THE EMPLOYMENT TRIBUNALS

Claimant: **Steve Harries**

Respondent: **Bath College**

Heard at: **Bristol Employment Tribunal** **On: 27 February – 2 March 2023**
(3 March 2023 in Chambers)

Before: **Employment Judge Beever**
Mrs C Monaghan
Mr E Beese

Representation:

Claimant: **In person**
Respondent: **Ms G Nicholls, Counsel**

RESERVED JUDGMENT AND REASONS

1. The claimant's claim for unfair constructive dismissal is not well founded and is dismissed.

2. The claimant's claim for detriment done on the ground of protected disclosures pursuant to section 47B Employment Rights Act 1996 is not well founded and is dismissed.

3. The claimant's claim for notice pay is not well founded and is dismissed.

4. Pursuant to rule 53, the claimant's claim for holiday pay is dismissed on withdrawal by the claimant.

REASONS

Introduction

1. By an ET1 presented on 5 May 2021, the claimant brought claims for unfair constructive dismissal and for being subjected to detriment for making protected disclosures and for notice pay. Finally, the claimant brought a claim for holiday pay but at the Final Hearing he withdrew the latter claim and it is dismissed on withdrawal by the claimant.

2. There have been a number of Preliminary Hearings. On 13 July 2022, EJ Roper discussed the claim in detail with the claimant and listed the issues in the case summary. EJ Roper ordered that if the parties thought that the list was wrong or incomplete, they must write to the tribunal within 14 days of the order otherwise the list will be treated as final unless the tribunal decided otherwise. The issues are identified at paragraph 37 of EJ Roper's Order [93].

3. Those issues are set out below. It is pertinent to note that EJ Roper discussed with the claimant the scope of the protected disclosures that the claimant would rely on at the Final Hearing. At the Final Hearing, the claimant stated that in the course of the discussion in the 13 July 2022 Hearing, he was "encouraged" to reduce his disclosures and as a result felt "under pressure" to do so. The claimant asserted that there were many different disclosures occurring over a number of years. The alleged protected disclosures that were identified at the Preliminary Hearing on 13 July 2022 fairly reflected the claimant's letter to the tribunal dated 16 May 2022 [78] in which he asserted that there were "*8 key disclosures made July 2018 to March 2021*". The claimant said that he had discussed these in detail at the Preliminary Hearing on 13 July 2022 with EJ Roper. The claimant has shown a strong grasp of the facts of his case and a clear understanding of the legal framework for his claim. He fully understood the issues that were identified by EJ Roper were the issues that the Final Hearing would determine. The claimant has made no application at any point to amend the claim or the List of Issues so as to rely upon additional or alternative Protected Disclosures for the purposes of the claim under the protected disclosure provisions of the Employment Rights Act 1996.

4. The tribunal was satisfied that the issues that the tribunal was required to determine were those set out by EJ Roper at [93-96]. The claimant was reminded at times during the Hearing that [93-96] was a useful roadmap which would assist the claimant in his examination of the witnesses and in his closing submissions.

The issues

5. The issues that the tribunal was required to determine were those, at [93], which were:

1. Time limits

1.1 The claim form was presented on 5 May 2021. The claimant commenced the Early Conciliation process with ACAS on 1 April 2021 (Day A). The Early Conciliation Certificate was issued on 6 April 2021 (Day B). Accordingly, any act or omission which took place before 2 January 2021 (which allows for any extension under the Early Conciliation provisions) is potentially out of time so that the Tribunal may not have jurisdiction to hear that complaint.

1.2 Was the detriment complaint made within the time limit in section 48 of the Employment Rights Act 1996? The Tribunal will decide:

1.2.1 Was the claim made to the Tribunal within three months (plus the Early Conciliation extension) of the effective date of termination / act complained of / date of payment of the wages from which the deduction was made?
1.2.2 If not, was there a series of similar acts or failures and was the claim made to the Tribunal within three months (plus the Early Conciliation extension) of the last one?
1.2.3 If not, was it reasonably practicable for the claim to have been made to the Tribunal within the time limit?
1.2.4 If it was not reasonably practicable for the claim to have been made to the Tribunal within the time limit, was it made within a reasonable period?

2. Constructive Unfair Dismissal (ss 95(1)(c) and 98(4) ERA 1996)

2.1 The claimant claims that the respondent acted in fundamental breach of contract in respect of the implied term of the contract relating to mutual trust and confidence. The alleged breaches were as follows:

2.1.1 permitting documents critical of the claimant to be placed on his personnel file in 2018, which he did not discover until May 2020; and
2.1.2 taking too long to provide an outcome to the grievance which the claimant had lodged on that subject on 10 and 16 June 2020; and
2.1.3 providing an unfair outcome to the grievance (and in particular exonerating LC); and
2.1.4 not addressing disclosures made by the claimant adequately or at all and subjecting him to detriment as a result of making them (the disclosures referred to are those set out above); and
2.1.5 being suspended without adequate reason; and
2.1.6 being referred to occupational health without any adequate reason. (The last of those breaches was said to have been the ‘last straw’ in a series of breaches, as the concept is recognised in law).

2.2 The Tribunal will need to decide:

2.2.1 Whether the respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent; and
2.2.2 Whether the respondent had reasonable and proper cause for doing so.

2.3 Did the claimant resign because of the breach? The Tribunal will need to decide whether the breach was so serious that the claimant was entitled to treat the contract as being at an end.

2.4 Did the claimant delay before resigning and therefore affirm the contract? The Tribunal will need to decide whether the breach of contract was a reason for the claimant's resignation.

2.5 In the event that there was a constructive dismissal, was it otherwise fair within the meaning of s. 98 (4) of the Act?

3. Protected Public Interest Disclosures ('Whistle Blowing')

3.1 Did the claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996? The Tribunal will decide:

3.1.1 What did the claimant say or write? When? To whom? The Claimant relies on these disclosures:

3.1.1.1 Disclosure 1: on 17 July 2018 verbally to Mr Paul Gilmore information that Mr Bentham had failed to mark work for students for three years in digital graphic; that assessments have been dumbed down and were unfit for University level credits, and that a complaint had been made by Matthew Elliott; and
3.1.1.2 Disclosure 2: on 12 December 2019 a disclosure to Melanie Smith of HR that two documents had been fraudulently altered, namely a communication handed to the claimant on 19 July 2018, and an alleged amendment on the following day (which was not disclosed until September 2020); and
3.1.1.3 Disclosure 3: on 7 June 2020 Disclosure 2 was repeated to Jayne Davis; and
3.1.1.4 Disclosure 4: in about February or March 2020 a disclosure to Jayne Davis to the effect that the welfare of a colleague had not been handled properly under the appropriate safeguarding procedures; and
3.1.1.5 Disclosure 5: on 10 June 2019 a disclosure to Melanie Smith that Lolita Austin had presented a false witness statement against the claimant; and
3.1.1.6 Disclosure 6: on 5 January 2021 to Rachel Matthews a disclosure that HE lessons were being de-skilled to meet an agenda of unqualified lecturers; staff had organised exam cheating; and fraudulent communications had been made to the University of Bath to de-skill the programme: and
3.1.1.7 Disclosure 7: on 14 January 2020 a disclosure to Claire Beaty Pownall that the claimant was suffering undue pressure following Disclosure 6 and that the respondent had failed to follow its Whistleblowing policy and should have disciplined Kate Hobbs; and

3.1.1.8 Disclosure 8: on 10 February 2021 to Anna Wheeler and Justin Haskins to the effect that the claimant had been wrongly and unfairly suspended because of his whistleblowing.

3.1.2 Were the disclosures of 'information'?

3.1.3 Did the claimant believe the disclosure of information was made in the public interest?

3.1.4 Was that belief reasonable?

3.1.5 Did the claimant believe it tended to show that:

3.1.5.1 a person had failed, was failing or was likely to fail to comply with any legal obligation;
3.1.5.2 the health or safety of any individual had been, was being or was likely to be endangered;

3.1.6 Was that belief reasonable?

3.2 If the Claimant made any of these qualifying disclosures, then they would be protected disclosures because they were made to the Claimant's employer pursuant to section 43C(1)(a) of the Act

4. Whistle Blowing Detriment (s 47B of the Act)

4.1 Did the Respondent do the following things (the claimant repeats the allegation set out in the unfair constructive dismissal claim):

4.1.1 permitting documents critical of the claimant to be placed on his personnel file in 2018, which he did not discover until May 2020; and
4.1.2 taking too long to provide an outcome to the grievance which the claimant had lodged on that subject on 10 and 16 June 2020; and
4.1.3 providing an unfair outcome to the grievance (and in particular exonerating LC); and
4.1.4 not addressing disclosures made by the claimant adequately or at all and subjecting him to detriment as a result of making them (the disclosures referred to are those set out above); and
4.1.5 being suspended without adequate reason; and
4.1.6 being referred to occupational health without any adequate reason.

4.2 By doing so, did it subject the Claimant to detriment?

4.3 If so, was it done on the ground that the claimant had made the protected disclosure(s) set out above?

6. The tribunal examined issues of liability only. In the event, judgment on liability was reserved and no evidence or submissions were received in respect of remedy.

The Evidence

7. The tribunal heard oral evidence from the claimant and from the claimant's witness, Jo Backstrom (JB). The tribunal also heard oral evidence from the respondent's witnesses: Anna Wheeler (AW), Jayne Davies (JD), Melanie Smith (MS), Sally Eaton (SE) and Clair Beaty-Pownall (CP). All witnesses were cross examined. For ease, each witness will be referred to herein by their initials. References to paragraph numbers within their respective witness statements will take the following format: [JD§2]. Both the claimant and the respondent's representative made closing oral submissions. The tribunal is grateful to both the claimant and the respondent's representative for their co-operation in working within a timetable to enable examination of the evidence and closing submissions to be completed and leaving sufficient time for the tribunal to undertake deliberations on the final day of the allocated listing.

8. There was a bundle of documents of 762 pages placed before the tribunal. Pages 763-781 were also provided to the tribunal which comprised an Excel spreadsheet (described by the parties as Appendix A, and referred to in a misconduct investigation report at [559]) and an "analysis" by the claimant of that spreadsheet. The spreadsheet contains summary details of emails and MS Teams chats. The claimant's analysis, for example at [774], provides further detail as to the percentage of emails vs Teams chats, and the frequency within which communications had occurred within 15 minutes of each other. The tribunal has not been provided with the underlying emails and Teams chats. The tribunal added an email dated 22 January 2021 [782] which was a disclosure during the Hearing from the claimant (without objection from the respondent). At [783], the tribunal added disclosure from the respondent (with no objection from the claimant) of an email dated 7 October 2019 attaching an email dated 22 May 2018 (already in the bundle at [238]).

9. The tribunal undertook some pre-reading on the first morning of the hearing. The tribunal was greatly assisted by a cast list and key documents list provided by the respondent and added to by the claimant, as well as a chronology of events provided by the claimant. Live evidence began in the afternoon of the first day, when the claimant gave evidence. The evidence was then paused in the light of a "housekeeping" matter that arose on the morning of the second day. The respondent disclosed a number of documents to which the claimant objected and over the course of the morning time had to be spent in resolving those issues. In the event no order of the tribunal was required. The respondent disclosed a WORD document which JD had created overnight when she had searched her own laptop and she copied newly discovered Teams chats and cut and pasted them into a WORD document. The claimant did not accept the veracity of the document and as a result the respondent agreed to provide the meta data properties for the WORD document (and did so at lunchtime on the third day of the hearing). In the event the tribunal

was provided with a copy of the meta data properties [for convenience, now identified as 785 – 789] but neither party placed before the tribunal the underlying WORD document created by JD. The claimant continued to dispute that JD could have created the document in the way that she had said and in particular that it was not technically likely that she would be able to do so in the format produced. When JD gave her evidence, she described the circumstances in which she discovered the existence of the communications on her own laptop and sought to create a single composite document. The tribunal accepted this explanation and consequently nothing has turned on the late disclosure. The tribunal has taken into account the fact that the respondent's position has been that a number of MS Teams chats had been deleted from the main server, but the tribunal is satisfied that there is nothing untoward with JD discovering those that remained on her own laptop and/or within her own Teams Chat function. It remains regrettable that it should happen in the course of the Hearing with obvious impact both on the claimant and on the potential progress of the Hearing itself. Finally, the claimant did not object to an email dated 4 March 2020 [for convenience, now identified as 784] relating to the welfare of a colleague and the subject matter of Disclosure 4.

