EMPLOYMENT TRIBUNALS

Claimant. **Ms P Paintal**

Respondent 1. Art Asia Trust Ltd
Respondent 2. Dahlia Jamil (DJ)
Respondent 3. Arvind Pandit (AP)

Heard at: **Southampton via CVP** **On: 19th–21st October 2020, Deliberations 10th December 2020.**

Before: **Employment Judge Hargrove, Sitting with Members Ms C Date and Mr P Bompas.**

Appearances
For the Claimant: **In person**
For the Respondent: **Ms Walker, Barrister**

RESERVED JUDGMENT AND REASONS

The unanimous judgement of the tribunal is as follows: –

1. The claimant's claims of being subjected to a detriment in the form of suspension, and of being automatically unfairly dismissed, for making public interest disclosures, are not well-founded.

REASONS

1. The claimant was employed by the respondent as CEO from 22 October 2018 either until 8 November 2018 when, according to the respondent, she resigned, or until 19th of November 2018, when, according to the claimant, as clarified in further and better particulars in the bundle at page 52, she was dismissed by email of that date.
2. The claimant commenced her claims by an ET1 dated 21st February 2019 (pages 1 to 14), having commenced early conciliation on 6 December 2018 and received a certificate on 21 December. At that stage she did not tick the box for unfair dismissal, and identified her claim only as of being subjected

to a detriment for making public interest disclosures (PIDs), namely her suspension at a meeting with DJ and a PT, DJ being the long serving Chair of the board of trustees and AP being the Treasurer, on 8 November 2018. However, at a case management hearing on 19 September 2019, she identified her claim as including a claim also for dismissal, and subsequently identified the date in her further and better particulars. The claimant did not have two years service to claim ordinary unfair dismissal, and her claims are accordingly of being subjected to the detriment of suspension on 8 November 2018, contrary to section 48 (1), and of automatically unfair dismissal on 19 November 2018, contrary to section 103A of ERA, for making PIDs.

3. The primary issues were identified by the tribunal at the outset of this hearing and are not disputed.
   3.1. Does the claimant prove, on the balance of probabilities, that she made qualifying and protected disclosures of information tending to show, in the reasonable belief of the claimant (1) that the respondent had failed, was failing, or was likely to fail to comply with any legal obligations to which it was subject, and (2) that the disclosure was made in the public interest? (See section 43B(1)(b) of ERA).
   3.2. It being admitted that the claimant was suspended on 8 November 2018, does the claimant show that it was a detriment under section 48(1); and does the respondent prove that she was not subjected to that detriment because she had made PIDs?(See section 48(2)).
   3.3. Did the claimant resign on 8 November 2018 or was she dismissed by the respondent on 19th of November 2018, the burden of proof lying on the claimant?
   3.4. If the claimant was dismissed, was the reason or the principal reason for dismissal that she had made a protected disclosure? (Section 100(3)A.
   3.5. If we were to find that the claimant was subjected to the detriment and/or unfairly dismissed for that reason, there would be other issues relating to compensation about which we have not heard evidence or submissions at this hearing.

4. The hearing took place by CVP plus on days 1 and 2, when we heard evidence from the claimant and DJ, and by local CVP on day 3 when we heard evidence from AP. There was insufficient time for submissions and the parties agreed to provide written submissions and replies. A final bundle of documents containing 253 pages was submitted electronically late in the morning of day 1, which entailed a delayed start in the hearing of evidence. We also note and record that many of the important documents in the bundle have been the subject of deductions and anonymisation , apparently having been disclosed in response to FOI requests.This was not helpful – FOI and data protection provisions do not apply to tribunals. Furthermore, some of the documents were scarcely legible electronically and we had to ask for unredacted and better copies to be sent to during the hearing. Further delays were caused by problems with access via CVP plus.

5. **Chronological summary of main events.**
   5.1.The respondent is a charitable organisation founded in 1994 based in Southampton promoting South Asian culture including music, dance, drama and art in the region.It organises an annual Mela festival, normally taking

place in Southampton in July, which is open to people of all races and nationalities. Its principal source of funding at the material time in 2018 was the Arts Council of England (ACE).Their standard terms and conditions for grant offers are at pages 227 to 240.The respondent had signed for the latest grant in March 2018. Another source of funding was Southampton City Council.

