



EMPLOYMENT TRIBUNALS

Claimant: Ms E Bogowicz

Respondents: Newport Tax Management LLP (1)
Mr P Porter (2)
Mr N Wood (3)

Heard via Cloud Video Platform (London Central) On: 22, 23, 24, 25 June 2021

Before: Employment Judge Davidson
Ms S Pendle
Ms J Marshall

Representation

Claimant: Ms C Meenan, Counsel
Respondents: Mr K Chehal, Consultant

RESERVED JUDGMENT

The unanimous decision of the tribunal is as follows:

- a) the claimant's complaints of whistleblowing fail and are dismissed.
- b) the claimant's complaint of unfair dismissal succeeds. A remedy hearing will take place on 13 September 2021.
- c) the claimant's complaint of wrongful dismissal fails and is dismissed.
- d) the claimant's claim for holiday pay fails and is dismissed.

Employment Judge Davidson

Date 8 July 2021

JUDGMENT SENT TO THE PARTIES ON
09/07/2021.

FOR EMPLOYMENT TRIBUNALS

Notes

Public access to employment tribunal decisions: Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

CVP hearing

1. The hearing was a remote public hearing, conducted using the cloud video platform (CVP) under rule 46. The parties agreed to the hearing being conducted in this way.
2. The parties were able to hear what the tribunal heard and see the witnesses as seen by the tribunal. From a technical perspective, there were no difficulties.
3. The participants were told that it was an offence to record the proceedings.
4. I was satisfied that none of the witnesses was being coached or assisted by any unseen third party while giving their evidence.

REASONS

A Issues

Protected disclosures – s.43B ERA 1996

1. Did the claimant make the following disclosures of information:
 - a. On 10 May 2018 and 19 February 2020 to the second and third respondents that they were excessively using the first respondent's funds for personal use rather than investing such funds in the first respondent in accordance with the business plan and budgets **Disclosure 1**;
 - b. On 10 May 2018 to the second and third respondents that their drawings were excessive and were creating cash flow difficulties for the first respondent **Disclosure 2**;
 - c. On 10 May 2018 the claimant raised concerns that the second and third respondent withdrew part of the first respondent's funds in order to pay for holidays and/or home improvements and this was creating cash flow difficulties for the first respondent **Disclosure 3**;
 - d. At the claimant's annual review meetings on 28 August and 5, 12, 16 and 23 September 2019, to the second and third respondents that their drawings were excessive and their expenses high and not always genuine and that this was putting the financial stability of the first respondent at risk and could cause the employee's salaries not to be paid **Disclosure 4**;
 - e. On 10 May 2018 and 26 November 2019 that unless expenses were reduced or postponed, employees would go unpaid **Disclosure 5**.
2. In so doing did the claimant disclose information that she reasonably believed tended to show the respondents had failed, were failing or were likely to fail to comply with any legal obligation to which they were subject (s.43B(1)(b))?

3. If so, did the claimant reasonably believe that the disclosures were made in the public interest?

Detriment – s.47B ERA 1996

4. Did the respondents subject the claimant to any detriment on the ground that she had made (a) protected disclosure(s), by virtue of any or all of the following:
 - a. On 16 October 2019, 17 October 2019 and 2 April 2020 the second and third respondents complaining and sending rude and disparaging emails in response to the claimant making requests whilst carrying out her role **Detriment 1**;
 - b. the claimant's selection for redundancy by the second and third respondent **Detriment 2**;
 - c. the manner of the claimant's dismissal on 23 March 2020, specifically the failure to warn or consult the claimant of the alleged redundancy situation **Detriment 3**;
 - d. the refusal to consider placing the claimant on "furlough" under the Coronavirus Job Retention Scheme instead of dismissing **Detriment 4**;
 - e. payment of incorrect notice and holiday pay to the claimant and citing an incorrect job title in the financial statement provided to the claimant **Detriment 5**;
 - f. the third respondent's email of 2 April 2020 which told the claimant to "stop using irrational phraseology" **Detriment 6**; and
 - g. the first respondent's failure to provide the claimant a reference **Detriment 7**.
5. Is the claim in respect of any of the above detriments out of time under section 48(3)(a) ERA 1996?
6. If any of the detriments are out of time, did those detriments form part of a series of similar acts or failures to act the last of which is in time (section 48(3)(a) ERA 1996)?
7. If not, should time be extended under section 48(3)(b) ERA 1996 because it was not reasonably practicable to present a claim in time and a claim was presented in a reasonable further time?