10. On the third day of the hearing at the close of the evidence of JD, the respondent's representative sought to disclose a grievance policy of the respondent, the relevance of which was to confirm that at the time of suspension of the claimant that there was no requirement for him to be offered a right of accompaniment. The claimant objected. For reasons given orally to the parties at the time, and having regard to the evidence already given about JD's actions at the time, the tribunal refused the respondent's application admit the document into evidence.

Findings of Fact

11. The tribunal made its findings of fact having regard to all of the evidence and did so on a balance of probabilities.

12. The respondent is a Further Education College. It provides teaching and learning in a number of areas, or strands, these being Further Education (FE), Higher Education (HE), Adult and Community (AED) and Apprenticeships (APP). It is HE that features heavily in this case. "FE" is typically for the benefit of young adults aged 16-19yrs and entailed teaching and learning at levels 1-3 as awarded by Pearson, which is an accredited awarding body, and all under the regulation and oversight of OFSTED. "HE" is typically for the benefit of young adults aged 19+ yrs and learners undertaking a first degree. The respondent was able to take advantage of "widening participation" in education to enter into a franchise agreement with the University of Bath (UoB) to provide teaching and learning at levels 4-6, at a quality and standard that the UoB required in accordance with its franchise arrangements, and all under the moderation, approval and authority of UoB, as further explained by JD in evidence and at [JD§4].

13. The claimant was employed as a lecturer in IT/computing from August 2013 until 30 March 2021 when by email dated 30 March 2021, 13.20hrs [562], the claimant attached his "reasons for constructive dismissal effective immediately". The respondent did not agree that there was a constructive dismissal but did accept the resignation. It had paid the claimant a salary in respect of a period after that date but subsequently recouped it. 30 March 2021 is the date relied on in the claimant's ET1 and in his witness statement [C§1]. Neither party sought to argue for a different date of termination. As further set out below, the tribunal is satisfied that the effective date of termination of the claimant's employment is 30 March 2021 when communicated on that date in a letter and a covering email sent by the claimant.

14. The claimant describes significant work-related issues over a period of time. In his witness statement [C§3] he asserts that he was undermined by the respondent in order to protect the respondent's interest in its franchise provision of what he termed a "profitable but sub-standard HE program delivery" and also how Lyall Clarey (LC), an IT lecturer and HE program leader, was "instrumental" in undermining the claimant. The claimant was critical of the manner in which LC managed the teaching timetable. In early July 2018, the claimant wrote to LC concerning timetable issues [688] and LC was unhappy with the tone of his email. The claimant said to LC that "my tone is intended". This was brought to the attention of MS, a member of the respondent's HR function. This was her first interaction with the claimant [MS§3].

15. MS suggested a letter to be sent to the claimant. She drafted a short letter based on what she was told verbally by LC. That letter appears at various places in the bundle, including at [80]. It has throughout the hearing been described as "v1", or version 1. MS sent v1 draft to a number of people, including the head of Department, Paul Gilmore (PG) on 19 July 2018, at 14.11 hours [164]. The "v1" letter has been understandably referred to by the claimant as a "ban" on the claimant working in the HE provision.

16. In the meantime, a meeting took place on 17 July 2018, attended by the claimant and LC and PG. At this meeting, the claimant verbally expressed concerns about aspects of the HE provision. The respondent accepts that this conversation took place. The meeting was not minuted but on the following day LC wrote a detailed email setting out his "concerns" about the points that the claimant had raised in the meeting on 17 July 2018 [160]. The email contained bullet points reflecting what the claimant had said including that, "the quality of the course, claiming it had been dumbed down and is not fit (this is his opinion and not substantiated by the University for the external moderator)", and "challenging the teaching on units" and also "claiming that students come to see him" and "mentioning complaints".

17. The evidence of Jo Backstrom, an IT lecturer, was that when PG took over the IT department as interim Head of Department in July 2018, a number of members of staff in the IT department raised concerns such as the correct staff in the correct units and levels, complaints and students and the marketing situation and the Department. The concerns that the claimant raised reflected those that were being raised by others within the IT department. Mr Backstrom confirmed that after he had

raised concerns in July 2018, he was not subject to any detrimental action. He also confirmed that, apart from professional disagreements, the relationship between the claimant and LC was "carried out professionally by both of them".

18. The email at [160] is persuasive evidence that the claimant did raise concerns during the meeting on 17 July 2018. The tribunal finds that the claimant did verbally state to PG that a teacher had failed to mark student work for three years in digital graphic; that assessments have been dumbed down and were unfit for University Level credits, and that a complaint had been made by a learner. The tribunal finds that when the claimant did so he had a strong belief in the best interests of the learners and of ensuring that they had the best possible learning experience. He expressed the view, for example, that learners were not learning in their assignments based on the latest technology (Disclosure 1).

19. The claimant did not receive a copy of the email at the time and did not discover it until May 2020 in connection with a redundancy process at the respondent and the claimant's request for access to documentation on his personnel file. It was thus apparent that [160] was placed on the claimant's HR file. There is no clear evidence as to who did that, but the tribunal draws no adverse inference from that. MS states that she believes that HR staff must have been given a physical copy for placing on the file for future reference. When challenged about that view, she said that the email was relevant because, for example, if the issues arose in the future then it could be seen that they had been raised by the claimant. MS said that she would always keep such documents on file. MS believed the document to be accurate given it was a contemporaneous note by LC. The [160] was subsequently removed from the claimant's HR file in January 2021 [782] by CP. She too was challenged about the document particularly because in the email she said that she did not "see the relevance". She said that she removed it because it was "outdated" (three years on) and in the interests of "moving forward" with the claimant's issues. Further, JD was questioned about [160] and she also said that it was appropriate that it was on the HR file because, "if lots had gone wrong, we would see that you'd told us before….".

20. The claimant describes the email at [160] as a "retaliatory email". By contrast, MS thought that it was "relevant and accurate" because it was an expression of opinion by a manager at the time. The tribunal pauses to note that it has in fact been useful to the claimant in this case as it has assisted him in establishing the disclosures that he made to LC on 17 July 2018. The tribunal does not accept that it can fairly be described as a "retaliatory" email. It expresses LC's opinion on the face of it for legitimate management and HR purposes. JD does however acknowledge that it "could" be detrimental to the claimant given that it did express a person's view about the claimant. JD said that, following [160], she spoke to LC and would also have "followed up with appropriate managers" to see what might be relevant, for example in respect of the specific processes referred to by the claimant. JD says that she had numerous conversations with the claimant over the period.

21. JD says in her witness statement, at [JD§4], that she was involved in discussions with LC arising from those concerns and describes how the respondent is heavily scrutinised by UoB and "if such concerns existed" then they would have been picked up by UoB. From that, the tribunal concludes that JD did not require an investigation. JT describes that she had numerous informal conversations with the claimant over the period of time that he raised and the claimant does not suggest that he was treated detrimentally by JD. In response to the specific question of whether it was "correct to investigate" the comments raised by LC as reflected in [160], she responded: "yes, but only if proof was required; but we have not had issues with the claimant's teaching". Further, the tribunal notes that in April 2019, the claimant was graded as excellent in his annual performance review [149].

22. Meanwhile, on 20 July 2018, LC had amended the "v1" letter [163]. He did so, "to show that we are working on getting Steve on the HE provision not blocking him". The email has been described at the hearing as the "v2" letter alternatively the "Lyall amendment" letter.

23. The claimant's witness statement at [C§31] states that he was handed the "v1" letter before raising his grievances at the 17 July 2018 meeting. That seems unlikely given the date of MS's sharing of the draft on 19 July 2018, and also the inference from LC's email [163] that the document had not been provided to the claimant pending amendment. LC noted that the claimant was "off until the 20th"; the claimant agreed that he was not at work until 20 August 2018. Further, the request for an update from MS was made on 20 August 2018 [164].

24. The tribunal accepts that the claimant was given a version of the HE letter by PG. This was in either July or August 2018 and the claimant took the letter to read it and interpreted that there was a "ban" on HE. It is not clear whether the claimant was given "v1" or "v2" but in either event he handed it back; he believed that he had been restricted in teaching on the HE strand. Following the update request on 20 August 2018, MS said that she did not hear further. MS therefore put the updated version (v2) on the claimant's HR file and marked it as DRAFT. She did not remove v1 from the claimant's HR file. In those circumstances, there remained both v1 and v2 versions of the letter on the claimant's HR file. The tribunal finds that each version contained the "DRAFT" watermark. Typically the HR file was accessible only by HR although it can be inferred that the claimant's managers would be likely to be able to access the file in appropriate circumstances.

25. On 5 April 2019, a report was received by HR, following an investigation under the Dignity at Work procedure into an allegation that the claimant had caused offence to a colleague by the tone and language used in emails [166]. The conclusions of the report, at [168], evidence that the colleague was upset and offended by the claimant's communication, both face-to-face and by email. The claimant throughout the process and at tribunal, rejected those conclusions and remained steadfast in his view that he did not accept the outcome of the report or that the colleague had the right to feel the way that she did.

26. Following the outcome of the investigation, the claimant says that MS had sent him a summary and suggested to him that the claimant's manager would need to talk to him about the way that he "communicated in the office". The claimant did not answer MS and considered that there was no issue with communication in the office. The claimant stated in evidence that he inferred that there must have been a statement provided by a witness and that the statement would have been false because there was no issue with communication in the office. MS in turn did not recall any conversation of this type with the claimant at that time. The claimant maintains that he made a disclosure to MS on 10 June 2019 (Disclosure 5).

27. On 10 June 2019, at [226], MS did inform the claimant that there were "some recommendations which your line manager, Daisy Walsh will talk to you about on a 1-2-1 basis". The claimant responded by stating that he was not expecting any action as the evidence was "indisputable" that he did not apply any pressure to the colleague. MS further responded by saying that recommendations will be taken forward by HR. The claimant had further communication with MS on 4 October 2019, at [239], in which he challenged the evidence of the investigation and disputed that he had "pressured" or "pushed any opinions onto anyone else" and asserted that, "I believe this may have been an unrelated and un-evidenced comment potentially from someone, a witness perhaps of someone being investigated, who may have been opportunistic and held a personal grievance against me".

28. Another communication with MS, this time on 12 December 2019, at [248], requested an update on a number of outstanding concerns. This email, similar to a number of others, contains communications between the authors and is set out in different colours for differentiation purposes. In that email, at the second bullet point the claimant states, "can I ask again about the investigation regarding the HE letter on my file? I maintain it was a fraudulent letter likely produced in consultation with LC to obstruct my progression within HE lecturing and to potentially deliberately mislead management into approving a SAFF for James Barron at that time that subsequently has led to the unresolved redundancy situation we face as a team". (Disclosure 2). In evidence, the claimant said "I had a deep suspicion that my progress was being impacted" and that the fraud was the misrepresentation by LC that he had consulted with the UoB. The claimant said in evidence, "I have requested evidence of LC'S contact with UoB and there is none".

29. The reference to the HE letter is to the v1/v2 letter. The email of 12 December 2019 does not identify which of the versions is referred to. The claimant's evidence (see above) was that he was given v1 in July 2018 and, having seen it, he handed it back. In fact, in September 2019, the claimant was provided with v2 following a request for a copy of his personnel file for the purposes of a redundancy process that was taking place. He had requested this from MS. The tribunal accepts that MS located a copy of the HE letter on her own laptop (in her words, "I sent you a version from my own folder") and upon doing so she had watermarked it as "COPY"" and scanned it and sent it to the claimant. It was in those circumstances that he came into receipt of v2 and marked as "COPY". Later, in circumstances set out below, the claimant also came into receipt of v2 when JD had accessed the file in 2020 and the

document that the claimant received was the one placed earlier on the HR file by MS and which was watermarked as “DRAFT”. The tribunal sees nothing untoward with these events and it explains why v2 has been variously marked COPY and DRAFT.

30. In those circumstances, in December 2019, the claimant asserted to MS that the HE letter (i.e. v2, “COPY”) was fraudulent. In evidence, the claimant asserted that it was “fraudulent” because it had plainly been updated to permit the claimant to do level 4 teaching which , (i) had an ulterior motive simply to suit/ameliorate the timetabling “chaos” orchestrated by LC and/or (ii) LC could not have “secured agreement” with the UoB in the 24 hours that it took for him to receive a draft of the HE letter (19 July 2018) and to respond to MS with proposed amendments (20 July 2018).

31. The tribunal recalls that the changes to the letter were done by LC as described by him in his email dated 20 July 2018 [163]. Further the tribunal noted the email from UoB dated 22 May 2018 [238] evidencing LC’s communications with UoB to establish relevant criteria required by UOB for teachers to be able to undertake HE provision and that LC had forwarded a copy of this email to MS in October 2019 [783] which explained why MS was in possession of the email when it was disclosed (erroneously in the belief that it had not previously been disclosed) in the course of the Hearing.

