EMPLOYMENT TRIBUNALS

Claimant **Respondent**

Ms E Reid **v** **Gilmour Quinn Financial Planning Limited**

Heard at: Watford **On**: 14-18 June 2021,
11 and 19 August 2021 (in chambers)

Before: Employment Judge Bedeau
Members: Mrs I Sood
Mr N Boustred

Appearances

For the Claimant: Mr R Wayman, Counsel
For the Respondent: Mr S Crawford, Counsel

RESERVED JUDGMENT

1. The claims of sex discrimination and equal pay based on like work, are dismissed upon withdrawal by the claimant.

2. The claim of constructive unfair dismissal is well-founded.

3. The claim of constructive unfair dismissal by reason of protected disclosures is not well-founded and is dismissed.

4. The claims of public interest disclosures detriments are not well-founded and are dismissed.

5. The claim of wrongful dismissal has been proved.

6. The claim of breach of unauthorised deductions from wages in respect of the non-payment of the incentive bonus is struck out.

7. The claim of breach of contract/unauthorised deduction from wages in respect of accrued unpaid holiday, is well-founded.

8. The claim of breach of contract/unauthorised deductions from wages in respect of pension contributions, is not well-founded and is dismissed.

9. The claim of victimisation is not well-founded and is dismissed.

10. The case is listed for a remedy hearing on **Thursday 25 November 2021 at 10.00am** either in-person at Watford Employment Tribunals or by cloud video platform, unless settled earlier.

REASONS

1. By a claim form presented to the tribunal on 25 January 2019, the claimant made claims of constructive unfair dismissal; discrimination on grounds of sex; wrongful dismissal; accrued unpaid holiday; unpaid bonus and unpaid pension contributions.

2. In the response presented to the tribunal on 13 March 2019, the claims are denied. The respondent asserts that the claimant had been increasingly hostile towards Mrs Kim Shephard, Director, and refused to accept her position of authority. She made a series of demands which the respondent considered unreasonable and were refused. Her grievances were dealt with fairly using an outside, independent, person. It further denies that it acted in a manner calculated or likely to breach the implied term of mutual trust and confidence entitling the claimant to resign. It asked for a preliminary hearing to consider whether a deposit should be ordered.

3. A preliminary hearing, in private, was held on 14 October 2019, before Employment Judge Manley, when the case was listed for a further preliminary hearing on 4 February 2020, for two hours, to address any outstanding case management matters, finalise the list of issues, consider an application to amend the claim and any applications for strike out and/or deposit orders. The case was given a final hearing date of five days starting Monday 5 October 2020.

4. The Judge identified the claims at the time as: constructive unfair dismissal; breach of contract; and equal pay based on like work.

5. The preliminary hearing on 4 February 2020, was postponed due to the Covid-19 pandemic and relisted for the 28 July 2020 before the Judge in this instant case, Employment Judge Bedeau. On that occasion the Judge allowed the claimant to amend her claim by adding public interest disclosure detriment and public interest disclosure dismissal.

6. The respondent appealed the judgment resulting in the final hearing listed in October 2020, having to be postponed. The appeal was, however, unsuccessful. The case, therefore, had to be relisted for a final hearing to start on 14 June 2021 for five days.

The issues

7. Before us, on the first day, the parties produced an agreed list of the claims as well as the legal and factual issues in dispute. In respect of the sex discrimination and equal pay claims, they were withdrawn by the claimant and dismissed.

8. In relation to unauthorised deductions from wages based on the allegation that the respondent did not pay correct pension contributions. It was agreed that this cannot proceed as an unauthorised deduction from wages but on the basis of it being a breach of contract.

9. The claims before the tribunal are: wrongful dismissal; unauthorised deduction from wages in respect of the alleged unpaid bonus; breach of contract in relation to the pension contributions; constructive unfair dismissal; public interest disclosure detriments and public interest disclosure dismissal.

"Time limits

1. Was the complaint under s.48 ERA 1996, breach of contract, constructive dismissal and whistleblowing detriment claims, presented within time? If not was it not reasonably practicable for the claim to be presented within the time limit? If so was the further period taken to present the claim reasonable, s.48 (3)(b)

Wrongful dismissal and breaches of contract

2. To how much notice was the claimant entitled?

11. Was the claimant contractually entitled to be paid a bonus?

3.1 If so what was the amount of the bonus and by what date was the bonus to be paid?

3.2 If it was not paid in breach of contract did the claimant waive the breach(s) of contract?

4. What was the claimant's contractual entitlement to annual leave during the Christmas closure in December 2018?

5. What pension payments was C entitled to during employment between 2004 to 2008; and between 2008 and 2019?

Unlawful deduction from wages s13 ERA 1996

6. Did the respondent make an unlawful deduction from the claimant's wages?

7. If so was the unlawful deduction part of sequence of deductions or a single deduction?

8. If a sequence of deductions were the gaps between the deductions more than 3 months?

Constructive unfair dismissal

9. Was the reason, a principal reason, for the claimant's (constructive) dismissal that she made a protected disclosure(s)?

10. Did R, without reasonable or proper cause, breach the implied term of trust and confidence such that C was entitled to resign and claim constructive dismissal under section 95 (1) (C) ERA 1996, by any or all of the following:

    10.1. In response to the claimant's disclosure that the Mr and Mrs Shepherd were in breach of their fiduciary duties as company directors: more closely monitor the claimant; remove work from her; and remove her contractual entitlements

    10.2. In response to the claimant's disclosure that the respondent was in breach of data protection rules: more closely monitoring the claimant; bullying; harassment; prohibiting the personal use of the claimant's mobile telephone during working hours; victimisation; and failing to investigate her concerns;

    10.3. In response to claimant's disclosure of the respondent was in breach of Financial Conduct Authority rules and regulations: withdrawing work from the claimant; more closely monitoring the claimant, bullying; harassment; victimisation

    10.4. In response to the claimant's grievances: failing to respond to the first grievance of 9 December 2016, failing to appoint an impartial person to investigate the second grievance of 11 December 2017, failing to appoint an impartial person to investigate and chair the third grievance of 20 March 2018 and 20 April 2018.

    10.5. Responding to the claimant's email of 3 December 2018 to state that the correct procedure to notify the respondent of any absence was to telephone Mrs Shepherd on her mobile telephone and not send an email

    10.6. The assertion by the respondent to Tenet Connect by letter dated 8 October 2019, that the claimant deleted paperwork without the respondent's knowledge or instruction

11. If one or more of the above is found to amount to a repudiatory breach of contract, did C resign because of the breach of the implied term?

12. Did C delay too long such that she ought properly to be deemed to have waived the breach?

13. If the claimant was dismissed, was the dismissal fair or unfair?

14. Was the dismissal automatically unfair under section 103A ERA 1996, being for the sole or principal reason that she made a protected disclosure?

15. If not, was the dismissal fair or unfair having regard to the test set out in section 98 ERA 1996, including whether the respondent can show a potentially fair reason?

Whistleblowing

Protected disclosures

Legal obligation

16. Did C communicate the following, which on her case fall within section 43 B (1) (B) ERA 1996, as tending to show breach of a legal obligation:

16.1 Mr Shepherd misappropriated company assets by using funds from the profit from the respondent to pay a capital gains tax bill? (Made in a letter emailed to Mrs Shepherd on 8 February 2018, Page 451)

16.2 Expressed concern that the blanket reviews being conducted without client contact and update may lead to confidential information being sent to an out-of-date address. (email 1 September 2017, page 284)

16.3 Expressed concern that a copy of her contract of employment was being left around the office for all to see (email dated 7 June 2018, page 553)

16.4 That the name "S Buckland" appeared on the global address book(Email dated 21 June 2018, page 577)

16.5 Access to claimant's computer by Prism was done without any authorities in place requiring the claimant's permission to do so. (Email dated 9 July 2018, Page 614)

16.6 Failing to protect the claimant's personal data and personal data of her son. (Email dated 10 September 2018, page 695)

16.5 Potential loss of data namely emails between the claimant and Paul Shepherd going back to 2008 (email dated 25 September 2018, Page 704)

16.8 The inability to complete new life assurance application forms using previous health details for the client. (Email dated 23 October 2017, page 337)

16.9 Blanket client reviews conducted without client contact. (No date for this at amended particulars 54, C, ii) (Email dated 1 September 2017, page 284)

16.10 That the claimant never uploaded an Authority to Proceed for protection cases

16.11 Email of 30 November 2018, (Page 748): taking two additional days out of the claimant's holiday entitlement or not to pay the claimant over the Christmas period was unlawful;

16.12 Sharing of claimant's personal data with a third-party was a breach of privacy

16.13 Dishonestly withholding evidence relevant to the claimant's grievance

16.14 Bringing to the respondent's attention serious IT matters and not protecting private information on all respondent's staff on the H drive

16.15 The suitability letter claimed to have been provided at the time of sale of the Synergy plan in 2004 was never received by the claimant

17. Disclosure under s.43G - Tenet Connect: that a suitability letter on file dated 10 March 2004 was created on 18 June 2004, kept on file and not issued to the claimant (form filled by claimant, page 1008)

17.1. Did the claimant reasonably believe that a relevant disclosure were substantially true

17.2. Did the claimant not make the disclosure for purposes of personal gain?

17.3. Either

17.3.1. At the time the claimant reasonably believed that she would be subjected to a detriment by the respondent; or

17.3.2. At the time there was no prescribed person in relation to the alleged failure, the claimant reasonably believed that it was likely that evidence relating to the relevant failure would be concealed or destroyed if she made a disclosure to her employer

18. The legal obligations relied upon by the claimant are? [the source of the legal obligation should be identified]

19. In respect of all the disclosures of breach of legal obligation:

19.1. What information, if any, did C disclose within the meaning of section 43 B (1) ERA 1996?

19.2. Did C reasonably believe that there was, or was likely to be, a breach of legal obligation?

19.3. Did C reasonably believe that disclosure was in the public interest?

19.4. Were any such disclosures protected within the meaning of section 43C ERA 1996?

Whistleblowing; Non dismissal detriment

20. Did R subject C to a detriment on the ground that she had made a protected disclosures above or any of them (in accordance with section 47B ERA 1996) by:

20.1 Subjecting her to closer monitoring;

20.2 Removal of work from the claimant

20.3 Removal of claimant's contractual entitlement

20.4. Bullying

20.5. Harassment

20.6 Prohibition on use of personal mobile phones during working hours (from 18 June 2018)

20.7 Victimisation

[There is a distinct absence of dates of alleged acts]

21. Was the complaint under section 48 ERA 1996 presented within time?

Remedies

22. Were the disclosures made in good faith? If not, would it be just an equitable to reduce any more by 25% (section 49 (6A) ERA 1996)?

23. Should any compensation be subject to a Polkey reduction?

24. Should any compensation be reduced due to claimant's causal or contributory conduct?"

The law

10. In relation to public interest disclosure, we have taken into account sections 103A and 47B Employment Rights Act 1996 on dismissal and detriment.

11. Section 47B(1), Employment Rights Act 1996 provides, "A worker has the right not to be subjected to any detriment by any, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure." "A worker may present a complaint to an employment tribunal that he or she has been subjected to a detriment in contravention of section 47B.", section 48(1A). The time limit is three months from the date of the act or failure to act, or the last act in a series, "or 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.", section 48(3). This time is extended under section 207B where there has been conciliation before the presentation of the claim, section 48(4A).

12. A protected disclosure means a qualifying disclosure as defined under section 43B made by a worker in accordance with sections 43C to 43H, ERA 1996, section 43A.

13. Section 43B defines what is a qualifying disclosure. It provides,

> "(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, or is likely to be deliberately concealed."

14. What is a detriment under section 47B is not defined in the legislation? In this regard the judgments of their Lordships in the case of Shamoon-v-Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285, will apply. It is

whether or not the worker was put at a particular disadvantage having made a protected disclosure? The disadvantage could be either physical, such as being instructed to engage in degrading work; or denying them benefits such as a company car, medical cover or membership of a sports or social club; being denied the opportunity of promotion, or a delay in addressing an issue. It may also be psychological, financial or not being offered employment, amongst other things.

15. The qualifying disclosure must be a disclosure of information, that is conveying facts, Cavendish Munro Professional Risks Management Ltd v Geduld [2010] IRLR 38, a judgment of the Employment Appeal tribunal.

16. A reasonable belief is assessed objectively taking into account the particular characteristics of the worker in determining whether it was reasonable for him/her to hold that belief, Korashi v Abertwe Bro Morgannwg University Local Health Board [2012] IRLR 4, EAT.

17. In the case of Fecitt and Others and Public Concern at Work-v-NHS Manchester [2011] EWCA Civ 1190, the Court of Appeal held that the causal link between the protected disclosure and suffering a detriment under section 47B, is whether the protected disclosure "materially influenced", in the sense of being more than a trivial influence, the employer's treatment of the whistleblower.

18. In section 48(2), the statutory test is whether the worker was subjected to the detriment by the employer "on the ground that" they had made a protected disclosure. It is for the worker to prove, on the balance of probabilities, that there was a protected disclosure, that there was a detriment, and the employer subjected the claimant to the detriment. If established, the burden shifts to the employer to show the ground on which the detrimental act was done. If the tribunal rejects the reason advanced by the employer, it is not bound to accept the reason given by the worker and may find, on the facts, that there was another reason for the detrimental treatment.

19. Causation will be established unless the employer can show that the protected disclosure played no part whatsoever in its acts or omissions, Fecitt.

