EMPLOYMENT TRIBUNALS

Claimant: Mr J Brannan

Respondent: Tesco Stores Limited

Heard at: Manchester **On:** 5, 6, 7, 8, 9 and 10 June 2022
15 July 2022
(in Chambers)

Before: Employment Judge KM Ross
Ms A Gilchrist
Ms S Khan

REPRESENTATION:

Claimant: In person
Respondent: Ms A Smith, Counsel

JUDGMENT

The judgment of the Tribunal is that:

1. The claimant's claim that he was automatically unfairly (constructively) dismissed pursuant to section 103A Employment Rights Act 1996 is not well-founded and fails.

2. The claimant's claim that he was unfairly (constructively) dismissed pursuant to section 95 and section 98 Employment Rights Act 1996 is not well-founded and fails.

3. The claimant's claim that he suffered detriments for making protected disclosures pursuant to s47B Employment Rights Act 1996 is not well-founded and fails.

REASONS

Introduction

1. The claimant was employed by the respondent, mainly as a Customer Delivery Driver, from 1 November 2017 until he resigned on 15 December 2019.

2. The claimant brought claims that he was automatically unfairly (constructively) dismissed for making public interest disclosures pursuant to section 103A Employment Rights Act 1996, and in the alternative that he was unfairly constructively dismissed pursuant to sections 95 and 98 Employment Rights Act 1996. He also claimed he had suffered detriments for making public interest disclosures.

Claims and Issues

3. The case was case managed at a preliminary hearing by Employment Judge Howard on 18 January 2021, where the claims and issues were discussed and identified, and Employment Judge Howard ordered the parties to agree a List of Issues. Following further correspondence with the parties Employment Judge Howard confirmed that the claims and issues were as attached to the Case Management Order dated 26 January 2021 sent to the parties on 15 February 2021 and found at pages 181-185 of the bundle of documents.

Evidence and Witnesses

4. We were provided with an extensive bundle of documents comprising 1,500 pages.

5. We heard from the claimant and for the respondent from the claimant's line manager, Brian Keyes; Mr Keyes' manager, Vanessa Strutton; Simon Court (Store Manager at Blackpool Extra store); James Forsyth (a Dotcom Picking Manager); and Simon Olive (a lead manager at the Blackpool Extra Store where the claimant was based). We also heard from Alison Jones, Team Manager (Checkout) at the Helsby Superstore who heard the claimant's disciplinary hearing; Lisa Allen, a People Partner from the respondent's Human Resources department and Louise Stamper, a Colleague Relations Partner, also from Human Resources.

6. We were also presented with a video file of some CCTV footage (no audio) which the parties asked us to view in relation to a discussion between the claimant and Mr Forsyth.

Findings of Fact

7. The Tribunal found the following facts.

8. The claimant began working for the respondent as a Personal Shopper on a 7.5-hour contract although he worked regular overtime. The claimant applied successfully to become a Customer Delivery Driver and he worked in this role from January 2018.

9. There was no dispute that the claimant was employed on a permanent contract.

10. The Tribunal finds that, as explained by Mr Court, Tesco issued terms and conditions of employment to permanent employees such as the claimant which noted the number of hours the claimant worked. However, these contracts could be amended to reflect an agreed change in the number of hours to be worked. We find it was the Respondent's practice to issue a new contract with the new hours recorded, even if the change in hours was temporary. We find where a change of hours was agreed, the manager also completed a change of hours form, which was also signed by the affected employee. The Tribunal finds that when the claimant first worked as a driver, he was working evening shifts. We rely on the hours form at page 284 signed by the claimant on 5 February 2018 which shows the claimant was working Tuesday, Wednesday, Friday and Saturday evenings, totalling 16 contracted hours.

11. The claimant informed the respondent that he had serious financial difficulties in relation to his mortgage and needed to work extra hours to earn more. The Tribunal finds (as set out below) that both Mr Keyes (who we found to be a truthful and fair witness, making concessions when necessary) and Ms Strutton (who we also found to be a truthful and fair witness) made great efforts to find additional hours for the claimant where they could. The Tribunal finds that the claimant wished to work day shifts because he found evening shifts stressful and he wished to work weekdays rather than weekends. The Tribunal accepts the evidence of the respondent's witnesses that it was difficult to recruit drivers to evening shifts and antisocial hours shifts, and the additional daytime hours sought by the claimant were popular with other drivers. We rely on their evidence to find that they were constrained by the needs of the business when trying to seek additional hours for the claimant.

12. We find the claimant's agreed hours of work were:

31 October 17:	7.5 hours (page 259)
22 July 18:	25.50 hours (page 265)
27th January 19:	36.5 hours (page 268)
14 April 19:	25.5 hours (page 272)
31 May 19:	31.5 hours (page 272)
1 September 19:	36.5 hours (page 273)
6 October 19:	32.5 hours (page 274)

13. There was no dispute that the claimant obtained many "wows" which were positive feedback forms completed by customers. There was no dispute that the claimant had the highest number of such positive feedback forms of any driver. However, it is also undisputed that during the course of his employment the claimant received four customer complaints, one of which the claimant only became aware of

after his employment ended because the customer had not wanted any action to be taken in relation to the complaint because she was fearful of her safety.

14. There is no dispute that the claimant received a warning in relation to one of the customer complaints after a formal investigatory and disciplinary meeting in August 2019, although that was overturned for procedural reasons on appeal by Mr Olive in October 2019.