32. As at 12 December 2019, the respondent’s position, as explained by MS at [249], was that the claimant had been issued with a copy of the HE letter but that it was unlikely that it could be removed from his file. He was entitled to have his challenge/objection kept alongside the letter so as to reflect his disagreement.

33. In early 2020, the Covid pandemic emerged and by March 2020, the respondent (as with other organisations) was required to undertake significant actions to manage the unfolding crisis. In March 2020, the respondent was closed (save for a designated safe space) and employees were required to work from home.

34. In March 2020, the claimant raised concerns with JD concerning one particular colleague who was considered vulnerable and who suffered from significant health conditions. (Disclosure 4).

35. JD accepts that the claimant had appropriate concerns about the welfare of the colleague. At [JD§10], JD states that the claimant had “sent” through his concerns. This implies email communication. The tribunal has not seen email communication from the claimant. Nevertheless, the claimant asserted that he raised verbally with JD the following concerns about the colleague and JD accepts that the claimant did verbally raise concerns: that the colleague had been impacted by LC’s handling of timetabling; that it was timetabling “chaos”; that the colleague needed structure and that the claimant had noticed that the colleague was stammering and that this may be caused by anxiety exacerbated by the timetabling circumstances.

36. JD was challenged about paragraph 12 of her statement. She confirmed that at the time of the communication with the claimant, in March 2020 she thought, “fair enough, you have concerns”. It was only later, when she felt that the claimant had used the unfortunate death of the colleague as a means of criticism of the respondent, that she considered that the claimant’s actions were “despicable”.

37. In March 2020, the respondent was in the midst of the unfolding pandemic. However, the claimant was adamant that his disclosure was not related to Covid but instead was to do with the manner in which the department was being managed and in particular the “management by chaos” of LC who, for example, would resort to timetabling in a manner that caused upset and unrest.

38. At the time, in March 2020, the respondent was already aware of the individual circumstances of the colleague and, for example at [784], had been engaging with the colleague concerning his work and any adjustments that he might require. The colleague had expressed appreciation. The claimant was not aware of that communication because perfectly understandably, it was “none of his business” (in the words of JD). Indeed it is apparent from MS, at [MS§16], that the colleague did not wish to be involved/copied into communications generated by the claimant and was not comfortable in saying so directly to the claimant. As a result MS communicated a generic-style request to the claimant not to copy in other members of staff. MS describes that the claimant would send significant numbers of emails and that if she did not respond immediately then he would send more emails; if he did not agree with her responses then he would just continue to email the same questions. In one week he sent 20 lengthy emails and on one day alone he sent 8 emails [MS§15].

39. In the course of June 2020, and at the height of lockdown, a conversation took place via MS Teams between JD and the claimant. The claimant had requested the contents of his HR file and the file had been obtained with some difficulty in the light of Covid restrictions. At the Teams meeting, a verbal conversation ensued in which JD identified to the claimant that there was an HE letter on his HR file and when pressed, that there were in fact two versions of the HE letter on his HR file.

40. The claimant alleges that on 7 June 2020 he verbally disclosed to JD that the HE letter was fraudulent (Disclosure 3). JD does not recall the claimant asserting a view about the letter. Her statement, at [JD§13-14], asserts that the claimant appears to be basing his “claim” simply on the differing watermarks on the letters. This is not the basis of the fraud that the claimant believed that he had disclosed to MS. The tribunal is reminded that Disclosure 3, as set out in the List of Issues, at [95], is that “on 7 June 2020 Disclosure 2 was repeated to JD”. The claimant, at [C§99-106], recites the events around the Teams conversation with JD. Even assuming it to have taken place on 7 June 2020, the claimant does not assert that he disclosed to JD that the HE letter was fraudulent.

41. In the claimant’s witness statement, at [C§111-2], the claimant states that, “as soon as I got the documents I prepared a Stage 2 Grievance”. The List of Issues, at [96],

refers to a grievance on 10 and 16 June 2020 but it is common ground that the pertinent grievance is the one at [740], dated 16 June 2020. In his witness statement, he states that he had worked with HR to understand how his file had been manipulated and how the drafts had ended up on his file. It is evident that the veracity and validity of the HE letter(s) was of utmost concern to the claimant. The subsequent paragraphs, at [C§112-121], confirm the strength of feeling of the claimant regarding the HE letters. In his formal grievance [740], the claimant describes the "nature of the grievance" as; "LC's misrepresentation of a Bath University denial/consent to teach (and subsequent manipulation of the same) which in my view was to favour the appointment of another member to build a personal team on HE to disrupt my progression within my HE specialisms and hindering my career". His detailed grievance was complex and factually dense, extending to 14 pages (223 paragraphs) and supporting documentation. At [741], the claimant divided his grievance into (1) background, (2) the HE context, and (3) reputational damage.

42. The grievance investigators were Jon Domaille and Sally Eaton (SE). The investigation report is dated 24 September 2020. That length of time was determined by logistical issues presented as a result of Covid and the summer leave for key members of staff. The claimant has no complaint about this timeframe and the tribunal agrees.

43. SE had identified that the grievance essentially contained 2 "strands", at [SE§8-9]. This was done in order to "distil" the grievance into a "manageable" exercise. SE considered that the thrust of the grievance was that, firstly, LC had misrepresented the position of UoB in respect of HE teaching, with the aim of hindering the claimant's progression and that secondly, there were inconsistencies in the HE letters. The tribunal accepted SE's evidence that the investigators had genuinely sought to address the claimant's concerns as they thought them to be.

44. The report at [355] was disclosed to HR at the end of September 2020. At that stage it was being managed by Barbara Owen, but she was shortly to leave the respondent. The report, at that time, ended mid-way on [358]: the "comments" and the "recommendations" were added later in the following circumstances.

45. On receipt of the investigation report at the end of September 2020, HR reviewed the position. At this time Ms Owen was shortly to leave (and at [360] apologised to the claimant for some ensuing delay), and her successor was CP. CP needed time to update herself with regard to what was a complex case. CP worked two days per week, which contributed to the resulting delays. The situation was further complicated by the fact that CP continued to receive numerous emails from the claimant which resulted in her getting "bogged down". Despite that, the claimant and CP undertook at least 2 detailed MS Teams meetings on 5 November 2020 and 18 of November 2020. These meetings reflect the fact that HR were heavily involved in facilitating a way forward and this included communicating with the claimant. In the event, CP discussed with the investigators the need to make recommendations. The

comments and recommendations, seen at [358], were discussed between the investigators and CP and were approved by the investigators in conjunction with HR.

46. Those recommendations were the subject of cross examination of both SE and CP. The report notes that the claimant was scheduled to start teaching in the HE provision from January 2021. The report also notes that the respondent was looking at the transparency of information provided to and discussed with UoB. The recommendations required CP to remove the HE letters from the claimant's HR file, which was described in the Hearing as upholding the claimant's grievance. The recommendations also required the respondent to undertake a review of HE provision including timetabling and career progression. These could similarly be described as upholding the claimant's grievance.

47. The claimant made a specific complaint in his cross-examination of SE: that she had not acted upon the evidence provided by a previous colleague, set out in summary form at [357], that the relationship between the claimant and LC suggested potential bullying and undermining of the claimant. In response, SE stated that the former colleague was not further interviewed as she had left the organisation 4 years previously and in any event the grievance report did expressly identify both the existence of a "negative relationship" between the claimant and LC and also (in a way that was plainly beneficial to the claimant in his grievance) that, "there has been more than one ineffectual manager in the Department to appeared to be "easily led" by LC regarding timetabling and any consequent issues raised by staff… two previous managers were regarded as over reliant on the views of LC and/or unable to deal with conflict… Further fuelled this sense of non-transparency and timetabling" [358]. Properly analysed, the grievance outcome did not exonerate LC. What it did not do however was to recommend disciplinary action against LC. The report expressly stated that it was, "unable to conclude that there is evidence to suggest that the letters of communication prepared for the claimant regarding delivery on HE were tampered with to the detriment of the claimant" [358].

48. The grievance was not a "dignity at work" grievance, a process that the claimant was familiar with but did not quote or utilise. The nature of the grievance, evident from its outline at [740] and in its subsequent paragraphs, was not an express complaint of bullying and harassment by LC but was in fact a complaint arising from an act of misrepresentation impacting upon the claimant's HE progression.

49. The claimant requested the outcome of his grievance. He sent numerous emails to CP, including those described by her in her witness statement at [CP§10-12] which attest to the challenges that she had in managing the grievance process and its outcome. On 16 December 2020, the claimant was informed that he would receive an outcome on 22 December 2020, which he duly did [401]. The claimant has subsequently argued that CP/HR should not have "interfered" in the grievance process. The tribunal accepts the legitimate role undertaken by HR in the investigation and recommendation process. The recommendations were approved by the investigators.

50. Following receipt of the grievance outcome, the claimant raised an appeal on 4 January 2021 [404].

51. The following day, on 5 January 2021 the claimant had a MS Teams meeting with Rachel Matthews (RM), a manager of the respondent's HE and Digital provision. The transcript of the meeting appears at [412]. The claimant alleges that he made a disclosure regarding the HE provision to RM (Disclosure 6).

52. From the outset of the meeting it is plain that the claimant was raising his concern that the assignment specification had been changed in such a way as to make it easy for success ("… The assignments being changed in such a way that students can achieve 70% of their grade without building a website and I think that's absolutely ridiculous….." para 7). RM does not appear to dispute the claimant's genuine concern but she reiterates that UoB is, "the most rigorous university I've ever worked with" and any specification changes could not be done without their oversight and approval. At paragraph 19, at [413], the claimant states that, "LC he's been changing the [course] to dumb them down to make them easier to pass" because, at paragraph 25, "he doesn't want any skilled staff in the course he is happy to have unskilled lecturers which puts him in a position where he looks like he knows what he's doing but he's 10 years out of date with web development…". See also paragraph 31 at [414] and paragraph 49 at [415]. At paragraph 67, at [417], claimant identifies that the mock exams contain the same questions as the actual exam, "word for word, now that horrendous". The claimant in his evidence also referred to paragraph 125, at [420], which expresses that the actions of LC have been to influence the UoB to award a qualification at first class on a course that "doesn't even need any person to build a website" and that this is "academic fraud".

53. Unsurprisingly, given this transcript, the respondent does not deny the conversation. In terms of the claimant's disclosure claim, the respondent contends that the claimant had not made any disclosure in the public interest as it was for his own purposes (criticism of LC) and in any event that he had no reasonable belief given that the subsequent investigation did not find concerns.

54. The claimant expressly described these comments as "protected disclosure", at [422]. The respondent instigated an investigation, which was undertaken by Louise Rawlings (LR) and is headed "Confidential report in response to [Claimant]: Public Interest Disclosure Policy and Procedure. Concerns:…". The respondent evidently treated it as a whistleblowing disclosure and carried out an investigation on that basis ("the Whistleblowing Investigation").

55. The claimant had a meeting with CP on 14 January 2021. He alleges that at this meeting he disclosed to CP that he was "suffering undue pressure following Disclosure 6 and that the respondent failed to follow its whistleblowing policy" (Disclosure 7). A transcript of this MS Teams meeting is at [440]. The conversation relates to the claimant's ongoing concerns regarding the HE provision. At paragraph 6, CP stated, "… I spoke to Kate about this and this is the problem that sits with UoB are not us…" The claimant responds, at paragraph 7, that "… We are a franchise

and written in the franchise documents for the learning partnership is that the college is responsible for the quality of the provision of a franchise program, the University of Bath do oversee it and they review it but they may not realise everything that is going on, because we might not tell them all we might not disclose stuff that actually they need to be aware of, and that's against the franchise. CP stated, at paragraph 8, "… So in that case you need to take that with Bath (University) because I spoken to Kate length today… You need to take that with University of Bath, Kate is been very clear today… take that up with them…"

56. CP's position is reiterated in paragraph 34, at [442], and the claimant's position by contrast appears at paragraph 33, where he expresses his view that it is "terribly unfair" because he is raising a concern and if the college agrees with his concern then it is the job of the college to raise it and not to require the whistle-blower to take it directly to the University. The claimant subsequently reflected on the meeting when he wrote to CP the following day, at [446], in which he said, "Clair apologies on another email, I understand you feel they are excessive however I have explained before that I think in chunks to evaluate and rationalise the information I receive…… The college policy is very clear on [the WB] process, and in any matter I have advised you that I felt pressured from what you relayed very assertively about Kate's position on this matter" namely, that the claimant was required to take the matter up directly with the UoB.

