are, in the circumstances, not really necessary. For completeness, however, we find that some of the protected disclosure claims are out of time as raised by issue 14.4. That which arose earlier than August 2015 which can only be the first alleged detriment at issue 10.1.1. is clearly out of time and it was reasonably practicable to present any claim for detriment for making protected disclosures in time. All other alleged detriments were presented in time but we have found that those detriments, where any were made out, were not on the ground of having made protected disclosures.

158. As far as the victimisation claim is concerned, most alleged detriments would appear to have been presented in time. The tribunal accepts that these amounted to conduct extending over a period given the relatively short period of time and the fact that Mr Ali was himself involved in most of the allegations.

159. The claimant's claims all fail and are dismissed.

_____
Employment Judge Manley

Date: …23/10/18……..

Sent to the parties on: .....

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For the Tribunal Office