**Case Number: 2206284/2018**

# EMPLOYMENT TRIBUNALS

**BETWEEN**

| **Claimant** | **and** | **Respondents** |
|---|---|---|
| **Mr S Deegan** | | **Globalgrange Ltd & others** |

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

**SITTING AT: London Central** **ON: 15-26 November 2021; 29-30 November 2021 (in chambers)**

**BEFORE: Employment Judge A M Snelson** **MEMBERS: Mr I McLaughlin, Miss K Church**

On hearing Ms L Banerjee, counsel, on behalf of the Claimant and Mr A MacPhail, counsel, on behalf of the Respondents, the Tribunal determines that:

(1) By consent, the Claimant complaints against the Fourth Respondent, Mrs Linda Bekoe, are dismissed on withdrawal.
(2) The complaints of unfair dismissal under the Employment Rights Act 1996 ('the 1996 Act'), ss 94, 98 and 103A are not well-founded.
(3) The complaint of wrongful dismissal is not well-founded.
(4) The complaints of detrimental treatment under the 1996 Act, ss47B and 48 are not well-founded and all but one were, in any event, presented out of time with the consequence that the Tribunal has no jurisdiction to entertain them.
(5) Accordingly, the proceedings as a whole are dismissed.

### REASONS

### Introduction

1 The First Respondents ('Globalgrange') were at all material times the principal vehicle for a group of companies trading in the hotel business under the Grange Hotel brand. They employed over 1,500 people.

2 The Second Respondent, Mr Harpal ('Harp') Matharu, was and is a director of Globalgrange.

3 The Third Respondent, Ms Mira Gohil, was Globalgrange's Head of HR.

4 The Fourth Respondent, Mrs Linda Bekoe, was an employee of Globalgrange's. She did not participate in the proceedings and, purely for pragmatic reasons, the Claimant withdrew his claims against her at the start of the hearing and consented to them being formally dismissed.

5 The Fifth Respondent, Ms Cam Li, was an HR Assistant employed by Globalgrange.

6 The Sixth Respondent, Mrs Mani Raina (formerly Ms Mani Gill), was an HR Consultant who provided services to, among others, Globalgrange.

7 The Seventh Respondent, Mr Steven Waldron, was Globalgrange's Financial Controller.

8 The Eighth Respondent, Mr Bhakta Das, worked at all relevant times in a consultancy capacity as the General Manager of the Grange Tower Bridge Hotel, one of the London hotels operated by the Globalgrange group.

9 The Claimant, Mr Sartaj Deegan, was continuously employed by Globalgrange from 2 April 2003 until 16 July 2018, latterly in the capacity of non-executive Director of Sales on a salary of some £77,000 per annum. The employment ended with summary dismissal on the stated ground of gross misconduct, namely solicitation of a fellow employee to work for a competitor organisation.

10 By a claim form presented on 5 October 2018 the Claimant brought complaints of unfair dismissal on 'whistle-blowing' grounds and 'ordinary' unfair dismissal, wrongful dismissal and 'whistle-blowing' detriments, which were resisted on their merits and, in part, on jurisdictional grounds.

11 The case came before us on 15 November 2021 in the form of a final 'in-person' hearing to determine liability and associated issues[1], with 12 sitting days allowed. Regrettably, prior listings had had to be vacated, owing to shortages of judges and other factors.

12 The Claimant was represented by Ms Lydia Banerjee, counsel; the Respondents by Mr Andrew MacPhail, counsel. We are most grateful to both, not only for the skill and care with which they presented their cases but also for the admirably co-operative and good-natured spirit in which the hearing was conducted, which served to take some heat out of a bitterly contested dispute.

13 On day one, before we adjourned to read the statements and key documents, we were asked to resolve a preliminary issue as to whether certain documents could be added to the trial bundle. For reasons given in writing during the adjournment, we granted the Claimant's application for permission to add the documents, without prejudice to the Respondents' right to dispute their relevance.

[1] We were happy to accede to counsel's request for us to deal with conduct and contribution points but to defer consideration of any *Polkey* issues to a later remedy hearing, should one be needed.

14 Closing argument was presented on day 10. We then reserved judgment. Our deliberations were completed on day 12.

## The Legal Framework

*'Whistle-blowing' protection*

15 By the Employment Rights Act 1996 ('the 1996 Act'), s43B, it is stipulated that:

> **(1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is 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 …**

16 Qualifying disclosures are protected if made in accordance with ss43C to 43H (see s43A). By s43C, it is provided that:

> **(1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure –**
>
> **(a) to his employer …**

17 The requirement for a disclosure of 'information' was considered by Slade J sitting in the EAT in *Cavendish Munro Professional Risk Management Ltd v Geduld* [2010] ICR 325. She equated 'information' with 'facts', observing that mere 'allegations' did not fall within the statutory protection. This analysis was qualified in *Kilraine v London Borough of Wandsworth* [2018] ICR 1850 CA, in which it was pointed out that the legislation posited no rigid dichotomy between facts and allegations and that 'information' may comprise both: a disclosure which makes an allegation will be protected provided that it has sufficient factual content and specificity.

18 The requirement for a reasonable belief that the disclosure is in the public interest was enacted by means of an amendment introduced by the Enterprise and Regulatory Reform Act 2013. Its effect was examined by the Court of Appeal in *Chesterton Global Ltd v Nurmohamed & Anor* [2017] EWCA Civ 979. Giving the leading judgment, Underhill LJ rejected the argument that a disclosure about a breach of an individual worker's contract of employment (or some other matter personal to him or her) could not fall within the statutory protection. In such a case the Tribunal must have regard to all the circumstances including the number of people whose interests the disclosure served, the nature of the interests affected and the extent to which they are affected by the disclosure, the nature of the alleged wrongdoing and the identity of the alleged wrongdoer.

19 The word 'likely' in s43B(1) was construed by the EAT in *Kraus v Penna plc & another* [2004] IRLR 260 as meaning that it is "probable or more probable than

not" that the relevant act, failure or consequence in question has arisen, is arising or will arise. Some commentators have argued that this formulation sets the bar unduly high, but counsel agreed that it represents the law binding upon us.

20 By the 1996 Act, s48(1) a worker has the right not to suffer a detriment (which may take the form of an act or a deliberate failure to act) done "on the ground that" he has made a PID. On such a claim, it is for the employer to show the ground on which the relevant act or failure to act was done (s48(2)).

21 A claim under s48(1) is subject to the usual three-month jurisdictional time limit, to which the standard "not reasonably practicable" exception applies (s48(3)). Where there is a series of "similar acts or failures", or a detrimental act which "extends over a period", time runs from the last of them (s48(3)(a), (4)(a)). In this context, "reasonably practicable" has been equated to "reasonably feasible" (*Palmer v Southend on Sea Borough Council* [1984] 1 All ER 945 EAT).

22 A 'detriment' arises in the employment law context where, by reason of the act(s) complained of a reasonable worker would or might take the view that he or she has been disadvantaged in the workplace. An unjustified sense of grievance cannot amount to a detriment: see *Shamoon v Chief Constable of the RUC* [2003] IRLR 285 HL.

23 The "on the ground that" test in s48B(1) is satisfied if the fact of the disclosure was a material influence behind the detrimental treatment (see *Fecitt v NHS Manchester* [2012] ICR 372 CA).

24 Very often, the outcome of a 'whistle-blowing' claim will turn on whether or not the Tribunal infers an unlawful motivation on the part of the employer. In *International Petroleum Ltd & others v Osipov* & others EAT/0058/17 the EAT (Simler J, as she then was) summarised the key principles as follows (para 115):

> **(a) The burden of proof lies on a claimant to show that a ground or reason (that is more than trivial) for detrimental treatment to which he or she is subjected is a protected disclosure he or she made.**
>
> **(b) By virtue of s.48(2) ERA 1996, the employer (or other respondent) must be prepared to show why the detrimental treatment was done. If they do not do so inferences may be drawn against them.**
>
> **(c) However, as with inferences drawn in any discrimination case, inferences drawn by tribunals in protected disclosure cases must be justified by the facts as found.**

*Unfair dismissal*

25 The 'ordinary' unfair dismissal claim is governed by the 1996 Act, s98. It is convenient to set out the following subsections:

> **(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show –**
>
> **(a) the reason (or, if more than one, the principal reason) for the dismissal, and**
> **(b) that it is either a reason falling within subsection (2) or some other**

> **substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.**
>
> **(2) A reason falls within this subsection if it – …**
>
> **…**
> **(b) relates to the conduct of the employee,**
> **…**
>
> **(4) 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.**

26 Although our central function is simply to apply the clear language of the legislation, we are mindful of the assistance available, both legislative and judicial. By the Trade Union and Labour Relations (Consolidation) Act 1992, s207(2), any ACAS Code of Practice which appears to be relevant to any question in the proceedings is admissible in evidence and "shall be taken into account in determining that question". We bear in mind the guidance applicable to misconduct cases contained in *British Home Stores Ltd v Burchell* [1978] IRLR 379 EAT (although that authority must be read subject to the caveat that it reflects the law as it stood when the burden was on the employer to prove not only the reason for dismissal but also its reasonableness). The criterion of 'equity' (in s98(4)(b)) dictates that, the more serious the allegation and/or the potential consequences of the disciplinary action, the greater the need for the employer to conduct a careful and thorough investigation (*A v B* [2003] IRLR 405 EAT and *Salford Royal NHS Foundation Trust v Roldan* [2010] IRLR 721 CA). From *Iceland Frozen Foods Ltd v Jones* [1982] IRLR 439 EAT and *Post Office v Foley; HSBC Bank v Madden* [2000] IRLR 827 CA, we derive the cardinal principle that, when considering reasonableness under s98(4), the Tribunal's task is not to substitute its view for that of the employer but rather to determine whether the employer's decision to dismiss fell within a band of reasonable responses open to him in the circumstances. That rule applies as much to the procedural management of the disciplinary exercise as to the substance of the decision to dismiss (*Sainsbury's Supermarkets Ltd v Hitt* [2003] IRLR 23 CA).

27 A dismissal is 'automatically' unfair if the reason or principal reason is that the person dismissed has made a protected disclosure (s103A)[2]. Here reasonableness does not enter the reckoning: if the proscribed reason applies, the dismissal is unfair without more.

28 The only remedy for unfair dismissal sought by the Claimant is compensation. The legislation provides for basic and compensatory awards. The basic award is calculated by application of a formula which takes account of the

[2] The protection against unfair dismissal sets a higher standard than that under s48(1), where the disclosure need be no more than a material influence behind the detrimental treatment (see above).

employee's age, period of service and weekly pay (which is subject to a cap). The 1996 Act, s122(2) includes:

> **Where the tribunal considers that any conduct of the complainant before the dismissal … was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the tribunal shall reduce or further reduce that amount accordingly.**

29 As its name suggests, the compensatory award is intended to enable the Tribunal to compensate the employee for monetary losses flowing from the unfair dismissal. The 1996 Act, s123(1) states that the amount of the compensatory award shall be such amount as the Tribunal considers just and equitable in all the circumstances having regard to the loss sustained in consequence of the dismissal in so far as that loss is attributable to action taken by the employer. It too may be the subject of reduction on account of the conduct of the claimant. By s123(6) it is provided that:

> **Where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding.**

30 In *BBC v Nelson (No. 2)* [1980] ICR 110, the Court of Appeal explained that s123(6) (strictly, its indistinguishable predecessor) was properly approached by asking three questions. First, was the employee culpable or blameworthy? Second, did the employee's actions cause or contribute to the dismissal? Third, is it just and equitable in the circumstances to reduce the award?