15. The Tribunal finds that on occasion the claimant spoke directly to his managers in a way that might be considered unacceptable, but no formal disciplinary action was taken. For example, when he refused to obey a reasonable management request from Mr Keyes on 18/11/19. Page 1137

16. There is no dispute that the claimant had a number of absences due to stress and the Tribunal finds (and the claimant agrees) that he suffered from poor mental health including at the time leading up to his resignation. The Tribunal's detailed findings of fact is set out below.

17. The claimant started employment with the respondent on 1 November 2017. (pages 259 and 262). On 13 January 2018, not long after the claimant started his driving role, there was a review meeting with the claimant's line manager Brian Keyes (page 278-279) where the claimant was told to *"make sure he took breaks".* The claimant said in cross examination there was no problem with getting breaks at this point.

18. On 28 January 2018 the claimant was confirmed on a permanent contract with the respondent (page 264).

19. On Thursday 1 February 2018, the claimant alleged he made a **first protected disclosure** in a verbal conversation with his line manager's manager Vanessa Strutton.

20. In March 2018 the claimant was selected by Vanessa Strutton to receive a gold superstar service award and was put forward for a regional award.

21. On 4 June 2018 the claimant alleges he made a **second protected disclosure** verbally in a conversation with manager Brian Keyes (page 299 C journal).

22. On 6 June 2018 the claimant attended a meeting with manager Brian Keyes and a colleague Martyn Talbert-Sykes to discuss an incident between them. (page 300).

23. On 23 June 2018 the claimant emailed Vanessa Strutton "VS" at 16:35 (page 302). He raised several issues including a request to meet to discuss his hours. On the same day at 17:09 the claimant met with VS. He covertly recorded the meeting. A number of issues were discussed including the claimant's concerns about his colleagues and his request to work more hours (pages 304-325).

24. VS followed the meeting up with an email (page 301) stating that the claimant should raise concerns with his direct line manager, that a meeting would be arranged the following week to mediate his concerns about his colleagues and that further

investigations would take place in relation to his request for more hours but a full-time contract could not be guaranteed.

25. On 25 June 2018 manager BK held a meeting with the colleagues the claimant had complained about, spoke to them about their comments being unacceptable and reported back to the claimant who said the issue had been resolved (page 326). This appears to be clarified by the claimant in an email to VS where he says the other issue "seems now to have been resolved so all good there" (page 327).

26. On 12 July 2018 the claimant's hours were increased to 25.5 hours (pages 327 and 328).

27. On 6 August 2018, the claimant was invited to an investigation meeting following an allegation of assault against him by a colleague (page 331). The claimant was later invited to a disciplinary meeting arising out of the same incident (pages 375-383). No action was taken against the claimant in relation to the matter (page 383).

28. The claimant attended a sickness absence review meeting on 3 November 2018 (page 394). He expressed concerns about stress and losing his home due to financial worries.

29. On 26 November 2018 the claimant met BK for a formal absence review meeting. At it he raised concerns about his home and financial situation and asked about more hours (page 406).

30. On 10 December 18 the claimant contacted Vanessa Strutton seeking increased hours, raising his financial worries and concerns about homelessness (pages 419-421). We find Vanessa Strutton responded sympathetically saying she would contact his manager BK to see if they could find any additional hours for the claimant.

31. The Tribunal relies on the evidence of Simon Court to find that an employee on a permanent contract with a temporary increase in hours would not be transferred onto a temporary contract but instead would have their new hours shown on their permanent contract, but the change of hours form would make it clear that the hours were temporary.

32. Mr Keyes "BK" agreed the claimant asked for an increase in hours and he discussed it with Vanessa Strutton. We find they realised a full-time driver colleague was going on a temporary career break and discussed offering the claimant that driver's hours on a temporary basis (see paragraph 33 BK statement).

33. We find BK made the claimant aware that the increase in hours was only temporary. We find BK completed the change of hours form at page 439 of the bundle which set out the claimant's new temporary shift/hours which would take effect from 27 January 2019 when the other driver started his career break. We rely on BK's evidence that he made it clear it was for a 12-week period only which was the length of time the other driver would be off. We find the words "temp" were written on the document. The Tribunal finds this was a genuine document.

34. The claimant says he was told by BK that the changing hours was permanent. He says the contract he was issued shows that the hours were permanent.

35. The Tribunal prefers the evidence of BK. It is supported by the contemporaneous evidence including the covert recording taken by the claimant on 19 March 2019 where, when BK reminds the claimant the increase in hours is temporary, the claimant says initially "I don't recall that" and then "I misunderstood what you've said" (page 500). It is also supported by page 439 which says the change is temporary and which the claimant signed. It is consistent with the explanation that the reason the change was temporary was a named driver going on a career break on a temporary basis.

36. By contrast the claimant, who was often inconsistent as a witness, suggested the change of hours form was not genuine. He said the reason why the change of hours was permanent was because the contract (page 268) did not refer to a temporary increase in hours. Although the Tribunal accepts that the contract, on the face of it, was unclear, in the context of the explanation given to the claimant by BK and having regard to the change of hours form, we find it was clear the increase in hours was temporary.

37. We find on 15 December 2018 it was proposed the claimant's hours would increase up to 36.5 hours (see page 439). The change of hours form was signed by the claimant on 2 January 2019. (At the claimant's request the original document was provided at the hearing).

38. On 31 December 2018 there was an incident involving the claimant and the Dot.com Picker Manager, James Forsyth. This incident is not in the claimant's witness statement. Mr Forsyth provided an account in his diary (page 438). The claimant was not disciplined in relation to this matter.

39. On 5 January 2019 claimant's manager BK contacted him about walking out of his shift and failing to keep in touch with him, his manager (page 440).

