EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		**Respondent**
Mr J A Reyes	AND	University of Exeter (1) Dr M White (2)

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Bodmin ON 22 and 23 August 2019

EMPLOYMENT JUDGE N J Roper

Representation

For the Claimant: Mr P Sayers, Solicitor
For the Respondent: Miss R Tuck of Counsel

JUDGMENT

The judgment of the tribunal is that (i) the claimant made protected public interest disclosures in writing on 24 July 2018 and 17 August 2018; and (ii) the claimant made a protected act for the purposes of his victimisation claim by letter dated 17 August 2018.

REASONS

1. In this case the claimant Mr J A Reyes brings claims alleging that he has suffered detriment and has been unfairly dismissed, and that the principal reason for this was because he had made protected disclosures. He also brings claims of direct discrimination, indirect discrimination, harassment and victimisation on the grounds of race (namely his Filipino nationality).
2. This preliminary hearing was listed to determine two matters, namely: (i) whether the claimant has made public interest disclosures; and (ii) whether the claimant committed protected acts for the purposes of his victimisation claim.
3. I have heard from the claimant. For the respondents I have heard from Dr M White (the second respondent) and Ms S Johnson.
4. There was a degree of conflict on the evidence. I have heard the witnesses give their evidence and have observed their demeanour in the witness box. I found the following facts proven on the balance of probabilities after considering the whole of the evidence,

both oral and documentary, and after listening to the factual and legal submissions made by and on behalf of the respective parties.

5. The claimant Dr Joseph Reyes is a Filipino national with a PhD in Environmental Studies. On 8 January 2018 he commenced employment with the first respondent under a four-year fixed term contract, subject to the completion of a probationary period. The claimant had originally applied for and was interviewed for the position of Postdoctoral Research Fellow on Project 12 working for the University of Plymouth, but Isabel Richter was successful in obtaining that position and he was offered, and accepted, the role of Postdoctoral Research Fellow on Project 6, working for the first respondent.
6. The first respondent is the University of Exeter. The second respondent Dr Mathew White is employed by the first respondent as Senior Lecturer (Education and Research) in the College of Medicine and Health. Dr White leads three international programs with the first respondent, including one program called Blue Communities, and he was the claimant's line manager. Blue Communities is a four-year Global Challenges Research Fund (GCRF) coordinated by Plymouth Green Laboratories. The first respondent's UK partners in this project include the University of Plymouth, and there are also partners across South East Asia, including the Western Philippines University (WPU). The Blue Communities program consists of 12 related projects and Dr White is the co-lead on Project 6. The Blue Communities program is not a research project, but is a collaboration project which involves visiting each country to work with partners to help them develop their own bespoke surveys and to build a research network with them.
7. The GCRF project concerns the health and well-being implications of coastal living and there was a field trip to Palawan Island in the Philippines for three weeks from 7 to 26 May 2018. Of the 12 projects, projects 6 and 12 both focused on the social science and human aspects and so these projects were integrated. Dr White and the claimant attended from project 6, and Project 12 was represented by Dr Sabine Pahl and Dr Isabel Richter, who also attended. Dr White and Dr Pahl are husband and wife. These four protagonists are referred to as "the UK Partners".
8. The main working language of the Philippines is Tagalog, and the claimant is a natural speaker of this language. He was extremely helpful in arranging the trip and liaising with the WPU team. Although the professional working language of the academics, including in the Philippines, was English, and they were all English speakers, other stakeholders were not, and the claimant assisted with translation were necessary.
9. Unfortunately, there was a degree of antagonism between the claimant and Dr Isabel Richter. The role of Postdoctoral Research Fellow was advertised by the University of Plymouth as requiring a certain level of qualification and relevant experience. Dr Richter had completed her doctoral work but had yet to complete the defence of her doctoral thesis (her Viva exam). She was successful in her application to that position, whereas the claimant was not. He seems to have objected to the fact that her first degree was in psychology and not fisheries, and because technically she had not completed her doctorate she should not have been referred to as "Dr".
10. Those on the trip travelled to Taytay in the North Philippines on 12 May 2018. The purpose was to collect data as part of Project 6 which would also assist in informing Project 12, and the UK partners met to discuss the ways forward. Dr White noticed that whenever Dr Richter spoke, the claimant physically turned away from her and would talk over her to him. The claimant also made it clear he wished to separate the two projects. In addition, there was a local resident and businessman staying in the same hotel namely Anton who owned some property on the coast and was developing the site. During a conversation with Dr Richter he said that he owned a drone which he had used to take images for publicity purposes. He offered to fly this in order to take images of the relevant areas around. Dr Richter discussed this proposal with the UK Partners in connection with potential images for Project 12. Dr White was of the view that whether to use the drone or not was a decision for Project 12 which was up to Dr Pahl.
11. On 15 May 2018 the claimant and Dr Richter joined members of the WPU team to a field trip on the west side of the bay. It was clear to Dr White on their return that there had been certain problems on the trip. The claimant complained that Dr Richter had asked people to

do tasks for her, including carrying a camera tripod. The claimant also said that Dr Richter had not dressed appropriately for work. He did not refer to any mandatory dress codes nor suggest that there was any legal obligation to dress in a particular way. Nonetheless Dr White thought it important to respect local cultures on dress and he discussed the claimant's concerns with Dr Pahl (who was her line manager) and she agreed to take action to address it. The claimant also commented that there might be some restrictions on flying drones in the Philippines. He did not provide details or any specific regulations. Dr White thought that this might be possible because he was aware that there were some restrictions on flying drones in the UK.