20. In a breach of a legal obligation case, the tribunal should identify the source of the legal obligation and how the employer failed to comply with it. Actions could be considered wrong because they were immoral, undesirable or in breach of guidance without being a breach of a legal obligation, Eiger Securities LLP v Korshunova [2017] IRLR 115, EAT.

21. Section 103A ERA provides that, "An employee who is dismissed shall be regarded for the purposes of the 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."

22. It is for the employer to prove the reason for the dismissal. Where the employee lacks the relevant qualifying period of service the burden will be

on the employee to prove the reason for the dismissal was by reason of making a protected disclosure, Kuzel v Roche Products Ltd [2008] ICR 799.

23. If a detriment claim is well-founded the tribunal can make a declaration to that effect and award compensation, section 49(1) Employment Rights Act 1996. The claimant is under a duty to mitigate, section 49(4), and the tribunal can consider whether the claimant either caused or contributed to the act complained of, section 49(5).

24. Compensation is assessed on the same basis as a discrimination claim and can include an injury to feelings award, Virgo Fidelis Senior School v Boyle [200] IRLR 268.

25. In addition we have considered the case of Royal Mail Group Ltd v Jhuti [2019] UKSC 55, on the issue of the real reason for a section 103A ERA dismissal.

26. In Norbrook Laboratories (GB) Ltd v Shaw [2014] ICR 540, disclosures can be aggregated.

27. Where there are multiple protected disclosures, the tribunal is required to ask itself whether, taken as a whole, the disclosures were the principal reason for the dismissal, El-Megrisi v Azad University (IR) in Oxford, UKEAT0448/08.

28. When considering the employer's potential liability, the tribunal must focus on the mental processes of the individual decision-maker, in asking whether the employer was materially influenced by protected disclosures.

29. However, that the general rule may be displaced in circumstances where a manipulator with an unlawful motivation who is in the hierarchy of responsibility above the worker, procures the detriment via the innocent decision-maker, Jhuti.

30. Section 95(1)c Employment Rights Act 1996, provides,

> "(1) For the purposes of this Part an employee is dismissed by his employer if …..
>
> (c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct."

31. It was held by the Court of Appeal in the case of Western Excavating (ECC) Ltd-v-Sharp [1978] IRLR 27, that whether an employee is entitled to terminate his contract of employment without notice by reason of the employer's conduct and claim constructive dismissal must be determined in accordance with the law of contract. Lord Denning MR said that an employee is entitled to treat himself as constructively dismissed if the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer

intends to be bound by one or more of the essential terms of the contract. The employee in those circumstances is entitled to leave without notice or to give notice, but the conduct in either case must be sufficiently serious to entitle him to leave at once.

32. It is an implied term of any contract of employment that the employer shall not without reasonable cause conduct itself in a manner likely to destroy or seriously damage the relationship of trust and confidence between the employer and employee, Malik-v-Bank of Credit and Commerce International [1997] IRLR 462, House of Lords, Lord Nicholls.

33. In the case of Lewis-v-Motorworld Garages Ltd [1985] IRLR 465, the Court of Appeal held in relation to the "last straw" doctrine that,

> "…the last action of the employer which leads to the employee leaving need not itself be a breach of contract; the question is, does the cumulative series of acts taken together amount to a breach of the implied term?", Glidewell LJ.

34. Dyson LJ giving the leading judgment in the case of London Borough of Waltham Forest-v-Omilaju [2005] IRLR 35, Court of Appeal, held:

> "A final straw, not itself a breach of contract, may result in a breach of the implied term of trust and confidence. The quality that the final straw must have is that it should be an act in a series whose cumulative effect is to amount to a breach of the implied term. I do not use the phrase 'an act in a series' in a technical sense. The act does not have to be of the same character as the earlier acts. Its essential quality is that, when taken in conjunction with earlier acts on which the employee relies, it amounts to a breach of the implied term of mutual trust and confidence. It must contribute something to that breach, although what it adds may be relatively insignificant.
>
> I see no need to characterise the final straw as 'unreasonable' or 'blameworthy' conduct. It may be true that an act which is the last in a series of acts which, taken together, amounts to a breach of the implied term of trust and confidence will usually be unreasonable and, perhaps, even blameworthy. But, viewed in isolation, the final straw may not always be unreasonable, still less blameworthy. Nor do I see any reason why it should be…. .
>
> If the final straw is not capable of contributing to a series of earlier acts which cumulatively amount to a breach of the implied term of trust and confidence, there is no need to examine the earlier history to see whether the alleged final straw does in fact have that effect.", pages 37 - 38.

35. The test of whether the employee's trust and confidence has been undermined is an objective one, Omilaju.

36. In the case of Tullett Prebon plc v BGC [2011] IRLR 420, on the issue of whether the first instance judge had applied a subjective test rather than an objective one to the actions of the alleged contract breaker, the Court of Appeal held, reading from the headnote,

> "The question of whether or not there has been a repudiatory breach of the duty of trust and confidence is a 'question of fact for the tribunal of fact'. It [is] a highly specific question. The legal test is whether, looking at all the circumstances objectively, that is from the perspective of a reasonable person in the position of the innocent party, the contract-breaker has clearly shown an intention to abandon and altogether refused to perform the contract. The issue is repudiatory breach in circumstances where the objectively assessed intention of the alleged contract breaker towards the employees is of paramount importance.
>
> In the present case, the judge had approached the issue correctly. He had not applied a subjective approach. He had objectively assessed the true intention of Tullett and had reached the conclusions that their intention was not to attack but to strengthen the employment relationship. That was a permissible and correct finding, reached after a careful consideration of all the circumstances which had to be taken into account in so far as they bore on an objective assessment of the intention of the alleged contract breaker."

37. Mr Justice Cavanagh in the case of Lacey v Wechseln Ltd t/a The Andrew Hill Salon UKEAT/0038/20/VP, held in relation to the last straw doctrine,

> "The very essence of the "last straw" doctrine is that the last straw need not be something of major significance in itself. It need not even amount to a breach of contract, when looked at on its own. It need not even have the same character as the other incidents that preceded it: Omilaju v Waltham Forest London Borough Council, at paragraphs 15-16. Rather, the significance of the last straw is that it tips things over the edge so that the entirety of the treatment suffered by the employee amounts to a repudiate a breach of contract.", paragraph 71.

38. We have considered sections 13 and 27 Employment Rights Act 1996, on unauthorised deductions from wages. Wages includes bonus, section 27(1)(a). The time limit is the same as for a section 47B detriment case. However, where there is a time difference of more than three months between unauthorised deductions, the statutory time limits will apply to each, Bear Scotland Ltd v Fulton [2015] ICR 221, EAT.

39. Article 3, Extension of Jurisdiction (England and Wales) Order 1994, allows an employee to bring a breach of contract claim if it arises or is outstanding on termination of employment.

The evidence

40. The tribunal heard evidence from the claimant who called Ms Kerry Nelson, former Accounts Administrator.

41. On behalf of the respondent evidence was given from Mrs Kim Shephard, Director; and by Mr Paul Shephard, Director.

42. In addition to the oral evidence the parties adduced two joint bundles of documents, the larger of the two comprising of 1,358 pages, and the smaller 277. The tribunal shall refer to the documents as numbered in the bundles. The numbers in brackets are the page references.

Findings of fact

43. The respondent is a business dealing in financial solutions to a wide remit of clients, advising on financial planning, investments, pensions, mortgages, as well as protection. The business is divided into three sections:

    43.1 Protection – The protection area of the business includes personal protection, life and critical illness, business protection, inheritance tax planning, private medical insurance, and income protection.

    43.2 Pension/investment – This area of the business deals with the pension/investment review process, transferring pensions, final salary pension advice and transferring, drafting client/pension investment review letters, gathering fund information including plan changes, valuations and client withdrawals.

    43.3 Mortgages – This deals with the setting up and administration of all mortgage types including second charge loans, re-mortgages and equity release products.

44. At all material times Mr Paul Shephard was a director of the respondent.

45. The claimant, on 9 August 1999, was employed by Gilmour Quinn Limited. That company ceased trading in August 2003. Her position became redundant and she was made redundant at that time.

46. On 20 January 2004, she was employed by another company called Gilmour Quinn Technical Services Limited, which was later renamed Gilmour Guinn Financial Planning Limited, the respondent. She left her employment on 30 November 2007 after the birth of her second child and returned to work with the respondent on 1 April 2008.

47. Although the parties agree that the claimant commenced employment with the respondent on 20 January 2003, that is at odds with the contract she signed on 20 January 2004 that states that she commenced employment with the respondent on 1 September 2003. We accept what is contained in the contract in relation to the dates of her employment as accurate.

48. In the contract signed on 20 January 2004, in relation to holiday entitlement, the claimant was entitled to 20 working days holiday with full pay in a calendar year, plus statutory public holidays. The provision in relation to holiday entitlement was to be reviewed after five years, paragraph 2.2.

49. As regards company sick pay, the contract stated that it was at the discretion of the directors and would not be unreasonably withheld. The qualifying employee must have had six uninterrupted months' service and

complied with the requirements of notification of absence and the provision of medical certificates. Entitlements were dependent on length of service. After six months it would be statutory sick pay; six months to two years, four weeks full pay; two years to four years, six weeks full pay and two weeks half pay; four to seven years, eight weeks full pay and four weeks half pay; over seven years, ten weeks full pay and six weeks half pay.

50. In relation to notice, up to thirteen weeks the respondent is required to give one week's notice; up to two years, four weeks; between two and six years, six weeks; thereafter, an additional week notice to twelve weeks' notice after twelve years' service (863-868).

51. Prior to the claimant's re-employment in April 2008, Mr Shephard, along with Ms Sarah Hayter, Financial Director for Oaks Services Limited, an outside agency, were engage in drafting a contract of employment for the claimant.

52. The claimant told the tribunal that prior to the commencement of her employment in April 2008, she had a meeting with Mr Shephard who wanted her to return to work on a self-employed basis. She called HMRC and they advised her that some employers do want to take on staff on a self-employed basis but in reality they were employees. She said she had a meeting with Mr Shephard following her discussion with HMRC and that he agreed that she should be employed on the same terms and conditions as before, namely on her 2004 contract of employment terms and conditions. No new contract of employment was issued in or around April 2008, as Mr Shepherd needed the claimant to commence work as soon as possible as two female staff had left, and he needed the claimant to hit the ground running According to the claimant, he told her that she could follow the previous terms and conditions and that her other work colleagues were still operating under their old contracts of employment. She stated that she returned to work to the office on the same terms as Mr David Gray and Mr Ben Stone. The conversation about returning to work she told the tribunal started when Mr Shephard called her and invited her for a coffee in Staines.

53. Having heard the evidence we find as fact that Mr Shephard was keen to have the claimant back at work in April 2008. She was not willing, after taking advice from HRMC, to be taken on as a self-employed independent contractor and said that to Mr Shephard. Mr Shephard agreed that she would be on the same terms and conditions of employment as in her 2004 contract. He wanted her to return to work as he had lost two female employees and she had a good and detailed knowledge of the running of the business. Further, she left in 2007 as he was unwilling to give her flexibility in her working hours following the birth of her second child. This time, however, he was prepared to concede to allow her to work flexibly.

<u>The claimant's role</u>

54. The claimant's role involved managing the protection area of the business; personal protection, life and critical illness, business protection, inheritance tax planning, private medical insurance and income protection. She

provided quotes, produced provider illustrations, processed applications, drafted suitability reports and prepared trust documentation. She also supported the pensions/investment area of the business, dealt with the pension investment review process, drafted client pension/investment review letters, gathered fund information including plan charges, valuations, client withdrawals, and switched funds into cash. She also provided secretarial support to Mr Shephard.

55. Although Mrs Kim Shephard, in her email to the claimant dated 8 February 2018, referred to the claimant's 2008 contract being on her file, this document, in its signed form, had not been produced. We have not seen a contract of employment dated 2008 pertaining to the claimant's terms and conditions of employment. (458-459)

56. Mrs Shephard decided to return to work in 2016 with the respondent as her children were getting older and less dependent on her. Initially, when started it was to assist Mr Shephard. She later sat various examinations, and successfully achieved a Certificate in Mortgage Advice in Practice, as she wanted to learn and understand the business, as well as to have a professional knowledge before becoming a Director. She understood that the business is heavily regulated.

57. She said in evidence that it became apparent that certain areas of the business were not being well run and required better record keeping to ensure that the company was being run compliantly and efficiently.

58. On 8 March 2010, Mr Shephard, Director at the time of Gilmour Quinn Technical Services Limited, wrote to the claimant informing her that due to statutory changes to her employment, the company had decided to formalise her rights by issuing her with a new contract of employment and enclosed two copies for her perusal. He assured her that there were no changes to her terms and conditions of employment as her new contract merely clarified the statement of employment changes affected, such as leave, sickness and disciplinary procedures. He invited her to request a meeting with him within the next 14 days should she wish to discuss the provisions in the proposed new contract. He then wrote, "If I have not received such an application within the 14 days it will be deemed that you have accepted your new contract." (185-186).