40. On 7 January 2019 there was a return-to-work meeting (pages 441-450) following the claimant's short absence from work. On 14 January 2019 there was an absence review meeting (pages 458-465) with Brian Keyes. The claimant raised his concerns about his housing situation.

41. On 1 February the claimant was issued with a 36.5 hour contract (page 268).

42. The claimant was absent from work from 14 February to 25 March 2019 with stress and anxiety.

43. The claimant says he made **a third disclosure of information** to Protector line (page 586) about colleagues who had died suddenly and had worked at the Blackpool store.

44. On 19 March 2019 Mr Keyes held a wellness meeting with the claimant. The claimant says he made a **4th protected disclosure** in this meeting. His notes of the meeting are at pages 497-498. The claimant covertly recorded the meeting. His notes of the recording are at page 499-521. The Tribunal finds that during this meeting BK said, "of course I want you back".

45. During this meeting there was a further discussion about the claimant's hours and a first customer complaint was also discussed.

46. The claimant came back to work on 21 March 2019: he was placed on Monday, Tuesday and Friday day shifts at his request. (We find he would have been able to work the hours covering the colleague's career break until the end of March but the claimant had requested that he not worked the remainder of those full-time hours because of his stress.)

47. The claimant and BK had a conversation on 3 April 2019 (page 538) about the claimant's hours. The claimant followed it up with a very direct email on 4 April 2019 (page 544).

48. On 5 April 2019 the claimant refused to take his van about after a meeting with Simon Court (page 550).

49. On 8 April 2019 the claimant met with Brian Keyes (page 553) and objected to his hours and refused to sign a change of hours, reducing his hours back to the level before the temporary increase.

50. On 9 April 2019 he met with BK and VS (pages 563-6). He said he did not want to work Sundays (page 565) and would rather work eight hours not four hour shifts. He requested two days off together.

51. On 11 April 2019 the claimant received a letter from his mortgage company informing him that his mortgage term had ended (page 567).

52. On 18 April 2019 claimant told his manager in an email "I hate what you're doing" and stating that BK was "destroying my life". His manager responded by offering additional shifts to him.

53. On 19 April 2019 the claimant accepted some of the additional shifts offered to him (page 579).

54. On 20 April 2019 the claimant spoke inappropriately to his manager. When questioned at Tribunal he could not remember the call (page 581).

55. On 29 April 2019 the claimant met with Lisa Allen and VS to discuss informal grievance concerns. A representative from USDAW was also present (pages 599-605). The issue concerned the claimant's hours.

56. On 8 May 2019 VS offered the claimant six hours permanently on a Sunday (pages 608 and 609).

57. On 13 May 2019 the claimant was offered four hours overtime shift.

58. On 18 May 2019 the claimant met with BK to discuss a change in hours form and his hours increasing from 25.5 to 31.5 hours (pages 615-616).

59. On 5 June 2019 the claimant met again with VS and Lisa Allen about his hours (pages 618, 620, 622). We find in June 2019 the claimant was working 31.5 hours (see page 615).

60. On 11 June 2019 a second customer complaint was received against the claimant (pages 635-640).

61. On 17 June 2019 investigation started about that complaint (page 658).

62. On 24 June 2019 there was a meeting to discuss the customer complaint (page 671). It was followed by a "coaching" meeting where the claimant was defensive (page 676). The claimant did not accept any responsibility for the complaint. After the "coaching" meeting the claimant told his manager BK said the manager who had conducted the previous meeting was trying to teach him to "suck eggs" (page 679).

63. The claimant was off work sick from 28 June to 23 July 2019.

64. On the 16 July the claimant met with Lisa Allen and VS (pages 699-704).

65. On 25 July the claimant sent an email to Dave Lewis, CEO of Tesco, making an **alleged 5th protected disclosure**.

66. On 2 August 2019 the claimant met with VS and Lisa Allen. He agreed in cross examination he was shown vacancies and a trollies shift (page 741).

67. On 14 August a third customer complaint was received (pages 797, 819). The claimant was called to a meeting to investigate the complaint and then to a disciplinary meeting heard by Ms Jones on 2 Sept 2019 (pages 217-224). He was issued with a warning. He later appealed. The hearing took place before Simon Olive on 16 October. He overturned the warning for technical reasons (documents in a meeting not signed/dated and going straight from no further action to first warning) (page 1089).

68. On 25 August 2019 claimant gave 4 weeks' notice to drop his Saturday shift (page 905).

69. On 2 September 2019 another customer complaint (4th) was received (page 932).

70. On 10 September 2019 there was a meeting between Mr James Forsyth, the dotcom picking manager and the claimant (pages 965-970) about lateness.

71. On 24 September there was a further conversation about the claimant's persistent habit of clocking on a few minutes late (paragraph 22 JF statement)

72. On 2 October 2019 VS confirmed he could drop his Saturday shift. On 7 October 2019 she wrote again,supportively, about shifts (page 1051).

73. On 12 November 2019 Lisa Allen suggested a face to face meeting with the claimant to discuss issues he had raised in correspondence (page 1127). She also contacted the claimant's union representative to try to encourage a meeting (page 1130) as she was finding it difficult to fix a date for a meeting with the claimant.

74. On 18 October 2019 the claimant was referred to Occupational Health (pages 1094-8).

75. On 18 November 2019 BK recorded the claimant refused to stack up trays (page 1137). In cross examination the claimant agreed he did that and was out of order. No formal disciplinary action was taken.