Unfair dismissal - s.98 ERA 1996

8. What was the reason for the claimant's dismissal? Has the respondent shown that the reason for dismissal was redundancy?
9. Was dismissal for this reason in all the circumstances fair within the meaning of section 98(4) ERA 1996? If the reason was redundancy, the claimant alleges dismissal was not fair for the following reasons:
 - a. failure to warn and consult the claimant;
 - b. failure to offer the claimant the right to be accompanied to the dismissal meeting;

- c. failure to select the claimant on a fair and objective basis;
- d. failure to search for suitable alternative employment;
- e. failure to explore ways to avoid the redundancy, including placing the claimant on “furlough”; and
- f. failure to consider “bumping”.

Automatically unfair dismissal – protected disclosure, s.103A ERA 1996

10. Was the sole or principal reason for the claimant’s dismissal that she made protected disclosure(s), as above?

Wrongful dismissal

11. Was the claimant’s notice period either three months or one month such that her dismissal on four weeks’ notice was wrongful?

Unlawful deduction from wages, s.13 ERA 1996

12. Is the claimant owed holiday pay?

Remedy

13. What is the period of loss of earnings to be awarded, if any?
14. Should the claimant receive compensation for an injury to feelings award? If so, how much?
15. Should the claimant receive compensation for personal injury suffered as a result of being subjected to detriment? If so, how much?
16. Is the claimant entitled to aggravated damages? If so, how much?
17. Should there be any adjustment to any award to reflect an unreasonable failure to follow the ACAS Code?
18. Should compensation be reduced following *Polkey v AE Dayton Services Limited* and/or to reflect the claimant’s contributory conduct and, if so, by how much?
19. What interest should the claimant be awarded, if any?
20. How much holiday pay is the claimant owed, if any?
21. How much notice pay is the claimant owed, if any?

B Evidence

22. The tribunal heard evidence from the claimant and Kieran Thorne (formerly Finance Assistant) on the claimant's behalf and from Nicholas Wood, Philip Porter and Stephen Almond (Director of Client Relations) on behalf of the respondents.
23. The tribunal also had witness statements from Nicole Gregor (partner) and Susan Wood (partner). The claimant's representative confirmed she had no cross examination for these witnesses and they did not attend.
24. The tribunal had a bundle of documents before it running to some 1600 pages

C Facts

25. The first respondent is an LLP which provides litigation and tax management assistance in relation to bad investment schemes. The partners are the third respondent and the second respondent together with their wives/partners and, over the course of the claimant's employment, there were between five and ten employees in the business.
26. The claimant joined Newport Capital Admin Limited in September 2016 as Finance Manager. Her employment transferred to the first respondent under TUPE in August 2017. Her contract contained a notice period of one month and holiday entitlement of 25 days plus bank holidays.
27. Part of the claimant's role was to monitor the first respondent's bank accounts to ensure there would be sufficient funds to pay the first respondent's liabilities as they fell due. On a few occasions in 2017, there were insufficient funds to pay staff salaries, suppliers and HMRC and these were paid late.
28. On 10 May 2018, the claimant sent an email to the first respondent and the second respondent which included the following wording:

“during April there was £14K of NTM [first respondent] funds...spent via NV on miscellaneous BBI entertainment...not to mention other expenditures and drawings in previous months...the Newport employees still haven't received any April salaries.” **Disclosure 1, Disclosure 2, Disclosure 3, Disclosure 5**
29. The first respondent accepts that salaries were paid late but they were paid in full after a short delay, the reason for the delay being a holdup in a funder supplying funds.
30. In late August 2019, the respondent proposed new contracts of employment for staff, which were due to be returned by 2 September 2019. The claimant had various queries about the changes to her terms and these were discussed at her annual review meeting, which took place over five meetings on 28 August, 5 September, 12 September, 16 September and 23 September 2019. She was asked to put her comments regarding the new contract in writing, which she did on 25 September. Her points of concern included an objection to her notice period

being increased to three months, as she was concerned that there may times in future where the respondent was not able to pay salary and she wanted her risk to be limited to one month.