59. After reading the terms and conditions of the proposed new contract, the claimant refused to sign it and sent to Mr Shepherd her email response on 12 March 2010. The revised contract stated that she was entitled to 22 days annual leave plus 8 days Bank Holiday, when it was agreed that she was entitled to take 25 days annual leave. Further, the contract provided that she was required to use 2 days annual leave entitlement to cover the Christmas closure period. Previously, they would be required to use 1 day with the other days being covered by the respondent. In addition, the contract provided that she was entitled to 5 working days company sick pay thereafter payment in respect of sick leave would be at the discretion of the respondent. She set out the provisions agreed to which were dependent on length of service. She was pleased that he also acknowledged that she had

a flexible working arrangement working in the office for most of the day then remotely from home. (187-189)

60. We are satisfied that the claimant did not agree to the changes in the proposed March 2010 contract of employment.

61. On 16 May 2010, Mr Shephard wrote to the claimant informing her of a salary increase by £1,000 with immediate effect, a one-off bonus payment of £250 paid in vouchers, and a one-off contribution of £250 into her pension fund. (192)

62. In September 2010, her salary increased to £30,000 gross per annum (109a)

63. She alleges that during team discussions in 2012 the respondent promised her and Ms Kerry Nelson, Accounts Administrator; Mr David Gray, Mortgage Administrator; Ms Sarah Buckland, Mortgage Administrator; Mr Ben Stone, Pension Administrator; and Mr Richard Batty, Planner, a bonus of £3,000 pursuant to the St James' Place bonus incentive on 30 April 2013. She said that the targets and bonus were spoken about continuously by the respondent for weeks and all employees worked almost flat out to achieve this. This was confirmed in Mr Shephard's email dated 2 January 2013. The respondent failed to make the payment of £3,000 on 30 April 2013.

64. In Mr Shephard's email dated 2 January 2013, he wrote to his staff the following:

> "Subject: Happy New Year
>
> Hope you all well and had a great Christmas and New Year break.
>
> Just to everyone know we finished the year on 272 credits and double partner was 260… well done to you all.
>
> The hard work starts now though, need approximately 135 credits by the end of March to hit partner and double that by end of April and you will all be £3k richer.
>
> See you all next Monday morning but can everyone crack on without me and make as much progress in the next three days."
>
> (206)

65. In his evidence he said that between January and April 2013, the network the respondent had signed up to, St James' Place, he had fallen out with as he was unsatisfied with it, therefore, there was no bonus to pay as he did not receive payment from that network.

66. To explain, there are several "networks" throughout the country. All investment business, we were told, are transacted via networks and they would handle millions of pounds worth of business each year. St James'

Place is a network. A financial company would join a network. The trading position of the network would affect its members.

67. In the claimant's evidence, under cross examination, she said that her work colleagues would carry out the work to gain a bonus and Mr Shephard would keep the money. She stated that in relation to 2 January 2013 email from him, she worked a whole year to get the bonus but the respondent's predecessor company, Gilmour Quinn Wealth Management Limited, was dismissed from the St James' Place network so it did not get the expected bonus from the network. However, she said that she did not resign because she did not receive the bonus.

68. Gilmour Quinn Wealth Management Ltd, did not receive the expected payment from St James' Place as the relationship it had with that network between January and April 2013, had broken down. There was no evidence that the network had paid the company at the time. Accordingly, we find that the claimant and her colleagues, to whom the email was directed, are not entitled to £3,000 bonus payment.

69. On 2 July 2013, following the formation of the respondent company, Gilmour Quinn Financial Planning Limited, Mr Shephard wrote to Ms Nelson and to the claimant informing them that as a new company had been formed, he was proposing to issue new contracts of employment. He sent copies to both Ms Nelson and to the claimant. One of the issues raised by Ms Nelson was that the references to holidays were wrong. Mr Shephard responded on 16 July 2013, acknowledging that holiday entitlements needed to be amended in the contract. (214-216)

70. In the claimant's evidence she stated that what Mr Shephard was proposing was to revise the old 2008 contract which she objected to at the time. Sickness and holiday pay being two of her major concerns. Although the proposal was the claimant was entitled to 30 days paid annual leave which included eight statutory Bank Holidays, it was a requirement that she must take two days of her annual allowance at Christmas when the premises were closed. She stated that she was entitled to 25 days including the eight statutory Bank Holidays based on her length of service. At the time she had been working for the respondent for slightly over five years. She again raised a similar concern that she had raised in 2010 about sick pay. There were other queries which do not concern the issues in the case. (917-924)

71. We find that the claimant did not sign the proposed 2013 contract of employment as there were going to be material changes to it which she objected to. In relation to holiday entitlement, after five years she was entitled to five days additional holiday. She said that on or around 2004, Mr Shephard had increased her holiday entitlement to 25 days plus Bank Holidays, and that it was an express term of her contract that she was entitled to 10 weeks full pay and six weeks half pay while absent on sick leave. Further, it was an implied term of her contract that she would use one or two days annual leave from her entitlement over the Christmas to New Year when the respondent's offices were closed.

72. From 2008 to 2011, Mr Shephard would write to his staff well before the Christmas and New Year break, informing them of the dates when the offices would be closed, and would inform them of when they would be required to use the one or two days of their holiday entitlement during the closure. In return the respondent would give either two or three days additional holiday as a gesture of goodwill (page 174,179 and 194).

Long-term Incentive Plan

73. At a team meeting on 12 January 2016, attended by Mr Paul Shephard, the claimant, Ms Nelson and three others, several items on the agenda were discussed. Of concern was the respondent's Long-Term Incentive Plan which, according to Mr Shephard, was due to be achieved in that year. He stated that an internal incentive for staff would be applied in accordance with the "Intrinsic/Old Mutual/ incentive", but the exact details were still to be confirmed (945).

74. In the claimant's evidence she stated that in line with the incentive plan, she was due to be paid a bonus in April 2017 of £1,176.48; in April 2018 the sum of £588.23; and in April 2019, a further sum of £588.25. The respondent failed to make the payments to her. There was no date given as to when bonus would be paid. (1299)

75. In her evidence under cross examination, she said that the incentive plan was a new bonus scheme and that bonus would be paid when the respondent received payment. She had asked many times in May 2017, to be paid her bonus but Mr Shephard did not reply to her emails. When Mrs Shephard became a Director in October 2017, she also raised the issue of the payment of a bonus. At her grievance on 8 June 2018, Mrs Shephard wrote that the respondent had agreed to pay a bonus as a gesture of goodwill.

76. The claimant relies on the outcome of the County Court case involving Ms Nelson and the respondent at which Mr Shephard gave evidence. It was her case that on 13 April 2017, the respondent received £27,681.56 from the network Intrinsic Financial Services, and on 20 April 2018, a further sum of £13,809.10. She claims that she was entitled to a bonus payment on 30 April 2017, in the sum of £1,176.47, and to a payment on 30 April 2018, in the sum of £588.23. The total being £1,764.70. After hearing all the evidence, the Judge found Ms Nelson's case proved and entered judgment in her favour in the sum of £1,764.70 plus £283.43 interest together with solicitor's costs, court fees, and witness expenses coming to a total of £2,418.13 (1342).

77. The claimant's circumstances were the same as that of Ms Nelson. Mr Shephard's evidence in the County Court was not believed. In order to achieve consistency in outcomes, we find that the claimant is entitled to be paid the incentive bonus. Whether the claimant is entitled to the bonus payments will depend on whether this claim was presented in time,

The claimant's 9 December 2016 grievance

78. Following on from a meeting between the claimant and Mr Shephard on 21 November 2016, when they discussed her mortgage application and the location of a file, she wrote to him on 9 December 2016, her first grievance letter. In it she covered a number of matters, such as, her mortgage application and how it was dealt with; that Mr Shephard no longer wanted her to work remotely notwithstanding that it had been agreed that she would work flexibly; Mrs Shephard had sent an email to staff stating that no keys would be provided to them to access the new offices; that she had not accepted changes to the sick pay provisions; there had been no annual reviews of her salary for the previous six years; her salary was not always paid on time; that the Christmas booking at a restaurant had been cancelled by Mrs Shephard at a time when Mrs Shephard was not working for the company and instead was booked to take place at a local public house; the repositioning of cabinets closer to her desk restricted her movement and the violent kicking of them by Mr Shephard; not replacing the cleaner when he had retired placing cleaning duties on to staff; being rudely spoken to, ignored, overloaded with work and not being acknowledged as a valuable member of staff; and that her job needed to be re-evaluated (238-246).

79. During the hearing Mr and Mrs Shephard, denied having received the letter on or around 9 December 2016, or at any time thereafter. The unchallenged evidence was that the company was moving premises from 5 The Courtyard, 80 High Street, Staines-upon-Thames on 9 December 2016, to Northumberland House, Drake Avenue, Staines-upon-Thames. The claimant said that she put the grievance in an envelope and placed it on Mr Shephard's desk. The respondent was due to start business at its new address the following day, 10 December 2016.

80. Mr Shephard said in evidence that he only became aware of the letter when it was drawn to his attention by Mrs Shephard either in November or December 2017.

81. We find that it was a risky strategy on the claimant's part to put the letter on his desk at a time when the company was moving premises. It would have been a very busy period with no guarantee that Mr Shephard would have picked it up prior to the office furniture being removed or that he would be visiting the premises after the claimant put the letter on his desk. She must have known that given the circumstances, Mr Shephard's concerns would have been on the move and on making sure that the company was up and running the following day. The claimant did not send him a further email shortly thereafter to find out whether he had received her grievance letter and had read it. We find that there was no evidence that Mr Shephard had read her grievance.

82. On 11 January 2017, Mr Shephard wrote to his staff with regard to the Christmas closure from 22 December 2017 to 1 January 2018. He asked them to allocate two days out of their holiday entitlement. There were three working days during the Christmas closure and that the respondent would allow the other day as an additional holiday as a gesture of goodwill (249).

83. On 13 July 2017, he wrote to staff that "with immediate effect", Mrs Kim Shephard had been made a director and that "part of her role will involve reporting of all staff absences which will include annual leave, sickness and lateness and any changes to normal working hours. In view of this there will be no further requirement to inform me of these areas as Kim will be responsible for them." (262)

Alleged public interest disclosure on 1 September 2017

84. The claimant relies on her email dated 1 September 2017 at 08.56, to Mr Shephard as a qualifying and protected disclosure disclosing alleged data protection breaches. She wrote as its subject, "Review Process". She then continued:

> "I have been working on these reviews, however the information being sent is confidential and could be potentially being sent to an out of date address (client hasn't notified you that they have moved) or client has split from their partner and not notified you. If information is being sent it could be looked at by an ex-partner and cause your client problems or alternatively if they've moved confidential information could be getting into the hands of the wrong person. I've noticed some of the fact-finds are very out of date, and some clients you haven't seen/had contact for four years. I thought the idea of the review was that you had to establish contact with the client and then follow a process from there, because couldn't the way we are doing it be potentially breaching data protection and this could cause bigger issues? I thought the idea was to establish contact with the client and then once established provide them with their review information or if no contact established you just made a note on their file and uploaded the file note to Intrinsic, but don't send out any confidential information to client.
>
> Are Intrinsic ok with the process we are following? If they are that's fine. I'm only following a process you are asking me to do but thought I'd bring this to your attention to be on the safe side, rather than this potentially causing problems for you/company further down the line. I know this is a relatively new process but thought it best to do things right from the beginning.
>
> If you could let me know this is all ok, I will carry on with the reviews." (284)

85. Mr Shephard replied, an hour later, stating:

> "Carry on as you are. I have had dealings with these clients recently (Pearse is actually coming in next week for example)" (283)

86. The claimant was disclosing information about a potential breach of the data protection legislation, in that, without ensuring that a client live at the address on file, sending out information in writing was likely to be read by a third party. Taking into account the surrounding circumstances we bear in mind that an hour after sending her email Mr Shephard had reassured her that he had made contact with the clients. The claimant to rely on this email as a qualifying and protected disclosure, we take the view that she was not disclosing information held in the reasonable belief that it was in the public interest. The information concerned one client and there was no potential breach of data protection as the client was already contacted by Mr Shephard. Had she made that enquiry of Mr Shephard prior to her email being sent that fact would have been disclosed. This email does not satisfy

the requirements of a qualifying disclosure as the claimant did not hold a reasonably held belief and that the disclosure was not in the public interest.

Alleged public interest disclosure on 23 Octobr 2017

87. The claimant relies on her email dated 23 October 2017 to Mr Shephard as a qualifying and protected disclosure. In relation to the life assurance procedure, in respect of a particular client who shall be referred to as M, she wrote:

> "You have passed this application back to me, however the medical questions still remain unanswered and I have explained to you several times now without a completed application I cannot process the form online. You have passed me blood reading results that means absolutely nothing to me and suggest that I contact Jonathan, he won't be able to help and will tell me I need a completed application to proceed. I need to follow an application to complete online and you are not providing me with this and therefore cannot submit this as I have explained to you. This is not good, nor compliant as you are effectively asking me to guess the client's health and this could potentially lead to a claim being declined. The only person who can complete this application accurately is the client, please confirm if you want me to send this to him as I have noticed you have already seen the client as he has signed a blank Royal London form. I await your instruction on this as the application form is being passed back from you to me without conclusion." (337)

88. The claimant said that this was a disclosure in relation to breaches of the Financial Conduct Authorities rules and regulations, none was identified nor brought to Mr Shephard's attention by her.

89. It is difficult to see what she was disclosing by way of alleged breach or breaches of the FCA's rules and regulations. Nowhere in the paragraph in relation to client M, does she refer to Mr Shephard specifically giving her instructions to guess the client's health. This is an assumption she made based on the paperwork in front of her. Furthermore, there is no reference to any actual, occurring or potential breach of the FCA's rules and regulations. What she wrote was that she had difficulty in completing the application in relation to client M as the medical question was unanswered. We are satisfied that this is not disclosing information, therefore, not a qualifying disclosure. Further, there is no public interest element in it as it relates only to M. (paragraph 16.8)

90. As previously stated, Mrs Shephard became a director in July 2017 and began to address human resources issues as was her role and wanted to ensure that there were procedures in place for holidays, sickness absences, and financial compliance.