5.2. The respondent is managed by a board of trustees who are unpaid volunteers. As of 2018 eight out of the nine trustees/directors were from a South Asian background, including Pakistan, India and Bangladesh, and including Hindus and Muslims. There was one white British trustee. The articles of association provided that one third of the trustees had to retire in rotation at the AGM, but were eligible for reelection.

5.3. The previous CEO, Vinod, retired in July 2017 and, leading up to the appointment of the claimant on 22nd of October 2018, the duties of the CEO were authorised to be undertaken by DJ and AP during the vacancy. The respondent advertised the vacancy in July and September 2018 unsuccessfully, and again in June 2018

5.4. The claimant's application for the vacant post dated June 2018 is at pages 216 to 223. This included her educational background, which is impressive, and experience in managing another cultural organisation (Shiva Nova). The claimant was interviewed by a panel including Paula Orrell from ACE, and Helen Keell, a former trustee, from Solent University. She was considered to be well qualified for the job and was appointed to the post on the basis of working a four day week. The claimant's contract of employment is at pages 58 to 66. The terms included a probationary period of 12 months and a requirement that she be DBS checked. The job description for the post is it pages 205– 207. In particular this set out that she was to be responsible to the board of directors and to manage "the artist associate, freelance tutors and artists and freelance marketing and administrative staff". Prior to the claimant's appointment, on 3 October 2018, the respondent wrote to the claimant stating that she would be reporting to the chair (DJ).

5.5. At the time of her appointment, there was an administrator, Heather McKenna, who regularly worked three days per week. Evidence given during the hearing indicated that she had had an annual written contract, which we have however not seen, and that the last such contract had expired sometime in the previous year. There was the annual Mela event organiser, Paul, who had been freelance for a number of years. There was a marketing manager Lucy Attrill (the claimant's evidence at the tribunal); an educational coordinator (? Pujati). It is apparent that all of the staff except for the administrator were treated as freelance.

5.6. It is the respondent's case that following her appointment DJ and AP met the claimant during the first 1 to 2 days to welcome her to the organisation, arrange access to the IT systems, and told her that the insurance policies were coming up for renewal the following month and that she should lead on this (see email AP to the claimant 24 October page 88). It was envisaged that there would be a professional press release and an introduction to the staff including freelance workers, and to contacts in the local arts organisations. However the claimant instructed the administrator to send out a one line announcement on the 24 October. see page 87.

5.7. A board meeting was arranged to take place following the AGM on the 25th of October 2018. In advance of the meeting, the claimant sent an email to DJ and AP, Page 91, advising them that at the AGM they might want to consider succession to the board membership as being quite crucial ; as well getting new members on the board, and increasing diversity, "before you do this round of nominations and members". There are minutes of the board meeting at pages 92 to 94. This version has the members' names and other parts redacted, but it is agreed that there was a re-election of the Chair (DJ), the Vice chair and Treasurer (AP), and of the personnel subcommittee. The claimant attended and was introduced to the board. An unredacted copy with the names revealed was added to the bundle. On day 3 of the hearing what was described as the final version of the unredacted minutes was sent to the tribunal. These are slightly different from the version of pages 92 to 94, which was said to be an earlier draft. Under any other business, it was noted that all policies and procedures would be updated and signed off and submitted to ACE in January 2019 as part of the payment conditions. "New policies should include digital strategy, lone person working, child protection , and safeguarding young people". It is recorded that the chair asked the claimant to check and update all policies. There was a discussion of DBS checks and it is recorded that all members of the board would be DBS checked.

5.8.There followed a series of communications between the claimant on the one hand and DJ and AP on the other up to the 6th of November. On 26 October DJ emailed the claimant in response to a text the claimant had posted on the WhatsApp Arts Asia management group (page 196) – the text is not in the bundle – but the email cites a passage from the text: – "The company's future may have been jeopardised by an ongoing fractious relationship which needs to be rectified". DJ disputed this stating that " if such was the case I do not think we would have been awarded NPO status in the last NPO funding round which was very competitive. I can reassure you we do not have a fractious relationship with ACE and I would be very disappointed and concerned if you met Paula (Orrell) with this in mind."