57. It is apparent that the pressure that the claimant felt arose in no small measure because of the apparent inconsistency in approach of the respondent: by email dated 18 December 2020, at [393], KH had informed the claimant that if in fact he felt it necessary to pursue his concerns directly with UOB then, "… it would be addressed this [sic] with you formally" because the respondent had clear communication channels with UoB.

58. CP reflected on this exchange and came to the view that the claimant was correct in his assertion. CP discussed the matter further with KH. By email dated 22 January 2021[466], CP clarified the position with the claimant and said that the claimant's concerns "should be looked at by the college and not UoB". CP reinforced this by offering that there were some issues in regards to KH's understanding of the policy which she needed to "digest further" and that, "at no time was she putting you under undue pressure not to make this disclosure…".

59. The impact that these events were having on the claimant is apparent from the fact that he sought guidance from the student welfare officer [462] and he also advised his manager that he could not teach on HE whilst the matters remained unresolved [458]. The claimant wrote a detailed six page letter on 16 January 2021, which he himself has termed, "risk of harm, impact on claimant's well-being" at the top of [453], and which identifies that the claimant felt at risk of harm. This was subsequently described by CP as an "at risk" letter. The claimant describes in his witness statement, at [C§193], continuing pressures that impacted on his welfare.

60. Notwithstanding the institution of his grievance appeal and the Whistleblowing investigation, the claimant continued to write a series of emails to CP, some of which are to be found between [450 – 465]. On 22 January 2021, CP sent an email to the claimant, as follows:

> "Steve, at the moment the amount of emails that you are sending staff (in particular myself, Rachel and Kate) is disproportionate and the tone of your emails often shows a lack of mutual respect in line with the Staff Code of Conduct. I would ask that you allow us to make headway with the two points above as we cannot move forward on either until you refrain from constantly sending emails with questions and asking for further information that I need to keep looking into. I have asked this of you on several occasions before. All it is doing is prolonging the process and an outcome and in my opinion I feel that is it is beginning to hinder the progress of these two matters above stop it is also impacting on the well-being of college staff at a time when we all under pressure as a result of the pandemic" [466]

61. Despite the request to refrain from sending emails, CP received numerous further emails. The claimant did not dispute sending further emails. In evidence and in cross examination of CP he sought to justify the reasons for sending emails. In one of those, at [702], the claimant repeated his concern that there was, "nothing being done to protect me from harm (i.e. being part of the HE strand while being intimidated and undermined)"

62. On 28 of January 2021, the claimant attended a meeting with JD and CP. The claimant was informed that he was suspended on full pay. The claimant (as acknowledged [C§209] in his witness statement) was told that he was suspended for sending too many emails. This too is reinforced by the minutes of the meeting, in particular at paragraph 68, at [492] and paragraph 84, at [493].

63. The claimant asked about the reason for his suspension: at paragraph 32, at [491], he asked, "to be clear are we suspending for whistleblowing?". The response was clear: at paragraph 30, "JD: - grievance appeal and protected disclosure investigations will continue as planned"; and at paragraph 33, "JD- the WB and appeal will carry on whilst suspended; and at paragraph 35, "JD - this suspension has no relevance to WB".

64. The claimant received a letter of investigation the following day on 29 January 2021, at [488], in which he was informed that an investigation will be conducted into an allegation of misconduct, specifically, failure to adhere to reasonable management instruction to limit email correspondence. That written communication removed any ambiguity that there might have been in the stated reason. The claimant was told that although he did not have the statutory right to be accompanied to the investigation meeting nevertheless the respondent would allow him to be accompanied. The claimant had complained that he had been refused a "witness" [490] at the suspension meeting on 28 January 2021. The tribunal accepted the evidence of JD that her genuine belief at that time was that the claimant had no right

to accompaniment at a suspension meeting. The grievance policy within the bundle suggested that he might have had such a right but there was some ambiguity as to whether it was merely a “draft” policy and not in force. When the claimant subsequently commented on the meeting notes, on 2 February 2021, at [489], the claimant does not make reference to the issue of accompaniment but instead seeks to emphasise and to justify his reasons for having to “send so many emails explaining exactly why I felt at risk leading up to the teaching I was expected to do in HE".

65. A misconduct investigation was then undertaken by Justin Haskins and by AW. AW gave evidence. She emphasised in her evidence, and as is apparent in the form of her report, that her remit was limited to the impact of the correspondence which staff have found to be overwhelming and detrimental to their work.

66. The decision to suspend was taken by JD. She was an appropriate person, with appropriate seniority, to take the decision. HR recommended suspension to JD but the tribunal is satisfied that JD was capable of, and did, take the decision herself. The tribunal finds that the reason that JD suspended the claimant was in order to carry out a misconduct investigation into the claimant’s failure to adhere to reasonable management instructions to limit his email correspondence. Those management instructions had taken the form of numerous verbal instructions from CP and in writing on 22 January 2021. Further, for example as set out in his email dated 2 February 2021, at [489], the claimant understood this to be the reason for the suspension and the resulting misconduct investigation. Throughout that time, the claimant maintained that there was justification for his communications.

67. The tribunal is satisfied that JD gave careful consideration to alternatives to suspension. It was not feasible simply to “require” the claimant more formally to desist from email communication as this would simply have been ignored by the claimant. Nor is it feasible to restrict, or suspend, the claimant from part only of its role. JD stated that she needed to ensure that there were no unintended consequences. In other words, although she fully accepted that there had been no evidence of the claimant communicating with the student body, nevertheless given the (as JD perceived it to be) erratic and aggressive behaviour of the claimant then in order to mitigate against the risk of it “bleeding into the student body” it was necessary to suspend the claimant pending investigation. In her own words, the focus of JD was “on the student body” interests.

68. On 29 January 2021, at [485], the claimant was sent an email by MS entitled “occupational health referral”. In it, MS informed the claimant that she had been asked to refer the claimant to OH. She attached a referral form. She specifically said that the claimant could submit a statement or additional information to be sent along with the referral form; she also said, “if there are any factual inaccuracies on the form, please contact [email] with the changes that need to be made”.

69. The attached form can be seen at [725]. The claimant challenged the contents in specific ways, namely, at [726], it recorded that “the grievance was dealt with”

whereas the claimant believed that it had not been addressed properly. This objection of the claimant was unreasonable given the follow-on comment that "… An outcome sent to Steve; Steve was dissatisfied with this argument has appealed". Secondly, the claimant challenged the contents, at [727], which recalled that the claimant "cannot teach at HE any longer despite this being the area he wanted to teach within, due to being the subject of harm and that this is affecting his health, we are unsure what this means…" (emphasis added). The claimant objects because he believes that given the copious communication between the parties there was no reasonable room for the respondent to be "unsure". Undeniably though, the proposed referral makes reference to seeking advice to, "support Steve through this time as I am sure the suspension may cause anxiety and worry".

70. The claimant responded in a detailed email, on 2 February 2021, at [519], containing what he has described as a 20 point summary. Despite the length of the email, the claimant purports to argue that matters are not complicated at all and that there was no requirement for the occupational health referral, at [520], if only the respondent would simply, "allow me to stay out of HE or if HR expeditiously resolve the Grievance Appeal and the disclosures based on the actual evidence. I shall advise also that I will politely not sign the Occupational Health Referral in its current form as the summary (intentionally or not) is misleading, distorting facts and therefore not accurate".

71. By reply, on 3 February 2021, MS confirmed that the claimant would not sign the referral form. In evidence MS accepted that she could have gone back to the claimant regarding a potential referral. However she anticipated that it would result in further extensive emails, and therefore the decision was taken not to refer the claimant to OH. At no point has the claimant complained about the resulting lack of referral to OH.

72. The suspension continued. The claimant was subject of a fact-finding interview in the misconduct investigation with AW on 10 February 2021. The claimant alleges that he disclosed to AW that he had been wrongly and unfairly suspended because of his whistleblowing (Disclosure 8). The transcript of the meeting (recorded without obligation to do so, but at the request of the claimant) is at [502]. At paragraph 19, at, [503], the claimant states that the suspension is linked to his whistleblowing. When asked in evidence why that might be regarded as a disclosure in the public interest, the claimant described how the learners that he had been teaching were under pressure to complete UCAS applications and that the claimant himself was in the course of managing a number of assessments/major project into web development, so that the impact of his suspension was that there was a significant adverse impact on learners.

73. The grievance appeal proceeded. The respondent concluded that due to the amount of people that had been involved over a period of time with the claimant's concerns, that it was preferable to instruct an independent investigator for the purposes of the appeal. The claimant objected: the claimant considered that there were other managers within the respondent that would be able to deal with the appeal. The

respondent disagreed: in evidence, CP stated "because the appeal needed both time and independence, I believe that the best outcome was to outsource that for independence……the reason why it was external was because the information was so vast and complicated that I didn't think that management on site would have the time to dedicate to it or, in fairness to the claimant, look at it objectively". The tribunal accepts that as a genuine and reasonable assessment of the situation.

74. The claimant sought to argue that "it could not be dealt with objectively by someone outside of the organisation". The tribunal rejects that: a competent external investigator could and would no doubt undertake such factual enquiry as was needed in order to understand the complex factual situation and then reach an objective view. The claimant argued that the disclosure of information to the appointed external investigator, Beth Parsons (BP), was a breach of his data protection rights. The claimant was informed of the disclosure on 23 March 2021, at [684] and he raised his objections. There was extensive challenge in the Hearing about the respondent's compliance with its data protection Privacy Notice, at [676-680].

75. At [680], the Notice provides that respondent was entitled to share the claimant's personal data with third parties outside the respondent in circumstances without his consent if the disclosure was in the legitimate interests of the college. The tribunal finds that the disclosure to the external investigator for the purposes of undertaking the review process under the claimant's Grievance Appeal was disclosure in compliance with the Privacy Notice (notwithstanding that it was without the claimant's consent) because it was in the legitimate interests of the respondent to ensure that the claimant's concerns were uncovered and investigated transparently, independently and objectively. The tribunal also noted the claimant's inconsistent complaint that LR should not have been instructed to undertake the parallel Whistleblowing Investigation because she did not seem to have the time to do so and even to the extent, according to the claimant, that she was required to work on it "over the weekend".

76. The whistleblowing investigation proceeded. The investigator, LR, was in communication with the claimant, as is apparent from a number of texts. The claimant was aware of the progress of the investigation. The resulting report is dated 24 March 2021 [541]. The claimant was aware of the report on or by 30 March 2021 as is apparent from a text exchange on [561]. He expressed the view that he, "was largely happy with your investigation outcome". The outcome disclosed no concerns albeit that the claimant has, in the course of this Hearing, contended that the substance of the investigation by LR focused on the wrong unit (level 4) instead of level 6. At the Hearing the claimant suggested that he felt that LR was "under pressure" to produce the outcome, but the tribunal saw no evidence of that.

77. On 30 March 2021, by email at 13.20 hours, at [562], the claimant wrote to CP stating, please find attached my reasons for Constructive Dismissal effective immediately". Attached was a detailed letter, at [562-4]. The stated purpose of the letter was to "communicate my views about my continued employment with the

business concerns that I have in that respect" and that "I have completely lost trust and confidence in management's ability to support me or my students properly and fairly in my return to work. I feel there is a fundamental breakdown of my working relationship…". The letter concludes that "you will appreciate that this has been a very difficult decision being forced to leave a role and I dearly loved…". The tribunal finds that the 3 key aspects which underpinned the letter are: (i) "knowingly misleading" Occupational Health referral; (ii) being "suspended on full pay indefinitely… following my public disclosures and requests do not have to teach in the HE strand"; (iii) the respondent "repeatedly insisting on a process to have an external contractor" and thereby "shared my personal detail with that contract without my consent and instructed me to engage with her before my appeal will progress".

78. The respondent treated that as termination of the claimant's employment. Although the claimant did subsequently receive salary, there was a recoupment of his salary. The respondent did not accept the letter from the claimant dated 30 March 2021 as a constructive dismissal but it did accept it as a resignation. The date of termination of the claimant's employment is 30 March 2021.

79. At that point, the claimant did not know the outcome of the AW misconduct investigation. In a report dated 25 March 2021, there was a recommendation of the investigators that, "the claimant should be invited to a Disciplinary Hearing to address the pattern of communication which has been damaging to colleagues both professionally and personally" [552]. The claimant was not made aware of the outcome until after the termination of his employment when the report was subsequently disclosed to him sometime later in 2021 as part of an ICO process. The investigation did not proceed to a hearing (with or without the claimant) and as far as the tribunal is aware no outcome was reached.