12. An incident occurred on 24 May 2018 between the claimant and Dr Richter when they were working with other members of the WPU team. In short Dr White took this to be a public humiliation of Dr Richter by the claimant during which the claimant complained to Dr White that Dr Richter was not doing what she was told and that he tried to "shut her up". Dr White informed the claimant that Dr Richter had equal status to him, and that his behaviour was unacceptable and decided to discuss the matter further with the claimant the following morning (on 25 May 2018). The claimant asserts that at some stage on 24 May 2018 he explained to Dr White that giving gifts in the Philippines were prohibited as an anticorruption measure but Dr White does not accept that that conversation took place.
13. Dr White and the claimant then met on 25 May 2018. The claimant had prepared a list of points to consider which were these: "line of communication, infrastructure limitations, clear procedure, task and project responsibilities; protocol, customs; dress code (field research scientists, not tourist) and posture; professional courtesy, also hierarchy; scheduling, costing (e.g. pier trip musical instruments personal request); extra request, MOU, procedural integrity (other people equipment) (e.g. drone); security and accountability."
14. At that meeting the claimant referred to the dress code in the context of colleagues having to dress as scientists and not as a tourist. This was effectively a criticism of Dr Richter's apparently casual attire, but the claimant did not identify any mandatory dress code or any legal obligation, or state that Dr Richter's attire might have breached any such standards. The claimant also complained that in the Philippines people were very hierarchical. He expressed concern that Dr White had not introduced himself as Dr White, and that Dr Richter should not be referred to as a postdoctoral employee because she had not formally finished her PhD. He was also upset that she had previously been introduced as Dr Richter. The claimant mentioned the drone again and did comment that he wondered if there were any regulations but did not expand further. He just seemed concerned about the relationship with other partners. However, Dr White noted that the local WPU team had not expressed any concerns as to what had happened. He did not mention any laws and legal obligations with regard to the giving of gifts. Dr White's recollection of the meeting was that there were discussions as to how to accommodate the claimant's preferred working style and they agreed a list of tasks and dates for delivery.
15. The claimant suggests that he also raised concerns that he was prohibited at this meeting from speaking Tagalog. Dr White denies that this occurred, but makes the point that the claimant's interaction with local stakeholders in the natural language of Tagalog where necessary was most welcome, but that it was expected that communication with the academic professional partners would be in English, because that was the agreed language for professional interactions. In any event there is no evidence to suggest that the claimant complained of any unlawful discrimination against him in this regard.
16. Upon their return from the Philippines, there was then a probation review meeting between the claimant and Dr White on 18 June 2018. This covered positive aspects of the claimant's performance as well as concerns arising from the Philippines trip. Dr White explained to the claimant that the respondent intended to progress the non-confirmation of probation procedure, in other words to propose the termination of his employment on the failure of his probationary period. At no stage during this meeting did the claimant raise any of the concerns which he now asserts were protected public interest disclosures. He also prepared a detailed response to the meeting running to 7 pages. Other than mentioning briefly that on the meeting on 25 May 2018 he had made points to consider such as "clear procedure, instructions, tasks, safety, security, dress code, courtesy calls, participant

interactions, and project responsibilities" there was no mention in this lengthy document of any of his supposed concerns.

17. Dr White then prepared a report recommending the non-confirmation of the claimant's probationary period and under the relevant procedure this was sent to the claimant for his review on 16 July 2018.
18. The claimant then attended the HR Department for a meeting with Ms Johnson the first respondent's Associate HR Business Partner, from whom I have heard. Early on 21 June 2018 he requested an urgent meeting, Ms Johnson arranged to meet with him at 4 pm. The claimant tape-recorded that meeting surreptitiously, without seeking Ms Johnston's consent. He has prepared a transcript of that meeting from that tape recording, which at some stage during this hearing he suggested was in some way not accurate. I find that an extraordinary assertion given that it is the claimant's own transcript of his surreptitious tape-recording. In addition, I have seen Ms Johnson's summary notes of that meeting.
19. The purpose of the meeting was to discuss the claimant's concern that his probationary period was not being extended. They discussed the reasons for this, and the respondent's perception of the claimant's performance. As a minor point the claimant raised at one stage that he had a PhD whereas some of the other research fellows did not, although he declined to name them. He also complained that Dr Richter had dressed like a tourist and had not been projecting a professional image as a researcher or scientist. The transcript shows that the claimant referred to the importance of being mindful of protocols and customs, and not dressing like tourists, being aware that government agencies prohibit flip-flops and shorts. The claimant did not impart any information that there was any breach of any legal obligation, or breach of any requirements concerning Government buildings. His complaint was effectively that Dr Richter's breach of etiquette had upset him. The claimant also mentioned the issue of the drone, but in the context that he was concerned that the owner of the drone might want something in return and that there might have been an issue about ownership of the photographs. He only raised a general concern about security and accountability, and did not allege any alleged breach of regulations concerning the flying of the drone.
20. The claimant also now asserts that at this meeting on 21 June 2018 he made a protected act, namely complaining that he had been discriminated against, in connection with the alleged prohibition on his speaking Tagalog. However, there is no record of the same in the transcript of the meeting. The claimant mentioned at one stage that he felt harassed, but this was not specified to be on racial grounds.
21. The claimant then submitted a detailed response to Dr White's report on 24 July 2018. The report runs to 31 closely typed pages. It accuses Dr White amongst other things of defamation, fraudulence and lying.
22. On page 4 of his report, the claimant stated: "Ms Richter and Anton in utilising the drone to obtain aerial photos of Taytay violated several rules and regulations prescribed by the Civil Aviation Authority of the Philippines such as operation above populated areas and proximity to persons not associated with the operation." His second footnote referred to the specific local Civil Aviation Regulations relating to the use of drones.
23. On page 5 of his report, the claimant stated: "… Dr White and Dr Pahl with full knowledge that Ms Richter has not been conferred a Doctorate, caused the partners, participants and myself to being misled into using the title "Dr" to address Ms Richter, and still continuously does so until the end by introducing her as a "Post-doctoral Research Fellow".
24. On page 9 of his report, the claimant referred to the project debrief on 25 May 2018, and stated: "… Dr White and I had some serious discussion on how we should properly work in future with country partners with regard to clear procedure, instructions, tasks, safety, security, dress code, courtesy calls, participant interactions, and project responsibilities." These points were repeated on page 12 of the claimant's report.
25. On page 16 the claimant stated: "As mentioned prior, Dr White and Dr Pahl introduced Ms Richter degree as a "post-doc" or "Post-doctoral research fellow" to the partners and participants, with full knowledge that Ms Richter has not been conferred a Doctorate, caused the partners, participants and myself to being misled into using the title "Dr" to