She asked her when they could meet on Monday. Also on Friday 26 October AP emailed the Mela organiser, Paul, asking for a meeting with himself, the claimant and DJ to introduce the claimant to Paul. Page 223. The claimant was copied into that email. 12.30 that day DJ emailed the claimant copying her in on an email from ACE dated the 5th of September on the subject of "safeguarding and dignity at work policy," requiring such policies to be in place. DJ asked the claimant, "as discussed at the board meeting", to check all policies as a matter of priority so that they could be passed at the only board meeting in November/December and submitted to ACE by the deadline in January 2019. The Claimant replied by email timed at 15.35 that day, in which she also mentioned the topics of succession and progression at board level and the diversity of the board "which needs to be strengthened and broadened", and a leaving party for Vinod, the previous CEO who had left in 2017. She also said that she had had a very detailed meeting with Paul McKenna that day. See pages 193 to 194.

5.9. At paragraph 19 of her witness statement DJ describes that on telephoning the office on the 2nd of November 2018 she found out that the claimant had had a meeting with Paul without including herself or AP, despite AP's email of 26 October. According to DJ the claimant reacted very angrily over the telephone and in a tone and manner that was "unacceptable, rude and unprofessional". She said that she could speak to anyone that she wanted to and not seek the permission of the chair or the board; and that she "needed her own space to develop a picture of the organisation without board interference." DJ claims that the claimant made derogatory comments about the administrator. The claimant denies having had any such conversation with DJ on that day on the basis that she was away from the office at a meeting in Kent. She does not say that it did not take place at all. It may be that the telephone call took place the day before. We find that a fraught telephone call did take place; that the claimant expressed herself in a forthright manner, and that this is the first evidence of what shortly became a fraught relationship between the claimant and DJ. In any event , it is not in dispute that DJ emailed the claimant at 10:50 am on 2 November (page 193) in which she set out the board's position on the funding issue, succession planning, and a leaving event for Vinod, claiming that he had been adamant that he did not want one, but that , as discussed at the AGM , an event could be held but would need to be costed and submitted to AP for approval . Significantly , under paragraph 5, she referred to the detailed meeting the claimant had had with Paul without herself or AP. " I was also quite startled when I mentioned this that you wanted your own space to develop a picture of the organisation, and reminding me of how a board should work and the role of board members." This, we find, is a reference to the earlier telephone conversation. The claimant responded to that email in terms which again may reasonably be described as forthright, in an email of 3 November timed at 11.28. See page 192. At point 1, she said that it was her responsibility to talk to all staff and would continue to do so, saying that it was a priority since the respondent had not had any formal contracts with them and that such contracts would need to be drawn up and their jobs formalised. "In some cases we need to re-advertise their jobs to be completely aboveboard and transparent as a charity…"; in point 2, she expressed a concern about succession within the board ; in point 3, she expressed views on the the policy concerning ACE funding and reserves; in point 4 she said that she would be sending regular updates to all board members; in point 5 she expressed a view that there should be a 60:40 split between Asian and non- Asian members. She also said she had spoken to Vinod, who did not want an official leaving event over a year after he announced his departure. This was addressed to DJ and AP only, and is not claimed as a PID. Subsequently, however, DJ circulated it to the Board members, who expressed views supportive of the Board. See pages 164-167. At page 167 are comments from AP. These were not copied to the claimant.

5.10. It was at 14.34 that day that the claimant circulated to the Board members and the Administrator the email which she now relies upon as PID number 1. See pages 102 to 103. This was headed "CEO and priorities" and raised a list of

issues "which the board needs also to work on and there are also some of the areas that our main funder, the Arts Council, has also discussed with me". There follows a list of 10 subject headings including (1) board succession; (2) diversity of board; (3) updating payment methods to staff (a reference to payment by cheque); (4 and 5)) ACE funding and reserves – a budget subcommittee to look at new ways of fundraising; (6) staffing – that it was her responsibility to work with all staff, and that board members should discuss any concerns with staff direct to her, and that none of the staff had formal contracts issued. (7) Policies: "I also get the sense that none of the company's policies have been updated over the last few years". (8) DBS checks for all board members. 9. Vinod's leaving party.