91. On 18 October 2017, she emailed staff stating that she had decided to introduce a generic employee form to collate relevant data on each employee. The information requested included their current PC log in password. This was to allow the respondent in the absence of an employee, to be able to continue to offer the services provided to its clients by that employee. She stated that should staff wish to change their password at

any time, she should be emailed immediately. She also requested contact details for the next of kin to be used in the event of an accident or illness at work. She also required any qualifications achieved relevant to their role and any courses they attended. She also asked whether or not there were any training courses they would like to attend to enhance their position within the company relevant to their job role. Further, for them to clarify all aspects of their job roles in a separate email to be sent to her. She said it was imperative as it would be used in the event of any unexpected absences by a member of staff, other staff members would be able to assist in the ongoing requirements of the business to reduce disruption to a minimum. She asked all staff to complete the attached form and return it to her by no later than the following day along with details of their job role. She stated that the information would be placed in their personnel file and would be treated as strictly confidential. If they had any questions or concerns about supplying the information requested, they should not hesitate to email her. (350-351)

92. The claimant responded on the same day, approximately five hours later, raising concerns about the information requested. Despite stating that she understood the need to gather employee details and that she was more than happy to provide those together with details of her computer log-in in case of an emergency, she wrote that training had been requested over the years, had been promised but not fulfilled; Mr Shephard told staff that he could not afford to have them take time out for training, it was a case of just getting on with the job; and that on occasions it had been difficult to complete a job without being trained. She then wrote the following:

> "As you are aware if you need aspects of my job role I would suggest you speak to Paul; after being employed for Gilmour Quinn since 199 it is extremely concerning that he needs you to ask staff for clarification of their job roles. Paul provides the work and know exactly who does what, but to reconfirm speaking for myself I would not know where to start with the mortgage process, but could chase a solicitor to chase an offer if requested to do so. Again I have no objection to assisting if there is an unexpected event as has happened on occasions previously; all staff pull together at such times, but again other options need to be explored. For example, if David is being signed off work for 28 days then I would suggest you speak to Intrinsic to seek guidance and assistance and see if they are able to offer help in such a situation. For your information I have read on the extranet they have a support system in place should additional support be required as with current workloads, that's speaking for myself I had very little extra capacity.
>
> On a final note I am making a statement to say I did not throw a fact find at Paul and want to make you all very clear on this point. I passed it back and it slid across his desk and I find it objectionable and in bad taste that he got up from his desk stood in his doorway and said "Gill, why did you throw that file at me?" in front of yourself and Kerry. I do not know what you want to achieve by making such an allegation?
>
> Hope we can now move onwards and upwards and I look forward to our meeting tomorrow Kim, as agreed." (347-349)

93. We find that the request for information from staff was reasonable and aided business continuity. What had happened in the past was that it had been run by Mr Shephard who did not place a high value on human resources issues as he was busy generating income for the business. It was the role of Mrs Shephard to take on this responsibility and to ensure that the respondent had relevant information relating to staff.

94. The claimant's response was unhelpful and disrespectful.

Request for a salary increase 19 November 2017

95. On 19 November 2017, she put in a request to Mr Shephard for a salary increase of between £8,000 to £10,000, as well as payment of the LTIP bonus that he agreed to pay staff in line with the reward offered by the respondent by Intrinsic in 2016 to early 2017. She further stated that she could see the direction the respondent was heading being that staff were no longer involved in decision making as the company was now becoming a family run business. She, however, wanted to continue to work for the respondent. She stated that what she was requesting was not excessive but a fair estimate of what she was worth having regard to her length of service and her input into the company's success. (355-356)

96. She did not get the increase she asked for. Mrs Shephard told the tribunal that she had looked at comparable salaries and concluded that the claimant had been paid above the going rate. (pages 30 to 40 of the final bundle)

97. We find that what was happening was a perceptible shift in roles. When Mr Shephard was sole director the claimant was his assistant and was an important part of running the company. With the employment of Mrs Shephard and her enhanced role as a director, much of the administrative work the claimant was doing shifted on to Mrs Shephard. This, in our view, led to some uneasiness between the claimant and Mrs Shephard and between Mrs Shephard to other members of staff. The old ways of doing things while Mr Shephard was sole director were going to change.

The claimant's second grievance on 9 December 2017

98. In the claimant's second grievance dated 11 December 2017, sent to Mrs Shephard, covering 8 pages, she stated that Mrs Shephard had said to her that her position, the claimant's, in the company was unclear; that following Mrs Shephard's request on 24 November 2017, in an email entitled "Employee Personal Information and Job Role" she, the claimant, provided that information the following day; there had been no salary review in her case in excess of seven years; Mrs Shephard had said to her that she was working to a particular contract of employment which the claimant said was a contract which she had previously rejected; she referred to changes in staff holiday; and that she raised concerns with Mr Shephard relevant to her employment which had not been addressed; she gave an account of her employment history; she referred to her 9 December 2016 grievance; and to other issues raised in correspondence. In closing, she wrote:

> "Finally, the time has come for a resolution and being ignored over a long period of time is not acceptable behaviour of an employer. Response and acknowledgment are long overdue and need to be addressed as a matter of urgency.
>
> I now request a response by 8 January 2018 to take matters forward to resolution and look forward to hearing from you." (398-405)

99. In a very detailed response, dated 23 January 2018, Mrs Shephard considered all of the points raised by the claimant and rejected each one. She expressed concern about the claimant's conduct and attitude in questioning certain matters not within her role. In relation to the first grievance dated 9 December 2016, she wrote that this was handed to her in October 2017 soon after she was officially appointed a director. She challenged its authenticity. She wrote in relation to the claimant working flexibly:

> "Whilst on the matter of the perks of your job I would like to clarify your hours of work at home. I am aware of your hours of work in the office – 8.30am to 3pm Monday to Friday with a 20 minute break at 12pm each day unless you request otherwise to me on an ad hoc basis. But I am unaware of your hours and times of work at home each day. This requires clarification. As your employers we need to know you are working at home at a set time each day and can be contacted within your working hours without infringing your personal time. So please request your chosen time to be working away from the office so that this can be confirmed at a mutually agreeable time each day from now on." (430-436)

100. The claimant replied the same day, some five hours later, challenging the claim that working from home was a perk as it was an agreed flexible working arrangement. She also wrote that she was anxious to resolve matters as the existing situation had been causing her "anxiety and unhappiness" over many years. (429)

<u>Alleged public interest disclosure on 8 February 2018</u>

101. The claimant's next qualifying disclosure is her 12 pages response to Mrs Shephard's reply to her second grievance dated 8 February 2018, which she challenged. Of concern in relation to the alleged qualifying disclosure, is a paragraph under paragraph 16, in her response which reads as follows:

> "I'm aware in late 2015 you and your husband were upsizing to a larger property in the French Alps and paying in excess of €750,000 for the property. Initially you wanted to finance the new property but heard you were turned down from telephone conversations that took place in the office. Instead your husband made a decision to sell some of the rental properties in the portfolio to fund the purchase of a new holiday property. The profit from that sale of the rental properties was used towards the purchase at the time. However, due to all money being sunk into the holiday home money was not set aside to pay a substantial large Capital Gains Tax bill that would be due in 2017, therefore this was paid from the profit of Gilmour Quinn Financial Planning.

> Therefore as you claim there is a debt, however from what I can see this debt has been accumulated due to funding your lifestyle and property abroad and not as you claim company debt." (445-457)

102. In evidence the claimant said she and her work colleagues were being paid late. There were long-standing issues impacting on her employment. She believed Mrs Shephard would be a fresh start. In relation to the above paragraph she said that this was an observation by her of what went on during her employment. Mrs Shephard's reply to her grievance was to belittle her and she wrote the email response on 8 February 2018. She said that Mr and Mrs Shephard were running a property portfolio and had Capital Gains Tax liabilities and had used the profit from the respondent to pay that tax bill.

103. What the claimant is relying on as a qualifying disclosure was something she was aware of in 2015 about purchasing a property in the French Alps in excess of €750,000. She asserted that Mr Shephard decided to sell some of the rental properties to purchase the new holiday property. So far there has been no breach of a legal obligation. She then went on to write that profits from the sale of the rental properties were used towards the purchase at the time. She then wrote that as all the money was put into the holiday home, nothing was set aside to pay a large capital gains tax bill due in 2017, it was, therefore, paid from the profits of the respondent.

104. Although on its face there appears to be disclosure of information of the misuse of company funds, there is no evidence in support of the claimant's reasonable belief that the alleged disclosure was made in the public interest. The claimant had not questioned either Mr Shephard or Mrs Shephard about the amount of the capital gains tax bill; how that had been paid; whether company's profits had been used for that purpose; and when it was paid? She had not produced any documentary or other evidence in support of her alleged reasonably held belief that the respondent's profits was used to pay the capital gains tax bill.

105. Mrs Shephard told the tribunal that taking dividends from the company allowed them to pay their tax bill. If that be right, had the claimant asked Mrs Shephard how that capital gains tax bill was paid, she would have been given that answer. The claimant has not shown that she had made any enquiry into how that bill had been paid leading her to form a reasonable belief. We, therefore, conclude that this was not a qualifying disclosure (16.1)

<u>Grievance dated 20 March 2018</u>

106. On 20 March 2018, the claimant's solicitors, Simpson Millar, wrote to Mrs Shephard raising a grievance, the third, on her behalf. They wrote the following:

> "Our client feels that the manner in which both you and your husband (Mr Paul Shephard) have dealt with any correspondence received directly from our client to date is unproductive and that her attempts to liaise with you directly are having an

adverse impact on our client's health and wellbeing. Therefore, please ensure that any correspondence on this matter is sent directly to me as her representative.

We intend to preclude any reference to the relevant comments made by both our client and yourself in previous correspondence and will keep our correspondence as concise as possible, so as to avoid increasing your time spent on this matter and our client's legal fees being any more than necessary to reach a resolution.

Our client seeks urgent clarity around the following points:

- Her contract of employment;
- Her annual leave entitlement
- Flexible working arrangement
- Unpaid bonus

Contract of employment

It appears on review of correspondence provided by our client that you are seeking to vary our client's terms of employment. In order to do this, the correct manner would be to arrange with our client, to consult on the proposed changes to our client's terms of employment and discuss her options in respect to the changes you are seeking to make. When seeking clarity around the proposed new terms of employment, I understand that you allege to have issued our client with a contract of employment in 2008, however our client is in receipt of evidence to suggest that this contract of employment was not in existence until in or around March 2010.

Please set out the proposed changes to our client's terms of employment in order for us to advise her of her rights in connection with any such proposal.

Annual leave entitlement

Our client has been in receipt of 25 days annual leave (plus Bank Holidays) since her anniversary of five years' service with the company. I am in receipt of evidence provided by you to our client, which confirms that in 2017 her annual entitlement was indeed 25 days (plus Bank Holidays). However, it now seems to be the case that you are challenging our client's annual leave entitlement. Please clarify this position and any justification for your actions in doing so, in order for us to advise our client in respect of her rights.

Flexible working arrangements

Our client has been permitted to work flexibly both in terms of her working hours and place of work since 2004. This flexible working arrangement is a permanent arrangement without time restraint. However, you now appear to be seeking to remove this right from our client. Please clarify your justification in seeking to do so and why you believe such steps are appropriate in the circumstances, in order for us to advise our client.

Bonus

We are instructed that our client is due to receive a bonus payment in relation to an internal incentive plan referred to in a meeting of 12 January 2016. Please can you confirm the total amount payable to our client in respect of this bonus and when this payment will be made.

> Please refrain from approaching our client directly to discuss the above issues.
>
> We look forward to hearing from you and hope that all matters can be resolved swiftly and amicably.
>
> We ask for your substantive response to this letter by 4pm, Tuesday 22 March 2018. Should you fail to respond within this timeframe, we will proceed to advise our client on the potential claims arising from the circumstances set out within this letter.
>
> In the meantime, our client's rights and remedies remain reserved."
>
> (509-510)

107. The letter was sent by Ms Deana Bates, Solicitor.

108. Mrs Shephard's response to Ms Bates on 23 March 2018, was to write that the matter was internal and that she would address the concerns raised directly with the claimant, subject to confirmation by the claimant that she could correspond with her, that is with Ms Bates. (516a)

109. Mrs Shephard also wrote to the claimant on the same day authorising her leave request and her further request to work from home during the summer period. She asked for the dates she would be working from home. (512)

110. On 3 April 2018, the claimant gave permission to Ms Bates to liaise directly with Mr and Mrs Shephard on her behalf. (517)

111. In relation to Mrs Shephard's request for the claimant's working hours at home, her initial response was to refuse to comply stating that Mr Shephard was aware of her working hours at home.

112. There was clearly a strained relationship between the claimant and Mrs Shephard. This, we believe, was centered around the claimant's hours of work at home; her contract of employment; holiday entitlements; sick pay entitlements; the Christmas gratuity days; and her son, that is Mrs Shephard's son, being paid more than the claimant and was offered training.

113. In Mr Shephard's email dated 23 March 2018 to the claimant he wrote that he was sorry to learn that working from home was having a detrimental effect on her health and wellbeing. He stated that the hours of work were flexible and that the terms of her contract stated, "as you are working on flexitime you hours will be negotiated and agreed with myself, Paul Shephard." There was no set agreement in place for her time spent working for the respondent at home. He further stated that despite numerous requests for her to confirm her hours of work outside of the office, she had not supplied the information. He claimed that she was not assisting the respondent in so doing and that it had no option but to default to the core hours of its business and that he expected her to work between 8.30am to 5pm each working day at her home. He further stated that as her employer they would

liaise with her in relation to all work-related matters notwithstanding the statement in her solicitor's letter (514).