76. On 19 November 2019 LA tried again to arrange a meeting with the claimant to discuss his concerns (page 1144).

77. On 5 December 2019 the claimant wrote a letter to Dave Lewis, Chief Executive of Tesco (pages 1161-2) which he now accepts was offensive and inappropriate.

78. On 9 December 2019 Lisa Allen and his trade union representative held a meeting with the claimant to try to discuss and resolve his concerns. They discussed his shifts and his request to mentor new drivers (page 1156). Lisa Allen followed it up with a letter on 13 December 2019 explaining the steps which were agreed (page 1163). It was not disputed the meeting was positive and amicable.

79. On Sunday 15 December 2019 the claimant attended Blackpool store to hand in his fit note. He also asked Simon Olive to sign for it, which he declined to do.

80. On same day, the claimant resigned at 18.03pm by email sending it to Lisa Allen. (page 1174).

81. The respondent asked him to meet (page 1192) and the claimant said he would (page 1210). He attended the meeting on 3 January 2020 to discuss matters including the respondent's offer for him to withdraw his resignation. Louise Stamper attended for the respondent. The claimant's TU rep was also present. The claimant covertly recorded the meeting (pages 1249-1303).

82. There was a further discussion about the claimant's shifts amongst other matters. At that stage the claimant said he made "no apologies" for the email he sent to Mr Lewis in December 2019 and said if he did withdraw his resignation it would only be on the understanding he was not sacked for gross misconduct (page 1291). He reiterated he was not at all remorseful about the email (page 1292).

83. Louise Stamper said the respondent was giving the claimant an opportunity to rescind his resignation, taking into account his absence from work due to his mental health. The claimant chose to stand by his resignation

The Law

84. For the public interest disclose claims, the relevant law is a section 43B(1)(b) and (d), and section 47(B), section 43(C) (1) and section 103A Employment Rights Act 1996.

85. The Tribunal had regard to Cavendish Munro Professional Risks Management Ltd v Geduld 2010 ICR 325, Kilraine v London Borough of Wandsworth 2018 ICR 1850, Chesterton Global Ltd and another v Nurmohamed 2018 ICR 731, Goode v Marks and Spencer plc EAT 0442/09, Parsons v Airplus International Ltd EAT 0111.17.

86. So far as detriment is concerned, we had regard to Blackbay Ventures Ltd v Gahir 2014 IRR 416, Jesudason v Alder Hey Children's NHS Foundation Trust 2020 IRLR 374.

87. In relation to causation, we reminded ourselves of the well-known case of Fecitt v NHS Manchester 2012 IRLR 64. We had regard to the principle in Western Union Payment Services UL Ltd v Anastasiou EAT 0135/13 and Royal Mail Group v Jhuti 2020 ICR 731.

88. For the unfair constructive dismissal, the law is at sections 95 and 98 Employment Rights Act 1996.

89. We reminded ourselves of the long established case of Western Excavating Ltd v Sharp 1978 IRLR 27, and Malik v Bank of Credit and Commerce International SA 1997 IRLR 462.

90. We were also referred to Leeds Dental Team Ltd v Rose 2014 IRLR 8 and Omilaju v Waltham Forest London Borough Council 2005 IRLR 35.

Issues

91. The complaints and issues for the Tribunal to determine were as follows:

Protected disclosures

1. Did the claimant make the disclosures, laid out at Appendix 1 below; which tended to show that a person had failed, was failing or was likely to fail with any legal obligation to which he was subject and/or that the health and safety of any individual has been, is being or is likely to be endangered in accordance with (s.43B(b) ERA 1996)?

2. Did the claimant reasonably believe that those disclosures tended to show that the alleged wrongdoing had occurred, was occurring or was likely to occur? (s.43B(1) ERA 1996)

3. Did the claimant make those disclosures in the public interest? (s.43B(1) ERA 1996)

4. Did the claimant make those disclosures to his employer or other responsible person? (s.43C(1) ERA 1996)

Whistle-blowing detriment (s.47B ERA)

1. Was the claimant subjected to any of the detriment(s) as specified at Appendix 1 below?

2. In so far as the claimant was subjected to any such detriments, were any of them on the grounds of his having made one or more of the protected disclosures (and if so, which one(s))?

3. Does the Employment Tribunal have jurisdiction to hear the detriment claims, having regard to the applicable time limits in section 111(2)(a) of the ERA and or should time be extended in accordance with section 111(2)(b) of the ERA 1996?

Automatic Unfair Dismissal (S103A ERA 1996)

1. If the Employment Tribunal is satisfied that the claimant did make any or all of the protected disclosures identified: Was the sole or principal reason for the claimant's constructive dismissal because he made one or more of the alleged protected disclosures?

Constructive dismissal (s.98(4) of the ERA and 103A ERA)

1. In relation to the ordinary constructive dismissal claim:

2. Was the respondent in fundamental breach of contract?

3. The claimant relies on the alleged acts of detriment laid out at Appendix 1 as amounting to a breach of the implied term as to mutual trust and confidence. In addition, the claimant will rely upon:

    - The events on 15 December 2019 as outlined in his resignation email regarding Mr Olive's conduct in refusing to sign for receipt of his fitness for work certificate;

    - His resignation not having been accepted

    - The conduct of Louise Stamper at the subsequent meeting on 03 January 2020 (said to amount to the last straw) in failing to either (a) provide him with an alternative position at an alternative store or additional day time shifts at #2103, and (b) failing to confirm that a *"line would be drawn in the sand"* regarding the claimant's email to Tesco CEO Dave Lewis 05 December 2019.