31. Following the review meetings, the claimant's salary was increased to £65,000. This was not reflected in the draft contract given to the claimant to sign.
32. On 2 October, Rachel Lockhart, IT Manager, chased the claimant for her signed contract. The claimant replied that she was still waiting for a response to her queries from the second respondent. The third respondent and the second respondent discussed this and decided not to accept her changes. They did not go back to her and inform her of this, nor did they offer her the new contract to sign with the correct salary in it. The issue of the new contract simply lapsed.
33. The purpose of the review meeting was to look back at her performance and to look forward to the coming year. Prior to the hearing, she prepared some notes which she added to in manuscript during the period of the various meetings. The gist of her comments related to her under-appreciated worth to the business and included remarks about the contribution she made despite a lack of support or cooperation from the respondents. Among the points she made was the lack of priority shown by the second and third respondents and funds taken out of the business by them which led to outstanding and overdue payments. **Disclosure 4.** There was a conflict of evidence whether the issue of partner drawings and expenses was discussed. The respondent did not produce their notes of the meeting and we accept, on the balance of probabilities, the claimant's account that she did mention the issue of cashflow management but we do not find that she referred to payments being 'excessive' or expenses not being 'genuine'.
34. On 16 October 2019, the claimant was chasing the respondent for documents relating to a VAT inspection in which she says that she has been waiting for some requested information for over a year, adding "*I don't understand the lack of priority all of this have been given and I don't feel comfortable with this.*" In response to which the third respondent said (copying in all parties) '*if you send emails like that I'm not surprised at the lack of support*'. **Detriment 1**
35. On 17 October 2019, there was an email exchange where Angel (who worked for the first respondent's accountants) asked the claimant to follow up on some information which the second respondent and the third respondent had promised her. The second respondent criticised the claimant for not dealing with the query, at least in the first instance, but the claimant explained that she had not been given the necessary information to draft a response and that she had drafted responses to all Angel's other queries. We find that the second respondent's criticism was unduly harsh and he had not taken the time to check the context of her request. **Detriment 1**

36. On 26 November, the third respondent asked the claimant to pay an invoice he had received from a supplier (TBONTB) and asked what the salary bill would be. He also said that he was expecting funds in within the following couple of days. The claimant responded by alerting him to the fact that there was not enough money at that point to pay the TBONTB invoice and the staff salaries, asking if some of the TBONTB invoice should be held back until the money he was expecting came into the account. We have no evidence that the commitments were not met on time. **Disclosure 5**
37. In November 2019, the claimant found out about and took exception to Rachel Lockhart preparing Financial Spreadsheets, which she considered was part of her role. She alleged that the figures on the spreadsheet were being manipulated. We find that the spreadsheets being prepared by Rachel Lockhart were not part of the accounts of the business but were part of a pitch to potential new investors. The changes she was asked to make to the figures were not misleading but were a way of presenting figures to new investors. She was working on instructions from the second respondent and the third respondent.
38. On 19 February 2020, the claimant sent an email to the second respondent and the third respondent pointing out that there were insufficient funds in the account to pay various commitments falling due that month asking when more money was coming in: *“please see today’s bank balances after EC receipt and the requested payments (Breakspear, Leon Zero Gravity, Waud Wine Club). Do you expect any additional funds in the bank during current or the next week, so the required payments and salaries (details below) can be paid?”* **Disclosure 1**
39. We have no evidence that the commitments were not met on time.
40. Due to the pandemic, the first respondent’s employees were asked to work from home with effect from 16 March 2020. The team had a regular 9am morning call each day to discuss the day’s work. The claimant had previously worked from home and had office equipment at home to enable her to work remotely.
41. Over the weekend of 21/22 March 2020, the second respondent and the third respondent took the decision to make the claimant and two other employees redundant. They decided to cut the claimant’s access to banking ‘just in case’ and reviewed her access to other systems. There was discussion about reducing the pay of other members of staff but we did not hear whether this was implemented or not.
42. On 23 March 2020, the claimant was told to join the daily call at 9.15am instead of 9.00am. She asked her colleagues if they were aware of the change of time and was told that they not heard of any change. When she joined the call, it was just her, the second respondent and the third respondent. They told her that she was being made redundant and that there were no alternatives to her redundancy. **Detriments 2 and 3** She was not told the detailed reasoning of the decision and

was not invited to make representations. She brought up the newly announced government furlough scheme (Coronavirus Job Retention Scheme) as a possible option to mitigate her redundancy but this was rejected by the second and third respondents. The call ended having lasted 14 minutes. Later that morning the second respondent sent the claimant an email confirming her redundancy as of 9.00am that morning, referring to 'unprecedented times'. We take this to be a reference to the pandemic.