114. We find that the respondent in March 2018 did not deny the claimant flexible working from home. She was allowed to work from home but during the respondent's core working hours primarily during school holidays.

The claimant's third grievance dated 20 April 2018

115. In an email from Ms Bates to the respondent dated 20 April 2018, she referred to her earlier correspondence of 20 March 2018 setting out the claimant's key concerns regarding her ongoing disputes with the respondent and "her intolerable working conditions due to the manner in which these concerns have been dealt with to date." Ms Bates asked that her email be treated as a formal and open grievance. In it she dealt with the issue of the claimant's contract of employment; annual leave; working hours; bonus; and workflow. Under contract of employment, she stated the claimant had rejected the proposed contract presented to her in 2010 by Mr Shephard. She was not consulted on the proposed changes to the terms and conditions of her employment when compared with her 2004 contract. There was no discussion to affect an agreement to the changes. The contract did not include a date of commencement nor was it signed by the claimant. Ms Bates asked the respondent to provide details of when the contract was issued to the claimant; any signed copies; details regarding the steps taken setting out the proposed changes; and the claimant's acceptance of those. She further stated that the claimant refuted the assertion that she was provided with a contract of employment either in 2008 or 2013. Given that the respondent was not formed until 2013, reliance on the terms on the 2008 contract was not possible as the terms could not have been in existence in 2008. She asked for all the information to be provided in relation to the 2008 contract.

116. In relation to annual leave entitlement, she repeated what she wrote in her earlier letter, namely the claimant asserted that she was entitled to 25 days annual leave each year plus additional Bank Holidays.

117. With regard working hours, Ms Bates wrote that there appeared to be an inconsistency in the claimant's working hours. The claimant had instructed her that her working hours when in the office have always been flexible around her family life, with her working from around 8.30am to 3pm in the office, then collecting her children from school and working remotely from home thereafter. She asked that the respondent provide confirmation of when the claimant's working hours were agreed as 8.30 am to 5.30pm as it was inconsistent with the document in Ms Bates' possession. If the respondent wished to vary the claimant's working hours, they should engage in the correct process, and asked whether it intended to do so.

118. In relation to bonus, she stated that the claimant's entitlement to the LTIP bonus had not been paid despite the target having been achieved, and asked whether the respondent had received payment in 2017 in recognition of its achievements in 2016.

119. On workflow, Ms Bates wrote that the claimant believed that work was deliberately withheld from her by Mr Shephard. Failure to provide work to the claimant despite her best efforts to "flag this" as an issue, could amount to a fundamental breach of her terms and conditions of employment giving rise to a constructive dismissal. Ms Bates wanted to know why the claimant's workflow had declined.

120. In conclusion she wrote the following:

> "Our client informs us of various comments made by Mrs Shephard in the past which infers she no longer wishes our client to continue her employment, one example being "I am sure you will find new employment that will make you much happier rather than being a martyr remaining here at Gilmour Quinn. Our client confirms that she has on the whole been very happy working with the company, until recent events, the most significant of which are set out in our letter of 20 March 2018 and this email.
>
> A substantive response to the points raised in our letter of 20 March 2018 and this email is required, with evidence to substantiate (where appropriate).
>
> We look forward to receiving the proposed next steps in this grievance process."
>
> (524-526)

121. On 24 April 2018, Mrs Shephard replied to Ms Bates' email stating that as the grievance was an internal matter the respondent would be communicating with the claimant directly to discuss it. It would be investigated by an external human resources consultant. As the issues raised in the grievance would be the subject of an investigation, it would be inappropriate for her to make any comments. (524)

<u>Alleged public interest disclosure on 7 June 2018</u>

122. In an email dated 7 June 2018, from the claimant to Mrs Shephard, copying Mr Shephard, giving the subject matter, "Confidential information". She wrote:

> "I'm very concerned as David has just taken off the printer a contract of employment for "Gill Reid". I have not printed this nor do I use the printer next to David.
>
> I have asked Paul and he knows nothing about this. Therefore, I am very concerned why such personal information of mine is being left around the office for all to see, especially in light of GDPR.
>
> Please advise who printed this?" (553)

123. Mrs Shephard gave her response on the same day sending an email to Mr Shephard, Mr Ben Stone, Mr David Gray, Ms Kerry Nelson, and the claimant. She wrote that after discovering a breach of personal data of a member of staff, she took immediate action by contacting the Information Commissioner's Office, "ICO". The ICO was satisfied that the matter was borderline and very low risk, and that no further action was required . It was not a reportable breach. "There was nothing unusual or detrimental to anyone to view

any details contained within the contract of employment paperwork discovered on the photocopier… as it did not contain comprehensive personal information, such as private health data or mental health issues et cetera." The ICO were satisfied that the matter had been dealt with in the correct manner by her. She stated that in the unlikely event of such a breach happening again, staff should inform either her or Mr Shephard immediately in order for it to addressed urgently. She stated that the respondent took GDPR compliance very seriously and would be completing an incident log. (553)

124. The claimant's email is relied on as qualifying disclosure and a protected disclosure, in that the disclosure was made to Mrs Shephard copying Mr Shephard and the rest of the staff, as well as the ICO. It refers to a potential breach of the General Data Protection Regulations 2018. While we accept that the claimant had made a disclosure which tended to show a potential breach of GDPR in that documents personal to her were left on the printer, we, however, conclude that the disclosure was not made in the reasonable belief that it was in the public interest. This was a small office and the contract, the full content of which was not disclosed, was referable to the claimant and no one else. Those who were likely to have access to it were Mrs Shephard, Mr Shephard, Ms Nelson, Mr Gray, Mr Stone and the claimant. It was not accessible to members of the public. We conclude that the disclosure does not satisfy the public interest requirement. Accordingly, this was not a qualifying disclosure.

125. The claimant put in a Subject Access Request for information relating to her employment to the respondent on 11 May 2018 which was later responded to. (534-535)

<u>The grievance meeting</u>

126. There was some correspondence between Mr and Mrs Shephard and Ms Bates in relation to conduct of the grievance process and whether or not Ms Bates should be allowed to participate in what is an internal matter. She wanted the identity of the investigator to be disclosed. Mrs Shephard wrote that it was not possible to arrange a grievance meeting within the timeframe stipulated by Ms Bates as her younger son had been admitted to hospital with a life-threatening illness and was currently undergoing further urgent investigations. She wrote that the claimant had been informed of the situation "during the past few weeks". Mrs Shephard stated that the claimant could be reassured that her grievance was being addressed as urgently as reasonably practicable in the circumstances. (533-552)

127. On 25 May 2018, Mrs Shephard emailed the claimant copying in Mr Shephard, informing her that the grievance meeting was scheduled to take place on Thursday 7 June 2018, to be chaired by external Human Resources representatives. She wrote that the purpose of the meeting would be for the claimant to provide full details of her grievance with a view to resolving her concerns, and was informed of her right to be accompanied at the meeting by either a work colleague or an accredited trade union official. (543)

128. Ms Bates emailed Mrs Shephard on 6 June 2018, informing her that the claimant's earlier request for the identity of those attending the grievance meeting to be disclosed, had not been complied with. Should the respondent refuse to inform the claimant of the identity of those attending the grievance meeting, she would not be comfortable attending it. Should the grievance investigator proceed with the meeting in the claimant's absence, it would constitute a breach of the Acas Code of Practice in relation to grievance procedure and that the claimant reserved the right to raise it as part of any subsequent claim. (549)

129. Mrs Shephard emailed Ms Bates, copying Mr Shephard, stating that due to unforeseen circumstances the independent investigator was not available to chair the grievance meeting on 7 June, and it was rescheduled to the following day, 8 June at 9.30am. This email was sent at 23.33, fairly close to midnight. (550-551)

130. The grievance meeting went ahead as rescheduled. In attendance were Ms Hayley Porter-Aslet, External Investigator; Ms Rachael Lever, External Investigator, minute taker; the claimant; and Ms Kerry Nelson, workplace companion. From the notes of the meeting, Ms Porter-Aslet said that she and Ms Lever were appointed as Independent Advisors to hear the claimant's grievance; that statements would be taken from individuals in relation to some of the points raised in the grievance; and that there would not be a resolution that day as a written response would be sent to the claimant.

131. The claimant then asked a few questions, namely the name of the organisation Ms Porter-Aslet and Ms Lever were from, to which Ms Porter-Aslet responded by saying, Turner Schools. She was then asked whether she was independent. Ms Porter-Aslet's response was to say that they were "independent from Gilmour Quinn", and that they were instructed by a mutual acquaintance of the Shephard's. Her organisation offered outsourced Human Resources services. She was then asked by the claimant whether she had a personal connection with Mr and Mrs Shephard, to which she responded by saying "No". She confirmed that Mr and Mrs Shephard had provided her with the claimant's personal data, such as her contract of employment and information regarding her grievance. She also confirmed she had a GDPR privacy document. The claimant then said:

> "As far as this meeting goes, it stops now. I have good reason to believe otherwise about your suitability. Kim as refused to explain and has ignored my solicitor. Kim hasn't given details of who was chairing the meeting. I have reason to doubt that you are independent and impartial. It can't go any further."

132. Ms Lever then said that they were appointed by Gilmore Quinn to investigate the claimant's grievance independently. The claimant responded by saying that she could prove everything. The claimant was given two further opportunities to put forward the points raised in her grievance but refused to do so. She was informed that the investigation into her grievance would continue. (993-994)

134. The claimant said that although she had been told that the notes would be sent to her in two weeks, they were not. She stated that Ms Nelson took brief notes but these have not been disclosed and were not in the bundles of documents before us.

135. As part of the investigation Mrs Shephard was interviewed on 8 June 2018 and notes were taken (995-997).

136. Mr Shephard, was interviewed on 8 June. (998-1000)

137. Mr Ben Stone, their son, was also interviewed on the same day as Mr and Mrs Shephard. (1001).

138. The claimant did not stay for the grievance meeting on 8 June because she believed that Ms Porter-Aslet was not independent and was a friend of the Shephard's. After she had given answers to the claimant's questions, the claimant said that she had no trust in her. She said that she did not recall saying, "I can prove everything I've got." After the meeting she conducted her own investigation and discovered that Ms Porter-Aslet was not impartial. She went on Facebook and saw evidence that Mrs Shephard and Ms Porter-Aslet socialising and on holiday together. She said that during the meeting Ms Porter-Aslet admitted that she did not have a personal connection with the respondent. However, this was not in the notes.

139. We were taken to Facebook photographs which showed pictures, according to the claimant, of Mrs Shephard and Ms Porter-Aslet together. Ms Porter-Aslet was not called give evidence before us. (1189-1191)

140. We find that Mrs Shephard did have a friendly relationship with Ms Porter-Aslet at the time of the grievance meeting which called into question Ms Porter-Aslet's impartiality. Just as the Mr and Mrs Shephard approached Turner Schools, an approach could have been made to another organisation independent of them and the respondent.

141. In her email dated 18 June 2018, sent to Mr and Mrs Shephard, Ms Bates raised concerns about the conduct of the grievance meeting. She asserted that Ms Porter-Aslet was not independent because she had a close relationship with Mrs Shephard, and that the respondent had acted dishonestly in trying to conceal it. It was a conflict of interest. Their identities were not disclosed until the eve of the meeting on 6 June. Ms Bates further claimed that the claimant had been treated less favourably because of sex as a man in similar circumstances would not have been treated in the same way. After the claimant had put questions to Ms Porter-Aslet about her relationship with the respondent, Ms Porter-Aslet confirmed, on two occasions, that she had no connection with the respondent. According to Ms Bates, after the claimant had left the room, Ms Porter-Aslet called her back and disclosed that she did in fact have a personal connection with Mr and Mrs Shephard. Ms Bates asked that the notes of the meeting should be provided in advance of any further grievance meeting. Although Mrs Shephard stated that she would conduct the grievance, Mrs Bates wrote that that would be against the rules of natural

justice as Mrs Shephard and Mr Shephard were the subjects of that grievance. Further, choosing Mr Ben Stone, her son, would be inappropriate. It was necessary that the claimant's grievances be handled by a newly appointed independent human resources representative. (563-564)

142. Although the claimant would have liked the respondent to have used the services of Croner, employment and human resources experts, Mrs Shephard had considered this course of action and having obtained information that it would cost £1,440 per day inclusive of VAT, this was a service they could not afford. She stated that ACAS had given her advice that she could conduct the grievance.