4. Did the claimant resign because of the respondent's fundamental breach of contract?

5. Did the claimant delay too long and so affirm the contract?

6. If the claimant was constructively dismissed, was the dismissal unfair?

7. Should compensation be reduced for the claimant's failure to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures, and if so, what should the extend of the deduction be, up to a maximum of 25%.

Schedule of allegations (As set out in Appendix 1 of case management note of EJ Howard)

1. The claimant alleges that he made 5 protected disclosures as are set out below.

2. In each case he relies upon section 43B(1)(d) that the health and safety of an individual had been, is being or is likely to be endangered. In the alternative, it is alleged that section 43B(1)(b) is engaged and that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject.

3. The only legal obligation (outside health and safety issues) which was identified at the preliminary hearing on 18 January 2021 was in relation PD2 (see below) where a breach of GDPR was identified.

	Date	Who to & communication	What information was disclosed	Detriment alleged
1	01.02.18	Vanessa Strutton (VS) Dotcom Lead Manager By telephone	C disclosed that he was forced to work without a break for 10.5 hours (12.30-11pm) – this was during heated conversation in which he stated that this would not happen again, as he would not break the law for anyone.	1. C had a meeting with VS on 23 June 2018 during which VS refused to address the bullying C was experiencing from colleagues and sought to defend their behaviour. 2. Following C's disclosure, the attitude towards him changed from VS and BK. He went from being considered for the trainee management programme (Options) and being given a Gold Superstar Service Award to being passed over for increased hours and progression from March 2018 onwards.
2	04.06.18	Brian Keyes (BK) Dotcom manager	C disclosed that the driver's list which he stated amounted to a "*name and shame*" list which was displayed on wall for drivers to see was (1) in breach of GPDR & (2) putting drivers under pressure to take risks	1. As above, C was passed over for additional hours and progression. 2. In addition, BK became more hostile towards C in his attitude. 3. There were 2 meeting with VS in June 2018 (the second of which was 23 June) during which she refused to increase his hours and permitted the bullying to

			when on the road to avoid the embarrassment of being on the list. This amounted to micro-managing	continue. 4. VS refused to allow C to mentor other drivers, denying him additional valuable experience to allow him to progress.
3	22.02.19	Telephone call to Protector line	C disclosed that between October 2018 and February 2019 6 colleagues had gone home from #2103 store and died. The commonality was the staff canteen. C disclosed that he had felt pressure in his brain on two occasions from having free coffee from the vending machine C also chased a response to this issue via the online portal (CL56359) on the 03.04.19	1. C's permanent contract of employment was removed from him on 19 March 2019. 2. BK was instructed to remove hours from C. 3. R knew it was C who had made the disclosure because he had raised the issue verbally 2 days earlier with BK.
4	19.03.19	In meeting with Brian Keyes	The Claimant disclosed that the database system used by drivers when delivering was inadequate in that some fields were left blank. This meant it was often hard to find rural addresses, particularly at night, where the location would be vague. As a result there was an increased need for drivers to	1. R ensured that C was given the most stressful and difficult shifts -i.e. 4 evening shifts and a Saturday evening/Sunday day shift pm (14 April 2019). 2. This was done with the intention to "*drive out*" the Claimant.

			reverse their vehicles and there was an increased risk accidents happen when reversing, which endangered the health and safety of the public. In addition, trying to locate addresses in such circumstances was very stressful and database needed to be updated with additional notes on how to find the customer's address.	
5	25.07.19	Email to CEO Dave Lewis	C disclosed that there had been an incident on 02.06.19 with a child in a cul-de-sac in Surry, who had been struck by a reversing vehicle. C had disclosed similar concerns regarding reversing vehicles previously to his line manager Mr Brian Keyes but he had failed to take any remedial action. C further disclosed that health and safety was not a priority for Mr Keyes who had failed on two occasions to pass the dotcom driving test and was hence unaware of the dangers and risks that delivery drivers	1. C was given a first written warning on 23 August 2019 for misconduct, arising out of an incident with a customer on 14 August 2019. 2. C alleges that the warning was treated differently in relation to this (Lytham) customer complaint as compared with an earlier one (Fleetwood), wherein he was exonerated, after customers were telephoned about his behaviour. 3. C was instructed to attend a meeting with James Forsyth on an unspecified date in August 2019 where he was given an informal verbal warning with regard to his punctuality. He

			were being asked to undertake.	was signed out, when others were given 3 minutes leeway with regard to their time of clocking on. 4. The meeting was a "*hijack*" as the "let's talk" was pre-prepared and not written in the meeting. This was manager closing ranks as C was seen as "*public enemy number one"*

Applying the Law to the Facts

Protected Disclosures

(1) Did the claimant make the disclosures laid out at Appendix 1 which tended to show that a person had failed, was failing or was likely to fail with any legal obligation to which he was subject, and/or that the health and safety of any individual has been, is being or is likely to be endangered in accordance with section 43B(1) ERA 1996?

First alleged disclosure

92. The Tribunal turned to the first alleged disclosure, namely that *on 1 February 2018 the claimant disclosed that he was forced to work without a break for 10.5 hours (12.30pm to 11.00pm) – this was during a heated conversation in which he stated that this would not happen again as he would not break the law for anyone*. It was made to Vanessa Strutton (VS), Dotcom Lead Manager, by telephone.

93. There was a factual dispute between the claimant and Ms Strutton about this conversation. The claimant said it took place. Ms Strutton that it had not. The Tribunal preferred the recollection of Ms Strutton. Ms Strutton was a clear and cogent witness. She explained to the Tribunal that 1 February 2018 was a Thursday and she does not work Thursdays.