5.11. On 4 November at 20.28, the claimant texted DJ in the following terms, (see page 105, which is one of a series of communications otherwise between various board members, not copied to the claimant at the time, and which set out board views between 3 November and 20 November 2018. These are at pages 105-116). The claimant's text of 4 November is cited amongst them. It reads: "Hi Dahlia, I have sent you a reply to your email with my recommendations and how a truly democratic board should work. Please read it before you respond. I really don't appreciate the tone of your email. I have many years of being on boards including the Arts Council and I do know how organisations should be run. If you want me to continue let me know. If so I will expect some changes to be made within you (sic) next few months. Regards Priti."

5.12. DJ claims she spoke to Ms Orrell, the ACE relationship manager at this time, and had shown her the emails, and that she completely denied the claimant's allegations. There is a description of the conversation in a text from DJ at 10.14 on 5 November. See also page 105. We have no reason to disbelieve DJ's evidence on this point in light of the contemporaneous record.

5.13 . The claimant sent a further email to DJ on the 6th of November, intended to be a reply to DJs email of 29th of October. See page 197. It is headed "safeguarding and dignity at work policies" and reads: – "I am concerned that these policies have not been regularly updated, and that the board has not asked to see these on a regular basis over the last few years. There also seems to be some that are completely absent. Has the charity commission not wanted to see these?

I would recommend that we pay a specialist on legal matters to help draft these policies so that we are legally in the right as the wording also must also legally right (sic) for any insurance that we take out". This is alleged to be PID 2.

5.13. It was decided that DJ and AP would invite the claimant to a meeting on 8 November. On 6 November 2018 DJ emailed the claimant in the following terms : "AP and I would like to meet with you on Thursday 8 of November at 2 pm at Art Asia office to discuss and clarify some of the issues you have raised in your various emails to myself and the board. Please confirm your attendance. Thank you." The claimant acknowledged and asked for the meeting to be put back to 2.30. See page 127.

5.14. The respondent's intentions with regard to the meeting are set out in an email from DJ to Board Members sent on the morning of the meeting at pages 173-174. This is marked "Urgent and confidential". In summary, it puts before the board two options: Plan A would involve the claimant being kept on, but she would have to rescind the allegations contained in the e mails. Plan B, which was the recommendation of DJ and AP, was to terminate the claimant's contract "from today," with 1 months pay in lieu.
5.15. The unhelpfully redacted notes of the meeting in the original bundle taken by another Board member are at pages 132-138. The agenda, only given to the claimant at the outset of the meeting, is at page 139. Other versions of the notes were sent to the Tribunal during this hearing. See pages 138A-F. These disclosed that the attenders were the claimant, DJ, AP and another member of the Board as note taker, Anypuma Kunjar. There are some issues as to the content and tone of the meeting, but it is not in dispute that the claimant was suspended on full pay until the board investigated this further, and decided what to do next; and that she would be informed of the board's decision within a few days. The claimant is reported as saying at the end: "She also had to think carefully if this was the right organisation for her, not realising what she was stepping into". Although the timing of the end of the meeting is not recorded in the notes, it appears that it ended at about 4 pm.
5.16. That evening the claimant sent four emails which the respondent relies upon as showing that the claimant resigned and intended to resign from her post. In time order , these were sent to Helen Keall at 20.03 on page 214: " I am afraid I have decided to leave Art Asia…."; to Paula Orrell of ACE at 20.15 on page 213, "I am afraid I have decided to leave Art Asia"; to the board members at 21.17 on page 140 headed "Leaving Art Asia"; and to Greeta Uppal at Solent University at 21.34 on page 145: " Unfortunately I have decided to leave Art Asia today being there for less than three weeks."
At 22.52 AP circulated a text to all board members "just received email from Pritti informing me that she is leaving. The email is sent to all board members – was in my junk mail have you all received?".
On 9 November at 10:53 AP circulated a text received from the claimant at 22.39 the previous evening: – "Hi Arvind I have also been asked to look at whether what happened today amounts to unfair dismissal given that I was not informed that today's meeting would be a formal meeting with a third person present and minutes being taken.I should have had the opportunity to have representation. Also other board members should have had the opportunity to seek clarification. I will seek further advice on this. I am very aware that Delia will misconstrue things that I have said today and so will draft my own notes and will send them to the board. What happened in the meeting should have been audio recorded so that it could have been played back when needed. I should also have been clearly informed". It is to be noted (1) that the claimant has not asserted since that she had been constructively dismissed. (2). The claimant did not assert that she had not resigned, or meant to resign. Subsequently, it is clear from the texts between Board Members, the respondent took legal advice. The next relevant