80. The claimant commenced the Early Conciliation process with ACAS on 1 April 2021. The ACAS EC certificate is dated 6 April 2021. The claim form was presented on 5 May 2021.

The Law

81. The law relating to constructive dismissal is well settled. See Western Excavating v Sharp. In order for a claimant to succeed, it must be shown:

    81.1. That there was a breach of contract so serious as to entitle an employee to resign from his employment;
    81.2. that resigning was (at least in part – see Wright v North Ayrshire [2014] IRLR 4 - in response to the breach of contract; and
    81.3. that in resigning the claimant did not delay or act otherwise so as to affirm the breach of contract.

82. A claimant who relies on a breach of the implied term of trust and confidence needs to establish conduct which amounts to a breach of an obligation that the employer will not, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee: Malik v BCCI [1997] IRLR 462.

83. The focus is on the conduct of the employer. Subjective intention is irrelevant: Leeds Dental Team Ltd v Rose [2014] IRLR 8; it is for the tribunal to assess whether the employer's acts or omissions, when considered objectively, amount to conduct in breach of the term of trust and confidence. That said, there is no rule as to what might or might not be a breach: in Leeds Dental, "the circumstances are so infinitely various that there can be and is no rule of law saying what circumstances justify and what do not", and that "in other words, it is a highly context-specific question".

84. The "last straw" need not be of itself a breach of contract but must when viewed in conjunction with other facts be considered sufficient to warrant the resignation to be treated as a constructive dismissal. Such a last straw might not always be unreasonable but it must be an act in a series whose cumulative effect was to amount to a breach of the implied term and the act must contribute something to the breach: Omilaju v Waltham Forest [2004] EWCA Civ 1493.

85. The law relating to protected disclosures has a firm statutory basis.:

> **43BDisclosures qualifying for protection.**
>
> (1)In this Part a " qualifying disclosure " means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—
>
> (a)that a criminal offence has been committed, is being committed or is likely to be committed,
>
> (b)that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
>
> (c)that a miscarriage of justice has occurred, is occurring or is likely to occur,
>
> (d)that the health or safety of any individual has been, is being or is likely to be endangered,
>
> (e)that the environment has been, is being or is likely to be damaged, or
>
> (f)that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed
>
> **47BProtected disclosures.**
>
> (1)A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.
>
> **48 Complaints to employment tribunals**
>
> (1A)A worker may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of section 47B.
>
> **……**

> (2)On a complaint under subsection… (1A)… it is for the employer to show the ground on which any act, or deliberate failure to act, was done.
>
> (3)An employment tribunal shall not consider a complaint under this section unless it is presented—
>
> (a)before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or
>
> (b)within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.
>
> (4)For the purposes of subsection (3)—
>
> (a)where an act extends over a period, the "date of the act" means the last day of that period, and
>
> (b)a deliberate failure to act shall be treated as done when it was decided on;
>
> and, in the absence of evidence establishing the contrary, an employer, a temporary work agency or a hirer shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.

86. The tribunal is mindful of the proper approach to dealing with a multiple PIDA detriment claim as identified in Blackbay Ventures Ltd (T/A Chemistree) v Gahir [2014] IRLR 416 requiring a tribunal to identify each disclosure relied upon together with the alleged or likely failure to comply with an obligation and to identify the nature of the obligation; to address the basis upon which the disclosure was said to be protected and qualifying; to determine whether the claimant had the necessary reasonable belief (Babula v Waltham Forest College [2007] IRLR 346) to determine, as appropriate, whether the claimant acted in good faith or whether the disclosure was made in the public interest (Chesterton Global Ltd (t/a Chestertons) and anor v Nurmohamed (Public Concern at Work intervening) 2018 ICR 731, CA); and where a detriment short of dismissal was alleged, identify the detriment and the date of the act or deliberate failure to act. The tribunal also notes that two communications can be aggregated so that together they convey sufficient factual content to establish a qualifying disclosure, the factual question (Simpson v Cantor Fitzgerald Europe [202] EWCA Civ 1601) being whether they can be read together.

87. In Cavendish Munro Professional Risks-v-Geduld, it was held there must be a disclosure of facts not simply voicing a concern, raising an issue or setting out an objection. In Kilrane-v-London Borough of Wandsworth [2018] ICR 1850, the Court of Appeal held that 'information' in the context of section 43B is capable of covering statements which might also be characterised as allegations. Thus, 'information' and 'allegation' are not mutually exclusive categories of communication, rather only that a statement which is general and devoid of specific factual content cannot be said to be a disclosure of information tending to show a relevant failure. It was said that 'it would be a pity if tribunals were too easily seduced into asking whether it was one or the other when reality and experience suggest that very often information and allegation are intertwined'.

88. On detriment, in Warburton v The Chief Constable of Northamptonshire Police [2022] EAT 42, the Judge said that the key test is: “Is the treatment of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment?” Detriment is to be interpreted widely; it is not necessary to establish any physical or economic consequence. Although the test is framed by reference to a reasonable worker, it is not a wholly objective test. It is enough that a reasonable worker might take such a view. Deer v. University of Oxford [2015] ICR 1213 .

89. On causation, NHS Manchester v Fecitt [2012] IRLR 64, identified that liability arises if the protected disclosure is a material factor in the employer's decision to subject the claimant to a detrimental act. S.47B will be infringed if the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's treatment of the whistle-blower. Once detrimental action is identified, it is for the employer to establish the reason, not for the claimant to establish the reason. s.48(2). If an employer fails to prove that the act, or deliberate failure, complained of was 'in no sense whatsoever' on the prohibited grounds, a claimant will succeed. Western Union Payment Services UK Ltd v Anastasiou [2014] UKEAT/0135/13.

90. There is a difference between the disclosure or protected act itself and the manner in which the disclosure or protected act is carried out. The cases of Martin v Devonshire Solicitors [2011] ICR 352 and Panayiotou v Chief Constable of Hampshire Police [2014] IRLR 500 are the leading authorities on this topic, though Kong v. Gulf International Bank (UK) Ltd [2022] ICR 1513 also has an important guidance for tribunals to bear in mind.

91. The burden of proof for the protected disclosure detriment claim is that the claimant must prove that they have made a protected disclosure and that there has been detrimental treatment on the balance of probabilities. The Respondent then has the burden of proving the reason for the detrimental treatment if the Claimant meets the threshold. In International Petroleum Ltd & Ors v Osipov & Ors UKEAT/0058/17 the Judge said: “84. Under s.48(2) ERA 1996 where a claim under s.47B is made, "it is for the employer to show the ground on which the act or deliberate failure to act was done". In the absence of a satisfactory explanation from the employer which discharges that burden, tribunals may, but are not required to, draw an adverse inference: see by analogy Kuzel v. Roche Products Ltd [2008] IRLR 530 at paragraph 59 dealing with a claim under s.103A ERA 1996 relating to dismissal for making a protected disclosure.”

92. There is a potential issue about the jurisdiction of the Tribunal due to time limits. Detriments asserted by the claimant are viewed by the respondent as being outside the primary limitation period. However, it may be that such acts form part of a continuing series of acts, the last of time is within the limitation period; if so, all the connected acts are in time. In the alternative, if the acts are not part of a continuing series of acts and have been brought to the Tribunal too late, the Tribunal can

extend time, but the reasonable practicability test applies. The relevant legislation is set out above.

Discussion and Conclusions

93. Both parties made oral submissions which the tribunal has taken full account of and dealt with them where they were of assistance.

94. Having regard to the guidance in Blackbay Venture, the tribunal first considered whether the claimant had established that he had made one or more of the alleged Protected Disclosures set out in the List of Issues. The tribunal reminded itself of the relevant background which in particular reflected the claimant's ongoing concern about the quality of the HE provision at the respondent and the actions of LC.

Did the claimant make Protected Disclosures?

95. There was a meeting that took place on 17 July 2018 between the claimant and PG, and LC was also present. A day later, LC wrote down the detail of what had taken place during the verbal conversation [160] and the tribunal has found that this is persuasive evidence that the claimant did raise concerns about teaching in the course of the meeting on 17 July 2018. Similarly, JD accepted that a conversation had taken place and she recalls discussing with PG and LC the points that the claimant had raised on 17 July 2018.

96. The written account, at [160], of the verbal conversation supports the claimant's evidence that he made verbal disclosures to PG. Further, the reaction of JD was to the effect that the UoB would have picked up on the concerns that the claimant had raised if there was any substance to them. This further reinforces the claimant's evidence that he had made the verbal disclosures to PG.

97. The tribunal finds that the claimant disclosed to PG verbally on 17 July 2018 that (i) assessments had been dumbed down and were unfit for University level credits, (ii) that the teacher had failed to mark student work for three years in digital graphic; that (iii) a complaint had been made by a learner. Each of these disclosures were reflected in the account at [160].

98. The tribunal reminded itself that a protected disclosure requires evidence of a disclosure of information. Information is more than setting out an objection or voicing a concern. It must have sufficient factual content to be capable of tending to show one of the matters listed in section 43B(1)(a)-(f). One relevant factor is whether the claimant had the reasonable belief that the information he disclosed tended to show a relevant failure.

99. There was sufficient factual content to amount to a disclosure of information. The claimant had identified in several ways how he believed that the quality of the teaching of the HE provision was lacking. He believed that as a result the learners

were not getting an appropriate teaching experience and they were not receiving a robust qualification. The claimant believed that his disclosures were in the public interest and in part given his genuine strength of feeling it was a reasonable belief that he held.

100. The respondent had a franchise agreement with the UoB. The respondent was responsible to the UoB for the quality of the teaching of the HE provision. That is reflected in the evidence of JD, at [JD§4-5], where she said that the UoB would have held the respondent to account if its teaching provision was materially substandard. The tribunal has not been provided with written documentation reflecting the franchise agreement. However the tribunal is satisfied that the respondent owed to UoB a legal obligation in respect of its teaching provision. That legal obligation extended to the maintenance of appropriate teaching standards. When the claimant made his disclosure on 17 July 2018 he believed that it tended to show that the respondent was failing or likely to fail to comply with its legal obligations to UoB. Those concerns were shared by a number of members of the IT department. The claimant's belief was reasonable. The fact that JD believes that the UoB "would have picked this up" is not sufficient to detract from the reasonableness of the claimant's belief.

101. The claimant's disclosure was made to PG, head of Department, and accordingly his employer. Disclosure 1 is a Protected Disclosure.

102. For the purposes of Disclosure 2, the claimant relies on his disclosure to MS on 12 December 2019. An email, at [248], states that the claimant maintains that the HE letter on his file was a "fraudulent letter", likely produced in consultation with LC to obstruct the claimant's progression. The email does not identify which of the HE letter versions is being referenced or the factual basis for the alleged fraud. This was not a disclosure of "information" as opposed to being an allegation albeit with the added alleged motivation that LC was seeking to obstruct the claimant's progression in its teaching.

103. The essence of the claimant's disclosure was that, in his own words in evidence, "I had a deep suspicion that my progress was being impacted". This would be a personal grievance and not a matter in the public interest. The claimant believed that the disclosure tended to show behaviour amounting to fraud. The tribunal accepts in principle that such behaviour might indicate a breach of the duty of trust and confidence ("the implied term") that is owed to an employee by his manager/employer. However, notwithstanding the evident strength of feeling of the claimant, and his belief that LC sought to hinder his teaching progression, the tribunal finds that the claimant's belief that the disclosure tended to show fraud was not a reasonable belief. The claimant's approach to this was unconvincing and at best disjointed. At times he suggested that the fraud arose because of the suspicious circumstances surrounding the appearance of COPY and DRAFT on the different versions of the HE letters. There was always liable to be a perfectly innocent administrative reason, and the tribunal finds that to be the position here. At other times, the claimant suggested that the misrepresentation arose because the v2

tended to suggest that the respondent had "been able to secure agreement" with the UoB in the space of the 24 hours that it took to make the amendment between v1 and v2. Not only is that an unreasonable interpretation of the letter, it does not stand up to scrutiny on the evidence. The UoB is required to approve the teaching and unsurprisingly it did so in this case, see for example [783] and [238]. Disclosure 2 did not amount to a Protected Disclosure.