address Ms Richter, and still continuously does so until the end of the fieldwork by introducing her as a "post-doctoral Research Fellow".

26. On page 20 the claimant referred to the dress codes which he claimed were: "implemented pursuant to Philippine government offices and state institutions memorandum and circulars" and in his footnote numbered 104 referred to an Immigration Administrative Circular from the Philippines which set out the Dress Code Prescribed For Government Officials and Employees and the section related to prohibited attire.
27. On page 21 of his report the claimant referred to the safety and security protocol stipulated by local authorities and the National Civil Aviation Authority of the Philippines with regard to the flying of drones.
28. Shortly thereafter the claimant then raised a formal grievance by email dated 17 August 2018 to Professor Ballard. This stated: "I am writing this to raise grievance as I have been discriminated against on grounds of nationality and suffered whistleblowing detriments leading to unfair dismissal. I hereby wish that the following matters be considered under the formal grievance procedure: 1 Unfavourable treatment on the grounds of race … 2 Whistleblowing detriment in dismissal, as I have brought up wrongdoings related to Civil Aviation Authority of the Philippines rules and regulations; expenses policy; and research misconduct …" The claimant included with this grievance a copy of his report dated 24 July 2018 as explained above.
29. The claimant's employment with the respondent then terminated with effect from 12 September 2018. The claimant's appeal against this decision was unsuccessful. The claimant then issued these proceedings on 2 November 2018.
30. Having established the above facts, I now apply the law.
31. The definition of victimisation is found in section 27 of the Equality Act 2010 ("the EqA"). A person (A) victimises another person (B) if A subjects B to a detriment because B does a protected act, or A believes that B has done, or may do, a protected act. The following are all examples of a protected act, namely bringing proceedings under the EqA; giving evidence or information in connection with proceedings under the EqA; doing any other thing for the purposes of or in connection with the EqA; and making an allegation (whether or not express) that A or another person has contravened the EqA.
32. Under section 43A of the Act a protected disclosure is a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H. Section 43B(1) provides that a qualifying disclosure means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following – (a) that a criminal offence has been committed, is being committed or is likely to be committed, (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject, (c) 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.
33. Under Section 43C(1) a qualifying disclosure becomes a protected disclosure if it is made in accordance with this section if the worker makes the disclosure – (a) to his employer, or (b) where the worker reasonably believes that the relevant failure relates solely or mainly to – (i) the conduct of a person other than his employer, or (ii) any other matter for which a person other than his employer has legal responsibility, to that other person.
34. Under section 103A of the Act, an employee is to be regarded 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.
35. Under section 47B of the Act, a worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.
36. The statutory framework and case law concerning protected disclosures was helpfully summarised by HHJ Eady QC in Parsons v Airplus International Limited UKEAT/0111/17 from paragraph 23: "[23] As to whether or not a disclosure is a protected disclosure, the

following points can be made - This is a matter to be determined objectively; see paragraph 80 of Beatt v Croydon Health Services NHS Trust [2017] IRLR 748 CA. More than one communication might need to be considered together to answer the question whether a protected disclosure has been made; Norbrook Laboratories (GB) Ltd v Shaw [2014] ICR 540 EAT. The disclosure has to be of information, not simply the making of an accusation or statement of opinion; Cavendish Munro Professional Risks Management Ltd v Geduld [2010] ICR 325 EAT. That said, an accusation or statement of opinion may include or be made alongside a disclosure of information: the answer will be fact sensitive but the question for the ET is clear: has there been a disclosure of information; Kilraine v London Borough of Wandsworth [2016] IRLR 422 EAT.