*Wrongful dismissal*

31 The wrongful dismissal complaint is brought under the Tribunal's contractual jurisdiction. It rests on the undisputed fact that the Claimant was dismissed without notice. Since he had a contractual right to notice, the claim must succeed unless the Respondents can make out the only defence open to them, namely that, by his conduct prior to dismissal, he had repudiated the contract of employment and thereby forfeited his right to rely on its terms as to notice. The focus here is not on their actions but his.

## The Claims and Issues

32 The Claimant relied on three alleged protected disclosures, made in emails sent by him to Mrs Gohil (already mentioned) on 10, 17 and 22 November 2017. We will refer to them as 'PID1', 'PID2' and 'PID3'. The parties agreed that the issue as to whether any fell within the 'whistle-blowing' protection turned on the following questions:

(1) Did the relevant communication disclose information?
(2) Did the Claimant reasonably believe that the information disclosed tended to show:
    (a) that a criminal offence had been committed, was being committed or was likely to be committed; and/or

(b) that a person had failed, was failing or was likely to fail to comply with a legal obligation to which s/he was subject?

(3) Did the Claimant reasonably believe that his disclosures were made in the public interest?

33 The Claimant relied on 10 alleged detriments which, he claimed, had been applied to him because he had made one or more than one protected disclosure. These were recorded in the agreed list of issues substantially as follows (for convenience we have changed the original numbering):

(1) Allegedly disparaging remarks about the Claimant made by Mrs Bekoe in her email of 11 November 2017;
(2) An allegedly groundless suspension from 22 November 2017 onwards;
(3) Failure to pay a Christmas bonus of £1000 and a sales bonus of £1000 in 2017;
(4) An allegedly unfair investigation conducted by Steven Waldron between December 2017 and May 2018;
(5) An allegedly baseless disciplinary process on 13 March 2018;
(6) The alleged failure to deal with the Claimant's grievance of 13 March 2018;
(7) The alleged failure to deal with the Claimant's grievance of 14 May 2018;
(8) The allegedly contrived and/or flawed disciplinary process from June 2018 to 16 July 2018 in relation to allegations of solicitation;
(9) The alleged manipulation (by Harp) of the decision to dismiss;
(10) The allegedly flawed appeal in relation to the decision to dismiss between 20 July 2018 and 17 September 2018.

We will refer to these as 'Detriment (1)', 'Detriment (2)' and so on.

34 The parties agreed that the pleaded jurisdictional dispute, which relates to a substantial proportion of the detriment claims, gave rise to these questions:

(1) Do the detriments or any of them amount to:
  (a) a "series of similar acts or failures" (see the 1996 Act, s48(3)(a)); and/or
  (b) an "act extending over a period" (see the 1996 Act, s48(4)(a))?
(2) If so, were the claims brought within three months of the last act/failure in the series?
(3) If not was it reasonably practicable for the Claimant to bring the claims within the primary three-month period?
(4) If not, did the Claimant bring the claims within a reasonable period thereafter?

35 As to automatically unfair dismissal, the only issue is whether the reason (or principal reason) for the dismissal was that the Claimant had made protected disclosures.

36 For the purposes of 'ordinary' unfair dismissal, the issues were:

(1) Could the Respondents demonstrate the reason for dismissal on which they relied, namely a reason relating to the Claimant's conduct?

(2) Subject to (1) did the Respondents act reasonably or unreasonably in treating the reason as sufficient (that question to be addressed by application of the 'band of reasonable responses' test)?

37 The wrongful dismissal claim posed an entirely different question, namely whether, by his conduct prior to dismissal, the Claimant repudiated his contract of employment and thereby forfeited the right to rely on its terms as to notice.

**Oral Evidence and Documents**

38 We heard oral evidence from the Claimant and his supporting witnesses, Ms Gergana Halatcheva, Senior Vice President of Global Hospitality Services Ltd, a company owned by Mr Tejinderpal ('Tony') Matharu, a brother of Harp Matharu (already mentioned), Ms Youlia Ouzanova, Director of Sales with Globalgrange until December 2017 and since then Vice President for Business Development with Global Hospitality Services Ltd, Ms Sandra Stamerra, formerly employed by the Respondents at their Monck Street office and now employed by a company (not Global Hospitality Services Ltd) owned by Tony Matharu, Ms Karleen Rennicks, formerly a Sales Administrator employed by Globalgrange at their Monck Street office and now working for a company (not Global Hospitality Services Ltd) owned by Tony Matharu. A statement was also produced by the Claimant's representatives in the name of Teddy Conjamalay, but that individual was not called as a witness and we were not asked to read the statement.

39 On behalf of the Respondents, evidence was given by Ms Cam Li, the Fifth Respondent (already mentioned) at all relevant times employed by Globalgrange, Mr Nimish Patel, a chartered accountant and insolvency practitioner, Mr Harp Matharu, the Second Respondent (already mentioned), Mrs Mira Gohil, the Third Respondent (already mentioned), Mr Steven Waldron, the Seventh Respondent (already mentioned), Ms Mehak Arora, formerly, but no longer, employed by Globalgrange at the Monck Street office, Mr Andrew Swindells, formerly CEO of Globalgrange, Mrs Anu Dass, formerly Ms Anita Chaudhary, at all relevant times International Business Development Manager of Globalgrange working at their Monck Street office, later at the Rochester Row office, Mrs Mani Raina, formerly Ms Mani Gill, the Sixth Respondent (already mentioned) and Mr Bhakta Das, the Eighth Respondent (already mentioned), formerly but no longer a consultant to Globalgrange. In the hope of avoiding confusion, we will refer to Mrs Dass as Ms Chaudhary and Mrs Raina as Ms Gill.

40 In addition to the testimony of witnesses we read the documents to which we were referred in the bundle of well over 700 pages.

41 We also had the benefit of a chronology and cast list and the comprehensive written closing submissions of both counsel.

**The Facts**

42 The detriment and dismissal claims fall within a narrow compass and our duty is to find facts and reach conclusions on those claims. The relevant facts, either agreed or proved on a balance of probabilities, are set out below. We are not at all persuaded that the much wider findings and analysis for which the Claimant

contended is warranted.

*Background*

43 The shareholders and owners of Globalgrange were the three Matharu brothers, Harp (the Second Respondent, already mentioned), Rajinderpal ('Raj') and Tejinderpal ('Tony') (already mentioned), and their families. Purely for brevity and convenience we will refer to them individually by their first names and collectively as 'the brothers'.

44 The Claimant is a nephew of the brothers.

45 Globalgrange's administrative and head office functions were conducted from two addresses in Victoria, 58 Rochester Row ('Rochester Row') and 15 Monck Street ('Monck Street'). Financial, development and administrative tasks were handled at Rochester Row, where Harp and Raj were based. Monck Street was responsible for sales. The Claimant was based there as, historically, was Tony.

46 In the summer of 2016 a rift developed between Harp and Raj on the one hand and Tony on the other. As time went by matters deteriorated. By 2017 all three brothers had instructed lawyers and hostilities had opened up on several fronts. There was litigation in the High Court. Despite efforts to keep the dispute confidential, it soon became common knowledge. Staff took up partisan positions. Broadly, those at Rochester Road sided with Harp and Raj and those at Monck Street were loyal to Tony. Before us, the Claimant painted himself as neutral, committed only to promoting the interests of Globalgrange. We reject that characterisation. Certainly by the time of the events with which we are concerned, he was a fiercely partisan member of the Tony camp.

47 The 2:1 split between the brothers had the important consequence that Harp and Raj were the majority shareholders in Globalgrange and so in a position to outvote Tony on key decisions.

48 By mid-2017 Tony's role at Monck Street was reduced to limited sales and marketing functions. His responsibility for HR at that site passed to Harp at about that time.

49 In June 2018 Mr Swindells (a witness before us) took up his appointment as CEO of Globalgrange and assumed what remained of Tony's sales and marketing duties. In August of the same year the Board resolved that Tony be prohibited from entering any company premises save by invitation.

50 A second entity within the group of companies was Global Hospitality Services Ltd (already mentioned), a hotel representation company. We will refer to it as 'GHS1'. Shares in that company were held by a nominee on behalf of the brothers. GHS1 went into administration in October 2017 and was liquidated in February 2018.

51 The collapse of GHS1 led to a competition between the brothers for its business. On or about 13 November 2017 the joint administrators of GHS1

accepted a bid by GHS Global Hospitality Services Ltd of ('GHS2'), a company owned and controlled by Tony, in preference to the lower bid of Amistad Ltd, a company backed by Harp.

52 GHS1 was based at Monck Street. At the time of the administration it had a small workforce, supplemented by a number of Globalgrange employees who were informally seconded to perform some work for GHS1 in addition to their Globalgrange sales duties.

53 It seems that some staff transferred from GHS1 to GHS2 under the TUPE provisions when its bid for the business succeeded. In addition, some Globalgrange employees at Monck Street resigned, declaring themselves constructively dismissed, and very soon thereafter were freshly employed by GHS2. Two other Globalgrange employees, Mrs Bekoe and Ms Choudhary (both already mentioned), told Harp in or around late 2017 that they had been approached by Tony and offered substantial incentives to move to GHS2, but had declined to do so. Tony was and remained a director of Globalgrange and, if their account was true, his conduct would self-evidently have placed him in serious breach of his fiduciary duties to that company. Whatever the underlying facts may have been, we find that Harp was greatly concerned by what Mrs Bekoe and Ms Choudhary told him, the truth of which he had no reason to doubt. Moreover, he valued their services and regarded it as critically important to avoid them being drawn into a competitor organisation, particularly one run by Tony. These sentiments explain the generous pay increases and other benefits which he extended to them in order to secure their services in the longer term.

*The alleged protected disclosures and Detriments (1)-(7)*

54 It may help to provide a little context. In a series of emails the first of which was sent on 11 October 2017 the Claimant made a number of critical comments about staffing levels at one of Globalgrange's hotels. These came to Harp's attention and he was annoyed by them. He considered that staffing was not within the Claimant's areas of responsibility and that the criticisms were unwarranted. On 2 November 2017 he took the matter up with the Claimant by email, reminding him that he had cautioned him before against making "unnecessary and provocative statements". The Claimant replied the following day, alleging that Harp's email contained "factual inaccuracies" which, he believed, were designed to serve "a predetermined agenda to continue intimidating and harassing" him.

55 Another concern for Harp in late October 2017 arose from reports by Mrs Bekoe (already mentioned) about attacks upon her credibility within the Monck Street sales team. In particular, she complained to him of allegations made against her by Mr Ronny Brossio in an email of 31 October which, she said, were entirely false and baseless. Mr Brossio was an employee of Globalgrange and consultant to GHS1 who was shortly to leave and join GHS2. With Harp's approval, she replied in an email of 3 November, copied to the other members of her team, fiercely challenging Mr Brossio's allegations and imputations and questioning his commitment to the organisation.

56 It is not an exaggeration to say that, by late October 2017, relations between Mrs Bekoe and senior members of the Monck Street sales operation,

including in particular Mr Brossio and Ms Gergana Halatcheva (already mentioned), had substantially broken down. Mrs Bekoe attributed that state of affairs to her refusal to join those supporting Tony's ambitions to acquire control of the business of GHS1 and consequential attacks upon her for that refusal.