43. The claimant responded later that day asking about her entitlements and working her notice. She was told to work normally where possible but not to dial into the morning meetings. The evidence of Mr Almond shows that her colleagues were told that she had already left.
44. The respondents followed up with a letter to the claimant dated 26 March 2020 which gave the pandemic and downturn in business as the reasons for the redundancy, without specific details. The claimant was asked to work out her notice. She was also offered the right of appeal to the third respondent within 7 days and told that they would respond to any requests for a reference from a prospective employer. This was sent via email on 27 March by the second respondent with a covering message which included the line "*On a personal level I feel very sad that through nobody's fault it has come to this and we all find ourselves in this terrible situation and the suffering Covid19 has, and will continue to cause, to all.*"
45. The claimant responded to the second respondent expressing her shock at the decision, making reference to the furlough scheme and commenting on the effect of the decision on her health.
46. On 1 April the claimant emailed the second and third respondents asking them to consider placing her in the furlough scheme. The third respondent replied a few minutes later rejecting the suggestion and saying the scheme was not relevant to her and that it would involve a cost to the business in topping up her salary. She responded explaining that it would not be any cost to the business and that the scheme was designed precisely for people in her situation. There was an email exchange regarding the furlough scheme and the third respondent refused to consider it as he did not think it was appropriate for the claimant. **Detriment 4**
47. On 2 April 2020, the claimant sent in her sick note having been signed off from work by her GP for 'stress-related problem'. Her covering email said that '*Unfortunately due to the redundancy situation you've put me in*' to which the third respondent replied '*We have not put you in a redundancy situation. I believe it was caused by a global pandemic which has affected millions of people. Please stop using irrational phraseology. I hope you feel better.*' **Detriments 1 and 6** In evidence, the third respondent told us that he was referring to a wider context of email correspondence but his witness statement and the normal reading of the exchange makes it clear that his objection was the claimant suggesting that it was

his decision to make her redundant that he took objection to. We find this comment unnecessarily hostile as it cannot be disputed that it was the respondents' decision to make her redundant so her comment was not irrational at all, and the third respondent failed to take into account that the claimant had just disclosed that she had been diagnosed with a stress related condition.

48. Later, on 2 April 2020, the claimant appealed against her dismissal on the grounds that it was not genuine, lack of process and not enough had been done by the respondents to avoid the redundancy. She also alleged that she should have been entitled to three months' notice and 28 days' holiday pay under the new contract offered to her in August 2019. **Detriment 5**
49. The claimant's appeal email was forwarded on 3 April to the second respondent and Rachel Lockhart by the third respondent with the comment '*The gift that keeps on giving!!*'. The email in reply from Rachel Lockhart was not before the tribunal but we saw the reply to the missing email from the third respondent saying '*Thanks Rach that's excellent. Let me discuss with Phil and we will revert. Perhaps a copy of her email and a polite Fuck Off.*'
50. The second respondent replied on 15 April rejecting the appeal against the decision to dismiss taken by him and the third respondent. In the appeal outcome letter, the reasons for the dismissal were given in more detail than had been given previously, particularly in relation to the claimant's function and role. The second respondent did not rely on the pandemic in this explanation. The outcome was that the appeal was rejected.
51. The claimant made representations in response but acknowledged that she had no further right of appeal.
52. The claimant's employment terminated on 20 April 2020.
53. On 7 May the claimant asked the third respondent for an open 'To whom it may concern' reference. She received no reply and repeated her request on 14 May to which the third respondent replied that he was not obliged to provide an open reference but would reply 'promptly' to a specific request from a prospective employer.
54. On 15 May, the claimant explained her request for the open reference to which the third respondent replied that there was a policy of not providing open references. We were not referred to any specific written policy.
55. In evidence, the third respondent said that he objected to open references as he did not like signing a document without knowing who would read it. The second respondent stated that there was a distinction between an employment reference and a mortgage reference (which had previously been given to the claimant), which he accepted could be addressed 'to whom it may concern'. The third respondent

said that he would be prepared to give a reference to a recruitment consultant. On 25 June, Ms N Verry made a reference request for the claimant. She was a recruiter although the second respondent would not have known whether she was a recruiter or a prospective employer from her email. He did not respond. She repeated the request on 29 July 2020 but received no response. The claimant also chased for the reference but received no reply. **Detriment 7**

D The Law

56. The Employment Rights Act 1996 (“ERA 1996”) contains the following relevant provisions:

Section 43A: Meaning of 'protected disclosure'

In this Act a 'protected disclosure' means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any sections 43C to 43H.]