37. [24] "As for the words "in the public interest", inserted into section 43B(1) of the ERA by the 2013 Act, this phrase was intended to reverse the effect of Parkins v Sodexho Ltd [2002] IRLR 109 EAT, in which it was held that a breach of legal obligation owed by an employer to an employee under their own contract could constitute a protected disclosure. The public interest requirement does not mean, however, that a disclosure ceases to qualify for protection simply because it may also be made in the worker's own self-interest; see Chesterton Global Ltd (t/a Chestertons) and Anor v Nurmohamed [2017] IRLR 837 CA (in which the earlier guidance to this effect by the EAT ([2015] ICR 920) was upheld).
38. [25] "More generally, in Chesterton, Underhill LJ offered the following guidance. First, as to the approach that has to be taken in general: "[27] First, and at the risk of stating the obvious, the words added by the 2013 Act fit into the structure of section 43B as expounded in Babula (see paragraph 8 above). The tribunal thus has to ask (a) whether the worker believed, at the time that he was making it, that the disclosure was in the public interest and (b) whether, if so, that belief was reasonable. [28] Second, and hardly moving much further from the obvious, element (b) in that exercise requires the tribunal to recognise, as in the case of any other reasonableness review, that there may be more than one reasonable view as to whether a particular disclosure was in the public interest; and that is perhaps particularly so given that that question is of its nature so broad-textured.. The parties in their oral submissions referred both to the "range of reasonable responses" approach applied in considering whether a dismissal is unfair under Part X of the 1996 Act and to "the Wednesbury approach" employed in (some) public law cases. Of course, we are in essentially the same territory, but I do not believe that resort to tests formulated in different contexts is helpful. All that matters is that the tribunal should be careful not to substitute its own view of whether the disclosure was in the public interest for that of the worker. That does not mean that it is illegitimate for the tribunal to form its own view on that question, as part of its thinking - that is indeed often difficult to avoid - but only that that view is not as such determinative. [29] Third, the necessary belief is simply that the disclosure is in the public interest. The particular reasons why the worker believes that to be so are not of the essence. That means that a disclosure does not cease to qualify simply because the worker seeks, as not uncommonly happens, to justify it after the event by reference to specific matters which the tribunal finds were not in his head at the time he made it. Of course, if he cannot give credible reasons for why he thought at the time that the disclosure was in the public interest, that may cast doubt on whether he really thought so at all; but the significance is evidential not substantive. Likewise, in principle a tribunal might find that the particular reasons why the worker believed the disclosure to be in the public interest did not reasonably justify his belief, but nevertheless find it to have been reasonable for different reasons which he had not articulated to himself at the time: all that matters is that his (subjective) belief was (objectively) reasonable.[30] Fourth, while the worker must have a genuine (and reasonable) belief that the disclosure is in the public interest, that does not have to be his or her predominant motive in making it: otherwise, as pointed out at paragraph 17 above, the new ss49(6A) and 103(6A) would have no role. I am inclined to think that the belief does not in fact have to form any part of the worker's motivation - the phrase "in the belief" is not the same as "motivated by the belief"; but it is hard to see that the point will arise in practice, since where a worker believes that a disclosure is in the public interest it would be odd if that did not form at least some part of their motivation in making it."

39. [26] More specifically, where the disclosure relates to something that is in the worker's own interest: (again per Underhill LJ in Chesterton) [37] … Where the disclosure relates to a breach of the worker's own contract of employment (or some other matter under section 43B(1) where the interest in question is personal in character), there may nevertheless be features of the case that make it reasonable to regard disclosure as being in the public interest as well as in the personal interest of the worker. Mr Reade's example of doctors' hours is particularly obvious, but there may be other kinds of case where it may reasonably be thought that such a disclosure was in the public interest. The question is one to be answered by the tribunal on a consideration of all the circumstances of the particular case …"
40. The claimant has served a schedule of the disclosures which he alleges he has made and which he alleges amount to protected public interest disclosures. The claimant now alleges that he made disclosures on six occasions (a) on 15 May 2018, orally to Dr White; (b) on 24 May 2018, orally to Dr White; (c) on 25 May 2018, orally to Dr White; (d) on 21 June 2018, orally to Ms Johnson;(e) in writing on 24 July 2018 (included in his response to the recommendation that his employment was not confirmed at the end of his probationary period) and (f) in writing by way of a formal letter of grievance dated 17 August 2018.
41. It is to be noted that in his originating application the claimant suggested that he first made protected public interest disclosures on 25 May 2018, and by implication did not at that stage consider that any discussions on 15 or 24 May 2018 amounted to protected public interest disclosures.
42. The alleged disclosures fall into four categories: (1) disclosures relating to the operation of a remotely piloted aircraft system (a drone); (2) disclosures relating to mandatory dress codes in place for Philippine Government buildings; (3) disclosures which relate to describing Isabel Richter as Dr Richter; and (4) disclosures relating to the giving of prohibited gifts whilst in the Philippines (the claimant alleges that local law has a strict prohibition of government employees accepting gifts and the claimant believes that this would also apply to employees of WPU (the Western Philippines University)). I deal with each of these in turn, and they are also numbered sequentially depending upon which category they relate to (1 relates to the drone; 2 to the dress code; 3 to Dr Richter's title; and 4 to gifts).
43. In each case, each disclosure is said to have been made to the claimant's employer, so as to satisfy s 43C(1)(a) of the Act.
44. Disclosure 1.1: The claimant relies on sub-sections 43B(1) (b), (d) and (e) of the Act. The claimant alleges that he made a verbal disclosure on 15 May 2018 at a restaurant to the second respondent Dr White, and to Dr Pahl and Ms Richter. The latter two are employees of Plymouth University rather than the first respondent. Ms Richter said that she had spoken with someone called Anton and that he had agreed to let fly a drone over Taytay, which is a densely populated area of the Philippines. The claimant suggested words to the effect "It is not a good idea to fly the drone, Taytay is a small place and very crowded. You should follow civil aviation rules on operations above populated areas and proximity to persons and get the necessary authorisation. Besides it's the election period, with heightened security and you might not get clearances." The claimant asserts that later that day he asked Dr White whether Anton had the necessary permits to operate the drone. The claimant did not identify precisely the nature of the civil aviation rule breaching his original comments, but did convey that he did not think the proposal to fly the drone would be in accordance with those rules and cited, he says in the public interest, that flying a drone could be dangerous in that time of year which was particularly problematic. The respondent has argued that photos taken from the drone flight were not used, but the claimant disagrees that this is in any way relevant given that the photo should not have been taken.
45. Dr White denies that the above conversation took place in that detail. The later contemporaneous documents (for which see further below) do not suggest that the claimant was sufficiently concerned about these matters to have raised them in this detail. In addition, the claimant's claim form suggests that his first disclosures were on 25 May 2018. I find that there was a conversation between the claimant and Dr White on this day