Communication is a lengthy email from the claimant timed at 12.19 on the 11th of November at pages 150 to 153 of the bundle. In summary, that raise the following topics: – (1).It Complained generally about the circumstances of the meeting on 8 November including that there should have been an independent minute taker or recording made so that all board members could have listened to it. She suggested that a special board meeting should be arranged as soon as possible. (2) that there was no succession plan for her arrival as CEO. She was particularly critical of DJ who she said had no right to rebuke the administrator; and questioned her ability to lead the company.(3). That she had not been properly inducted; (4) . That ? Vinod had not been invited to talk to her about the company or introduce her to his contacts. (5) that she had in consequence set up her own meetings with staff and had been rebuked for it. It is of some note that the claimant did not mention matters which she now relies upon as PIDs.

On 15 November the respondent wrote to the claimant stating:

"In response to your email dated the 8th of November informing the board of Art Asia Trust Ltd that you have decided to leave the company, the board of directors have accepted your resignation and this letter is a formal acknowledgement of the end of your employment from the 8th of November".

This correspondence is, however not the complete evidence of the communications between the parties over the period up to 20 November 2018.

On 17 November at 11 am the claimant sent an email stating an intention to return to work on 21 November. See page 155. On 19 November at 11 am the claimant emailed in response to the respondent's letter of 15 November claiming that she had not yet submitted a formal letter of resignation stating what her notice period would be. The claimant then relies relies upon a further letter from the respondent, who had taken privileged and undisclosed legal advice in the meantime , dated 19 November at page 203, the second and third paragraphs of which read:

" Your email to us of 8 November was titled "Leaving Art Asia" and the first sentence was "I'm afraid I have decided to leave Art Asia". This was a clear and unambiguous resignation and was accepted as such by the board. In addition, the email that followed on the 11 November included nothing to suggest a change of heart, or which might cause the board to doubt its understanding of your previous email; to the contrary, it was taken as providing further explanation for your decision.

However for the avoidance of doubt, if your email of 8 November was not a resignation, which we do not accept, then we confirm that your employment has been terminated by the organisation in any event".

The claimant does not accept that she resigned on 8 November. Accordingly she relies upon this letter as an unequivocal dismissal for making PIDs. There are however other communications in this period, not only between the parties, but also internal communications between board members, which the Tribunal has to consider.

5.17. That concludes a chronology of main events.

6. The Tribunal had insufficient time to hear closing submissions on 21 October and directed sequential closing submissions. The respondent's were received on 11 November and the claimant's on 25 November. We considered them at our deliberations on 10 December. They are a matter of record.

6.1. It is first in dispute that any of the written disclosures made on 3 November described at paragraph 5.10 above, and on 6 November at paragraph 5.13 above, were qualifying disclosures under Section 43B(1) (a) to (f), in particular (b), tending to show in the reasonable belief of the claimant, and in the public interest, that the respondent had failed, was failing or was likely to fail to comply with any legal obligation. We remind ourselves that the claimant is not required to prove that there was in fact a breach of a legal obligation, only that she reasonably believed it. We also remind ourselves that the disclosure must have sufficient factual content and specificity showing a relevant failure in order to qualify for protection. See Kilraine v London Borough of Wandsworth 2018 ICR page 1850. It is important to consider all the surrounding circumstances, not merely the content of the written documents, said to amount to the disclosure.

6.2. Updating of policies. In this case the background circumstances include the instruction given to the claimant in particular at the meeting on 25 October, and DJ copying the claimant into an email from ACE of 5 September reminding the respondent of the obligation to update its policies. In these circumstances we do not consider that the claimant's repetition of the obligation which she had been given to do that has the hallmark of, or would form the basis of a reasonable belief, that the respondent had breached or would breach its legal obligations in respect of any of the policies, even if they were found not to be up to date. In addition there must be a belief in the existence of a legal obligation, which is not the same as a breach of guidance or policy. See Parkins v Sodexho 2002 IRLR p 109.