143. On 18 June 2018 Mrs Shephard emailed the claimant stating the following:

> "Following your failure to attend the grievance meeting that had been scheduled for 8 June, please see the attached letter to reschedule this meeting for Tuesday 19 June 2018 at 10am. I have placed a hard copy of this letter on your desk. The meeting on 8 June was to be chaired by someone external to the company along with a notetaker. This was at significant cost to Gilmore Quinn. Unfortunately, we are not in a position to suffer the expense of external consultants charging further to hold any additional meetings. As a result, due to the size of the company, and the resources available, Paul and I will exercise our right for one of the owners of the business to chair the grievance and subsequently conduct any necessary investigation to establish the facts of each grievance before any decisions are made., Therefore I would like to confirm that I shall be chairing the grievance meeting on 19 June and the designated employer signed to note-take only will be Ben Stone. I would like to reassure you that I shall be treating all of your grievance points fairly and objectively." (560)

144. The grievance meeting went ahead on 19 June 2018, despite further protestations from Ms Bates on behalf of the claimant. (566)

145. Mrs Shephard later rescheduled meeting for Friday 22 June 2018 and informed Ms Bates of the date. She also wrote that the respondent had not hidden the fact that one of the consultants was known outside of a professional relationship. The opportunity of Ms Lever conducting the grievance meeting was declined by the claimant and due to the cost of the external individuals attending the cancelled meeting, the respondent had no option but now to address the complaints raised by the claimant internally. The meeting would be conducted in line with the ACAS Code of Practice and Guidance in relation to small businesses. (567)

146. In an email dated 22 June 2018, from Ms Bates to Mrs Shephard, she wrote that the claimant would not be attending the grievance meeting. (591-592)

147. Mrs Shephard wrote to the claimant on 27 June 2018, acknowledging that she did not wish to attend the grievance hearing. Should she fail to attend the again rescheduled hearing on 29 June 2018, it will be conducted in her absence and a decision made. She was also invited to consider if she would like to make written submissions or ask either a work colleague or an accredited trade union official to present her case. (593)

148. Ms Bates emailed Mrs Shephard on 27 June 2018, informing her that the claimant would not be attending the meeting for the reasons previously expressed, namely that it would not be impartial. As the meeting was to take place on 29 June, she requested a copy of the notes of it which should be sent without delay. (590)

149. The grievance meeting went ahead without the claimant in attendance. A grievance outcome was sent to Ms Bates on 5 July 2018, by Mrs Shephard. The covering email to her stated the following:

> "Following an extensive fair and unbiased investigation into your client's seven grievance points I have attached my investigation, evidence to support my decisions and my outcome concerning each case."

150. The letter was addressed to the claimant on the same date entitled 'Grievance Hearing – Outcome', in which Mrs Shephard wrote:

> "I refer to the grievance hearing which was held at Cadline House, at 10.10am on 29 July 2018.
>
> Present at the hearing were Kim Shephard, Director of Gilmore Quinn Financial Planning Limited and Chair along with Ben Stone, employee and note-taker for the meeting. You were given the opportunity of being accompanied by a work colleague of your choice or accredited Trade Union official, which you declined.
>
> The hearing had been arranged to discuss:
>
> - Your contract of employment
> - Your hours of work
> - A bonus payment
> - Your annual leave entitlement
> - Your workload
> - How your concerns have previously been addressed
> - Sexual discrimination
>
> Please be assured that the company takes any employee's concerns seriously.
>
> The hearing was adjourned. This provided me with the time to fully consider the facts presented and to undertake further investigations.
>
> After the hearing and subsequent adjournment, having concluded that the investigation into your concerns I am now able to give my decision concerning each grievance point which is fully illustrated in the documents I enclose with this letter along with any supporting evidence to confirm my reason for each conclusion reached.
>
> I trust the above resolves your concerns and I look forward to your response confirming the same. Should this not be the case you are advised that you have

> the right of appeal against my decision. This should be made in writing, addressed to myself, Kim Shephard, Director within five working days from the receipt of this letter, stating your reasons for the appeal." (610-611)

151. The details of the grievance outcome are set out in the final additional bundle of documents, unpaginated, but from computer number 166 to 273.

152. Mrs Shephard dismissed all of the issues raised in the claimant's grievance.

153. We find that Mrs Shephard's role would not be viewed as either independent or unbiased. She was referred to extensively in the claimant's grievance as the person, against whom, the claimant had many concerns. We find that the respondent had failed to explore all reasonable avenues to secure someone who was independent of Mr and Mrs Shephard and of the claimant. It is a company with quite a lot of contacts in the industry and it is difficult to accept that apart from Ms Porter-Aslet there was no other person it could use to act as an independent grievance investigator. The Shephards were willing to pay for the services of Turner Schools knowing of the personal relationship they had with Ms Porter-Aslet and Ms Lever.

154. On 10 July 2018, the claimant appealed the grievance outcome expressing her unhappiness with the way it was conducted by Mrs Shephard. She then referred to those matters previously addressed in Ms Bates correspondence to the respondent. (619-624)

Grievance appeal held on 13 July 2018

155. The appeal was dealt with by Mr Shephard on 13 July 2018 at which the claimant was not present due to her concerns about lack of impartiality. The outcome, dated 3 August 2018, was sent to he in which her concerns and grounds of appeal were dismissed. (635, 638, 640, 642, and 648-659)

156. In an email dated 10 September 2018, the claimant raised her concerns about the "sham" grievance process; the respondent's failure to protect her data; and ongoing intimidation and bullying by Mrs Shephard. (695-696)

157. Mr Shephard emailed the claimant on 17 September 2018, taking exception to the language she used about him and Mrs Shephard. He wrote that they had liaised extensively with her solicitor throughout the grievance and appeal processes and answered numerous questions above and beyond those they were required to respond to. He accused her of making completely unfounded allegations about the grievance process. In relation to her concern about Data Subject Access Request, he considered the matter as being closed, and that any further issues should be taken up with the ICO to investigate. He then wrote:

> "I'm fed up of your continuous inference of Kim and I lacking integrity. You have failed to produce a single factual example of this ever occurring. Instead both you and your solicitor claim only the following 'in your opinion'."

158. He then wrote that he had no idea what she was referring to with regard to GDPR and until she provided further information he was not a position to

comment. He also could not comment on how she believed her personal data was exposed. In the penultimate paragraph he wrote:

> "Your comments regarding Kim are not only unfounded but unacceptable. There is no instance of either intimidation or bullying that you claim. It is totally unacceptable of you to infer particularly as you have no evidence to substantiate such preposterous claims. Your detrimental and insubordinate comments regarding Kim will not be tolerated any further. Disciplinary action will follow should this happen again."

159. He then stated that he and Mrs Shephard were agreeable to a meeting with the claimant in the presence of one of her work colleagues. (697-699)

160. We find that the role of Mr Shephard at the appeal stage was not independent. He too was the subject of numerous concerns raised by the claimant, particularly in relation to her contract of employment and the proposed changes. We were not satisfied that all reasonable steps were taken to get someone independent of him and the claimant to conduct the appeal. He and Mrs Shephard have contacts within the financial industry and could easily enquire of a company or person who could conduct the investigation at a reasonable price. We were not given a list of such companies or individuals they had approached. There is also no evidence that the respondent had approached its network to get either human resources assistance to conduct, independently, the grievance and appeal. It was still a viable business.

161. The claimant had no objections to Croner performing that role.

162. In Mr Shephard's email dated 16 June 2018, sent to Mr Stone, Mr Gray, Ms Nelson, and the claimant which he copied Mrs Shephard, he wrote:

> "Dear all,
>
> I am sure you are already aware that within the terms and conditions of your contract of employment it stipulates that you are required to currently take two days of your annual leave allowance at Christmas/New Year when the office closes down for the festive period. Historically I would authorise additional days as a gesture of goodwill. I have now decided that with immediate effect all staff must use their own annual leave to cover all the days the office is not open excluding the Bank Holidays. For this year the office will close on Friday 21 December at the end of business and re-open on Tuesday 2 January 2019.
>
> Therefore the dates for the 2018 festive period that you are required to take your annual leave on are the following.
>
> Monday 24th
>
> Tuesday 27th
>
> Friday 28th
>
> Monday 31st December

> This includes the two days you are currently expected to take plus the two additional days now required to also take from your annual leave allocation. Your annual leave records will be updated accordingly to reflect this decision."
>
> (558)

163. Two days later on 18 June, Mr Shephard emailed his staff copying Mrs Shephard stating:

> "Dear all,
>
> I have decided to no longer permit the use of personal mobile phones during working hours. If you need to be contacted during working hours, calls should be made to our main number. Therefore with immediate effect the unauthorised use of a personal mobile phone during working hours may result in disciplinary action up to and including dismissal."
>
> (562)

164. On 21 June 2018, Mrs Shephard sent a letter to the claimant in which she stated that the respondent would "be monitoring company emails and files when required."

> "Occasionally it is necessary to look at this data to fulfil the needs of the business when for example a member of staff is on sick leave or leaves the company and access is required.
>
> Furthermore we may undertake the monitoring of both contents of emails sent and received and the extent of the use of emails. Therefore employees wishing to send confidential non-work-related emails should seek authorisation from me prior to sending. In future the changing of any passwords will not be permitted without prior authorisation from me.
>
> If you hold any additional passwords related to your work please notify me immediately so that I can also ensure these are placed on your personnel file.
>
> This will be implemented with immediate effect for the reasons stated. Should you have any concerns or issues regarding this matter then please contact me at your earliest convenience."
>
> (579)

165. On 26 June 2018, Mr Shephard emailed the claimant stating the following:

> "With immediate effect each day prior to leaving at 3pm I require you to email me what work you have been given is still outstanding from the day and what you expect to finish during the one hour and twenty minutes that you work from home so that I am up to speed with your workflow and can ensure further work is given on time prior to the current supply running out."
>
> (588)

166. The claimant felt that some of the proposed changes were directed at her and others amounted to significant changes to her terms and conditions of

employment, and articulated her objections in email correspondence. She told the tribunal that there were concerns about her son's behaviour at school and that she would receive telephone calls from the school about him. Those calls would be taken by her away from her work colleagues, in the washroom area of the toilet which comprises of two distinct areas; the washroom area with a sink, the outer door to which could be locked; the other part is the toilet cubicle that also had a lockable door. She would take the calls in the washroom area. She said that around June 2018, the lock to the outer door that opens into the washroom area, was removed.

167. Mrs Shephard, in cross examination, said that the respondent sub-let the office on the first floor where there is a communal kitchen and female and male toilet facilities. The Facilities Manager put locks on the toilet doors. It was reported to her that the outer door to the female toilets was locked preventing others from entering the washroom. It was decided to remove the lock on the external door allowing people to use the sink and mirror. The toilet cubicle still had a lock. She said she had no idea what the claimant was doing in the bathroom, and there was no need for her to use the toilet as an office as the company could provide a private room for her to take her calls. The rule introduced was not targeted at the claimant.

168. We find that the claimant was in the habit of taking her calls in the washroom area of the toilet and, in doing so, would lock the external door. This created a problem, in that other staff members were unable to use that facility while she was in there. (584-585)

<u>Alleged public interest disclosure on 9 July 2018</u>

169. On 9 July 2018, the claimant sent an email and attached a letter in which she asserted to Mr Shephard, there had been a serious breach in that the respondent's IT contactor, Prism, had stated to her that they could gain direct access to her personal computer without her permission. In her letter she wrote:

> "I am reporting this matter directly to you as my employer in the first instance and would request a copy of your Privacy Notice between Prism and you as my employer. Prism has confirmed they can gain direct access to my PC and there are no authorities in place for them to seek my permission to access my computer.
>
> I am concerned that you as my employer have committed a serious breach of your duty of confidentiality owing to all clients and employees.
>
> I understand that before reporting my concern to the Information Commissioner's Office (ICO) I should give you the chance to deal with it and you should report this matter to the ICO to rectify this breach immediately. Should I not receive satisfactory confirmation and supporting evidence that this breach has been dealt with sufficiently, I will report this to the ICO and any applicable regulatory body."
>
> (613-614)

170. She said in evidence that the role of Prism and its ability to access her personal computer, amounted to a breach of the duty on the respondent, as an employer, to protect the client data. It was also a breach of the ICO's requirements in that Prism was able to access personal data.

171. In cross examination, Mrs Shephard said, that the respondent pays Prism a considerable sum of money each month for its IT security.

172. The claimant had not identified any provisions the respondent had breached in relation to data protection. We were referred to correspondence between Mrs Shephard and Peter Neal, Operations Director at Prism. In Mr Neal's email dated 13 August 2018, he clearly outlined the scope of Prism in relation to its involvement in the respondent's IT security. He stated that at no point had the respondent ever asked Prism to do anything other than to deliver IT support to its staff as requested by those individuals. The respondent had never asked it to monitor or report on any specific user's actual use of a supported device. He stated that Prism was unable to physically provide email or internet surveillance. It installed a software agent on all devices and there was no variation in scope between devices. It was a uniform approach. He then gave a list of what is monitored which did not include any person information. He then confirmed:

> "I confirm that the agents in place on Gilmour Quinn's current devices was installed in May 2018 following a refresh of all hardware.
>
> As an example, Jill Reid had her agent installed 15/05/2018 at 12.37 (we could supply details of all current users if required)."
>
> (667-672)

173. We were unable to determine, from the evidence, what specific breach or breaches the claimant was referring to in her correspondence dated 9 July 2018. Had she raised this with Prism her concerns would have been allayed. She also did not hold a reasonable belief that the alleged disclosure was in the public interest as her concerns were having access to her computer. (613-614)

174. On 10 September 2018, she wrote to Mr Shephard following the outcome of the internal appeal, accusing him of refusing to co-operate with her solicitor and of obstructing their requests to provide information. She stated that the grievance process was a sham, contrary to the principles of natural justice. It failed to provide true and accurate disclosure following her SARS request. She further asserted that he had been in breach of the GDPR as he had shared sensitive information to a third party without her knowledge or consent, and made a derogatory statement to the School Trust regarding her son. Personal information and/or data was provided to Croner Consulting without her knowledge or consent and was a breach of the GDPR. She alleged that her had failed to protect her personal data and had failed to communicate with her unless it was necessary to do so and that Mrs Shephard continued to use her position of power to intimidate and bully her. Such conduct was unacceptable, she wrote. She proposed, in her final

paragraph, a meeting only with him in the company of a work colleague to discuss the way forward. Failure to respond, she will assume that he was unwilling to seek a resolution. (695-696)

175. The response, purportedly by Mr Shephard, was on 17 September 2018, in which he challenged each and every point in the claimant's email, stating that he and Mrs Shephard had liaised extensively with the claimant's solicitor throughout the grievance and appeal processes and answered numerous questions since March 2018, which went above and beyond those which they were required to respond to. The respondent's procedure, he stated, was finalised and it was up to the claimant to contact ACAS to discuss the next step. Her subject data access request was considered closed by him. Any further issues she would have to refer to the ICO to investigate. He wrote:

> "I am fed up of your continuous inference of Kim and I lacking integrity. You have failed to produce a single factual example of this ever occurring. Instead both you and your solicitor claim only the following – 'In our opinion' which is irrelevant in each instance. However it has previously been a matter of concern that the Company felt it necessary to question your own integrity in the past. An example of this was when the Company refuted your claim that you had sent a letter to me dated 12 March 2010. You handed a copy of this letter to Kim towards the end of last year which in turn brought the matter to the attention of the company for the first time. On inspection it appeared that this letter was far more likely to have been fabricated as late as some seven years after the actual event took place. You have failed to produce any evidence to support your claim of its authenticity when asked by the company ie follow up emails etc."