57 The first alleged protected disclosure ('PID1') is contained in the Claimant's email to Mrs Gohil of 10 November 2017. It includes:

> **A member of the team has pointed out to us that Linda Bekoe has been utilising information, contracts, and data belonging to Globalgrange Ltd and our Sales Representative, [GHS1] and our Business Intelligence and Distribution & Media Services partners, TravelClick for her own purpose to assist competitor hotels.**
>
> **We are very concerned that the hard work and contacts carefully created by our company and our representatives and partners has been jeopardised by Linda's conduct. The impact on our business of the leaking of our confidential information and data is very very serious, if true, and our understanding is that there are criminal implications as well as obvious employment sanctions.**
>
> **The allegation is that Linda Bekoe is a Corporate Vice President of The Black Book Consultant (TBBC) … TBBC purports to be a hotel representation company which aims to drive business to competitor hotels. Globalgrange Ltd information and data, and GHS1 information and data & TravelClick's data has been compromised by Linda's presence in an entity which represents competitor hotels. Screenshots of her involvement are currently going viral in the company which is a huge concern and embarrassing.**
>
> **We are sure you … will now immediately take appropriate steps to investigate these very very serious allegations and consider the immediate suspension of Linda Bekoe to prevent her accessing of further data which might irreparably damage our business. …**

The email was presented as originating from two people, the Claimant and Ms Youlia Ouzonova (already mentioned). She was employed by Globalgrange as a Director of Sales until December 2017, when she resigned, joining GHS2 shortly afterwards. The Claimant also copied the message to Mr Mani Krishnasamy, Head of IT.

58 Having received a copy of PID1 from Mr Krishnasamy, Harp met Mrs Bekoe on the afternoon of 10 November 2017. He showed her PID1. She was upset. She admitted that she was a director of TBBC but insisted that she had not carried out work for it and had certainly not passed any confidential information to it. She said that she had agreed to become a director as a favour to the person who had set up the company (a former employee of GHS1). She said that she was being attacked for refusing to join GHS2.

59 At Harp's request she then confirmed in writing what she had told him. She also supplied a letter of 10 November from Ms Viola Ncube, Managing Director of TBBC, addressed 'To whom it may concern', stating that her relationship with Mrs Bekoe was purely personal and that she had invited her to become a non-executive director only to assist her to open a company bank account. She also said that she had no need of assistance from Mrs Bekoe as she had established business relationships going back to 2015. In addition she stated that TBBC was not yet trading. Finally, she offered to make her IT system available for

independent examination should that be requested.

60 Harp decided to take Mrs Bekoe's account at face value. He told us that he believed that the allegations had been concocted for the reason she had given.

61 On 10 November 2017 Harp wrote to the Claimant. He began by referring to the Claimant's email of 3 November, chastising him for his "unnecessary and provocative comments" which appeared to be designed to "inflame the situation". He then turned to PID1, remarking as follows:

> **I have also been passed a copy of an email from you and Youlia making serious allegations against Linda Bekoe apparently on behalf of an unnamed "member of the team". Firstly if a "member of the team" has any HR concern he or she should report it direct to Mira Gohil. Neither you nor Youlia should get involved in HR matters. Secondly it would appear that neither you nor the "member of the team" is in possession of the true facts in relation to the matter. I am satisfied that if you were in possession of the true facts you would not have found it necessary to make these allegations.**

62 On the same day, Mrs Bekoe received an email from Ms Michelle Lowe, Director of Sales, Asia, stating that she had learned from Ms Halatcheva and Mr Brossio that she (Mrs Bekoe) had resigned and was working for a competitor. Ms Lowe added:

> **There were topics on the calls which I felt … should be addressed by the Administrators and not just an internal call sharing their personal opinions and making personal attacks**

It was not true that Mrs Bekoe had resigned and was working for a competitor.

63 Mrs Bekoe then decided to address the entire Monck Street team in order, as she put it, to "set the record straight". She did so in an email of 11 November. She repeated her denial that she was working in competition with Globalgrange or GHS1 and denounced allegations being made against her as "lies, plain and simple". She referred to a campaign designed to discredit her and disrupt GHS1's ability to serve its clients. She identified the principal figures behind the campaign as the Claimant, Mrs Halatcheva and Mr Brossio.

64 It need hardly be said that the email of 11 November did nothing to improve the atmosphere in the Monck Street office. Harp accordingly transferred Mrs Bekoe very soon thereafter to Rochester Row and appointed her to a fresh position.

65 On 17 November 2017 the Claimant sent what is relied upon as his second protected disclosure ('PID2'). Again, it is addressed to Mrs Gohil and purports to come from him and Ms Ouzonova. It reads as follows:

> **Further to the confidential email below sent to you on Friday 10 November regarding Linda Bekoe I am deeply concerned that we have not had any response from you on what we consider to be matters of significant concern. The only response to date [has] been an email from Harp which appears to dismiss the contents of the email without proper investigation or consideration. We believe this is not in the best interests of the company.**
>
> **Please advise as a matter of priority what steps are being taken to safeguard the company's data (sales-specific and otherwise) from further exposure to risk and**

> **what safeguards are being put in place to prevent this from occurring again.**
>
> **Separately I have grave concerns as to how the contents of my confidential email (which was specifically marked as confidential) and the very existence of it, including myself as the author, was disclosed to Linda Bekoe within hours of the email being sent. Linda subsequently disclosed this (including my name) in an email to the entire GHS staff and the 2 external Administrators … I have already queried and expressed concern about unlawful intrusion into employees' systems and I need to know that my emails and those of others at Monck Street are not being monitored, intercepted or forwarded.**
>
> **I consider both your actions and those of Linda in relation to my email to be a serious breach of my trust/my confidentiality from you as Head of HR and Linda as an employee of Grange Hotels and require an explanation for this as a matter of urgency.**
>
> **Please note that I reserve all my rights in consideration of this matter including reporting this significant breach to CIPD.**

CIPD was and is, of course, Mrs Gohil's professional body. The reference to PID1 having been specifically marked 'confidential' was wrong: there was no marking.

66 Having received PID2, Mrs Gohil spoke with Harp, who instructed her to suspend the Claimant to facilitate an investigation into his conduct. A letter of suspension was prepared by the Respondents' solicitors in Mrs Gohil's name and delivered to the Claimant on 22 November 2017, when the suspension took immediate effect. The letter included the following passages:

> **Your suspension is on full pay and benefits and … is not an indication of any guilt or misconduct on your part …**
>
> **Whilst under suspension you are not required to carry out any of your duties and you should not contact any employees or personnel of Globalgrange or any associated companies, former associated companies or their successors or any customers, suppliers, clients, or [attend] any meetings, conferences or customer premises unless authorised by me in writing.**

67 Also on 22 November 2017 the Claimant sent the email on which he relies as his third protected disclosure ('PID3'). This refers to the "serious and urgent" contents of PID1 and PID2 and asks Mrs Gohil to revert to him as soon as possible. It also asks for reassurance that he will not be penalised for his "honest intentions" in drawing attention to his "legitimate concerns". The decision to suspend was taken well before PID3 reached Mrs Gohil.

68 By agreement between Harp and Mrs Gohil, the investigation was entrusted to Mr Waldron. As already mentioned, he is and at all relevant times was Globalgrange's Financial Controller. He and the brothers have known one another since their schooldays. They have played sports together and mixed outside work in other social settings. Mr Waldron is a Chartered Accountant by training and qualification. He has held financial roles in a variety of organisations.

69 In late November or early December 2017 Mrs Gohil explained the background to Mr Waldron. The relevant documents (PID1, PID2, Harp's email of 10 November 2017 and the letter of suspension) were supplied to him.

70 On 7 December 2017 Mr Waldron invited the Claimant to attend an investigation meeting. He explained the main matters on which he intended to focus, which he identified under three points. Correspondence followed in which the Claimant, with some support from a trade union representative, repeatedly challenged the appointment of Mr Waldron, alleging that he was biased and/or conflicted and had predetermined the outcome of his investigation. Among other matters, he argued that (a) Harp was Mr Waldron's line manager, (b) Mr Waldron was beholden to Harp because the latter provided him with a company car and (c) Mr Waldron's son worked for Harp. Mr Waldron engaged with these points, observing that his line manager was Raj, not Harp, that the 'company car' was a venerable 19-year-old model of which others had shared use and that he did not judge himself to be conflicted by the fact that his son had a junior clerical role working for, or under the ultimate line management of, Harp. These reassurances only provoked renewed protests from the Claimant. Eventually, on 25 January 2018, Mr Waldron wrote to the Claimant facing him with the "stark choice" of cooperating or running the risk of possible disciplinary action for failing to do so.

71 The Claimant's case is that, albeit with reluctance, he was brought to order by the email of 25 January and, by an email of 8 February, signalled his preparedness to engage with the investigation. The documents shown to us appear to bear that out but we accept Mr Waldron's evidence that no email of 8 February was delivered to his inbox.

72 As a consequence of Mr Waldron reporting that the Claimant had not responded to the ultimatum of 25 January, the case was passed to Ms Cam Li (already mentioned) to conduct a disciplinary investigation. Ms Li was originally employed by Globalgrange to perform audits and payroll duties, but over time took on low-level HR responsibilities, mostly concerned with HR issues at the Grange City Hotel. She had no formal HR training and such experience as she had acquired did not equip her for the task entrusted to her.

73 On 8 March 2018 Ms Li invited the Claimant to attend a disciplinary hearing to answer an allegation that he had failed to co-operate with Mr Waldron's investigation. For reasons not provided in his witness statement of more than 30 pages, the Claimant did not respond with what might have been thought the obvious retort, namely that, a month earlier, he had expressly agreed to co-operate. Nor did he supply a copy of the email of 8 February.

74 The disciplinary hearing took place on 13 March 2018. The Claimant attended, accompanied by a work colleague, who took a note. Ms Geenisha Hoolah, Harp's Personal Assistant, also attended and took a note. The proceedings largely took the form of a sustained cross-examination of Ms Li by the Claimant. Towards the end he produced a copy of the 8 February email. Not long afterwards the hearing ended.

75 Ms Li covertly recorded the hearing on her mobile phone. She did not have, or request, the permission of the participants to do so. Indeed, shortly before the hearing began she had given an assurance that her phone would not be 'present'. The Claimant maintained that the recording was done on the instructions of Harp. We reject that allegation, for which there is simply no evidence.

76 As we have noted, the Claimant claims that, in the course of the hearing on 13 March, he raised a grievance which the Respondents did not deal with. That assertion is unfounded. He said at one point that he wished to raise a grievance and Ms Li explained that it was open to him to present a written grievance if he wished. He did not do so.

77 The Claimant became aware of the covert recording when he searched the room during a break in the proceedings, while Ms Li was absent. He took the phone away with it was eventually returned to Ms Li through his solicitors.

78 Correspondence followed between the solicitors on the subject of the covert recording. The Respondents' solicitors explained that Ms Li had acted on her own initiative.

79 The disciplinary process went no further. The matter was returned to Mr Waldron. He wrote to the Claimant on 18 April 2018, proposing an investigation meeting for 23 April. He referred back to the three topics identified in his email of 7 December 2017. No meeting was held on 23 April. The Claimant engaged in further correspondence seeking to widen the scope of the enquiry, arguing that any meeting should be on a neutral site and raising sundry other matters including alleged injury to his health. Eventually, he was signed off sick by his GP from 27 April to 10 May.