6.3. In this respect we do not accept that the claimant's complaints about board succession , or about board diversity, justified a reasonable belief that the respondent was in either respect likely to be in breach of a legal obligation. There is no evidence that the claimant checked the articles of association. If she had done so, she would have found that at paragraph 46 there was an obligation on one third of the members to resign, but could be available for reelection at each AGM, and the third should be composed of those who had served or been re-elected for the longest period. The claimant had no evidence or basis for a belief that this had not been complied with. Indeed it had been complied with at the last AGM.

6.4. As to diversity , a reference to racial or national origin, it was not surprising that an organisation devoted to advancing South Asian culture would have predominantly Asian members on the board . The claimant is unable to identify any legal obligation which she believed was breached by those circumstances , and the fact that there was a white English member demonstrates that there was no policy of racial or national exclusion. The respondent was aware of the racial mix, but depended upon unpaid volunteers to act as Board Members. It was not surprising that people from different racial backgrounds were not interested in becoming members.The claimant does not appear to have made any enquiries to ascertain what the legal

position was. If the claimant believed that there was some breach of a legal obligation, it was not a reasonable belief.
6.5. Next there is an issue raised that funding reserves received in particular from ACE were not invested in such a way as to produce a return. This was not altogether surprising, if correct, in the light of the circumstances that the principal part of the respondent's outgoings would have been devoted to the Mela annual festival taking place in July each year. The claimant does not explain how that fact, if it was true, supported a belief that the respondent was in breach of a legal obligation.
6.6. As to DBS checks, it was assumed, as was shown by the board minutes of the meeting on 25th of October, that all members of the board would be required to be DBS checked. This was accepted . There was no basis for a belief that anyone would refuse. There may have been a belief that there had been a failure to have had them checked in the past.

6.7. Absence of staff contracts and time sheets. It is apparent that the Administrator, Heather, was the only person recognised by the respondent as having employment status. She had fixed hours of work based at the office. The evidence is that she received a written contract on an annual basis, but that it had not been renewed in the past year when DJ and AP had been performing the duties previously done by Vinod, but, if that were so, it would mean that she had written notice of the terms under which she continued to be employed. It is common ground that none of the other people who worked for the first respondent had received written contracts, but we do not know, nor does the evidence or disclosure deal with what hours they worked with what regularity and whether they were under management or control by the respondent so as to constitute employment, thus giving rise to a legal obligation to provide written STCs under Section 1 of ERA, and payslips, and to deduct tax and NI under PAYE. In Paul's case, he was clearly treated as freelance, but his responsibility was only for the organisation of the Mela, not requiring year round attention. It is not uncommon for people to work for charities on a freelance basis, but not constituting employment. However, we again remind ourselves that the claimant is not required to prove that there was a breach of a legal obligation , only a reasonable belief that there was. It is unclear what investigation she undertook into these matters, and the detail of what she believed is notably lacking from her disclosure of 3 November. Nonetheless, we are prepared to accept that the claimant may well have reasonably believed that the respondent was not complying with legal obligations in respect of one or two of the people who worked for it. It was of course part of her duties, and if there was a breach, it was certainly not a breach which, taken in isolation would motivate any reasonable employer to subject the person who raises it to a detriment, which is the next issue we have to consider. We do not accept that any of the other disclosures whether in the email of 3 or 6 November, constituted qualifying or protected disclosures.
6.8. The next issue we had to decide was whether the claimant was suspended because she had made any PIDs . Accepting that the suspension did constitute a detriment even if it did not lead to dismissal, the burden shifts to the respondent under Section 48(2)to prove that she was not suspended for making a PID or PIDs. Accepting also for the sake of argument that the claimant had made PIDs in relation to staff contracts and payments and the necessity for board members to have been DBS checked, we turn now to the reasons for suspension. We conclude that the reason for the suspension was a breakdown in the relationship between