176. Mr Shephard expressed ignorance of the point raised by the claimant concerning the GDPR and that until further information was produced by her, he was unable to comment. There were no grounds for her to contend that she had been treated in an unacceptable manner. Comments with regard to Mrs Shephard were not only unfounded but unacceptable. There was no instance of either intimidation or bullying. He continued,

> "It is totally unacceptable of you to infer particularly as you have no evidence to substantiate such preposterous claims. Your detrimental and insubordinate comments regarding Kim will not be tolerated any further. Disciplinary action will follow should this happen again.
>
> As already stated you have been given ample opportunities to meet with Kim and I as we are and always have been agreeable to a meeting with you. We will permit the presence of one of your colleagues at the requested meeting in a supporting role to you. Agreement to this request is at the discretion of the company and not a requirement that we must adhere to as this is neither a disciplinary or grievance hearing. In either of those instances it would be mandatory however to be offered the option to be accompanied. We have done our utmost to seek a resolution with you since you raised a number of concerns. We have taken each one very seriously and dedicated an immense amount of time to each of them. I wait for you to suggest a convenient time for this meeting to take place and also ask you to notify me of the name of the colleague who will be attending with you."

(698-699)

177. In Mr Shephard's cross examination, various email correspondence were put to him to which he did not have knowledge of their content. He stated that it was likely that they would have been drafted by Mrs Shephard bearing his name. He said he did not deal with human resources matters as they fell with the remit of Mrs Shephard. He did, however, agree their content.

Alleged public interest disclosure on 25 September 2018

178. The claimant relies on an email to Mrs Shephard dated 25 September 2018 regarding Prism feedback request. She asserts that the email constitutes a qualifying disclosure and a protected disclosure. In it she wrote the following:

> "Dear Kim,
>
> I always keep emails and have also noticed any emails sent between myself and Paul don't go back very far at all now (they went back to 2008). Therefore what I cannot understand if "Outlook 365" is archiving emails beyond a specific time, why this doesn't apply to all emails? This may be a question you would like to raise with Prism as its very odd."

179. It is clear that the respondent was looking into the matter of deleted emails and Mrs Shephard undertook to contact Prism to see if they could be retrieved and advised the claimant accordingly. (704)

180. In considering the claimant's email, we find that there is nothing to suggest that the respondent had been in breach of a particular legal provision. The claimant wrote in her final sentence that "its very odd." and not that there had been a breach of a legal obligation. We conclude that this email does not satisfy the requirements of a qualifying disclosure but was in the nature of an enquiry.

The claimant's mortgage

181. On 8 August 2018, the claimant was written to by Synergy Financial Products Limited regarding her Homemaker Plan. They stated that current subscription was insufficient to maintain her insurance benefits and that her plan would cancel shortly. Should she wished to continue with her plan she should increase her monthly direct debit as it would lapse once the value had been exhausted. If she wanted to continue with her plan she was advised to contact the company as soon as possible. (662)

182. The claimant said that the plan was recommended by Mr Shephard in 2004 and was intended to protect the mortgage loan in the event of death or earlier critical illness for £90,000 over 17 years, expiring on 12 March 2021. The investment element of £10,000 was expected to cover the shortfall on her husband's endowment. She asserted that the plan failed due to the charges being applied to the investment and that Synergy had confirmed that the funds within the investment were used up to support the life and

critical illness which eventually cause the plan to fail three years before its expected maturity in March 2021.

183. The claimant wrote to Tenet Connect, the respondent's financial advisor network at the time the plan was taken out, on 31 August 2018, in which she stated that when the advisor sold the plan she was not warned that withdrawing monies could seriously affect the protection element and was likely to stop the investment from growing. It was a product that the advisor had been selling to other clients at the time. The advisor had not reviewed the plan or her husband's endowments for several years. She was still employed by the advisor, namely the respondent, namely Mr Shephard, which made her position difficult to complain about a policy that was sold to her, and that a complaint may have an impact on her employment. She was paying a premium for an investment she thought was growing and was getting nothing back. She further stated that she was able to locate a suitability letter on file which was not issued to her at the time the plan was taken out. It was dated 10 March 2004, but was created on 18 June 2004 and kept on her file. She wrote that if she made the disclosure to the respondent it would destroy or conceal the evidence. (105-108)

184. The suitability letter dated 10 March 2004 was addressed to the claimant and her husband, which she said she did not receive. (162-163)

185. Although the claimant said that she did not receive the letter dated 10 March 2004, it is clear that she had discussions with Mr Shephard about the applicability of the plan to her and her husband's circumstances, and in Mr Shephard's view, she had a good working knowledge of the market place having spent many years in the finance industry.

186. Mr Shephard wrote to Tenet Group Ltd on 8 October 2018, responding to the claimant's complaint against him and the respondent, enclosing all correspondence the respondent had on file. He stated that the claimant had worked for him since 1999; that she was employed as an administrator who dealt with all the processing of life assurance cases from start to finish including compiling the suitability reports and should be considered as an "industry" person; it had taken her 15 years to raise the complaint but could have done so directly with him; that the conclusion of her grievances was that there was no case to answer; that having discussed the matter with Synergy, the reason for the shortfall was that she withdrew £4,000 from the plan and had omitted to refer to this "vital fact" in her correspondence with Tenet; that there was missing paperwork from 2011 and that the assumption was that files had been deleted without his knowledge or instruction to the claimant to do so on his behalf as she always had access to her own file at all times; she was familiar with projection letters generated by the provider as she prepared those types of letters on behalf of the respondent's clients; that the annual reviews from Synergy advised her to increase her premiums but mysteriously copies of the letters were missing from the file; she re-mortgaged in 2016 but failed to discuss the projected shortfall; that she did not take care of her own policies on behalf of the respondent; and that her complaint was time-barred. (717-718)

187. In evidence Ms Nelson said that the claimant's role was in financial.

188. We find that Mr Shephard and the claimant must have discussed several options available to her and her husband. Having regard to her knowledge of the industry, they decided on a packaged product that included all elements within one policy. We further find that her detailed knowledge of the marketplace and of the plan, meant that she should have kept herself up to date on it. She failed to do so and now blames Mr Shephard. The was no failure on the part of the respondent in relation to its conduct of the plan.

189. Mr Shephard's letter, without evidence, inferred that the claimant had deleted a number of files or documents, and that letters were also missing. This allegation was serious and was an attack on her character.

190. According to the respondent, letters were sent to her and her husband, and she knew that a suitability letter would be sent at the outset of the plan. If one was not provided, with her knowledge, she ought to have engaged in an enquiry as to why that was the case.

191. It would appear that in the claimant's email correspondence to Pam Harrison at Tenet Group, dated 29 October 2018, with regard to the suitability letter, she made reference to an increase in her premium from £63.31 to £80 to avoid her plan from lapsing. (738-739)

Alleged public interest disclosure on 30 November 2018

192. In an email by Mrs Shephard dated 23 November 2018, sent to all staff, regarding proposals over the Christmas period, she wrote that the December salary would be paid on Friday 21 December 2018 and requested confirmation whether they would be taking two days from their annual leave allocation, or working when the company re-opened for business following the Christmas closure. The premises would be closed Monday 24 to Thursday 27 December 2018 and re-open for business on Friday 28 and Monday 31 December 2018. Mrs Shephard then wrote:

> "It is your prerogative to either attend work or use your annual leave allocation on these two days. Please notify me of your decision regarding both of these dates within the next seven days. If I do not receive a response from you by Friday 30 November 2018 your decision will be deemed to be annual leave and I will register this accordingly on your annual leave record."

193. In response to the working arrangements over the 2018 Christmas and New Year period, the claimant emailed Mr Shephard on 30 November 2018, stating that she would not be working over the Christmas period and that for the respondent to take two additional days out of her holiday entitlement or not to pay her was a breach and considered unlawful. She then repeated her concerns about the grievance process being a total sham and that she was pursuing a complaint regarding the Synergy plan Mr Shephard recommended to her in 2004, and that the suitability letter was questionable as she did not receive it. (748)

194. Her reliance on her email dated 30 November 2018, to Mr Shephard was on the basis that the respondent was proposing to breach a legal obligation in relation to her contract of employment regarding holidays. She asserted that it was an implied benefit she enjoyed from 1999 to 2017, and the respondent was not giving them two gratuitous days on 28 and 31 December 2018.

195. While the claimant may be able to argue it is a breach of a contractual provision, namely an implied term, the dispute is limited between her and the respondent without any wider public interest. Accordingly, this does not qualify as a qualifying and protected disclosure.

196. In addition, it remains our view, however, that each year the gratuitous additional days holiday given by Mr Shephard was as expressed, "a gesture of goodwill". It was discretionary depending on the circumstances of the business in any given year. He was entitled to remove that provision if there was a business case for it. The respondent had closed during the quiet period of Christmas and the New Year and had to make arrangements accordingly. For this reason, there was no breach or potential breach of a legal obligation.

197. On 3 December 2018, the claimant wrote to Mr Shephard, the subject being her health and work, stating the following:

> "I am sending this email to notify you that I am unwell and it is highly unlikely I will be recovered enough to return to work this week. My health and wellbeing is suffering considerably due to the continued bullying and intimidation towards me by your wife in the workplace. Distress caused by your wife has made me physically unwell and sick. I'm intending to seek and appointment with my GP this week.
>
> Being bullied by your wife is a common occurrence and Kim takes every given opportunity to belittle and attack me in the presence of colleagues. The last event was on Friday 30 November and this was in response to an email I sent only to you earlier in the day that you passed to your wife. I was prompted to email you about various work related matters concerning my grievance that remain unresolved due to Kim documenting to a work colleague that my grievance was complete and there was nothing more to answer. Trust and confidence in my employer has been broken due to confidential information about me being shared by my employer with work colleagues and third parties without my knowledge or consent.
>
> On 30 November I received an email from Kim at 13.54 requesting for me to attend a meeting with her at 14.00 hours to discuss some of my email that I had addressed to you only earlier in the day. Kim approached my desk just after 14.00 asking if I had seen her email and was I ready for meeting? I informed Kim that I had just responded to her email and she returned to her desk to read it. Kim approached me again, came up to my face and told me I must have a meeting with her in private now, although I said "no" she was unrelenting demanding a meeting. I advised Kim again "No I do not want a meeting" and asked her to move away from my face as I found her actions intimidating. I felt threatened and Kim should have respected my wishes when I said "I do not want a meeting with you". Kim then started shouting at me that it is not acceptable for me to

> continue to refuse meetings with her. I asked Kim to move away from me and the response was she can stand where she wants and shouted out that I was rude. At this stage you entered the office with a client and Kim returned to her desk and I was left feeling humiliated and sick.
>
> I would ask that you please respect my wishes and ask that your wife does not contact me due to the detrimental impact she is having on my health and wellbeing and I do not want to have any contact with her for this reason. I will keep you notified and will request a meeting with you only once I am well enough to return to the office to work.
>
> Thank you."
>
> (756)

198. Mr Shephard's response was on the same day. He reminded the claimant that the respondent had introduced a policy on 17 June 20208, Mrs Shephard's email, informing staff of the procedure to be followed when notifying sickness absence, which was to inform Mrs Shephard's personally by telephone and not by email. He rebuked the claimant for not complying with the policy. He further stated that in her most recent contract of employment she was only entitled to 5 days sick pay, thereafter, statutory sick pay. He offered to arrange a return to work meeting when she was fit and able to do so and referred her to Active Care, a counselling and advice service, to assist in her recovery. (760-761)

199. Having regard to the fact that the claimant alleged that it was the behaviour of Mrs Shephard towards her that led to her feeling unwell and going on sick leave, it was unreasonable to expect her to engage in a discussion with Mrs Shephard regarding her sickness absence. An email to him was sufficient enough to convey her sickness absence.