Section 43B: Disclosures qualifying for protection

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, or is likely to be deliberately concealed.

Section 47B: Protected disclosures (detriment)

(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.

Section 103A: Protected disclosure (dismissal)

An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.

s139: Redundancy

For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to

- (a) the fact that his employer has ceased or intends to cease—
 - (i) to carry on the business for the purposes of which the employee was employed by him, or
 - (ii) to carry on that business in the place where the employee was so employed, or
- (b) the fact that the requirements of that business—
 - (i) for employees to carry out work of a particular kind, or
 - (ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer, have ceased or diminished or are expected to cease or diminish.

s98: Unfair dismissal

(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—

- (a) the reason (or, if more than one, the principal reason) for the dismissal, and
- (b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this subsection if it—

- ... (c) is that the employee was redundant...

(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—

- (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
- (b) shall be determined in accordance with equity and the substantial merits of the case.

E Determination of the Issues

Disclosures of information

57. We find that, in her emails of 10 May 2018 (**Disclosures 1, 2, 3, 5**) and 19 February 2020 (**Disclosure 1**), the claimant does not state that the second and third respondents were using the first respondent's funds 'excessively for personal use'. The information disclosed is the level of expenditure and drawings and a reminder of payments due. The emails do not describe any wrongdoing and, in our view, they are an illustration of the claimant performing her role as Head of Finance in ensuring there was money in the right bank account to pay obligations.
58. We find that the email of 26 November 2019 (**Disclosure 5**) was not a disclosure of information regarding a wrongdoing but advice given to the respondents regarding their bank balance and forthcoming commitments, which was part of the claimant's job role.
59. We find that the disclosures relied on by the claimant amounted to a request to ensure funds were available for the payment of obligations to staff and third parties. There were cashflow difficulties but we do not find that any wrongdoing was identified.
60. The way that the claimant presents her claim illustrates a misunderstanding of the respondent's organisation. The respondents owed no fiduciary obligation to the litigation funders and the profits of the business belonged to the partners. It was up to the partners to decide what drawings were taken and what expenses were incurred as long as their obligations were met. We note that their obligations were met, albeit on occasions slightly late but the late payments had not occurred since 2018. The situation is different from a limited company where there is a duty to the shareholders to spend money in the best interests of the company.
61. To the extent that the claimant may have genuinely believed that she had identified a wrongdoing, we find that such a belief is not reasonable. She is a senior finance employee and must be aware of the difference between a partnership and a company. The tone and content of the disclosures she relies on suggest an irritation that her job was being made more difficult rather than a genuine belief that any wrongdoing was being committed.
62. There would be a possible wrongdoing if the partners were claiming expenses as business expenses which were, in fact, personal expenses and treating them as business expenses for tax purposes. There is no suggestion that this happened or that the claimant disclosed information tending to show that this was happening. We heard from Mr Thorne that if the partners did not provide information showing that an expense was a business expense, he would record it as a personal expense for tax purposes.
63. We therefore find that the claimant has not made any protected disclosures.

Detriment

64. If we are wrong about the disclosures being protected disclosures our findings in relation to the alleged detriments are as follows, taking into account that the earliest disclosure relied on (which is relied on in several separate allegations) took place nearly 18 months before the first alleged detriment:

64.1. The emails of 16 October 2019 and 17 October 2019 were forthright and possibly unnecessarily harsh but we find that the reason for these emails was the respondents' view of the way the claimant was carrying out her duties and did not reference back to any earlier matters.

64.2. The email of 2 April 2020 is unjustified and unpleasant. It follows from the third respondent's objection to the claimant attributing her dismissal to him rather than the pandemic. However, we do not find that his relates to any earlier matters.

64.3. We find that all the elements of the claimant's redundancy amount to detriments but we do not link these to any previous alleged disclosures by the claimant. We will consider these elements further in our discussion of the unfair dismissal claim.

64.4. We find that the claimant was paid the correct notice and holiday pay and therefore this is not a detriment. Our reasons are set out below.

64.5. We find the failure to provide a reference is a detriment but we do not find that there is a link between that and the earlier communications regarding drawings and cashflow issues.

Unfair dismissal

65. We find that the principal reason for dismissal was redundancy.

66. We find that, although the first respondent had a potentially valid reason for dismissal, the first respondent did not act fairly in the following ways:

66.1. There was no warning or proper consultation with the claimant. It is clear that the second and third respondents reached a decision over the weekend to terminate the claimant's employment. They did not invite her to make representations before they finalised their decision. They informed her of the decision at a meeting in which she had expected to be a regular daily update. She was not given any idea that the meeting would be to discuss redundancy.