80 On 14 May 2018 the Claimant raised a formal grievance in writing "against Cam Li and the HR Department". More than half of the one-page document is devoted to renewing his complaints about Ms Li's covert recording of the meeting of 13 March. He then continued:

> **I therefore wish to raise a formal grievance against Cam Li and the HR Department following the disciplinary meeting for the following:**
>
> - **Clear breach of trust and confidence**
> - **Failure in the company's implied duty of trust**
> - **Failure in its duty of care under the Health and Safety Act (sic) …**
> - **Repeatedly being subjected to malicious and sustained false allegations…**
> - **Unfair suspension which is prolonged …**
> - **… harassment under the Protection from Harassment Act …**
> - **Failure to engage in a fair, just and unbiased HR process**
> - **Victimisation for being a whistleblower**

Before us, the Claimant attempted to characterise the grievance of 14 May as being about much more than Ms Li's behaviour on 13 March. We note, however, that in the meeting with Mr Waldron on 18 May and in the later disciplinary hearing held by Ms Gill he described it as a grievance "about Cam".

81 Although not addressed to him, Harp received a copy of the grievance soon after it was sent. By an email of 17 May 2018 he responded, drawing attention to the correspondence between the solicitors following the 13 March hearing and stating that the matter had been dealt with.

82 The Claimant replied the same day, complaining that the (alleged) failure to deal with his grievance was "concerning" and promising that further correspondence on the subject would be pursued through his solicitors. None

followed.

83 On 15 May 2018 Mr Waldron invited the Claimant to a re-scheduled meeting but pointed out that since it was purely investigatory he would not be allowed to be accompanied. The Claimant protested that it was unfair that he was not allowed a companion but agreed to attend.

84 The meeting duly took place on 18 May 2018. Mr Waldron did his best to probe the three areas of interest which he had identified in his correspondence of 7 December 2017. The Claimant also had a full opportunity to advance his many (largely process-driven) concerns and arguments.

85 At the end of the meeting Mr Waldron stated that he would proceed to prepare a report. Not long afterwards, he was stood down from taking further action in light of the serious new allegation against Claimant which became the subject of the disciplinary process culminating in his dismissal.

86 The Claimant complains that he was wrongfully denied a Christmas bonus 2017. Harp gave unchallenged evidence that bonuses for Monck Street staff were determined by Raj and him but the decision-making process began with a recommendation from Tony. Here, there was (we were told) no recommendation by Tony, at least in relation to a bonus for the Claimant. Being presented with nothing that calls into question Harp's evidence on this matter, we accept it.

*Detriments (8)-(10): the disciplinary procedure and dismissal*

87 At all relevant times Ms Gill was an HR consultant who provided services to Globalgrange and certain other companies. She was approached by Harp in late May 2018 and asked to conduct a disciplinary process in relation to an allegation by Ms Arora (already mentioned) that, in a private meeting at a café on 4 December 2017, the Claimant had attempted to solicit her to join GHS2. She agreed and he encouraged her to take advice as required from the company's solicitors.

88 Harp had first learned of the alleged approach by the Claimant to Ms Arora from Ms Choudhary in January. He told Ms Choudhary that it would be helpful to have a statement from Ms Arora. The evidence is inconsistent as to what then happened. Either Ms Choudhary reverted to Ms Arora, the latter said that she was not prepared to sign a statement and Ms Choudhary then passed that answer back to Harp, or Ms Choudhary simply told Harp off her own bat, on the strength of her prior conversation with Ms Arora, that Ms Arora was not prepared to go on the record or sign a statement. Both possibilities are entirely plausible. Ms Arora and Ms Choudhary describe themselves as best friends and, no doubt, read each other's thoughts very well. At all events, Harp's hopes for hard evidence against the Claimant were disappointed at that stage.

89 In late April or early May 2018 direct communication between Ms Arora and Harp resulted in the former stating that she was willing to provide a statement relating to the Claimant's approach to her. Here again, there is an inconsistency. Harp told us that Ms Arora had contacted him directly whereas she maintained that he had approached her (see her statement of 24 May 2018, para 11). Either way,

Ms Arora was put into contact with the Respondents' solicitors and a statement was prepared which she signed on 24 May.

90 There was one matter on which Harp and Ms Arora were in complete agreement, namely that the former had placed no pressure upon the latter to make her statement. The word 'pressure' is open to interpretation. We think that he left her in no doubt that he wanted her to do so, but we are satisfied that she provided the evidence willingly.

91 Having received the statement, Harp passed the case to Ms Gill to proceed with disciplinary action.

92 Ms Gill spoke to Ms Arora, who confirmed that she stood by her statement. She also mentioned that she had a number of text messages which supported her account, although she was reluctant to produce them because the Claimant was a friend.

93 By a letter of 1 June 2018 the Claimant was invited by Ms Gill to attend a disciplinary hearing to be held at the Grange St Pauls Hotel on 6 June to consider the following charge:

> **The allegation against you is that in breach of the terms of your suspension and potentially in breach of your duty of good faith owed to your employer, you contacted a Globalgrange employee Mehak Arora and solicited her to leave her job with a view to joining a new company GHS Global Hospitality Ltd.**

A copy of Ms Arora's statement was attached. The letter explained the Claimant's right to be accompanied and pointed out that if he was found guilty of gross misconduct he might be dismissed without notice. It also stressed that the disciplinary proceedings were strictly confidential and prohibited him from discussing them with any third party other than a legal adviser, work companion or trade union representative.

94 Subsequent correspondence followed an established pattern. On 5 June 2018 at 20:31 the Claimant wrote to acknowledge Ms Gill's letter. He claimed that it had not been accompanied by the promised attachment and demanded that the hearing be put back. He further suggested that the alleged failure to include Ms Arora's statement had been, or might have been, deliberate. In addition, he demanded to be told by return what was being done to investigate his "grievances" (as we have noted, there was at that stage no live grievance).

95 Ms Gill postponed the hearing to 12 June 2018 and re-sent the relevant documents to the Claimant. This led to the Claimant arguing (in a long email of 8 June) that Ms Gill had been telling lies about the disputed attachment, that the charge pre-judged the outcome, that the notification that the hearing would be confined to considering the allegation of misconduct was an attempt to limit his opportunity to defend himself, that the Respondents' choice of note-taker (Ms Geenisha Hoollah, Harp's PA) was unacceptable to him, and that, despite prior notification that recording of the disciplinary hearing would not be permitted, he was determined to record it.

96 By an email of 11 June 2018, Ms Gill replied, stating that the outcome of the disciplinary proceedings was not pre-judged, that there was no valid objection to the company's note-taker, that his companion would be taking notes as well and that, as already stated, he should not record the meeting.

97 The Claimant replied the same day, repeating the arguments already ventilated in his earlier correspondence and demanding that the proceedings be postponed to another date and that, on account of her "apparent bias and unsuitability", Ms Gill be replaced by someone else so that a "fair and transparent disciplinary hearing" might be held.

98 Four further emails followed in which the Claimant repeated his earlier points at length and Ms Gill re-stated her grounds for not accepting them. In answer to a specific question, she advised that she was engaged by Globalgrange as a consultant and that Mrs Gohil was the Head of HR and Harp was the director responsible for HR matters. She added that any decision at the disciplinary hearing would be hers and hers alone.

99 The disciplinary meeting took place on 12 June. The Claimant attended, accompanied by a workplace companion. Ms Gill chaired the meeting. Ms Hoollah took a note.

100 The meeting began with the Claimant challenging Ms Gill's independence. He established that she was the daughter of a Globalgrange employee who reported directly to Harp. He alleged that her (Ms Gill's) brother had benefited from Harp's generosity. He wanted to know who approved her expenses and who agreed her daily rates. Ms Gill did not engage to any significant extent with the Claimant's questions and steered the enquiry on to the subject of Ms Arora's allegations, making it clear that she was determined to focus on the disciplinary charge. Eventually, she extracted from him the main planks of his defence, namely the following. First, it was Ms Arora, not he, who had initiated the contact between the two. Second, the core allegation of soliciting was a pure fabrication. Third, it had probably been procured by an inducement (apparently by Harp and/or Raj) because of the Claimant's alleged 'whistle-blowing'. Fourth, Ms Arora had not produced the relevant text messages, or all of them. He was holding "all the text messages" and was faced with a decision whether to betray Ms Arora or "maintain [his] dignity". Fifth, his wider complaints, grievances, claims about alleged manoeuvring and misconduct by a number of individuals and sundry other matters needed to be taken into account. The meeting was adjourned.

101 Ms Gill then approached Harp. He agreed that he had granted bonuses and pay rises to Mrs Bekoe and Ms Choudhary and said that he had done so in order to retain them and dissuade them from moving to GHS2. He denied offering any incentive to Ms Arora to provide her statement of 24 May. He further stated that he had decided to initiate disciplinary action against the Claimant based on that statement alone and had not been influenced by any prior communications with them or by any alleged 'whistle-blowing'.

102 Next, Ms Gill spoke to Ms Arora. She insisted that the Claimant had initiated the contact leading to the meeting at the café and stood by the evidence contained in her statement of 24 May. She added that he had questioned her in January

about her passing on to Ms Choudhary what had been said on 4 December, complaining that doing so had put his job in jeopardy. Ms Gill asked if Ms Arora was willing to disclose the text messages and she agreed to do so, supplying copies soon afterwards.

103 Ms Arora provided a further, brief statement on 14 June in which she confirmed that she has not initiated the contact with the Claimant in December 2017, offered to go through her telephone records should that be needed, stood by the core allegation of soliciting, declared that she had not received any incentive from Harp, Raj or anyone else and made sundry further points.

104 Ms Gill studied the text messages and noted that they appeared to support the two statements which Ms Arora had supplied.

105 By a letter of 14 June 2018 Ms Gill invited the Claimant to attend a reconvened disciplinary hearing to be held on 18 June. She attached copies of the supplemental statement of 14 June and the text messages.

106 The Claimant responded the following day, fiercely challenging Ms Gill's independence, maintaining that she was biased and the outcome of the hearing pre-determined. He demanded that she should play no further role in the proceedings. He further maintained that in any event he had been given insufficient time to prepare to meet the fresh evidence.

107 Very soon afterwards, the Claimant sought a postponement of the reconvened hearing on account of a family bereavement. The request was granted and in due course a fresh date, 9 July, was set.

108 The Claimant's demand for Ms Gill to step aside was rejected. He next argued (by an email of 8 July) that Mr Swindells, the new CEO, should be required to state in writing whether he considered it proper for the hearing to proceed the following day. The oral approval of Mr Swindells was confirmed and a series of email exchanges (copied to Mr Swindells) followed in which the Claimant complained unavailingly that his demand for written confirmation had not been satisfied.

109 The Claimant attended the reconvened hearing on 9 July 2018, but immediately returned to the matter of Mr Swindells. Ms Gill insisted that the evidence of his approval was sufficient. Turning to substance, Ms Gill referred to the text messages disclosed by Ms Arora and invited his comments on what they appeared to suggest. She also asked him if he was willing to provide any text messages himself. He referred to text messages and "group chat as well with other people" and appeared to undertake to forward them after the meeting. He went on to make a number of points about what he claimed to see as inconsistencies between Ms Arora's evidence and the text messages. He also developed much wider arguments concerning the activities and interests and connections of Ms Arora, Ms Choudhary, Mrs Bekoe and others. In addition he raised numerous challenges to Ms Gill's independence and integrity. The meeting took up a large part of the morning. Ms Gill then reserved her decision.