200. The claimant received into her joint bank account with her husband, not her full December 2018 salary but £739.53. (771-772)

201. She and Mr Shephard engaged in email correspondence to try and arrange a meeting with him to discuss her concerns, but following her doctor's advice she was unable to do so. (764-770)

202. She submitted a statement of fitness for work dated 6 December 2018 in which she was signed off as being unfit for work from 6 December 2018 to 4 January 2019 due to stress at work. (1009)

<u>The claimant's resignation on 4 January 2019</u>

203. On 4 January 2019, she sent her resignation letter to Mr Shephard. It is a very detailed document setting out her reasons for resigning which is too long to be reproduced here. In summary, she wrote that Mr Shephard had failed to address her concerns satisfactorily over a long period. She accused Mrs Shephard of bullying her which impacted on her health and wellbeing resulting in her being unable to return to work. She referred to her 10 September 2018 email entitled "Employer GDPR Data Breaches" and the

response dated 17 September 2018, in which Mrs Shephard wrote "allegedly" in relation to some of the matters raised by the claimant. The claimant considered that such a response was unprofessional and the contents threatening, slanderous and dishonest. She also stated that she did not accept Mr Shephard's grievance appeal conclusion, and he was not impartial. She alleged that Mrs Shephard had composed the grievance appeal minutes for the appeal meeting. She wrote that she had emailed Mr Shephard to reaffirm her objection to the removal of the days off between Christmas and New Year, but the response came from Mrs Shephard who required her to attend the meeting on 30 November at 2pm.

204. She then summarised what she set out in her email dated 3 December 2018, concerning her health and work. She stated that Mrs Shephard misused her position of power to bully and harass her repeatedly and persistently at the time. Her actions undermined and humiliated her in the presence of colleagues. It began in the early part of 2018 shortly after she became a Director in October 2017, and did not speak to her and excluded her from conversations in the workplace. She used the word "insubordination" at her frequently.

205. The claimant asserted that it was Mrs Shephard who composed his emails regarding employment matters concerning her, that is the claimant. She expected her legal fees to be reimbursed as she had been forced to pursue a grievance because of the conduct of the respondent. She then wrote about alleged breaches of data protection. Her two male colleagues were recognised in their roles and she was not. She stated that in 2017, Mrs Shephard commented that she wanted to bring Mr Shephard down. Thereafter there were heated discussions between the two of them regarding financial matters. Their personal affairs crossed over the company causing a toxic situation. The office environment became tense and uncomfortable. She then referred to the conduct of Synergy in August 2018. She accused Mr Shephard of making slanderous and unfounded allegations against her to Tenet Connect suggesting that she had deleted policy records from the respondent's database and that she had omitted a vital fact, namely that she had made a withdrawal from the plan in 2013. This she denied. She asserted that his claims were dishonest.

206. In the last year she had been subjected to having her work monitored as had a female colleague who had recently resigned. The two male members of staff were not monitored. She wrote that her solicitors concluded that the respondent's intention was to make her leave the company by its behaviour.

207. She then gave her account of the grievance and appeal processes and her challenges. She then referred to the issuing of a new contract in March 2010 with revised terms and conditions, not having engaged in prior consultation with her. The changes were to her detriment. Her challenges to the reduction in holiday entitlement led to Mrs Shephard agreeing to give her 25 days as a goodwill gesture. She asserted that the holiday allowance is contractual like the 10 weeks' sickness benefit at full pay.

208. She stated that she had no option other than to leave having been effectively forced out of her job. She would expect to be paid 10 weeks salary in lieu of notice. She was owed 7 days unspent holiday for 2018. The shortfall in December's payment was £1,242.51 net.

209. She wrote that she had been signed off sick by her doctor due to stress at work brought about by the actions of the respondent. The respondent had failed to pay her, her full salary while signed off as unfit for work due to stress and instead paid her statutory sick pay. This added to her stress and left her in a financially difficult situation during the Christmas period. She sent several emails making the respondent aware of the serious financial circumstances she was in by the withholding her salary, but there was no compassion. Her email to Mr Shephard dated 12 December 2018, requesting that he should reconsider his decision and pay her salary in full, was not responded to until 20 December 2018. The salary for December was withheld and constituted a breach of contract.

210. She compared her treatment with the treatment afforded to her two male colleagues who were involved cycling accidents and were paid full sick pay. They were on the same contract terms as her. She had never abused the respondent's sickness policy and rarely took time off due to sickness but her male colleagues were paid their full sick pay. She alleged sex discrimination.

211. She further stated that she expected to be paid her full bonus/incentive payment on 2016 to April 2019.

212. Finally, she wrote that in view of the fact that the respondent engaged the services of Croner Consulting to handle its human resources affairs, she gave her consent to the respondent to provide Croner with a copy of her resignation letter. Croner would then be in a position to engage with her solicitor and negotiate a satisfactory outcome. She asked that should the respondent arrange an exit interview then it should let her know as soon as possible in order for her to make the necessary arrangements. (799-806)

213. In evidence the claimant said that it was verbally agreed between her and Mr Shephard on a day week commencing 12 April 2004, that he was keen for her to return to work. Due to the high volume of work that had accumulated since the birth of her son on 30 March 2004, a discussion took place about pension contributions. The claimed that the contribution to her plan at the time was 10% of salary. She said that she was told by Mr Shephard that level of contribution would continue to her Standard Life pension and that she would not be disadvantaged by the change of company from Gilmour Quinn Limited to Gilmour Quinn Technical Services Limited. She said that she was assured that the total monies applied to her pension would remain unchanged at approximately 10% of her gross salary by the respondent towards her pension with Standard Life.

214. There is no corroborative evidence that it was agreed that the respondent's contribution towards the claimant's pension fund would be 10% of her gross earnings. A letter from Fryza Bannister dated 25 September 2020, to Mr

and Mrs Shephard, stated that to Mr Mark Fryza was the partner in an accountancy firm responsible for running the respondent's payroll until July 2004. Having looked at the claimant's payslip and information on Fryza's database, it revealed that £60 a month to 22 April 2004, 3% of her annual salary, was paid into her pension fund. There were arrears in contributions from January 2004 to March 2004. The employer pension contribution for April 2004 was a total of £240, which was four months, The claim by the claimant that £240 represented the employer contribution of 10% does not equate to her annual salary of £24,000 would amount to £200 a month. The respondent's former employee, Ms Kay Brumpton, received 3% employer contribution. Mr Fryza concluded that £240 was a clerical error for the months following April 2004 through to 31 December 2007. The figure should have reverted to £60 from 31 May 2004. For the monthly contribution of £60 (£720 per annum) agrees with the pension statement from Standard Life.

215. In August 2019 after the claimant had turned 55 years, she received from Standard Life, a pension plan statement, detailing the contributions made to her pension plan by the respondent.

216. We are satisfied that the respondent's contribution towards the claimant's pension fund was 3% of her annual salary. There was no evidence that the respondent was obligated, either expressly or impliedly, to pay the equivalent of 10% of her salary into her pension fund.

217. The claimant applied for work via Reed Recruitment and a request from a potential employer for a reference was made to the respondent. According to the claimant Reed Recruitment sent two emails to Mr Shephard. He failed to respond to them. The claimant was then asked to provide another referee. The claimant produced copies of the request from Reed Recruitment to Mr Shephard, for a reference. (1235-1236)

218. It is unclear why this was not responded to by Mr Shephard. It is dated 25 February 2019.

219. In relation to an email sent by the claimant on 11 May 2017, to Mr Shephard regarding rumours about the respondent's finances and whether her position was secure, as well as not being paid the incentive bonus, the email was sent to her husband's email account. It was clearly work related correspondence that should not have been sent to a private email account. (253)

220. The claimant also had in her possession confidential information pertaining to the respondent, including a spreadsheet on staff salary. (1194, 1227)

221. Although the claimant said that she was closely monitored and work was removed from her, we were unable to find, having regard to the evidence, that such was the case.

222. We make further findings of fact, namely that Mrs Nelson wrote to Mrs Shephard, copying Mr Shephard, on 12 February 2018, stating that the claimant was entitled to 25 days holiday. (483)

223. The claimant's holiday entitlement was accepted by Mrs Shepherd. (971)

224. In relation to notice pay, Employment Judge Manley at the preliminary hearing held on 14 October 2019, stated that the parties agreed that the claimant is entitled to notice of "between 10-12 weeks depending on the agreement about the start date.", paragraph 4.14. (77)

225. The claimant is claiming 10 weeks' notice pay.

Submissions

226. We heard the submissions from Mr Wayman, Counsel on behalf of the claimant and from Mr Crawford, Counsel on behalf of the respondent. We have taken into account the authorities that they have referred us to. We do not propose to repeat verbatim their submissions herein having regard to Rule 62(5) Employment Tribunal's (Constitution and Rules of Procedure) Regulations 2013.

Conclusions

Constructive unfair dismissal

227. As regards her constructive unfair dismissal claim, the issue is whether Mr and Mrs Shephard, by their conduct and acting on behalf of the respondent, breached the implied term of mutual trust and confidence? We found that there were changes to the claimant's sick pay, holiday entitlements, and to the subsequent purported contracts of employment after she commenced employment in April 2008; the whole grievance and appeal procedures were biased and unfairly conducted with predictable outcomes reached against her; she read the Tenet Connect letter dated 8 October 2019, which cast aspersions on her character in relation to documents being deleted and letters not disclosed; informing the claimant that the correct procedure in relation to notification of sickness absence was to personally contact Mrs Shephard by phone at a time when the claimant had accused her of bullying and that her conduct was the reason for her sickness absence; and the claimant had repeatedly requested the payment of her LTIP incentive bonus up to her entitlement in April 2019.

228. We have come to the conclusion having taken the matters in the above paragraph into account, objectively considered, the respondent breached of the implied term of mutual trust and confidence.

229. The claimant did not affirm the breach as she had protested against her treatment seeking legal advice and representation in the process. We also find that there was no ulterior motive for resigning. She had been working

for the respondent for a long time and had been instrumental in its development and success as a company, so much so that Mr Shephard approached her and subsequently re-employed her in 2008.

230. She was constructively dismissed. There was no fair reason for her dismissal, section 98(2) and (3) ERA 1996. As no procedure was followed in relation to her dismissal, we have come to the conclusion that her constructive unfair dismissal claim is well-founded.

231. Had the claimant contributed to her dismissal? The relationship between her and Mrs Shephard became strained following Mrs Shephard's elevation to Director in 2017. Prior to that time the claimant played a very active part in the respondent's business as she worked closely with Mr Shephard. The claimant was reluctant to accept the changes in the workplace brought about because much of the human resources functions were taken over by Mrs Shephard. Some of the claimant's email responses to Mrs Shephard were disrespectful and belligerent, and company information was sent to her private email account. We have taken the claimant's conduct and contribution into account and will reduce the basic and compensatory awards by 25%.

232. No ACAS procedure was followed in respect of the claimant's dismissal. Such a failure was unreasonable having regard to section 207A Trade Union and Labour Relations (Consolidation) Act 1992. We, therefore, award the claimant a 20% uplift on the compensatory award.

Public interest disclosure detriment and dismissal

233. We have already considered whether the claimant made protected disclosures and if she did, whether they materially influenced any detriments or her dismissal. We have concluded that there were either no qualifying or protected acts, or that any protected act did not materially influenced any alleged detriments or the dismissal. Accordingly, these claims are not well-founded and are dismissed.

Wrongful dismissal

234. In relation to the wrongful dismissal claim, the claimant was entitled to 10 weeks' pay in lieu of notice. She commenced employment in April 2008 and was constructively unfairly dismissed on 4 January 2019.

Incentive bonus

235. The claimant submits that she entitled to bonus as the respondent's refusal or failure to pay amount to unauthorised deductions from wages. She rely on the County Court judgment in Ms Kirsty Nelson's case and argues that there should be consistency in judicial outcomes where the facts are so similar.

236. She claims that she was due to be paid a bonus in April 2017 of £1,176.48; in April 2018 the sum of £588.23; and in April 2019, a further sum of

£588.25. The respondent failed to make the payments to her. There was, however, no specific date given as to when sums in respect of her bonus would be paid.

237. In the case of Bear Scotland Ltd v Fulton [2015] ICR 221, EAT, each failure to pay attracts its own time limit of three months. If the payment date was at the end of April in each year, she had up to 29 July in which to present her unauthorised deduction from wages claim. This she failed to do. She was represented by a firm of solicitors who advised her on her employment rights. Time limits are applied strictly and it was feasible for the claimant to have presented her claim in time. We do not extend time on the basis that it was not reasonably practicable for her to do so.

238. The April 2019 claim is premature as the claim form was presented on 25 January 2019.

239. Accordingly, we have come to the conclusion that the tribunal does not have jurisdiction to hear and determine her unauthorised deductions from wages claim and it is struck out.

Accrued unpaid leave

240. The claimant is entitled to 25 days annual leave but during the Christmas closure period in December 2018, she had the option of taking two days leave or working 28 and 30 December 2018. She chose not to do so. She is, therefore, not entitled to any payment for those two days. The respondent reserved the right to vary the working arrangements at the Christmas and New Year period.

Pension payments

241. In relation to pension payments, as already found, the respondent's contractual obligation was to pay 3% of the claimant's gross annual salary towards her pension fund, not 10%. There was no breach of contract in respect of pension contributions.

Victimisation

242. In relation to the victimisation claim, the claimant did make a protected act in lodging a grievance alleging, amongst other things, discriminatory treatment on grounds of sex as her male colleagues were treated more favourably in relation to sick pay. The reference from Reed Recruitment was not completed by Mr Shephard but there is no reason given for this failure. The request was made in the last week of February 2019, one month after the claimant had presented her claim form to the tribunal. There was no evidence the failure to provide a reference was significantly influenced by the protected act. It is possible that the respondent did not want to put anything in writing because it wanted to preserve its position in litigation after she had issued employment tribunal proceedings against it. This claim is not well-founded.

243. The remedy hearing is listed on 25 November 2021 unless settled beforehand.

_____

Employment Judge Bedeau

Date: …7th October 2021……..

Sent to the parties on: .7th October 2021.
THY
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For the Tribunal Office