66.2. Notwithstanding that she was taken by surprise and not invited to make comments, the claimant did make a representation that the respondents should consider putting her in the newly announced furlough scheme. Despite several exchanges on this matter, the respondents flatly refused to

countenance the idea, without giving a cogent or valid reason. It is not necessarily the case that a failure to utilise the furlough scheme for an employee who is at risk of redundancy is unfair but, in this case, we find that the respondents' approach to the claimant's representations was unfair and was evidence that the reason given to her, namely the pandemic, was not the real reason for the redundancy. The furlough scheme was designed precisely for employees otherwise at risk of redundancy due to the effects of the pandemic and the respondents' refusal even to consider the scheme suggests that the dismissal was not related to the pandemic.

66.3. Although the claimant was not given an opportunity to make representations prior to the dismissal decision, the respondent relies on the fact that she was able to appeal against the decision and contends that the appeal remedied any defects in the original decision. We find that this appeal does not remedy the defects in the original decision because the claimant was never presented with the real reason for the respondents' decision, which were described in the appeal outcome letter for the first time and expanded in the evidence before the tribunal. Essentially, the respondents rely on the changing business model which no longer relied on large numbers of individuals signing up to litigation schemes by paying a sign-on fee, which generated large numbers of invoices produced by the Accounts department. By moving to a funding model, they no longer needed to collect sign-on fees or generate invoices for these. They also referred to many of the claimant's tasks being outsourced to the accountants and others being taken over by other members of the team or dealt with using technology solutions. At the time of her dismissal, the claimant was given incorrect reasons (in particularly the pandemic) so she never had an opportunity to make representations to the respondents in relation to the issues which led to her dismissal. In evidence the respondents confirmed that the pandemic had no impact on its business other than the potentially positive one of potential litigators having more time to consider their position due to lockdown and therefore higher numbers signing up.

66.4. In addition, the appeal was to the same person (the second respondent) who made the original decision, despite the correspondence with the claimant suggesting it would be the third respondent not the second respondent who dealt with the appeal. Although the first respondent is a small organisation, it would have been possible to ask one of the other partners to review the decision. The lack of fairness of the appeal process is illustrated in the email chain on 3 April 2020 which included the phrases '*The gift that keeps on giving!!*' and '*Thanks Rach that's excellent. Let me discuss with Phil and we will revert. Perhaps a copy of her email and a polite Fuck Off.*'

67. We accept that there was no real selection issue as nobody was retained in her team.

68. We do not consider that a failure to 'bump' amounted to an unfairness. The first respondent is not under any obligation to 'bump' and there does not appear to be a compelling case for this to be the fairest option in the circumstances.
69. The failure to provide a reference took place after the dismissal and would not, of itself, make the dismissal unfair. However, we consider that this shows an attitude of unhelpfulness towards the claimant and, taken with the refusal to consider furlough, illustrates an obstructive and dismissive approach to the claimant.
70. In conclusion, we find that the dismissal of the claimant was substantively unfair. The reasons now relied on by the respondent were not put to her at the time and a number of factors suggest that the respondent had no interest in treating the claimant fairly. In particular, the failure to engage with her in a proper consultation process, the intemperate language used to her and about her, the failure to consider furlough seriously, the failure to hold a fair appeal and the failure to provide a reference. Although we accept that the respondent has met the definition of redundancy, we find that the decision to dismiss the claimant at the beginning of the pandemic was opportunistic and the respondent saw this as a way of dismissing the claimant quickly and without treating her fairly.

Wrongful dismissal and holiday pay

71. We find that the claimant rejected the offer of a new contract, in particular the term as to notice. She made a specific objection to the variation of this term which was not resolved. The pay increase she received was not linked to her accepting the new contract and she received this independently of agreeing to the terms of the contract.
72. She has failed to show that the relevant terms of her contract included a three month notice period and 28 days holiday. Her claims of wrongful dismissal and for holiday pay fail and are dismissed.

F Conclusion

73. The claimant's complaints of whistleblowing fail and are dismissed.
74. The claimant's complaint of unfair dismissal succeeds. A remedy hearing will take place on 13 September 2021.
75. The claimant's complaint of wrongful dismissal fails and is dismissed.
76. The claimant's claim for holiday pay fails and is dismissed.