110 Despite the invitation to do so, the Claimant did not submit any further

evidence, in the form of text messages or otherwise. He did write an email of four pages rehearsing many of the points raised in the disciplinary hearings and renewing the complaint of a campaign to remove him from the organisation.

111 By a lengthy letter of 16 July 2018 Ms Gill delivered her decision. She rehearsed the procedural history, identified the core issue, namely whether the evidence against the Claimant was true or false and concluded, for reasons clearly expressed, that it was true. She further found that his act of soliciting Ms Arora amounted to gross misconduct and that, given in particular the nature of his defence (at the heart of which was an allegation that she had fabricated an exceedingly serious allegation against him) and his complete refusal to acknowledge his wrongdoing, the only proper sanction was summary dismissal. She advised him of his right of appeal.

112 By an email of 20 July 2018 the Claimant exercised his right of appeal, contending that the dismissal had been engineered by Harp in order to punish him for making protected disclosures and was in any event unfair on numerous grounds, including Ms Gill's alleged failure to enquire into background matters such as his complaints and allegations against Mrs Bekoe and Ms Li.

113 Responsibility for the appeal was passed to Mr Bhakta Das (already mentioned). By a letter of 21 August 2018 he wrote to the Claimant inviting him to attend a meeting to consider his appeal scheduled for 24 August at the Grange St Paul's Hotel (of which Mr Das was the General Manager). Relevant documents were attached, including the two statements of Ms Arora and screen shots of the text messages which she had disclosed in the interval between the initial and resumed disciplinary hearings before Ms Gill. Mr Das observed that it was evident from the record of the disciplinary proceedings that other relevant text messages were already in the Claimant's possession. In addition, Mr Das noted that the Claimant had told Ms Gill that he held certain evidence (including text messages) that had not been shared with her, but that no such evidence had ever been produced. He therefore repeated her invitation to produce it.

114 In a long email of 22 August the Claimant took issue with numerous points in Mr Das's letter and accused him of being conflicted by reason of his association with Harp and others. He asserted that the appeal had been "pre-determined" and called on Mr Das to recuse himself. He ignored the invitation to produce the evidence which he had referred to during the disciplinary hearings. On the following day he wrote again to Mr Das, this time demanding pay records and other documents relating to Ms Arora, Ms Choudhary and Mrs Bekoe. Mr Das responded, declining to recuse himself and stating that he intended to decide the appeal without interference from any third party. He also promised to look at any point which might require consideration before the appeal was decided. This prompted a series of demands by the Claimant for the appeal hearing to be postponed, to which Mr Das replied that the hearing would proceed as scheduled but that he would have regard to all matters requiring investigation before reaching his decision.

115 On the morning of 24 August 2018, before the appeal hearing, Mr Das made a telephone call to the Claimant's wife. He did so by mistake. His intention was to speak to Ms Gill. The error is explained by the fact that the two women

have the same first name. His purpose was to get a better understanding about GHS1 and GHS2 and the connection between the two. The conversation, which was very brief and, not surprisingly, somewhat confused, was ended quite abruptly by Mr Das.

116 The appeal hearing on 24 August 2018 began with a sustained cross-examination by the Claimant of Mr Das concerning his brief phone conversation with the Claimant's wife. Mr Das admitted making the call and explained that he had contacted the Claimant's wife by mistake, intending to speak with Ms Gill. The Claimant accused him of lying on the record and sundry other matters. Generally, he complained that he was entirely beholden to Harp and was conflicted. He took points concerning the record of the disciplinary hearing, which was said to be defective (a complaint not pursued before us). The appeal then settled into a familiar pattern. On the one hand, Mr Das attempted to focus on what he saw as relevant, namely the allegation of misconduct which Ms Gill had found proved, while repeating his assurance that he would investigate the allegation that Ms Arora's evidence had been procured by a bribe. On the other, the Claimant demanded to be allowed to take Mr Das through the much wider case foreshadowed in his grounds of appeal. The Claimant largely got his way. It was not until almost 40 pages into the transcript that attention turned to the allegation of soliciting. At this stage, the Claimant was taken to the text messages and argued strenuously that, so far from pointing to him having solicited Ms Arora, they did the opposite. He maintained that there was no evidence that he had committed misconduct of any sort. The meeting, which ended with Mr Das reserving his decision, lasted nearly two hours inclusive of a short break.

117 On 28 August 2018 Mr Das interviewed Ms Arora to test her account against the Claimant's case as presented in the appeal hearing. She stood entirely by her prior evidence. She insisted that the Claimant had initiated contact with her on 3 December 2017. She denied that she had been offered any incentive to encourage her to make her statement.

118 On 30 August 2018 the Claimant wrote at length to Mr Das repeating many of the complaints and accusations which he had raised at the appeal hearing. He alleged that the phone call which his wife had received from Mr Das on the morning of the appeal hearing had been "a planned and deliberate attempt to cause further distress." He complained about Mr Das attempting to make the disciplinary charge against him the focus of the appeal hearing.

119 Mr Das gave his decision on the appeal in a letter of 17 September 2018. He began by apologising for the delay in delivering the outcome, explaining that he had had been away in India during the interim. (Before us he stated without challenge that the travel had been necessitated by a family bereavement.) He then dealt with the grounds of appeal. First, he rejected as implausible the argument that the dismissal had been a device to avoid having to investigate the Claimant's grievance. Second, he dismissed the complaint that Ms Gill ought not to have been involved in the disciplinary process and found that she had conducted it appropriately. Third, he found no substance in the theory that the dismissal had been engineered by Harp and Mrs Gohil in order to prevent the Claimant from exposing a culture of malpractice. Fourth, he rejected the complaint that Ms Gill had failed to investigate the allegation of misconduct properly or observe principles

of natural justice. Rather, he judged that she had reached the right conclusion and that the original evidence, in particular the text messages, supported Ms Arora's allegation. Fifth, he concluded that the complaint that Ms Gill had not examined the grounds for the original suspension was unfounded because her decision had not relied on the alleged breaches of the suspension terms. Sixth, he dismissed the Claimant's attempt to compare his treatment with that applied to Mrs Bekoe, taking the view that the two cases were entirely different.

*Additional facts relevant to the wrongful dismissal claim*

120 Ms Choudhary was away on business in November 2017. The Claimant contacted her on 22 November, the day of her return, and told her that he needed to see her very urgently. He offered to collect her that night from the airport but she declined and they met the following day, 23 November, at a café in London. In the course of their conversation the Claimant attempted to persuade her to leave the Respondents and join GHS2. She did not agree to do so.

*Miscellaneous facts*

121 One of the Claimant's many complaints was that he was treated differently from another Globalgrange employee, Ms Nity Tripathy. She was disciplined in June 2017 for soliciting another employee to work for a company by which her (Ms Tripathy's) husband was employed. The allegation turned on an oral exchange to which there was no independent witness. Mrs Gohil heard the case and, by a letter dated 5 July 2017, dismissed it, noting that she was faced with two "totally conflicting positions" and declaring that, in the circumstances, Ms Tripathy was entitled to the benefit of the doubt.

122 We heard some evidence concerning conversations in the summer of 2019 between Ms Arora and two other members of Globalgrange's Monck St staff, Ms Karleen Rennicks and Ms Sandra Stamerra (both already mentioned), who were called as witnesses for the Respondents. We accept that in those conversations Ms Arora was visibly distressed and voiced extreme anxiety about being put under severe pressure by Harp to give evidence at the forthcoming Tribunal hearing (then listed for September 2019). But we entirely reject the suggestion that she made any comment calling into question the truthfulness of the account given in her statements of 24 May and 14 June 2018, let alone admitted or implied that it was in any respect false.

**Secondary Findings and Conclusions**

*Rationale for the primary findings*

123 We have treated the evidence of all witnesses before us with a considerable degree of caution, not to say scepticism. The lamentable schism within the Globalgrange organisation has produced, as we have already observed, two utterly partisan factions. We could not avoid the impression that some of the witnesses were more concerned with securing an advantage for the camp with which they were associated than with giving a straightforward account of facts within their experience.

124 Treating the accounts of the witnesses with particular care, we have arrived at our findings of fact largely by considering the oral evidence against the contemporary documentary material. We have also had regard to internal consistency and inherent plausibility. We have been mindful of the tendency of some over-eager participants in litigation to advance cases which part company with common sense. The Claimant's quaint theory (not pressed, wisely, by Ms Banerjee) that Mr Waldron had simply invented the story about the emails of 8 February 2018 not reaching his inbox is an example in point.

125 There is no doubt that, overall, our findings of fact favour the Respondents, but we have been careful to note and reflect upon inconsistencies in the evidence on both sides. We have referred in our primary findings to some of those inconsistencies. One is the difference between the recollections of Harp and Ms Arora concerning the communications between them in the period from January to May 2018 which culminated in the latter providing her statement of 24 May. We have given this anxious consideration. In the end, however, it seems to us that the substance is more important than the small detail. What is tolerably clear to us is the following.

126 First, Ms Arora told her best friend Ms Choudhary in December 2017 or at latest January 2018 that the Claimant had attempted to solicit her. It would be natural for her to tell her best friend about an encounter which, as the Claimant agrees, she found traumatic. Second, Ms Choudhary passed on to Harp the information about the Claimant's approach to Ms Arora soon after she learned of it. There was no reason for her to invent make up her evidence to that effect. There was also no reason for Harp to invent evidence about learning of the approach from Ms Choudhary. Both gave evidence consistent with that of Ms Arora. Third, a consistent picture emerges of Ms Arora's attitude at the time when she first disclosed the content of her conversation with the Claimant of 3 December 2017. She was not willing to be a witness or to go on the record about it. That was anything but surprising. She found herself in a deeply invidious position. The Claimant was a friend and colleague of long standing. Moreover, giving evidence against him would inevitably expose her, in the context of a profoundly acrimonious wider dispute, to bitter recriminations (and perhaps worse) from those around her (at Monck St), most if not all of whom could be expected to take his side. Fourth, in these circumstances, the difference over who initiated the contact between Harp and Ms Arora in April 2018 is, in our view, of relatively minor importance. If it was Harp, it is surely more likely than not that he approached her because he was already mindful of the evidence which she was able to give and thought it worth trying again to persuade her to provide a statement. If it was Ms Arora, that would fit with her evidence that, over the period between her disclosure to Ms Choudhary and April or early May 2018, she had had a change of heart and realised her obligation to go on the record to say what had happened. Fifth, on any view, the evidence does not begin to justify the dramatic allegation, for which there is not a shred of evidence, that some substantial inducement or bribe was offered to Ms Arora to come forward to give evidence. Sixth, in any event the bribe theory does not win the day for the Claimant unless the Tribunal accepts not only that Ms Arora was persuaded by a financial inducement to provide evidence against the Claimant but also that the evidence which she supplied was false. The Claimant's

insuperable difficulty is that the bribe theory has to grapple with the overwhelming evidence, to which we next turn, that the allegation made by Ms Arora was true.