during which the claimant raised the possibility that there might be regulations which applied to drone flights, but his concerns were in the context of whether or not the WPU team had been undermined. I do not accept that the claimant relayed any information to Dr White which suggested that there was a breach of any legal obligation, a breach of health and safety requirements, a danger to the environment, or concealment of any of these issues. For these reasons I reject the allegation that there was a protected public interest disclosure made in this way.

46. Disclosure 1.2: The claimant relies on sub-sections 43B(1) (b), (d) and (e) of the Act. The claimant alleges that he made a verbal disclosure on 25 May 2018 at a project debrief meeting with the second respondent Dr White. The claimant discussed the drone being flown and stated words to the effect: "The drone should not have been flown as it is not allowed according to civil aviation rules to operate drones over public areas. It was election time, it was too risky and we might have undermined WPU since Isabel and Anton did not seem to have proper authorisation to fly the drone. For security and accountability we should follow proper procedures in flying this equipment. When they showed the pictures some of the partners approached me saying they were concerned and asked how the drone footage was obtained. Dr White is said to have replied: "it's none of your concern. It's Sabine and Isabel's project". The claimant accepts that he did not identify precisely which civil aviation rules have been breached but categorically stated that they had been breached and implied "(via the too risky comment) that doing so was dangerous. The claimant made his comments in the public interest in the hope of averting similar such incidents in the future. Following this meeting Dr White is said to have contacted Prof Fleming about the claimant which led to an email exchange.
47. Dr White denies the claimant raised any specific information about regulations or any breach of the same by the use of the drone. He recalls that the claimant's concerns related to liaising with other people. This is consistent with the claimant's own contemporaneous note ahead of the meeting which refers to liaising with other people and equipment. For these reasons I prefer the respondent's version of events. I do not accept that the claimant imparted any information to Dr White about the drone to suggest that the was any of a breach of a legal obligation, a breach of health and safety, or potential environmental damage. I therefore reject the allegation that there was a protected public interest disclosure made at this time.
48. Disclosure 1.3: The claimant relies on sub-sections 43B(1) (b), (d) and (e) of the Act. The claimant alleges that he made a verbal disclosure on 21 June 2018 at the meeting with the first respondent's senior HR adviser Ms Johnson. He alleges in that meeting he described what had happened and said "when they showed those pictures to the partners, some of them were concerned and were wondering how they obtained that". The claimant asserts that his disclosure was in the public interest because he mentioned that local partners, with whom the first respondent wished to keep a good relationship, were concerned. The claimant also informed Ms Johnson that he would be contacting the Philippine Embassy.
49. Ms Johnson denies that there was a conversation to this effect, and her recollection is supported by the transcript of the tape recording of the meeting. Ms Johnson does accept that the claimant mentioned the issue of the drone, but in the context that he was concerned that the owner of the drone might want something in return and that there might have been an issue about ownership of the photographs. He only raised a concern about security and accountability, and did not allege any alleged breach of regulations concerning the flying of the drone. For these reasons I do not accept that the claimant imparted any information to the respondent that there had been a breach of a legal obligation, a breach of health and safety, or potential environmental damage. I therefore reject the allegation that there was a protected public interest disclosure made at this time.
50. Disclosure 1.4: The claimant relies on sub-sections 43B(1) (b), (d) and (e) of the Act. The fourth alleged disclosure is a written disclosure made on 24 July 2018, at page 4 of the claimant's written response to Dr White's recommendation that his employment be terminated. He alleged that Ms Richter, Dr Pahl and Dr White disregarded advice about safety and security, particularly in instances dealing with random individuals not affiliated with the country partner institution and following local rules and regulations. This was said

to be very evident in an event when project 12 asked unnecessary favours from residents in Taytay to use their personal equipment such as the drone. He repeated his concerns made in disclosure 1.1 and that Ms Richter and Anton were said to have violated several rules and regulations prescribed by the Civil Aviation Authority of the Philippines, such as operation above populated areas and proximity to persons not associated with the operation. The claimant's second footnote is said to have identified precisely the civil aviation rule said to have been breached. The claimant is also said to have conveyed this information to the Philippine Overseas Labour Office on 7 August 2018.