104. Disclosure 3 relies on a repetition of Disclosure 2 on 7 June 2020 to JD. The tribunal has found that a conversation did take place during which JD identified to the claimant that there were versions of the HE letter on his HR file. It is for the claimant to establish that he made a disclosure to JD and he has not been able to do so. Even assuming that the disclosure related to the watermarking issue, it does not amount to a repetition of the disclosure made previously to MS. In any event, for the reasons set out above, if the claimant had repeated his disclosure to JD, the tribunal finds that the disclosure was not made in the public interest nor was the claimant's belief that it was made in the public interest reasonable and furthermore the claimant did not have the reasonable belief that the disclosure tended to show that the respondent through its managers, particularly LC, was acting fraudulently. Disclosure 3 did not amount to a protected disclosure.

105. Disclosure 4 relates to the claimant's disclosure to JD about the welfare of a colleague. The claimant's colleague had significant health conditions. He was working from home. The claimant raised verbal concerns with JD that he was concerned for the colleague's welfare. The email that the claimant "sent" has not been disclosed to the tribunal. Nevertheless, there is no dispute between the claimant and JD that the claimant disclosed that the colleague had been impacted by LC's handling of timetabling, "by chaos".

106. The tribunal finds that there was a disclosure of information. The tribunal finds that the claimant genuinely believed that his colleague's wellbeing had been impacted. The reason for the impact in the belief of the claimant was the chaotic management by LC. Although the pandemic was unfolding at the time, the disclosure was not related to the pandemic. The claimant has not asserted why he believed this disclosure to have been in the public interest. The tribunal finds that the claimant's disclosure was made because the claimant was concerned with the chaotic management by LC and he took it upon himself to raise the colleague circumstances. Notwithstanding at the time, JD did not consider it to be inappropriate, the impact of chaotic timetabling on a colleague is not reasonably to be regarded as a matter in the public interest. The tribunal finds that insofar as the claimant believed that the disclosure was in the public interest it was not reasonable for him to have that belief.

107. The fact that the claimant disclosed to JD that he was concerned for the welfare of a colleague does tend to show that he believed that the health and safety of his colleague was endangered. In fact the respondent had communication with the colleague albeit that the claimant did not know that. Furthermore, the colleague had intimated that he did not want to be involved in the claimant's correspondence and

felt unable to say that directly to the claimant. The claimant's belief was predominantly motivated by his impression of the "management by chaos". He did not give evidence that he had direct communications with the colleague concerning that colleague. The tribunal is not satisfied in all the circumstances that the claimant's belief that the health and safety of his colleague was likely to be endangered was a reasonable belief. Disclosure 4 is not a Protected Disclosure.

108. Disclosure 5 relates to an allegation that, on 10 June 2019, a disclosure was made by the claimant to MS that Lolita Austin had presented a false witness statement against the claimant. This related to the outcome of a dignity at work investigation, whose report is at [166]. As a result of the investigation, it was recommended that the claimant's manager would talk to him on a 1-2-1 basis. Instead, the claimant rejected any adverse outcome claiming that it was "indisputable" that he did not apply any pressure to any colleague. There is an email exchange at [226] in which the claimant asserts that he was not expecting any action. There is no disclosure that a false witness statement had been made. There is no reference to the named colleague or other colleague. In evidence claimant said that he inferred there must have been a statement provided by a witness. The tribunal is being asked to infer that such a statement must have been false because the claimant rejects any adverse conclusion about his communication in the workplace.

109. The claimant has not established to the satisfaction of the tribunal that he made a disclosure of information. Even to the extent alleged, if the claimant had disclosed that he believed a colleague had made a false statement about him, that would not reasonably have been in the public interest as it amounted to an assertion of a personal grievance. The actions of a colleague in providing evidence to a dignity at work investigation in the circumstances does not amount to evidence tending to show that the respondent, or its employee, had failed or was failing to comply with any legal obligation. Nor would the claimant's belief in that regard be reasonable. Disclosure 5 is not a Protected Disclosure.

110. Disclosure 6 concerns the claimant's disclosure to Rachel Matthews 5 January 2021. The disclosure is contained in an MS Teams meeting, at [412], which includes the claimant's statement that he was making protected disclosures. The transcript records a number of detailed statements made by the claimant, examples of which are set out above, and which is a result caused the respondent to initiate the Whistleblowing Investigation, undertaken by LR.

111. The claimant made disclosures of information. He disclosed that HE lessons were being de-skilled to meet an agenda of unqualified lecturers; he disclosed that Stafford organised exam cheating, and he disclosed that fraudulent communications had been made to UOB to deskill the HE provision.

112. When he made these disclosures, the claimant believed it to be in the public interest because he had a strong belief in the best interests of the learners and of ensuring that they have the best possible learning experience. For the reasons set

out previously, in respect of Disclosure 1, the tribunal concludes that the claimant did believe the disclosure was made in the public interest and that disclosure was reasonable. The respondent contends that the disclosure only reflected the claimant's purpose of criticising LC. Even accepting that the claimant may have had mixed motives, nevertheless the tribunal is satisfied that the claimant held the material belief that his disclosure reflected his belief that learners should enjoy the best possible learning experience. The fact that the ensuing Whistleblowing Investigation did not find concerns does not detract from the reasonableness of the claimant's belief at the time of disclosure.

113. The claimant did believe that the disclosure tended to show that the respondent was failing in its legal obligation to the UoB to provide a quality education to learners. The tribunal is satisfied that belief was reasonable at the time of disclosure. Accordingly, Disclosure 6 is a Protected Disclosure.

114. Disclosure 7 concerns a disclosure made to CP that the claimant was suffering undue pressure following Disclosure 6. This took place at a meeting with CP on 14 January 2021. The meeting transcript is at [440]. The claimant disclosed that it was the respondent's obligation to raise concerns with the UoB and it should not be for the whistle-blower to take it directly to the UoB. The respondent also wrote the following day, at [446], in which he confirmed that he had advised CP that he had felt pressured in relation to the respondent's stance that he was required to take matters up directly with the UoB. Taken together, the tribunal is satisfied that the claimant did disclose on 14 January 2021 that he was under unfair pressure as a result of the respondent's stance to his whistleblowing because it required the claimant to take matters up with UoB. That amounts to a disclosure of information.

115. The tribunal is satisfied that when the claimant made the disclosure it was because he was being hindered in his ability to raise disclosures without undue difficulty or pressure. It was reasonable for the claimant to hold a belief that this was in the public interest. Genuine whistle-blowers ought not to be subject to pressure or inconsistent direction if they seek to raise disclosures.

116. The claimant believed that the disclosure tended to show that the respondent was unwilling or unable to permit disclosures to be made or to be fully investigated. In particular the inconsistent approach (at the time) of the respondent that on the one hand there would be formal action if he were to approach UoB directly and yet on the other hand the claimant was apparently being told (in his view, dismissively) that he should take matters up with UoB, suggested to the claimant that the respondent did not take his disclosures seriously and/or did not wish for them to be investigated appropriately. These are features of the Implied Term, the respondent's duty not to act in a way without reasonable cause that might destroy or seriously damage the relationship of trust and confidence between employer and employee. The claimant had that belief and it was a reasonable belief. The reasonableness of the claimant's belief, if nothing else, is evident from the subsequent actions by CP when she recognised that the respondent was in error and confirmed that the

respondent should indeed be looking at the claimant's concerns. Disclosure 7 is a Protected Disclosure.

117. Disclosure 8 relates to the claimant was his disclosure to AW on 10 February 2021 in the course of a fact-finding interview as part of the AW misconduct investigation process. The transcript of that meeting records that the claimant stated that his suspension was linked to his whistleblowing. That amounts to a disclosure of information. The claimant believed that the disclosure was in the public interest because the consequence of the suspension was that there was a significant adverse impact on learners due to the claimant's absence from the workplace. The tribunal concludes that the claimant's belief was reasonable.

118. The claimant believed that it tended to show that he was the subject of detriment because he had raised disclosures. This may reflect the respondent's duty not to act in a way without reasonable cause of might destroy or seriously damage the relationship of trust and confidence employer and employee. This obligation is engaged where a respondent subjects an employee to unreasonable treatment after they have raised disclosures. The tribunal went on to conclude however that the claimant's belief at the time of disclosure 10 February 2021 was not reasonable.

119. Although the claimant may have reasonably expressed the view, at the suspension meeting, that his suspension was linked to whistleblowing, the respondent had made it unambiguously clear to him that he was the subject of a misconduct investigation by reason of his failure to comply with management instruction, both verbal and in writing, to stop sending so many emails. Further, the claimant himself, as at 2 February 2021, at [489], clearly understood (however much he sought to justify his emails) that this was the reason for his suspension. Disclosure 8 is not a Protected Disclosure.

120. The Tribunal therefore concluded that the claimant made Protected Disclosures as follows:

120.1. Disclosure 1, a verbal disclosure to PG by the claimant (among others) raising concerns about the HE provision in the course of a meeting on 17 July 2018

120.2. Disclosure 6, a verbal disclosure to RW, in the course of a meeting on 5 January 2021, and which triggered the Whistleblowing Investigation

120.3. Disclosure 7, a verbal disclosure to CP, in the course of a meeting on 14 January 2021.

<u>Was the claimant subjected to detriment?</u>

121. The tribunal turned next to the issues set out at paragraph 4 of the List of Issues at [96], and as set out above. For convenience, the asserted detriments are referred

to here as “Detriment 1” etc by reference to 6 identified asserted detriments in the List of Issues.

122. Detriment 1 is “permitting documents critical of the claimant to be placed on his personnel file in 2018, which he did not discover until May 2020”.

123. The respondent did allow LC’s email of 18 July 2018, at [160], to be placed on the claimant’s HR file. The email could reasonably be interpreted as critical of the claimant to the extent that it includes not simply a rehearsal of the concerns that the claimant had raised at the meeting but also the view that LC took of the claimant, namely, for example, that the claimant had “an unhealthy obsession”, an “attitude” and was “undermining”.

124. MS thought the email to be “relevant and accurate” because it was an opinion of a manager stated at the time. Being a contemporaneous note, MS said that she would always keep such documents on file for the simple reason that it recorded the concerns that the claimant had raised and would be useful for further reference. The tribunal finds that it is likely that an HR employee (MS could not recall if it was herself) must have been given a copy of the email for the purpose of placing it on the claimant’s HR file. The claimant was not informed that the email was placed on his HR file and he was not given an opportunity to respond to it.

125. Once on his HR file, it would typically only be accessed by HR for HR purposes. However, that said, it is likely that this would include reasonable requests from time to time by, for example, the claimant’s line manager. In those circumstances, it was adverse to the claimant’s interest that his managers would be aware of management views of the claimant’s “obsession” and “attitude” without the claimant knowing or having had the right of response. It was a detriment to the claimant to have had placed [160] on the claimant’s HR file.

126. The HE letters were also placed on the claimant’s HR file. The circumstances in which both versions were placed on the HR file are dealt with elsewhere in these reasons. However, the HE letter was a letter written at the time and (whether v1 or v2) handed to the claimant in July or August 2018 albeit that the claimant handed it back. The tribunal notes that the HE letters reference the respondent’s stated position regarding offering the claimant HE teaching. The letter is not critical of the claimant. The claimant was given a HE letter albeit that he handed it back. The tribunal finds that it was not a detriment to the claimant to have placed the HE letter (or in the circumstances set out elsewhere both of the versions) on the claimant’s HR file.

127. Detriment 2 is, “taking too long to provide an outcome to the grievance which the claimant had lodged on that subject on 10 and 16 June 2020”.

128. The parties agree that the relevant date is 16 June 2020; the grievance is at [570]. The grievance was the subject of a detailed investigation which resulted in a report dated 24 September 2020. There is no complaint about the period of investigation. The claimant confirmed that his complaint related to the period after 24 September 2020 to when the outcome was communicated to him on 22 December 2020.

129. The grievance was complex and the investigation report made numerous findings. The respondent was entitled to reflect on the findings in the report and was entitled for HR to consider the ramifications of those findings both in terms of comments that might be made and recommendations to deal with the resolution of the grievance. The claimant contended that the report dated 24 September 2020 represented the completion of the grievance and there should have been no further delay in communicating that to him. In contrast, the tribunal accepts the respondent's position that it was incumbent upon the respondent to consider how the grievance investigation findings could be incorporated into recommendations to achieve a resolution of the grievance. The process that then ensued was just that, and the claimant was involved in regular communication with CP.

130. The respondent explained that the HR officer responsible was leaving her employment, and CP took on responsibility for the grievance in the first week that her employment began with the respondent. CP undertook a number of meetings with the investigators.