127 The greatest difficulty of all for the Claimant lies in the damning text messages and his often absurd attempts to explain them away. We will take a small sample only. First, there are messages between the Claimant and Ms Arora dated 22 November 2017. The conversation happens while Ms Chaudhary is still airborne. It includes:

**C: I need to see Anita**
**You probably know why**
**MA: …see her then**
**C: BUT DON'T TELL HER YET**
**…**
**C: I probably shouldn't be speaking to her either**
**I could get fired**
**…**
**C: All I know is she is WANTED at ghs**
**But no-one can openly tell her**
**MA: hmm ghs as in under Mr T?**
**I find that strange but ok**
**C: I couldn't possibly comment**
**MA: Too much politics**
**C: Possible conflict of interest**

A little later the same day, there is a conversation between the Claimant and Ms Chaudhary in which he tries (unsuccessfully) to persuade her to allow him to pick her up from the airport or see her briefly in London. His texts include:

**… I'm sorry for the cloak and dagger**
**But I need to talk to you**
**…**
**Please don't tell anyone I've reached out to you …**
**I could get fired**

128 The texts between the Claimant and Ms Arora between 3 and 12 December are also illuminating. As was noted in the internal proceedings, there was a disagreement as to who first made the contact which led to the meeting of 4 December. It was central to the Claimant's case that his opening text in the chain shown to us picked up on a recent overture from Ms Arora; she was adamant that the exchange was begun by his text of 3 December. The conversation disclosed to us starts thus:

**C: Hey**
**Are you around tomorrow?**
**MA: Hey … yeah I'm in**
**What's up**

They agree to meet for a coffee. The conversation continues:

**MA: Am I ok to tell David or Youlia I am going out to see you?**
**C: Not yet**
**Say nothing**

About two hours later, following the meeting, the Claimant texts again:

**C: Hey, I didn't mean to stress you out. Are you ok?**
**MA: Not quite, just overwhelming to make choices with the situation here and circumstances ahead personal and jobwise.**
**C: Sorry. Selfish from me.**
**Like I said, I don't want things to change, especially the people.**
**So if I can work with the people I want, I'd be happy.**

129 The next text messages of interest are those between the Claimant and Ms Arora dated 17 January 2018. They begin as follows:

**C: Mehak, what did you tell Anita about when we spoke in the café?**
**It was meant to be private between us.**
**MA: Hey, you know we are best friends. I discuss my career and life choices with her.**
**C: Yeah but she told someone.**
**Now my job is [in] jeopardy.**
**That's why we both agreed to keep it quiet.**

130 There were further messages between the Claimant and Ms Arora on 1 June 2018. The conversation began with the Claimant apologising for sending a prior message to her which, he said, had been intended for someone else, who had "betrayed" him. It continued:

**MA: No worries, I am ignoring it, just like I've had to ignore certain other messages with accusations …**
**C: It's ok. Someone just betrayed me, despite me trying to help them.**
**…**
**This friend of mine …**
**I stood up for her …**
**I'll probably lose my job very shortly**
**…**
**… I didn't stick the knife in my friend's back …**

**MA: … Sartaj, this is nothing personal towards you.**
**C: I'm utterly devastated.**
**MA: … At least you have ghs.**
**C: Mehak. Just leave me alone please.**
**MA: … I prevented [the] situation as long as I could …**

131 Finally, we were shown a further, brief exchange between the Claimant and Ms Arora of 15 August 2019. It includes:

**C: Thanks for the call and the apology about what happened. Not sure what else to say or to think. It's a very unpleasant situation.**
**MA: Hey, it sure is an unpleasant situation but there's no apology for telling the truth. I do hope you understand that I was asked the questions and I had to state the truth.**

132 The Claimant claimed in the disciplinary process that he had other text messages which favoured him but none was produced then or at any stage of the Tribunal litigation. His claim was not easily reconciled with his behaviour throughout. He has been notably energetic and uninhibited in seeking out and deploying evidence in his own defence. He sought to anticipate the obvious difficulty with the assertion (made in the course of the disciplinary proceedings) that he was considering withholding relevant material to protect Ms Arora and/or

his own dignity. In evidence before us he said that he had wished to save her from embarrassment. The Claimant gave no reason for the odd notion that his dignity might be compromised by disclosure of communications helpful to his case. As for protecting Ms Arora, we remind ourselves that his defence to the disciplinary charges involved the central contention that she had concocted an entirely false allegation against him and had accepted a bribe to do so. Protection of Ms Arora was not, we find, a consideration that weighed with him to any extent. In the circumstances, we conclude that the Claimant did not, and does not, hold undisclosed documentary evidence favourable to his case (which evidence, of course, would have been disclosable in the Tribunal proceedings). We are satisfied that the evidence which he gave on that aspect during the disciplinary proceedings and before us was wholly false.

133 On the text messages shown to us, we make the following observations. The texts of 22 November 2017 are obviously supportive of the case against the Claimant and at odds with his protestations that his sole purpose was to protect the interests of Globalgrange. The urgency and secrecy of the contact (initiated by the Claimant) and his references to the risk of being "fired" do not sit easily with his evidence to us that he was not associated with GHS2 and wished only to preserve the status quo. More obvious still are the reference of the Claimant to Ms Chaudhary being "WANTED at ghs", Ms Arora's query, "ghs under Mr T?" and the Claimant's ironic reply, "I couldn't possibly comment."

134 The text messages of 3 and 4 December 2017 also present the Claimant's case with obvious difficulties. The opening exchange undermines his insistence that the conversation had been started a day or two earlier by Ms Arora. Why, if that were so, would she have responded to him with, "What's up"? And after the meeting, why would he need to apologise for causing her "stress" if, as he maintained, he had not engaged with her attempts to discuss work and simply shut the conversation down? The implausibility of his account increases when Ms Arora's response is considered: why would she refer to being faced with "choices with the situation here" if he had put no choice before her?

135 The exchange of 17 January 2018 again damages the Claimant's case. His explanation to us that the reference to the meeting of 4 December being secret and to his job being jeopardy alluded only to his breach of the terms of his suspension (by speaking to a colleague), and not to the matters discussed, struck us as highly improbable. We do not believe that he, a very senior employee with many years' service, would have regarded disclosure of such an infringement as putting his employment at risk. Further, if, as he maintained, he has said nothing noteworthy at the meeting, why would Ms Chaudhary have mentioned the conversation to anyone else? And why would Ms Arora have referred in her reply to discussing her "career and life choices" with Ms Chaudhary if the conversation of 4 December had not touched on such things?

136 Turning to the messages of 1 June 2018, we note that it is now common ground that these exchanges were initiated by the Claimant on the day he received the invitation to a disciplinary hearing to consider the charge that he had attempted to solicit Ms Arora on 4 December 2017 to work for GHS2. He knew that the allegation was based on a witness statement signed by Ms Arora (although the

statement may not have been attached and he may therefore not have read it). In our judgment, the most striking feature of this correspondence is the complete absence of any assertion by the Claimant that the charge against him was untrue. The complaint is of disloyalty and 'betrayal' but nowhere does he accuse Ms Arora of the outrageous and contemptible act of manufacturing a false allegation. He told us in his witness statement that he had sent the texts when drunk, but perusal of the messages amply shows that he was in control of his faculties to the extent of being able to think and communicate quite clearly. In cross-examination he had no explanation for his failure to seize the opportunity to counter-attack – a failure all the more notable when one reflects on his conduct throughout the various internal proceedings which we have recounted. We are also struck by the sentence, "Someone just betrayed me, despite me trying to help them." This is consistent with Ms Arora's account of the Claimant having approached her with a proposal on 4 December 2017. It does not fit with his claim that he declined to engage with her on any work-related matter.

137 The exchange of 15 August 2019 was another missed opportunity for the Claimant to confront Ms Arora with the obvious charge that she had made up an allegation against him which had cost him his job. And here he makes no claim to have been under the influence of alcohol.

*The alleged protected disclosures*

138 We start with PID1. The first question is whether the email discloses any information. In our judgment it does. The revelation of Mrs Bekoe's directorship of TBBC was plainly information. We have found the assertion that Mrs Bekoe "[had] been utilising information, contacts and data belonging to Globalgrange … for her own purpose" less straightforward. While it was presented unequivocally as fact, that allegation was, as the Claimant well knew, entirely speculative and was made for the ulterior purpose of damaging Mrs Bekoe regardless of whether or not it was true. It was certainly made in bad faith. But good faith is no longer built into the 'whistle-blowing' scheme and disclosures may be protected even if what is presented as information turns out to be untrue. In the circumstances, we are prepared to proceed on the footing that this element of the PID1 disclosure also arguably constitutes 'information'.

139 Did the Claimant believe that the information which he had disclosed tended to show any past or present commission of a criminal offence or breach of a legal obligation? We think not. We do not consider that he reflected enough about the subject-matter of the disclosure to arrive at any particular belief as to what it tended to show. His purpose was to damage Mrs Bekoe by disclosing information which could be seen as compromising her position as an employee of Globalgrange. That motivation was based on his knowledge or belief that she had declined an invitation to join GHS2 and thereby placed herself in opposition to the Tony camp. He may well also have hoped to prevent Harp from being able to benefit from her continued services. We do not accept his evidence that he was actuated by the noble purpose of protecting the interests of Globalgrange. His action in making the disclosure was driven by the desire to further the interests of Tony and damage those of Harp and Raj. If he formed any relevant belief it was the belief that the information disclosed tended to show Mrs Bekoe in a poor light

and that its disclosure would or might serve the interests which we have mentioned.

140 In case we are wrong in the finding just stated, we are satisfied in any event that the Claimant did not "reasonably" believe that the information disclosed tended to show the past or present commission of an offence or breach of a legal obligation. The information disclosed showed nothing more than that Mrs Bekoe was a director of a particular company. It was quite insufficient to found a reasonable belief that she was guilty of serious wrongdoing.

141 Nor, in our judgment, did the Claimant believe in fact that the information disclosed tended to show a "likely" future offence or breach of a legal obligation. The material was much too thin to enable him to form such an opinion and in any event, for reasons already stated, we do not think that he was directing his mind to what the information might tend to show. Rather, he was concerned with the tactical advantage which might be gained from it to the detriment of Mrs Bekoe and, probably, Harp. At its highest, any relevant "belief" did not extend beyond suspicion concerning Mrs Bekoe's intentions. As *Kraus* makes clear, for the purposes of 'whistle-blowing' law, suspicion is not enough: the word "likely" connotes at least a better-than-evens degree of probability.

142 And again, even if we are mistaken and he did have the requisite belief as to "likelihood", we are satisfied for the reasons already given that such belief was, in any event, unreasonable.

143 Did the Claimant believe that PID1 was made in the public interest? We are quite satisfied that he did not. Nowhere did he assert any public interest (besides calling himself a whistle-blower). We do not believe that the notion of public interest crossed his mind. What shines out from the evidence was that he saw himself as a combatant in bloody internal strife within a small corner of a private commercial organisation.

144 Further, even if we are mistaken in the matter of belief, we are entirely satisfied that the Claimant did not "reasonably" believe that the disclosure was made in the public interest. If such a belief were properly seen as reasonable, the reach of the 'whistle-blowing' protection, designed to protect the cardinal principles of openness and accountability in matters of genuine public interest, would be almost limitless and the entire scheme would be utterly devalued.

145 We turn to PID2. Was there here any disclosure of information? In so far as the email refers to PID1, it conveys no information of itself. Nor, self-evidently, does the inquiry about progress in investigating the subject-matter of PID1. We accept, however, Ms Banerjee's submission that PID2 conveys information about the disclosure of the content of PID1 and its authorship to Mrs Bekoe. We agree that the fact that PID1 was already in the possession of the Respondents at the time when PID2 was communicated to them does not of itself defeat the contention that PID2 conveyed information. Ms Banerjee did not rely on the reference to Mrs Bekoe's email of 11 November 2017 as a relevant further communication of information.