51. I find that the claimant did state in his written report on 24 July 2018 that Dr Richter and Anton had violated several rules and regulations prescribed by the Civil Aviation Authority of the Philippines such as operation above populated areas, and he referred to the specific regulations in support of this accusation. I find that the claimant did relay information that there had been a breach of a legal obligation and/or that health and safety have been compromised. I also find on balance that the claimant believed that making the disclosure was in the public interest, and that it was reasonable to hold that belief because it was in the public interest to ensure that such regulations should be complied with. There is no evidence to suggest that the claimant believed that the environment has been damaged, but nonetheless I find that the claimant did make public interest disclosures in this respect under subsections 43B(1)(b) and (d) and 43C(1)(a) of the Act.
52. Disclosure 1.5: The claimant relies on sub-sections 43B(1) (b), (d) (e) and (f) of the Act. The claimant raised a written grievance on 17 August 2018. He alleged in this grievance that he had been discriminated against the grounds of nationality, and suffered whistleblowing detriments leading to unfair dismissal. He included a copy of his report dated 24 July 2018 with his written grievance.
53. I find that the claimant effectively replicated the public interest disclosures made under Disclosure 1.4 above, simply by attaching a copy to his grievance, and again asserting that he had made such disclosures. The disclosures under 43B(1)(b) and (d) and 43C(1)(a) of the Act were therefore repeated on 17 August 2018. For the record, the allegation under sub-section 43B(1)(f) of the Act is rejected because threre was no evidence of any concealment.
54. Disclosure 2.1: The claimant relies on sub-section 43B(1) (b) of the Act. The claimant refers to the verbal discussion on 15 May 2018 between himself and Dr White. He complained that Ms Richter had not adhered to the dress code when they attended the municipal hall and government offices in the morning which made the partners uncomfortable. Dr White replied effect "don't worry I will talk to Sabine about it". The claimant accepts he did not identify the legal obligation said to have been breached, but did explain that dress codes were mandatory and had been breached and that this disclosure was in the public interest because it pertained to upholding the rule of law in the Philippines and breaching a dress code was causing disquiet amongst local partners.
55. Dr White denies that the above conversation took place in that detail. The later contemporaneous documents (for which see further below) do not suggest that the claimant was sufficiently concerned about these matters to have raised them in this detail. In addition, the claimant's claim form suggests that his first disclosures were on 25 May 2018. I find that there was a conversation between the claimant and Dr White on this day during which he raised the issue that in his opinion Dr Richter had not dressed appropriately for work. He did not mention any mandatory dress codes, and Dr White agreed to pass the concerns on in order not to offend cultural sensibilities. I do not accept that the claimant relayed any information to Dr White which suggested that there was a breach of any legal obligation. For these reasons I reject the allegation that there was a protected public interest disclosure made in this way.
56. Disclosure 2.2: The claimant relies on sub-section 43B(1) (b) of the Act. The claimant refers again to his discussion with Dr White at the project debrief meeting on 25 May 2018. The claimant stated words to the effect: "We should really be careful about the dress code. Normally by law people would not be allowed to enter government offices unless they adhere to its dress code. The partners seem very uncomfortable when we were at a courtesy call at the Municipal Hall and people were staring at her when she visited the

government offices near the port. To be safe we should dress like professionals and scientists rather than tourists." Dr White is said to have replied with words to the effect that he had spoken to Sabine about that already. The claimant accepts that he did not identify the precise legal obligation, but did state that dress codes were a legal obligation.