94. The Tribunal found Ms Strutton to be a conscientious and efficient manager. As shown in the findings of fact, where the claimant made a complaint to Ms Strutton, for example about being bullied by other members of staff, she acted promptly to ensure that the claimant's line manager (Mr Keyes) investigated the matter and spoke to the relevant individuals. The Tribunal finds that there were numerous occasions where Ms Strutton sought to support the claimant by finding extra hours for him. The Tribunal notes that there is no clear documentary evidence of this phone call. The Tribunal finds that where there were other concerns raised at other times, Ms Strutton took a note of the claimant's concerns.

95. The claimant was assiduous in noting concerns, particularly writing emails to the respondent where he was concerned about issues. The Tribunal was told by the claimant that at this time he had another whistleblowing case in Employment Tribunal in relation to a previous employer, so he was well aware of the law in relation to public interest disclosure. The first time the claimant mentioned the issue of his alleged heated telephone call was months later.

96. Another reason that the Tribunal preferred Ms Strutton's recollection was that he Tribunal was not impressed by the claimant as a witness. Some of his evidence was contradictory. Sometimes in cross examination the claimant contradicted himself. He was very quick to say that the managers were lying. For example, when Lisa Allen of HR explained that she had investigated to see if a Wednesday shift was available for the claimant and emailed him to say it was not, the claimant said in cross examination that she was lying. The claimant also suggested that Mr Keyes was lying when he disagreed with the claimant's suggestion that he had raised and discussed with him people dying at work

97. An example of the claimant contradicting his own evidence in cross examination was in relation to public interest disclosure 5. It was suggested to the claimant that he had said that people had died because of a coffee machine at work and the claimant disagreed, but shortly afterwards he said he had raised the issue that people had died because of the coffee machine.

98. The lack of a contemporaneous email or note from the claimant, together with the fact the claimant said in cross examination that there was "no problem with getting breaks at this point" in relation to the meeting with Brian Keyes on 13 February 2018, is a further reason why the Tribunal is not satisfied that the claimant told Vanessa Strutton on 1 February 2018 that he was forced to work without a break.

99. Accordingly, because the Tribunal is not satisfied there was any disclosure of information, there cannot be a protected disclosure here.

Second alleged disclosure

100. Tribunal turns to the next disclosure of information which the claimant says was made to Brian Keyes (BK) (Dotcom Manager) on 4 June 2018. *The claimant says he disclosed that the drivers' list, which he stated amounted to a "name and shame" list, which was displayed on the wall for drivers to see, was (1) in breach of GDPR, and (2) putting drivers under pressure to take risks when on the road to avoid the embarrassment of being on the list. This amounted to micromanaging.*

101. The Tribunal found Mr Keyes to be a good witness who made concessions when necessary. Once again there is no accurate contemporaneous note of a disclosure of this nature by either the claimant or BK. There was an entry in the claimant's diary at page 299 but it does not mention the "name and shame" list, it just refers to micromanaging. Mr Keyes disputed that there was a conversation of this sort about the driver's list.

102. The claimant says the disclosure took place in a conversation where Mr Keyes raised with the claimant the issue of running late. The claimant replied, "what

would you have me do, Brian? Panic and take out a bus stop full of people? – it's shopping!". The Tribunal finds that the reference to micromanaging that would cause accidents in the claimant's diary is likely to be the claimant being ticked off for running late by Mr Keyes.

103. We find there was a conversation on that day when Mr Keyes had to speak to the claimant about running late.

104. The Tribunal is not satisfied that the claimant, whose recollection was often poor and whose evidence was contradictory has accurately remembered that he raised the "name and shame" list. The Tribunal prefers the evidence of Mr Keyes that the "name and shame" list was taken down when Lisa Allen or a colleague from the Human Resources department raised the issue and informed him that it was not the most appropriate way to deal with the matter and asked him to remove the drivers' names and printed the list out so it was anonymised, because she was concerned about data protection. The Tribunal finds this version of events is more likely than the claimant's recollection.

105. Once again the Tribunal has noted that the claimant was very detailed in the emails he was sending to the respondent and if the claimant had concerns about this issue, he would have raised it in writing.

106. The Tribunal prefers the evidence of Mr Keyes to the evidence of the claimant and find that the disclosure of information as recorded in the List of Issues document as protected disclosure 2 was not made.

Third alleged disclosure

107. The Tribunal turns to the third disclosure of information, being a telephone call to Protector line on 22 February 2019 (page 586). The alleged disclosure was that:

> *"C disclosed that between October 2018 and February 2019 six colleagues had gone home from #2103 store and died. The commonality was staff canteen. C disclosed that he had felt pressure in his brain on two occasions from having free coffee from the vending machine. C also chased a response to this issue via the online portal (CL56359) on 3.4.2019."*

108. The Tribunal finds that the claimant did make a telephone call as recorded at page 586. The next issue for the Tribunal is: did the claimant disclose information?

109. The claimant in the phone call stated that six employees of the Blackpool store (2103) had died suddenly and without warning at home, having just finished working in the store. The record of the call states, "The caller feels that this is very unusual". It goes on to state the only connection known to the caller is that "they all used the store canteen" and it goes on to say that there was a vending machine and that "the caller has had coffees from the machine and on both occasions they report they have felt very strange, having a feeling of incredible pressure inside their head described as 'like a balloon inflating in my head, also a very hot and red face'".

110. Accordingly, although it is very vague the Tribunal is satisfied that the claimant disclosed information about the death of six colleagues and appears to

suggest it was in connection with the staff canteen. It is unclear if the claimant is suggesting there is a link with a coffee machine.