131. Following the introduction of CP to the claimant, the claimant then provided CP with a significant amount of extra documents and emails. She described the correspondence as "constant" and as a "barrage of emails and information", the effect of which was to make it increasingly difficult for CP to look at all the information and fully understand the position. Further, CP undertook several meetings with the claimant including MS Teams meetings on 5 November 2020 and 18 November 2020 (both recorded) in the course of which there was extensive reference made to numerous issues. The purpose of those meetings was for CP to better understand the grievance and be able to interpret the investigation findings into a resolution of the grievance.

132. In all of this, the Covid pandemic had resulted in further restrictions and a lockdown which only served to hamper attempts to bring the grievance to a conclusion. The tribunal finds that throughout the period from end of September 2020, the claimant was kept fully aware by CP that was seeking to understand how best to move the grievance forward with a view to making appropriate recommendations to the investigators. CP kept the claimant up to date with progress including notifying him that she needed to meet with the investigators in order to decide an outcome [CP§6] and later on that a written outcome would be provided to him by 22 December 2020, which it duly was.

133. The time taken following the grievance investigation report was fairly reflected by the complexity of the case and the fact that the findings and subsequent outcome required careful attention. It was also the result of the claimant frequently providing CP with repeated emails and documentation requiring her to repeatedly ensure that she was able to deal with all of the information and to understand the situation.

134. The claimant erroneously believes that CP had "no rights to look at the grievance" and this appears to underlie his sense of grievance about the time taken, but the tribunal considers that it was entirely appropriate that CP undertook such involvement that she did and sought and obtained the approval of the investigators for the comments and recommendations that brought the grievance to a conclusion. Notwithstanding the claimant's requests for an outcome, the tribunal finds that there was no detriment to the claimant arising from the time taken to provide an outcome the grievance.

135. The tribunal noted the evidence of CP in relation to the complexity of the grievance and the constant communications with the claimant. The reason for the time taken was because of CP's genuine attempts to understand and to recommend an appropriate resolution to the grievance, including fairly dealing with the claimant's "constant" communications and engaging with the claimant by MS Teams on more than one occasion and thereafter seeking the approval of the investigators. The reason for the time taken was in no sense whatsoever because the claimant had made a Protected Disclosure.

136. Detriment 3 is, "Providing an unfair outcome to the grievance (and in particular exonerating LC)". The outcome is at [355], including the Comments and Recommendations sections, at [358], which had been recommended by CP and approved by the investigators.

137. The first recommendation, at .1, was for CP to remove the two HE letters on the HR file. This upheld a part of the claimant's grievance. It was put to the claimant in cross-examination that this was his objective. He replied, "yes, but they shouldn't have been there in the first place". Nevertheless, it was plainly a favourable outcome to him.

138. The next recommendations, at .2 to .4, each require action to be taken to improve teaching of HE. In cross examination, the claimant expressly accepted that, "it's progress", that, in other words, it was a favourable outcome. The tribunal agrees with that. In each of these respects, the outcome reflected an open-minded investigation and findings and recommended that it was necessary to undertake a review in order to understand how to improve the HE provision: how access to teaching at HE was managed; how timetabling is completed within the Department; and how staff can progress to teaching on HE. These fairly reflected the claimant's concerns and that is why he acknowledged in cross examination that the recommendations amounted to "progress". Similarly the final recommendation, at .5,

and relating to HR practices, also recommended improvements. None of the above can sensibly be described as unfair; in fact, each can be seen as favourable to the claimant.

139. Furthermore, these recommendations are reflected in the body of the grievance report which identifies, at [355], "this report has uncovered unfair and non-transparent systems and processes that feed directly into the timetabling of this strand which directly contribute towards a toxic environment is the potential to cause harm students and staff members and the claimant in particular". The report also included some trenchant criticism of the Department, including, "…. There has been more than one ineffectual manager in the Department who appeared to be "easily led" by …and over reliant on the views of LC… fuelling the sense of non-transparency in timetabling". The report also stated that, "working practices need to be changed…". None of this is an unfair outcome.

140. The tribunal finds that what the claimant is in reality asserting is that the outcome to the grievance was unfair for the principal reason that it had "exonerated" LC. The difficulty with that assertion is two-fold. First, the report did not exonerate LC and instead described a toxic relationship with, for example, evidence of "potential bullying and undermining of the claimant and consequently an impact on the claimant's progression…" [357] and a "negative relationship" between the claimant and LC which "influences timetabling decisions". There was no finding that LC should be subject to disciplinary action, but that does not make the case for unfairness. Secondly, the report fairly addressed the nature of the grievance as expressed by the claimant, at [740], and succeeded in distilling a lengthy and complicated grievance document into a manageable and realistic structure. The tribunal finds that the recommendations of the report were favourable to the claimant and were in no sense unfair.

141. The subsequent grievance appeal only serves to confirm that assessment; and contrary to the claimant's perception, it is the experience of the tribunal that an experienced external investigator is more, rather than less, likely to be able to apply objective consideration to an investigation. The appeal report, at [592], considered that the claimant's "primary discontent" centred "on the fact that a finding of gross misconduct was not made against LC". This is consistent with the claimant's sense of grievance as demonstrated in this Hearing. The tribunal heard that the former colleague who related evidence suggesting potential bullying had left the respondent 4 years previously. It was not unfair that her evidence was not pursued further. The failure to recommend disciplinary action against LC was not unfair. The tribunal finds that the claimant was not subject to a detriment by reason of the outcome of the grievance. It was favourable to him; it was not unfair.

142. In any event, the outcome fairly reflected the investigation findings and CP's genuine attempts to seek a resolution of the grievance through consultation with the claimant and with the investigators. The outcome, as approved by the investigators (in respect of whom there has been no allegation of wrongdoing directed at them),

was a genuine and considered attempt at resolution. There is no indication of any desire to suppress or ignore inconvenient facts. The content of the outcome to the grievance was in no sense because the claimant had raised protected disclosures.

143. Detriment 4 is, "not addressing disclosures made by the claimant adequately or at all and subjecting him to detriment as a result of making them (the disclosures referred to are those set out above)"

144. The claimant made a disclosure to PG on 17 July 2018 (Disclosure 1). LC then wrote an email reflecting those concerns. JD told the tribunal that over the period from 2018 and prior to the claimant's formal grievance in 2020, she had numerous informal conversations with the claimant. There was no action taken; nor it must be said did the claimant take more formal action himself although he was of course not obliged to do so. JD did not initiate any investigation because she considered that if any concerns had substance they would have been picked up by the UoB. Looking at the picture overall, however, the tribunal is not satisfied the claimant's many disclosures in July 2018 were addressed at that time or prior to his grievance in June 2020 and the Whistleblowing Investigation in January 2021.

145. The respondent did address the claimant's concerns about the HE letters (Disclosure 2 and 3). It did so not least by the Grievance in respect of which the claimant received a favourable outcome. The respondent also addressed the claimant's concern about his colleague (Disclosure 4) not least by assuring the claimant that the respondent was ensuring the well-being of the colleague even though the detail was "none of the claimant's business". Insofar as the claimant made a disclosure (Disclosure 5), the respondent had effectively dealt with it in the grievance and further had addressed it in subsequent communications between the claimant and MS.

146. The respondent plainly did address Disclosure 6: it initiated a Whistleblowing Investigation, the outcome of which the claimant was aware of prior to his resignation and in respect of which he was "largely happy". So too did the respondent plainly address Disclosure 7: CP acted entirely properly and commendably by reflecting on the respondent's position and in effect encouraged KH to adopt a different position, one which accorded with what the claimant wanted. Finally, the respondent plainly did address Disclosure 8: AW made it plain to the claimant, and repeatedly so, that the suspension and the resulting investigation was not because of his whistleblowing and in fact the Whistleblowing Investigation (and Grievance appeal) continued as the claimant well knew.

147. In summary, the claimant was subjected to a detriment in respect of Detriment 4 only to the extent that his disclosures on 17 July 2018 (Disclosure 1) were not substantively addressed.

148. Detriment 5 is, “being suspended without adequate reason”. The tribunal has made clear findings of fact that the claimant was suspended by JD after having considered whether there was any feasible alternative to suspension and concluding that there was not, and explaining to the claimant in terms that he could plainly (and did) understand, at the suspension meeting and in the subsequent letter the following day, the reason why he was suspended. The reason was fully explained to the claimant at the time and reiterated thereafter. The reason was genuinely held by JD and it was adequate, having regard in particular to her conscientious consideration of alternatives. Like the claimant, JD’s focus was on the interest of learners. The Claimant was not subject to a detriment in this respect because there was adequate reason, both in actual fact and as stated to the claimant at the time.

149. In any event, if the fact of suspension were taken in isolation and regarded as a detriment to the claimant; the tribunal is satisfied that the reason for suspension was not because of a Protected Disclosure. Plainly the claimant felt justified in his communications and considered that they related to disclosures he was making. However, the respondent has explained that the reason was because the claimant did not comply with a management instruction to limit his email correspondence (and continued not to do so withstanding the instruction). This was not a ban on making a disclosure; the respondent’s consistent messages were focused on “excessive” (for example [727] in the OH referral draft) not on content; nor did the respondent seek to suppress the claimant’s disclosures given the Whistleblowing Investigation and the use of an external investigator into the Grievance appeal.

150. Detriment 6 is, “being referred to occupational health without any adequate reason”. The claimant was not in fact referred to OH. The tribunal finds that there was an intention to refer the claimant to OH. This was firstly because it was a common practice of HR to refer for support and advice in circumstances where an employee is suspended pending an investigation. The claimant did not dispute that. The form at [727] specifically asks for “advice on how we can support Steve through this time period as I am sure the suspension may cause him anxiety and worry”. Secondly, the claimant himself had expressly stated that he was exposed to a “risk of harm”. Again, the claimant did not dispute that. That is reason enough to seek an OH referral.

151. Both of these reasons amount to adequate reasons to refer the claimant to OH. In no sense is the intended referral to be regarded as a detrimental or unsupportive act. On that basis, the tribunal concludes that the claimant was not subject to detriment by reason of the (intended) referral to OH.

152. The respondent had informed the claimant that it proposed to make a referral to OH. It provided the claimant with the text of a referral [725]. The claimant took objection to the contents of the text. The fact that he did so was, in the tribunal’s view, unreasonable. First, he complained that the text wrongly stated that, “his grievance was dealt with” but the answer to that lies in the words immediately

following, namely, that the claimant was “dissatisfied with this outcome and was appealing”. Secondly, he complained that the text, at [727], recited that the claimant felt that he was the subject of harm and that this was affecting his health but wrongly went on to state that, “we are unsure what this means”. There is no dispute that the claimant had expressed that he was the subject of harm; the tribunal regards it as inexplicable that the claimant should regard the respondent’s open acknowledgement and request for support and advice as detrimental in any way to the claimant.

153. In any event, the claimant was given the opportunity to raise factual inaccuracies [485], which he did [489], and as a result the respondent did not proceed with an OH. They complied with the claimant’s requests. The claimant would have had the opportunity to explain his “harm” to an independent professional and seek support but in respect of which he in effect deprived himself of that opportunity. This reinforces the tribunal’s conclusion that the claimant was not in fact subject to detriment in respect of Detriment 6.

154. In any event, the reason why the respondent sought to refer the claimant to OH was supportive and to seek advice on how to support the claimant in the face of potential anxiety and worry and, in the claimant’s own words, risk of harm. It was in no sense because the claimant had made a Protected Disclosure.

155. The Tribunal therefore concludes that the claimant was subject to detriment as follows:

155.1. Detriment 1, only to the extent of permitting [160] to be placed on his HR file in 2018

155.2. Detriment 4, only to the extent only that the respondent did not address the claimant’s Disclosure 1 in July 2018 at the time.

<u>Was the claimant subjected to a detriment on the ground that he had made a Protected Disclosure?</u>

156. The logic of the tribunal’s findings means that the established detriments (which occurred in 2018) could not have been on the ground that the claimant had made a Protected Disclosure subsequently. Thus, the claimant cannot succeed in showing that the established detriments were done on the ground of the established Protected Disclosures 6 and 7.

157. Further, save for the sole exception of Protected Disclosure 1, the same logic applies such that the claimant could not have succeeded in showing that the established detriments were done on the ground of the alleged disclosures 1-8 at all, whether Protected Disclosures or not.

158. The document at [160] was placed on the claimant's file because it was "accurate and relevant". MS said that HR would as a matter of practice always keep a document reflecting such discussions on file. CP recognised that it was appropriate to do so "for future reference" and the tribunal accepts that this was a genuine and appropriate explanation from her such that should it be necessary to refer to the concerns in the future then the document at [160] would be useful to be able to show that the concerns had been raised previously. Further, JD was also questioned and she agreed that it was appropriate that it was kept on the HR file. It is a significant irony in this case that the claimant has been able to establish a Protected Disclosure in no small measure because [160] was retained on his HR file.