57. Dr White denies the extent of the conversation as relied upon by the claimant, but does accept that the claimant referred to the dress code in the context of colleagues having to dress as scientists and not as a tourist. This was effectively a criticism of Dr Richter's attire, but the claimant did not identify any mandatory dress code or any legal obligation, or state that Dr Richter's attire might have breached any such standards. The claimant accepts that he did not identify any precise legal obligation. For these reasons I reject the contention that the claimant imparted information to Dr White that there had been a breach of a legal obligation, and I reject the allegation that there was a protected public interest disclosure made in this way.
58. Disclosure 2.3: The claimant relies on sub-section 43B(1) (b) of the Act. The claimant refers again to his conversation with Ms Johnson on 21 June 2018. The claimant repeated his concerns about the violation of the dress code by stating that by law people are not normally allowed in government buildings unless they adhere to the relevant dress code. The claimant also suggested he would contact the Philippine Embassy in relation to this and other matters.
59. It is clear that at their meeting the claimant complained that Dr Richter had dressed like a tourist and had not been projecting a professional image as a researcher or scientist. The transcript shows that the claimant referred to the importance of being mindful of protocols and customs, and not dressing like tourists, being aware that government agencies might apparently prohibit flip-flops and shorts. The claimant did not impart any information that there was any breach of any legal obligation, or breach of any requirements concerning Government buildings. His complaint was effectively that Dr Richter's breach of etiquette had upset him. In the circumstances I cannot find that the claimant imparted information to Ms Johnson that there had been any breach of a legal obligation, and I reject the contention that there was a protected public interest disclosure in this way.
60. Disclosure 2.4: The claimant relies on sub-section 43B(1) (b) of the Act. The claimant refers again to his written response to Dr White's recommendation that his employment should be terminated and which was dated 24 July 2018. The claimant referred to "serious discussion on how we should properly work in future with country partners with regard to clear procedure, instructions, tasks, safety, security, dress code, courtesy calls, participant interactions, and project responsibility." The claimant's footnote is said to have precisely identified the legal obligation being breached.
61. I find that with regard to the dress codes, by this stage the claimant had passed on specific information that Dr Richter had breached relevant local dress codes, and had referred to specific regulations concerning government employees in government buildings to support his contentions. On balance I find that in this respect the claimant did relay specific information with regard to the alleged breach by Ms Richter of local dress codes. I also find on balance that the claimant believed that making the disclosure was in the public interest, and that it was reasonable to hold that belief because it was in the public interest to ensure that such regulations should be complied with. I therefore find that this was also a public interest disclosure under sub-sections 43B(1)(b) and 43C(1)(a) of the Act.
62. Disclosure 2.5: The claimant relies on sub-sections 43B(1) (b) and (f) of the Act. In his written grievance dated 17 August 2018 the claimant alleges that he disclosed the same information as that contained in Disclosure 2.4 above.
63. I find that the claimant effectively replicated the public interest disclosure made under Disclosure 2.4 above, simply by attaching a copy to his grievance, and again asserting that he had made such a disclosure. It was therefore repeated on 17 August 2018. For the record, the allegation under sub-section 43B(1)(f) of the Act is rejected because there was no evidence of any concealment.
64. Disclosure 3.1: The claimant relies on sub-sections 43B(1) (a) and (b) of the Act. At the project debrief meeting on 25 May 2018 between the claimant and Dr White, the claimant stated words to the effect: "We should be mindful of professional courtesy and hierarchy,

it's not okay to claim to the partners and stakeholders that Isabel has a PhD in fisheries and has a doctorate when she hasn't even defended yet. In Philippine law, misrepresentation of qualifications can be considered as a crime of swindling. It would also seem strange for the partners that someone would be a post-doctoral research fellow when she has not finished her doctoral studies." Dr White is said to have replied "it's not a big deal". The claimant says he specifically cited a possible criminal offence under the law of the Philippines and was doing so in the public interest because upholding the rule of law is in the public interest. Furthermore, misrepresenting Ms Richter's qualifications could cause the first respondent (along with Plymouth University) a reputational problem with local partners.

65. I do not accept that the claimant imparted any information to Dr White to the effect that the alleged misnomer of Dr Richter was in any way a potential criminal offence and/or a breach of any legal obligation. In addition, I do not find that the claimant generally believed that his comments were in the public interest and/or that it was reasonable for the claimant to hold such a belief. The conversation between the claimant and Dr White was more about his disagreement with Dr Richter arising from the antagonism between them. He was well aware of the common terminology of Post Doctorate appointments. I cannot find that there was any protected public interest disclosure in this respect.
66. Disclosure 3.2: The claimant relies on sub-section 43B(1) (b) of the Act. On 21 June 2018 at his meeting with Ms Johnson, the claimant asserted that there was another postdoctoral research fellow who did not have a doctoral qualification. He also alleges that he informed Ms Johnson that he would be contacting the Philippine Embassy which he subsequently did on 7 August 2018.
67. There is no record of the above in the transcript which the claimant himself provided. Ms Johnson concedes that as a minor point the claimant raised at one stage that he had a PhD whereas some of the other research fellows did not, although he declined to name them. I cannot find in the circumstances that there was any information imparted by the claimant to the effect that the was a breach of a legal obligation. I reject the contention that the was a protected public interest disclosure in this respect.
68. Disclosure 3.3: The claimant relies on sub-section 43B(1) (b) of the Act. In his written reply dated 24 July 2018 in response to Dr White's recommendation that his employment should be terminated, he alleged Dr White of exhibiting "utter fraudulence claiming that Ms Richter had a PhD in fisheries". Given that a dissertation defence had not yet been announced for her PhD in Norway he questioned why Ms Richter had been hired by Dr White and Dr Pahl as a postdoctoral research fellow without a PhD that it was dishonest to assert that she has a PhD in fisheries. The claimant accepts he did not specifically identify why he considered this to be improper in the context of breaching legal obligations, but clearly alleged impropriety and invited the first respondent to investigate further.
69. Dr White denies that there was a conversation to this effect, but does concede that the claimant complained that in the Philippines people were very hierarchical. He expressed concern that Dr White had not introduced himself as Dr White, and that Dr Richter should not be referred to as a postdoctoral employee because she had not formally finished her PhD. He was also upset that she had previously been introduced as Dr Richter. Dr White saw this as a feature of the ongoing antagonism between the claimant and Dr Richter, and does not accept that there was any information passed to him to the effect that in this context was a breach of a legal obligation. The claimant concedes that he did not identify why he considered any such conduct to be a breach of a legal obligation. In the circumstances I do not accept the claimant imparted sufficient information to the respondent that there had been a breach of a legal obligation in this respect. I reject the assertion that there was a protected public interest disclosure in this event.
70. Disclosure 3.4: The claimant relies on sub-section 43B(1) (b) of the Act. The claimant's written grievance dated 17 August 2018 enclosed a copy of the response and the alleged disclosure referred to at Disclosure 3.3 above.
71. I find that there was no new information in his grievance dated 17 August 2018 over and above the information referred to above, which I have found did not amount to a protected public interest disclosure. This allegation is therefore rejected.