the claimant and members of the Committee and in particular the Chair, DJ, and Treasurer, AP. It started with the claimant's claim that there had been an ongoing fractious relationship with the ACE representative which needed to be rectified which we interpret as a reference to DJ's relationship with Paula Orrell, which DJ strongly contested and referred to Paula Orrell, who denied it. The claimant ignored an instruction from AP that there should be a meeting to introduce the claimant to the Mela Organiser. The claimant was overtly critical of DJ, and her Chairmanship, in describing the organisation and the Board as being undemocratic, a reference to the re-election of DJ and AP. It was clear that she did not accept direction from DJ, even though instructed to report to her. We have accepted DJ's evidence that the claimant reacted very angrily in a telephone call with DJ at the beginning of November. We regard these matters as being the reason why a decision was made to suspend the claimant, and not anything connected to the requests originally made at the Board to check policies, and perform DBS checks, which were in any event uncontentious. The claimant had been instructed to deal with these matters, so it was inherently unlikely that DJ and AP would suspend her for obeying the instructions. The revised notes of the meeting on 8 November reveal that the claimant was highly critical of the Board. In short, we find that the decision to suspend the claimant was not because the claimant had made any PIDs even if she had, but because of the challenging relationship which had developed between the claimant and DJ in particular.
6.9. Next, we had to consider whether the claimant resigned on the 8th of November from her post or was dismissed by the respondent on the 19th of November. We have concluded that the claimant intended to resign on the 8th of November and that the terms of her resignation were unambiguous. This was not a resignation in the heat of the moment. We have considered in this respect the text tests laid down in Southern v Frank Charlesley and Co,1981 IRLR p. 278. We find that the claimant was contemplating leaving even before she made any disclosures which she relies upon as PIDs – see paragraph 5.11 above "if you want me to continue let me know. If so, I will expect some changes to be made within… Next few months". This was in effect an ultimatum. Next, we note that the claimant announced her decision to resign, four hours after the end of the suspension meeting, and not merely to the board members but also to three others closely connected with the organisation including two who had been on the interview panel and the third being the contact person with the respondent's principal source of funding. . This was not in those circumstances a resignation in the heat of the moment; the claimant was not in the circumstances a vulnerable person placed in a difficult position. Furthermore,, one of the communications stated "I have decided to leave Art Asia Today, (Tribunal's underlining) being there for less than three weeks". The claimant's communications over the next few days do not indicate that she was withdrawing her written resignation, or had not already left. Her next communication was a text to PA on 9 November, when, far from claiming that she had not intended to resign, stated that she was considering bringing a claim of constructive dismissal, thus confirming that she had resigned. The next communication of 11 November also did not say that she had not resigned. There was no such indication up to the respondent's letter of 15th of November, a week later, that the respondent, having taken legal advice, notified the claimant that her resignation as of the 8th of November was accepted. The respondent did not in those circumstances accept the resignation in haste, without giving the claimant the opportunity to withdraw it. It was not until 17th of November nearly 9 days later that the claimant appears to have changed her mind and out of the blue

announced an intention to return to work on the 21st of November. By that time, it was too late. In short, the claimant's resignation was unambiguous; it was repeated several times internally and externally to the organisation. It was not made in haste, and withdrawn. There were no special circumstances whereby the respondent should have waited any longer before accepting it at face value.

.

Employment Judge Hargrove

Dated: 23 December 2020

Sent to parties on: 7 January 2021

For the Tribunal Office

Online publication of judgments and reasons

The Employment Tribunal (ET) is required to maintain a register of all judgments and written reasons. The register must be accessible to the public. It has recently been moved online. All judgments and written reasons since February 2017 are now available online and therefore accessible to the public at: https://www.gov.uk/employment-tribunal-decisions

The ET has no power to refuse to place a judgment or reasons on the online register, or to remove a judgment or reasons from the register once they have been placed there. If you consider that these documents should be anonymised in anyway prior to publication, you will need to apply to the ET for an order to that effect under Rule 50 of the ET's Rules of Procedure. Such an application would need to be copied to all other parties for comment and it would be carefully scrutinised by a judge (where appropriate, with panel members) before deciding whether (and to what extent) anonymity should be granted to a party or a witness.