159. The respondent was content to remove [160] from the HR file, and did so in January 2021 [784]. The tribunal carefully examined the reason for removal; and the claimant cross examined in detail on the point. CP confirmed that she did so because the document, by 2021, was "outdated" and also that she wanted to act in the interests of the employment relationship with the claimant and of "moving forward". These reasons are not inconsistent with the placing of [160] on the HR file in 2018. The respondent's explanation is supported by the co-existence of the Whistleblowing Investigation and the external investigation into the claimant's grievance, neither of which indicate a desire to suppress or act detrimentally in the face of protected disclosures.

160. The tribunal's task is to determine a claim under section 47B of ERA and in so doing to determine the reason why the respondent subjected the claimant to a detriment. The tribunal reminds itself that in circumstances where the claimant has established that he was subject to a detriment, it is for the respondent to establish the reason for the treatment.

161. The tribunal has looked to the respondent for an explanation. The tribunal has taken into account the lack of evidence as to who placed [160] on the claimant's file. It has accepted the evidence of MS that she viewed the document was "relevant and accurate" given its contemporaneous content and that it was consistent with HR practice to keep such a document on an HR file. The tribunal is satisfied that there is a genuine and innocent reason and that it was in no sense because the claimant had made a Protected Disclosure. Disclosure 1 may have formed the backdrop but it was not the reason why [160] was put on the claimant's HR file.

162. The respondent did not address the claimant's Disclosure 1 at the time. The claimant's disclosure is reflected in [160]. At the same time, LC's comments were not the subject to investigation as JD did not see issues with the claimant's teaching; and he was graded "excellent" in April 2019. JD did have conversations with the claimant over the period. Given the nature of the claimant's relationship with JD, it is clear to the tribunal that the claimant had discussed the many issues with JD and if he had wanted to he would have raised (and in all likelihood did raise) his concerns with her freely. JD, on the other hand, is clear that, at [JD§4], the subject matter of the concerns were squarely within the remit of UoB and any deficient processes

would have been picked up along with specific actions. Her evidence is that she did not recall "a single issue regarding "dumbing down" of content. The tribunal accepts the evidence of JD that due to the heavy scrutiny and approval and moderation processes of UoB, she considered that it was unnecessary to ensure an investigation into the points made by the claimant albeit at the same time she did follow up with various managers. The tribunal did not conclude that JD sought to suppress or undermine disclosures.

163. All of this is also against a context that the respondent initiated thorough and objective investigations, namely, a Whistleblowing Investigation in January 2021, and a Grievance investigation from June 2020, and an external appeal in January 2021, each of which evidences measured outcomes which give countenance to the claimant's concerns. The tribunal records that the fact that the grievance appeal was contracted out externally is indicative of the respondent wanting to achieve a transparent review and it evidences that the respondent was willing for any shortcomings to be exposed by a practitioner who was wholly independent of the respondent.

164. The tribunal concludes that there is no evidence that the respondent was averse to investigating disclosures or unduly averse to exposing its managers or its teaching provision to criticism in the face of disclosures. When the claimant raised matters more formally, as he did from June 2020, the respondent acted appropriately. The claimant was not treated detrimentally or in a retaliatory fashion in response to his disclosures as reflected in [160]. Instead, JD throughout the period had regular communications with the claimant.

165. The fact that the claimant made a disclosure in July 2018 is the backdrop to the allegation of detriment. However, the fact taken alone that the respondent did not address the disclosures does not establish that this was because the claimant had made a protected disclosure. The tribunal had in mind the limited nature of its findings in respect of Protected Disclosures and detriments. There is no evidence that the respondent adopted an adverse attitude to those disclosures or to the fact that the claimant was raising the issues or indeed that the claimant had previously raised issues whether or not amounting to protected disclosures.

166. For all these reasons, the tribunal concludes that respondent's failure to address disclosures made by the claimant in July 2018 was in no sense whatsoever because the claimant had made a Protected Disclosure.

<u>Conclusion on Detriment on the ground of Protected Disclosure</u>

167. Taking a step back, and considering the evidence as a whole, the tribunal asks itself the question of whether the Detriments to which the claimant was subjected were done on the ground that the claimant had made Protected Disclosures. The

tribunal reminds itself that in circumstances where the claimant has established that he was subject to a detriment, it is for the respondent to establish the reason for the treatment.

168. For the reasons expressed by the tribunal in the preceding paragraphs, the tribunal is satisfied that the Detriments to which the claimant was subjected following the making of Protected Disclosures were in no sense whatsoever as a result of the claimant making the Protected Disclosures or indeed any of the disclosures whether Protected Disclosures or not.

169. The claimant's claim of detriment on the ground of protected disclosure fails entirely and is dismissed.

Was there a breach of contract so serious as to entitle an employee to resign from his employment?

170. The tribunal reminds itself of the Malik test and the objective approach to the conduct of the employer as rehearsed in the Leeds Dental case. The claimant has identified breaches at paragraph 2 of the List of Issues, at [94], and above, which in the view of the tribunal arise from the same facts in support of the claimant's claim of detriment for the purposes of the protected disclosure claim. As a result, the tribunal has also reminded itself of its findings and conclusions as set out above.

171. The respondent had reasonable and proper cause to place [160] and, for completeness, the HE letters, on the claimant's file. When the claimant discovered that they were on his file, the respondent dealt with his concerns seriously and appropriately. It was a recommendation of the grievance (known to the claimant by December 2020 at the latest) that the HE letters would be removed, which they duly were, and which represented an upholding of part of his grievance. It was known to the claimant that [160] would be removed from his file, by 22 January 2021 at the latest, which it duly was. Those reasons for removal do not undermine the reasonable and proper cause for putting them on the HR file in 2018. So far as issue 2.1.1 and 2.1.4, at [94], are concerned, for the reasons set out above, they do not amount to a breach of contract.

172. The respondent did not take too long to provide an outcome and its outcome was not unfair; instead it was favourable to the claimant in material respects. The respondent had reasonable and proper cause to act in the way that it did both in respect of the timing and process of the grievance and in respect of the outcome of the grievance. Issues 2.1.2 and 2.1.3, at [94], do not amount to a breach of contract.

173. The tribunal has revisited the circumstances of the claimant's suspension. It was explained to him at the time and subsequently, both verbally and in writing. The tribunal is satisfied that the reason that JD suspended the claimant was in order to

carry out a misconduct investigation into the claimant's failure to adhere to reasonable management instructions to limit his email correspondence and that those management instructions had taken the form of numerous verbal instructions from CP and in writing on 22 January 2021. The claimant understood this to be the reason for the suspension and the resulting misconduct investigation. There was adequate reason for suspension and the claimant was treated appropriately and with consideration over the period. Regarding issue 2.1.5, at [94], there was no breach of contract.

174. The tribunal has also revisited the circumstances of the OH referral. The tribunal concludes that the claimant's assertion at 2.1.6, at [94], is misconceived. There was no referral to OH because the claimant objected to the contents of the proposed referral form. He was given the opportunity to comment and to raise factual inaccuracies. He did so, and the referral did not proceed. This was notwithstanding that the intention and the purpose of the referral was to be supportive of the claimant. There was not a breach of contract.

175. The claimant relies on the OH point as the final straw. The circumstances relating to the intended OH referral do not evidence any adverse or unfavourable treatment of the claimant whatsoever. The tribunal finds it inexplicable that the respondent should be criticised for seeking to assert that it was "unsure of what this means" by reference to the claimant's assertions of "being the subject of harm and that this is affecting his health". The respondent was, both objectively and subjectively, acting supportively towards the claimant in respect of OH. These events do not contribute towards a finding of any breach of the implied term. They were entirely "innocuous" acts and do not amount to a "last straw". In any event, even if it were so, it is apparent that the situation had crystallised by 3 February 2021, at [495], when the respondent had recorded his points made. Thereafter, the claimant did not purport to resign until 30 March 2021, almost 2 months later. That amounts to an affirmation of the claimant's contract given that he subsequently engaged with the respondent in extensive email communications as well as engaging in the ongoing misconduct investigation and external grievance process.

176. The tribunal concludes that Issues 2.1.1-2.1.6, whether taken individually or together do not amount to a breach of the implied term entitling the claimant to resign and claim constructive dismissal.

177. The tribunal records that in the course of the Hearing, the claimant sought to argue that there was a different "last straw". He referred to the fact that the appeal was conducted by an external investigator and that he was informed on 23 March 2021 that the external investigator dealing with the grievance appeal had been sent information, that, in the view of the claimant, amounted to a breach of his data rights and was contrary to the respondent's privacy policy.

178. This was not the claimant's case prior to the Hearing notwithstanding that the claimant does make express reference to the point within his resignation letter, at [653]. The respondent contends that the claimant's change of position was a response to a realisation that the alleged final straw relating to OH was insufficient to meet the "affirmation" point raised by the respondent. The tribunal agrees that it represented a change in position by the claimant. nevertheless, he had expressed it in his resignation letter. The tribunal therefore considered the position as if it was the claimant's last straw argument at the Hearing.

179. The tribunal has found that the use of an external investigator was entirely appropriate. It concludes that it was in fact favourable to the claimant. First, there might well have been managers within the respondent that had not, as yet, been involved in the claimant's matters, but the claimant remains unable to recognise that the respondent was concerned that any manager would not have the time/opportunity to be able deal with his grievance fully. The claimant had in fact been unhappy that LR was dealing with the Whistleblowing Investigation because of other constraints on her time apparently requiring her, "to work over the weekend". Secondly, an external investigator was objectively independent and it was not reasonable to suggest that impartiality was impaired when compared with managers within the respondent. Thirdly, a competent external investigator would be able to ascertain the level of factual detail needed and therefore give a proper independent view. Fourthly, the use of an external investigator is wholly consistent with the respondent being willing to be investigated properly. Fifthly, in other words, any reasonable interpretation would conclude that an external investigation in the circumstances of this case was more transparent and therefore more supportive of examining the claimant's concerns. Sixthly, the tribunal has concluded that the disclosure of information to the external investigator was not in the circumstances a breach of the respondent's privacy notice.

180. Even if the use of the external investigator and/or associated disclosure of information is the claimant's "last straw", which it was not, the tribunal concludes that it was not a breach of contract of itself nor does it contribute to any prior event or breach so that when taken together there was a breach of the implied term.

181. The claimant resigned his employment. He was not entitled to do so by reason of any breach on the part of the respondent. Accordingly, his claim fails and it is dismissed.

Was the detriment complaint made within the time limit in section 48 of the Employment Rights Act?

182. In the light of the tribunal's finding, it is not necessary to determine the time limit issue set out in paragraph 1 of the List of Issues, at [93], and set out above.

183. The tribunal would have concluded that the acts complained of by the claimant as have been found to have been Detriments suffered by the claimant, took place in 2018 when the documents were placed on the claimant's file in or about July 2018 and as a result of the failure of the respondent to address the claimant's disclosures from July 2018.

184. The detriment claim was not made within 3 months (plus the EC extension) of that date. An act complained of that took place prior to 2 January 2021 is out of time.

185. The claimant cannot rely on later acts that do not amount to detriment. There was not a series of similar acts such that the claim was made to the tribunal within three months (plus the EC extension). The claimant's detriment claim pursuant to section 48 of ERA is out of time.

186. The tribunal asked itself whether it was reasonably practicable to have made a claim within the time limit. The claimant adduced no evidence that he was hindered in his ability to bring a claim or that he was in any way unable to understand that he could bring a claim. On his case, the claimant may not have discovered the relevant HR documents were on his file until May 2020. Further, on his case he may have then initiated a grievance in June 2020. The claimant has not explained that he was unable to bring a claim. Even were it the case, the failure to bring a claim pending the outcome of his grievance would not be a reason for the tribunal to conclude that it was not reasonably practicable for the claimant to do so. It was possible for the claimant to bring a clam and the tribunal concludes that it was reasonable to have expected the claimant to have done so.

187. The claimant has not shown that it was not reasonably practicable for his detriment claim to have been made to the tribunal within the time limit. Accordingly, if the claimant had succeeded in establishing a proscribed ground in respect of the detriments for which the tribunal has found, the tribunal would have gone on to decide that it had no jurisdiction to hear the detriment claim in any event.

Employment Judge Beever
Date: 22 March 2023

Judgment sent to the Parties: 24 March 2023

FOR THE TRIBUNAL