111. The next issue is whether the claimant reasonably believed that the health and safety of an individual had been, is being or is likely to be endangered. The Tribunal is not satisfied the claimant reasonably believed that the colleagues who died had their health and safety endangered because of the staff canteen or vending machine.

112. Accordingly, the Tribunal is not satisfied that this is a public interest disclosure that is protected. However, for the sake of completeness and in case we are wrong about that we have gone on to consider the next issue, which is whether the disclosure was in the public interest. If such disclosure was made about people dying because of food/beverage provided at work, the Tribunal finds that it was a matter disclosed by the claimant in the of public interest, because it was a serious health issue.

113. We turn to the detriments relied upon in relation to this disclosure.

114. Before the Tribunal considers the detriments the Tribunal turns to the issue of knowledge. The Tribunal accepts Mr Keyes' evidence that the claimant did not discuss with him any detailed issue about the six colleagues who sadly died in relation to the coffee machine or canteen. The Tribunal accepts Mr Keyes' evidence that he did not know it was the claimant who had raised this issue with Protector line and the first he knew of it was as part of the Tribunal proceedings.

115. We have turned then to deal with the detriments the claimant relies on in relation to this allegation. The claimant says his permanent contract of employment was removed from him on 19 March 2019. The Tribunal finds that this is factually incorrect and reflects a misunderstanding of the position by the claimant. The Tribunal finds that the claimant consistently asked the respondent for additional hours to help him with his difficult financial situation and that the respondent was sympathetic. The Tribunal finds that on from 27 January 2019 to 9 April 2019 the claimant had his hours increased to 36.5 hours to cover a colleague who was on a temporary career break. Accordingly, the claimant was permitted to work Monday 8.00am to 7.00pm, Tuesday 7.30am to 6.00pm, Wednesday 6.00pm to 10.00pm, Friday 8.30am to 7.00pm and Saturday 6.00pm to 10.00pm during that period. The claimant was told about this and offered the temporary change by his manager in December 2018, and we find Mr Keyes completed a change of hours form at page 439 setting out the claimant's new temporary shifts to take effect from 27 January 2019 when the colleague went off. We find Mr Keyes signed the form on 15 December 2018 and the claimant signed it on 2 January 2019.

116. We accept the evidence of Mr Keyes and Mr Court that as the store does not have a mixture of permanent and temporary hours' contracts the claimant was issued with a new contract which stated his hours were 36.5 hours per week (page 268). We find the claimant has misinterpreted this to believe that he was entitled permanently to the greater number of hours. We find that the claimant went off sick during this period and as a reasonable adjustment to enable him to return to work (because he had gone off work with stress) the respondent agreed to allow the claimant to work three daytime three hour shifts of 9.5 hours totalling 28.5 hours on

Monday, Tuesday and Friday to enable him to return to work from 25 March until the end of May.

117. Accordingly, the Tribunal finds it is factually incorrect to say the claimant's permanent contract of employment was removed from him on 19 March. It was not. The Tribunal find it is factually incorrect to say that BK was instructed to remove hours from the claimant. The factual situation was as we have described above. The claimant goes on to say the respondent knew it was the claimant who had made the disclosure because he had raised the issue verbally two days earlier with BK. We find this is factually incorrect.

118. The Tribunal finds that there was no permanent contract removed from the claimant so that cannot be a detriment. We find that Mr Keyes was not instructed to remove hours from the claimant, but rather Mr Keyes gave the claimant an increase in hours as the claimant requested to cover a colleague who was absent. When the colleague came back to work the claimant was, at his own request, given temporary hours of three days at 9.5 hours each.

119. Finally, even if there was any detriment to the claimant, we find it was wholly unrelated to any call he made to Protector line. We have set out above that the changes in the claimant's hours were efforts to support the claimant and in fact the respondent's continued to offer the claimant increased hours after the call to Protectorline.

Fourth alleged disclosure

120. To BK on 19 March 2019. *The Claimant disclosed that the database system used by drivers when delivering was inadequate in that some fields were left blank. This meant it was often hard to find rural addresses, particularly at night, where the location would be vague. As a result there was an increased need for drivers to reverse their vehicles and there was an increased risk accidents happen when reversing, which endangered the health and safety of the public*. *In addition, trying to locate addresses in such circumstances was very stressful and database needed to be updated with additional notes on how to find the customer's address.*

121. The Tribunal considered whether there was a disclosure of information. The Tribunal is not satisfied that there was a clear disclosure of information. The Tribunal found the claimant raised generalised concerns about the database and the difficulty of finding addresses at night and then made an allegation of breach of health and safety. It is unclear how the matters were connected. The Tribunal is not satisfied that amounts to a disclosure of information, nor that the claimant reasonably believed there was a breach of public obligation, nor that it was in the public interest.

122. However, in case we are wrong about that and the claimant had made a disclosure which is protected and qualifying, we have gone on to consider detriment. The claimant relied on "The *respondent ensured the claimant was given the most stressful and difficult shifts i.e. four evening shifts and Saturday evening/Sunday day shift pm (14 April 2019)" and "This was done with the intention to drive out the claimant".*

123. The Tribunal finds this is factually incorrect. The respondent did not "ensure the claimant was given the most stressful and difficult shifts" The claimant had originally joined the respondent as a picker working 7.5 hours and then applied to become a driver working 16 hours evening shifts only. For his own reasons he wanted to increase the number of hours worked. He found working evenings stressful and preferred to work day shifts. We find part of the reason he wanted to drop the Saturday shift was because they were antisocial hours. We find the respondent worked hard to increase the claimant's hours to help him financially as he requested. We find the respondent was supportive and gave him 3 day shifts on his return to work from sick leave in March 2019 as a temporary adjustment. We entirely accept the respondent's evidence that from a business perspective it was very difficult to recruit drivers for antisocial shifts. We rely on the evidence of Lisa Allen that there was no medical evidence to suggest the claimant was unable to work evening shifts or antisocial shifts (see page 1094 Occupational Health report). We rely on the respondent's evidence that most drivers also preferred weekday, daytime shifts.