146 To the extent that PID2 conveyed information, was it information which in

the reasonable belief of the Claimant tended to show the commission of a legal offence or breach of a legal obligation? We are prepared to accept that the Claimant, although driven primarily by the same motivation as underlay PID1, *may* have formed the belief that disclosure of the authorship of PID1 to Mrs Bekoe involved some form of breach by the Respondents of their legal obligations towards him. And if he did form that belief, it seems to us that such belief was not unreasonable. The law does not require a non-lawyer to marshall cogent legal analysis in order to get a complaint based on s43B(1)(b) off the ground.

147 Assuming that the question in the last paragraph is answered in the Claimant's favour, did he also form the belief that the disclosure conveyed by PID2 was made in the public interest? In our judgment the only sensible answer to this question is no. We are entirely satisfied that the Claimant did not consider that PID2 was made in the public interest. We are very confident that the thought never occurred to him. And if he had had such a belief it would have been anything but reasonable. On the contrary, it would have been an eccentric, not to say bizarre, idea to think that disclosing the fact that someone in a position of authority within the Globalgrange organisation had shown to Mrs Bekoe a document containing critical remarks about her and invited her comments on them was in the public interest. Our observations in relation to PID1 on the subject of public interest apply with even greater force in relation to PID2.

148 We now turn to PID3. We find that the complaints based on PID3 do not get to first base. The message contained no information. It merely made another complaint. In any event, if any information could be spelled out of it, it was not information which, in the Claimant's belief, tended to show the commission of an offence or the breach of a legal obligation. Such a thought did not cross his mind and had it done so it would have been anything but reasonable. And in any event, the Claimant did not believe that PID3 was made in the public interest and any such belief would have been entirely unreasonable.

149 The logic of our reasoning so far is that the Claimant fails to establish any disclosure qualifying for protection under s43B(1). It follows that the detriment claims and the unfair dismissal complaint under s103A necessarily fail. But in deference to the impressive efforts of Ms Banerjee and her instructing solicitors on behalf of the Claimant, we will complete the analysis.

*Detriments (1)-(7): are detriments shown?*

150 In respect of Detriment (1) we accept, for present purposes, that the Claimant is entitled to be treated as having made out a detriment in being criticised in Mrs Bekoe's open email. We say "for present purposes" for a reason: it might be, at the end of a full enquiry, that the Tribunal would have found that the Claimant's allegations against Mrs Bekoe were false or at least unmerited and that her response was entirely justified. In such circumstances there might be room for the argument that, whatever discomfort her email occasioned to him, it was not a matter about which he could properly harbour any sense of grievance, having brought the treatment entirely upon himself. But we are not called upon to carry out any such comprehensive enquiry and it would obviously be entirely wrong for us to proceed on the basis of assumptions adverse to the Claimant.

151 As to Detriment (2), we accept that the suspension probably qualifies as a detriment. An employee seen gratuitously attacking a fellow worker on the shop floor has no ground to feel aggrieved if he is suspended pending an investigation into the incident. But in the circumstances which applied here, Harp took an executive decision in circumstances where, to put the matter at its lowest, he had options to do otherwise. And we certainly accept that the Claimant felt disadvantaged on being suspended. Again, without a wholly disproportionate enquiry, we are in no position to say that his sense of grievance on the matter (which we assume for present purposes to be sincere) was unjustified.

152 As to Detriment (3), we find no actionable detriment made out. As explained in our primary findings, the only evidence we have is that it was for Tony to propose bonuses and, for the year 2017, he proposed none in the Claimant's case. The complaint of detrimental treatment by or at the behest of Harp does not get off the ground.

153 We analyse the complaint based on Detriment (4) as alleging two separate detriments. First, the institution of an 'unfair' investigation. This is really part and parcel of Detriment (2). The suspension was intended to enable the investigation to take place. This part will be examined when we return to give further consideration to Detriment (2). The second element of Detriment (4) appears to complain of unfair handling of the investigation by Mr Waldron. In our judgment no detriment is here made out. It may well have been a tedious and uncomfortable time for the Claimant but he brought that tedium and discomfort entirely upon himself (and not only upon himself). He was wholly unco-operative and childishly obstructive and it was his conduct which ultimately compelled Mr Waldron to face him with the choice of co-operating or facing disciplinary action.

154 Detriment (5) is on its face based on the consequences of the Claimant's behaviour referred to in relation to Detriment (4). There was no need at all for him to face the disciplinary process on 13 March 2018. He had only to produce the emails of 8 February and the hearing would have been cancelled. Regrettably, for tactical reasons, or simply for the pleasure of engaging in the fray, he chose to attend the disciplinary hearing, cross-examine Ms Li for the best part of an hour and then produce the evidence which was, not surprisingly, accepted as giving him a complete defence to the charge against him. If he genuinely feels aggrieved over being required to participate in the disciplinary hearing on 13 March 2018, his sense of grievance is entirely unjustified. We find no detriment here.

155 In so far as the case under Detriment (5) also rests on the covert recording of the meeting of 13 March 2018 by Ms Li, we accept that this underhand and reprehensible action did constitute a detriment. We will return to it in due course.

156 Detriment (6) discloses no actionable detriment. The Claimant did not raise a grievance at the meeting on 13 March 2018. He said that he wished to raise such a grievance and was told that he should do so in writing in accordance with the Respondents' procedures. He was not refused the right to raise a grievance. He raises here a matter about which no sensible complaint could be made.

157 As to Detriment (7), in our judgment it is very clear that the grievance of 14

May 2018 was not dealt with because Harp interpreted it as yet another of the Claimant's litany of hostile, tactical communications which he had tired of receiving – this time seeking to revive the subject of Ms Li's covert recording of the meeting of 13 March, which had been fully debated in correspondence between the solicitors on both sides. Harp's answer to that part of the grievance was entirely reasonable and no arguable detriment arose. It is, however, true that (as we have noted above) the grievance letter went on to make some general and wholly unparticularised allegations that might be seen as going beyond the subject of the covert recording. To that extent, and not without hesitation, we are just prepared to treat the dismissive response of Harp as involving an arguable detriment. (Our hesitation stems mainly from the fact that the Claimant on several occasions during the internal proceedings referred to the grievance being "about Cam" or "about Cam and HR". If he regarded it in that way and has come to rely on the wider reading only later for tactical purposes in this litigation, any sense of grievance here would be, we are sure, unwarranted. But, on balance, we prefer to stop short of making such a finding.)

*Detriments (1)-(7): were detriments done 'on the ground of' any PID?*

158 We pause here to make two observations by way of recapitulation. First, the analysis which follows assumes what we have already rejected, namely that the Claimant made *any* disclosures qualifying for protection. Second, hypothetical reasoning must have its limits. In the cases of complaints where we have found not only no relevant PID but also no actionable detriment, we think that it would be over-elaborate to ask whether, if we are wrong on *both* matters, the necessary link between the alleged detriment and the disclosure is made out. Accordingly, the analysis below will be confined to the treatment which we have found to amount to detriments, or at least arguable detriments.

159 Self-evidently, the Claimant's case on Detriment (1) argues that Mrs Bekoe made disparaging remarks about him because he had made PID1. (Apart from anything else, the detriment predated PID2 and PID3.) In our judgment the argument confuses two different concepts: a 'but for' cause on the one hand and a reason on the other. It is beyond question that PID1 was the, or at least a, 'but for' cause of the detriment: had the disclosure not been made, there would have been no retaliation. But the law is concerned with the reason, or an operative reason, for the detrimental treatment. This requires a focus upon the motivation behind the detriment, not simply the context in which the detriment arises. In our judgment, what prompted Mrs Bekoe to go on to the offensive was that, in the context of an acrimonious dispute between the two rival factions, a member of the opposing faction had made damaging allegations against her. We are satisfied that she did not respond as she did because (on the present hypothesis) the Claimant was a 'whistle-blower' but because she believed that he had sought to tarnish her reputation in the organisation. Her reaction would, we have no doubt, have been the same had he made allegations which were injurious to her reputation in some different way which did not, and could not, engage the PID provisions. The necessary motivational link is not established. On this part of the case we are mindful of the difficulties which claimants often face when they allege victimisation in the handling of internal grievances. While the protected act will, of course, be a 'but for' cause of the alleged detriment, the Tribunal will be much less readily

persuaded that it is the reason, or a reason, for it.

160 It is convenient to take Detriment (2) (suspension) and Detriment (4) in so far as it complains about the institution of Mr Waldron's investigation together. Here we are satisfied that the two actions were complementary: the suspension was imposed in order to facilitate the investigation. What prompted Harp's action was PID2. His decision was taken before PID3 was communicated. But for PID2, the suspension would not have happened and the investigation would not have been commenced but we have no doubt that Harp did not view PID2 in isolation. On the contrary, he regarded it as a 'last straw'. Prior conduct by the Claimant over some time increasingly exasperated and angered him (see above). It was by this stage Harp's settled view that the Claimant was a committed member of the Tony camp and was determined to pursue provocative and vexatious correspondence on behalf of that faction and against the faction which Harp led. Moreover, he was not at all pleased to be met by the Claimant's exceptionally belligerent style of correspondence. Harp was and is a person who does not take kindly to having his authority challenged. The latest manifestation of this mentality was PID1 and the Claimant's fiercely hostile repudiation of Harp's warning email of 10 November 2017. What brought about the suspension and institution of the investigation was Harp's sense that the Claimant was becoming a dangerously disruptive presence who needed to be taken out of circulation in the short term with a view to some disciplinary action being applied to control his behaviour. PID1 was not of itself a material contributor to that perception, being only one of a significant number of recent incidents. Besides, in so far as PID1 conveyed information about Mrs Bekoe, it was not of itself in any way objectionable to Harp. Indeed, he enquired into the information in order to find out what lay behind it. The fact that he took what may have been an indulgent view is explained by his priority of retaining her skills and connections and ensuring that they were not lost to the Tony faction. He did not resent the Claimant for making his disclosure about Mrs Bekoe; what he resented was the obvious strategy behind the disclosure namely to sow further discord and thereby advance the interests of the Tony faction at the expense of the Harp/Raj faction. In the circumstances, we find that Detriment (2) and the surviving part of Detriment (4) were not done 'on the ground that' the Claimant had made PID1 and PID2, or either of them.

161 What remains of Detriment (5) is confined to Ms Li's act of covertly recording the meeting of 13 March 2018. The Claimant's case is that this was, in effect, Harp's act in that he told her to do it. There is simply no evidence for that theory. Moreover, it does not sit comfortably with the parallel complaint that the note-taker appointed on behalf of the Respondents was a 'tame' appointee who could be relied upon to conjure up a note favourable to them and adverse to the Claimant's interests. If Harp's aim was to secure a false memorandum of the meeting, why would he direct that a verbatim and incontrovertible record be taken? We find that Ms Li was, as Ms Banerjee put it, hopelessly inexperienced and exceedingly anxious about the task which had been entrusted to her. Among many other worries was her thought that she might be placed in a position where she could not provide a reliable record of what had been said. She took the unilateral decision to make the covert recording. We also accept the unsurprising evidence that at the time of the disciplinary hearing she knew nothing of any supposed protected disclosure. In the circumstances, her act of recording the meeting was

not done on the ground that the Claimant had made any disclosure.