72. Disclosure 4.1: The claimant relies on sub-sections 43B(1) (a) and (b) of the Act. During his conversation with Dr White on 24 May 2018 the claimant had previously explained that Philippines law prohibited giving gifts as an anticorruption measure and that a send-off dinner gifts of low value were provided to the WPU partners. The claimant is said to have complained to Dr White "what you guys did during the dinner may not have been appropriate for some of the WPU partners". Dr White asked that they discussed it during the debrief which was due on the following day 25 May 2018. The claimant accepts that he did not describe the legal obligation said to have been reached but argues that from previous conversations with Dr White must have understood what he was referring to. The claimant asserts that upholding the rule of law in the Philippines is in the public interest, and so is not offending or worrying local partners.
73. I do not accept that even if this conversation occurred, as suggested by the claimant but denied by Dr White, it can be said that the claimant relayed to Dr White any information to the effect that a criminal offence might have occurred, or that there might have been a breach of a legal obligation. It may well have been the case that the claimant observed that there were some local sensibilities with regard to the giving of some gifts, but I do not accept that the comments relied upon amount to the giving of information sufficient to qualify for the purposes of the legislation. In addition, I bear in mind that on the claimant's own case he originally asserted that there were no disclosures before 25 May 2018. Accordingly, I do not accept that the claimant imparted information to suggest that there was the commission of a criminal offence and/or the breach of a legal obligation in this respect, and I reject the allegation that there was a protected public interest disclosure.
74. Disclosure 4.2: The claimant relies on sub-sections 43B(1) (a) and (b) of the Act. At the project debrief meeting with Dr White on 25 May 2018 the claimant asserts that he complained to Dr White "we should be more careful about protocol and customs. I told you guys about the law prohibiting public officials and employees receiving gifts and reminded you when we were at the bank. The partners might have seemed okay in front of the stage, but they might have just felt embarrassed as they were put on the spot and obliged to receive the gifts even when they're not allowed to, just as not to offend guests. Food like the cake would have been okay to an extent. However even giving indirectly the gift to Dr Young to make amends for you dragging his kid out of the room is kind of inappropriate. A quick apology might have been enough and in the future it may be best to let the local research assistants to handle situations involving the child or have them screen prior to their activities." The claimant accepts he did not identify precisely the law said to have been breached but did explain there was a law now it had been breached.
75. Dr White denies any such conversation took place. The note which the claimant had prepared in advance of this meeting refers to "protocols, customs" including "gratuities, tips, gifts", and Dr White's note suggested that this was in was in the context of having an updated protocol. There was nothing specific mentioned about any gift being inappropriate on the evening of 24 May 2018 or otherwise. In addition, there was no mention of any allegations concerning gifts during the interview with Ms Johnson. Similarly, there is no mention of any concerns with regard to gifts in the claimant's 31 page document in reply to his recommendation that his probation would not be extended. There are no contemporaneous documents to support the claimant's contention that he ever imparted information to the effect that there was likely to have been the commission of a criminal offence and/or the breach of a legal obligation. Indeed, the contrary is true, namely that the contemporaneous documents suggest that it was not a genuine concern because of the omission of any reference. Accordingly, I do not accept that the claimant imparted information to suggest that there was the commission of a criminal offence and/or the breach of a legal obligation in this respect, and I reject the allegation that there was a protected public interest disclosure.
76. Protected acts
77. I now deal with the three alleged protected acts which the claimant relies upon to support his victimisation claim. The first is that the claimant was prohibited from speaking Tagalog on 25 May 2018, and complained to Dr White that this was discrimination against him. The second alleged protected act is effectively the same, but is said to have taken place on 21

June 2018 at his meeting with Ms Johnson. As set out in my findings of fact above, I do not accept that the claimant was either restricted from speaking Tagalog as suggested, or more importantly, that he complained on either occasion that the same was discrimination against him. I find that there were no protected acts upon which the claimant can rely on either 25 May 2018 or 21 June 2018.

78. The position is different with regard to the claimant's grievance dated 17 August 2018, in which the claimant clearly complains of having been "discriminated against on grounds of nationality", and "unfair treatment on the grounds of race". This is sufficient to amount to a protected act under section 27 EqA and I find that this was a protected act. The respondent does not dispute the same.
79. In conclusion therefore, I find that the claimant did make protected public interest disclosures with regard to both the use of the drone, and the relevant dress codes, on 24 July 2018, and as repeated in his grievance on 17 August 2018. The claimant meets the provisions of sub-sections 43B(1)(b) and (d), and 43C(1)(a) of the Act. In addition, the claimant made a protected act in his written grievance dated 17 August 2018 and which he complains of having been discriminated against on the grounds of his nationality.
80. For the purposes of Rule 62(5) of the Employment Tribunals Rules of Procedure 2013, the issues which the tribunal determined are at paragraph 1; the findings of fact made in relation to those issues are at paragraphs 4 to 29; a concise identification of the relevant law is at paragraphs 31 to 39; how that law has been applied to those findings in order to decide the issues is at paragraphs 40 to 79.

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Employment Judge N J Roper
Dated 29 August 2019

Judgment sent to Parties by email