162 As to what remains of the claim under Detriment (7), we are satisfied that the fact that the Claimant had made the alleged PIDs was neither the reason, nor a material part of the reason, for Harp responding as he did to the grievance of 14 May 2018. We are quite sure that he interpreted it (as, at the time, the Claimant appeared to do) as an attempt to revive the issue of the covert recording and nothing more. He was irritated by it and saw it as a further vexatious act. He had had enough of the Claimant's machinations and was not prepared to be drawn by him into further disputes and processes. His summary response was not aimed at excluding particular complaints. Nor was it brought about by, or materially influenced by, the alleged PIDs, or any of them.

*Detriments (1)-(7): time*

163 The complaints based on Detriments (1), (2), (4) (in respect of the institution of the investigation by Mr Waldron) and (7) were all presented outside the primary three-month limitation period. They cannot be linked to one another to constitute an 'act extending over a period' or as a 'series of similar acts'. They occurred over an appreciable span of time and involved disparate actors and subject-matter. And although, for reasons stated below, the claims under Detriments (8)-(10) are in time, the factors just mentioned argue all the more compellingly against the Claimant's attempts to establish the linkage with those (dismissal-related) Detriments necessary to bring Detriments (1)-(7) within the Tribunal's jurisdiction. Here, Ms Banerjee ran the only argument realistically open to her, namely that the alleged detriments were all the acts of Harp, manipulating events from behind the scenes with the core aim of penalising the Claimant for his alleged 'whistle-blowing'. That submission fails on the facts.

164 For these reasons (and even if we are wrong about any linkage between Detriments (1)-(7) or any of them) the Detriment claims other than those resting on Detriments (8)-(10) (as to which see below) fall outside the Tribunal's jurisdiction unless we find that it was 'not reasonably practicable' to bring the claims within the primary three-month period. Ms Banerjee did not make that argument – and for good reason, since the Claimant laid no evidential foundation on which it could have been built. Time and again he was constrained to accept that there had been nothing to prevent him from putting in a timely complaint about the treatment on which he sought to rely.

165 Moreover, in circumstances in which the claims based on Detriments (1)-(7) have been found to lack any merit, even if the Tribunal had a discretion to extend time it would be idle and contrary to the overriding objective to exercise it.

*Detriments (8)-(10): are detriments shown?*

166 It is convenient to take Detriments (8) and (10) together. In the first place, we find that the disciplinary process was not 'contrived'. It was the unsurprising consequence of Ms Arora's decision to produce a statement confirming her assertion that the Claimant has solicited her to join GHS2. The fact that Harp had exerted a degree of pressure on her to sign a statement did not render the

evidence invalid or the consequential disciplinary charge contrived.

167 We find some arguable detriments, however, in the disciplinary process. In the first place, it was poor practice to proceed straight to a disciplinary hearing. In a serious case in which the career of a long-standing employee was in jeopardy, maintaining the safeguard of an investigatory stage was appropriate, despite the fact that the central charge was clear and straightforward. Second, Ms Arora should have been taken up on her offer (in her statement of 14 June 2018) to search through her phone records: they might have contained material of importance. Third, Ms Gill's style of questioning of the Claimant at the disciplinary hearings was, in places, unfortunate and tended to suggest a settled view about his defence. Fourth, given his claim to hold further relevant text messages and other records, it would have been prudent for Ms Gill to give the Claimant a deadline following the resumed disciplinary hearing for the delivery of any further documentary evidence on which he might wish to rely. Fifth, Mr Das's error in telephoning the Claimant's wife just before the appeal hearing was compounded by his confused and evasive reaction to the Claimant's questions on that matter at the start of the appeal hearing. Sixth, there was a regrettable, if understandable, delay in sending out the appeal decision and the Claimant was not kept apprised of the reason or made aware of when the outcome could be expected.

168 Detriment (9) is not established on the facts. The decisions taken by Ms Gill and Mr Das at the disciplinary and appeal stages were not 'manipulated', by Harp. We have little doubt that both were aware of the outcome which Harp hoped for and expected, but he did not interfere in their decision-making. Nor did their consciousness of his interest dictate, or even influence, their decisions, which rested on the overwhelming evidence contained in the text messages and the Claimant's evasive and wholly unconvincing answers to the charges.

*Detriments (8)-(10): were any detriments done 'on the ground of' any PID?*

169 As we will shortly explain when considering the unfair dismissal claim, we are satisfied that the disciplinary proceedings were conducted in a permissible, if not optimal, way and that the decision to dismiss was, in substance, fair and indeed unimpeachable. The procedural imperfections to which we have referred, which we are prepared to treat as arguable detriments, were, in our judgment, likely to have been the product of a number of factors, including the (evident) deficit of suitable HR skills and supervision, inadequate training, inexperience (certainly in the case of Mr Das) and, no doubt, sundry others. We cannot, however, see any ground for inferring that flaws in the procedure were linked in any way to any of the three communications relied on as PIDs. The Claimant's arguments here make very little sense. If, as he alleges, the Respondents were hell-bent on securing his dismissal, they were well placed to achieve that end given the compelling evidence provided by Ms Arora. They had no possible need to dream up procedural manoeuvres against him and doing so could only strengthen his hand by providing him with grounds for saying that he was being unfairly treated. Nor does any of the imperfections have the look of a device intended to disadvantage the Claimant. And even if there was any evidence of an intention to cause him prejudice through the procedural handling of the disciplinary case, we would see no reason to suppose that his communications about Mrs Bekoe's

activities and related matters seven months or longer before were the reason, or any part of the reason, for such an intention.

*Detriments (8)-(10): time*

170 In our judgment, no time point arises in relation to Detriments (8)-(10). The complaints based on the decisions taken at the disciplinary and appeal stages are plainly within time. And in so far as the Claimant seeks to base a claim on alleged flaws in the procedure applied, we consider that he is entitled to rely on the entire disciplinary process (including the appeal) as an 'act extending over a period' for the purposes of s48(4)(a).

*Detriments: overall conclusions*

171 All detriment claims fail because there was no protected disclosure.

172 The claims based on Detriments (3), (6) and parts of Detriments (4), (5) and (7) fail for the further reason that detrimental treatment is not established.

173 All detriment claims fail because if and in so far as (a) (contrary to our view) the Claimant made any protected disclosure and (b) he was subjected to any arguable detriment, no detriment was done on the ground that he had made, or was thought likely to make, any protected disclosure.

174 The claims based on Detriments (1)-(7) inclusive fail for the further reason that they were brought out of time and are accordingly outside the Tribunal's jurisdiction. No jurisdictional bar applies to those based on Detriments (8)-(10).

*Unfair dismissal: ss98 and 103A*

175 What was the reason or principal reason for the Claimant's dismissal? We are quite satisfied that it was the belief of Ms Gill, shared by Mr Das on appeal, that, on 4 December 2017, the Claimant had solicited Ms Arora to join GHS2. That was a reason related to conduct and, as such, a potentially fair ground for dismissal.

176 Did the Respondents act reasonably in treating the reason as sufficient? We remind ourselves that the statutory question must be addressed by applying the 'range of reasonable responses' test.

177 As a matter of substance, we are in no doubt that the decision to dismiss fell comfortably within the permissible range. Ms Gill and Mr Das were entitled to focus their attention on the core allegation against the Claimant and resist (albeit with little success) his repeated attempts to develop wider arguments and accusations relating to the behaviour of other people. And it was obviously open to them to find that Ms Arora's account was true and the Claimant's untrue. Indeed, it seems to us that, given the evidence presented, any other outcome would have bordered on the perverse. The comparison with the case of Ms Tripathy does not assist. The higher courts have warned of the dangers of drawing comparisons, even in superficially similar cases. But in any event there is here no similarity, superficially

or otherwise. The case against Ms Tripathy turned entirely on a clash of evidence as to what was said in a private conversation. There was no documentary evidence to assist Mrs Gohil to resolve the conflict. In the circumstances, she quite understandably gave Ms Tripathy the benefit of the doubt. In the Claimant's case, there was copious, damning documentary evidence pointing very clearly to where the truth lay.

178 It was also clearly open to Ms Gill and Mr Das to judge that the Claimant's conduct amounted to gross misconduct and that the proper sanction was dismissal. He was a senior employee in a position of trust and responsibility. He had acted in flagrant breach of his duty of loyalty to his employer. And he had entirely failed to acknowledge his wrongdoing or offer any other mitigation. On the contrary, his misconduct was greatly aggravated by the defence which he put forward, which involved accusing a fellow-employee of the outrageous act of accepting a bribe to manufacture an entirely false allegation against him.

179 As to the procedure followed, again, we find that the Respondents' actions fell within a permissible range. The charge was clearly formulated. The Claimant had sufficient notice of the disciplinary and appeal hearings. The supporting evidence was served in good time. He was made aware of his right to be accompanied, which he exercised. A proper record was taken (and he made his own recording anyway). The hearings were lengthy and comprehensive – arguably too comprehensive given the narrow and specific nature of the central charge. On any view, he was given a full opportunity to defend himself. The decisions at both stages were clearly explained.

180 We have not said that the disciplinary process was a model of its kind. There were certainly procedural imperfections, as we have noted above. But the law does not set a standard of perfection. What was done was permissible and occasioned no prejudice to the Claimant.

181 The above reasoning disposes of the 'automatically' unfair dismissal claim. There was no protected disclosure and in any event, the Claimant was not dismissed for a s103A reason.

182 It follows that the dismissal was not unfair.

*Conduct and contribution*

183 Had the complaint of unfair dismissal succeeded, we would have awarded no compensation. We would have held that the Claimant had in fact committed the misconduct with which he was charged and had in addition solicited Ms Chaudhary to join GHS2 and that, in those circumstances, it would not be just and equitable to make any basic award (see the 1996 Act, s122(2)).

184 We would also have held (under the 1996 Act, s123(6)) that the Claimant's solicitation of Ms Arora had caused his dismissal and that it would not be just and equitable to make any compensatory award. If necessary, we would have further held that his solicitation of Ms Chaudhary separately warranted reducing the compensatory award (under s123(1)).

*Wrongful dismissal*

185 We have concluded that the Claimant committed serious acts of misconduct by soliciting Ms Arora and Ms Chaudhary to leave the Respondents and join GHS2. It was also not in question that he repeatedly breached his employer's lawful and reasonable instruction not to communicate with colleagues during his suspension.

186 In our judgment it is clear that these acts (in particular, the solicitation) constituted a repudiation of the Claimant's contract of employment and had the inevitable legal consequence that he forfeited his right to rely on its terms as to notice. Accordingly, he was not wrongfully dismissed.

**Outcome**

187 For the reasons stated, all claims fail and the proceedings are dismissed.

188 Although the Respondents have succeeded in this litigation, it would be a mistake for them to hail the outcome as some sort of vindication. The story recounted to us in the evidence was one of sustained and shameful failure on the part of all those in positions of power to face up to the deplorable consequences of their strife and the need to bring the hostilities to an end in the interests of their enterprise and, in particular, their benighted workforce. On a practical level, there are also many obvious lessons to be learned about proper employment relations practices – lessons which one would not expect an organisation with such resources to need to be advised to take.

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EMPLOYMENT JUDGE – Snelson
15th Jan 2022

**Reasons entered in the Register and copies sent to the parties on : 17th Jan 2022**

**For Office of the Tribunals**