124. We rely on the respondent's evidence at the Tribunal that at least one driver had shifts which had to be honoured because he had transferred in. We rely on the evidence of Ms Stamper that the claimant was not being treated differently to other drivers (see the rota referred to in her statement).

125. The Tribunal also finds that the respondent was not trying to drive out the claimant. The Tribunal relies both on Mr Keyes' comment to the claimant on 19 March, "of course I want you to stay", together with the evidence of the respondent in trying to find additional hours for the claimant.

126. Accordingly, the Tribunal finds these two allegations are factually incorrect and so cannot amount to detriment.

127. Even if we are wrong about that there is no evidence to suggest that the claimant's changing shift pattern had anything to do with a conversation with BK on 19 March 2019 about the difficulties of driving in the dark and the database, the alleged protected disclosure. In fact not long after this conversation the respondent permitted the claimant to work 3 day shifts as a temporary adjustment on return from sick leave. This is inconsistent with a suggestion that the antisocial shifts were linked to what the claimant told BK on 19 March 2019 about the database.

128. The Tribunal finds that the respondent's business model was that it needed to recruit and retain drivers to cover evening and antisocial hours' shifts as well as daytime shifts. We find it was challenging to recruit and retain drivers on anti-social hours. The Tribunal accepts the evidence of the respondent that it did all that it could to increase the hours for the claimant and the evidence shows the rrespondent did increase the claimant's hours.

129. Therefore, this claim fails.

Fifth alleged disclosure

130. The Tribunal turns to the fifth disclosure of information, being an email to CEO Dave Lewis on 25 July 2019 (page 716).

131. There is no dispute that the claimant sent the email to Mr Lewis. The next issue for the Tribunal is: did the claimant disclose information?

132. The Tribunal find that the information disclosed by the claimant was that:

> "A three year old child was run over and killed by one of our Dotcom vans (in a cul-de-sac in Surrey on 2 June 2019."

133. The claimant referred to a newspaper article which apparently related to the incident.

134. The next issue is whether the claimant reasonably believed the health and safety of an individual has been, is being or was likely to be endangered. The Tribunal find that the claimant reasonably believed that a child being killed by a delivery driver amounted to a reasonable belief that the health and safety of an individual had been endangered. The Tribunal is satisfied that the death of a child in a road traffic incident is a matter of public interest. There is no dispute that the claimant made this disclosure to his employer.

135. The second disclosure referred to in the email was:

> "The claimant had disclosed similar concerns regarding reversing vehicles previously to his line manager, Mr Keyes, but he had failed to take any remedial action."

136. The Tribunal considered carefully the email of 25 July 2019. The Tribunal is not satisfied there is any "information" within the email in accordance with the meaning of the principle in the case of Cavendish Munro. The claimant simply refers to "previous verbal disclosures all unresolved made by me to line manager Brian Keyes and also to Ms Strutton with regard to several health and safety issues in dotcom at 2103". He then says, "I hereby give notice of my intention to supply a public interest disclosure to you as the CEO of Tesco within the next few days".There is no dispute that he did not make a further disclosure. He then refers back to a diary entry "further to a disclosure I made then to Mr Keyes". The Tribunal find it is unclear from this email that the claimant had disclosed similar concerns regarding reversing vehicles to his line manager, Brian Keyes. Accordingly, the Tribunal is not satisfied that the claimant has raised a disclosure of information with regard to that matter.

137. The Tribunal turns to the last matter referred to in disclosure 5, which is "health and safety was not a priority for Mr Keyes who had failed on two occasions to pass the dotcom driving test and was hence unaware of the dangers and risks that delivery drivers were being asked to undertake". The Tribunal is satisfied that the claimant disclosed information that Mr Keyes was a person who "has twice failed the dotcom driving test" and "is running the department". He also states that Mr Keyes is "underqualified".

138. The Tribunal went on to consider the next issue, which is whether the claimant reasonably believed that the health and safety of an individual had been, is being or is likely to be endangered. Within the email the claimant said:

> "I can assure you that when you've got fleets of delivery vans delivering in built up residential areas health and safety comes before anything else yet this is something not even on the radar of the distinctly underqualified Mr Keyes."

139. The Tribunal finds therefore that the claimant appears to be making a link between fleets of delivery vans delivering in built up residential areas and the reference earlier in the email to a three year old child being killed by a dotcom delivery driver in a cul-de-sac in Surrey. The claimant appears to believe that having a person running the department who has not passed his dotcom driving test means that the health and safety of an individual has been, is being or is likely to be endangered. It is not entirely clear why the claimant thinks the manager of a driving department is likely to cause health and safety to be endangered because he has not passed his dot.com driving test. However, on balance the Tribunal accepts that the claimant reasonably believed that because Mr Keyes had failed on two occasions to pass his dot.com driving test, he was unaware of the dangers and risks of delivery drivers including reversing.

140. The Tribunal is satisfied that such a failure is potentially a matter of public interest.

141. There is no dispute that the disclosure was made to the employer.

142. Having found that disclosure number 5 is protected and qualifying in part, the Tribunal went on to consider the detriments relied on in connection with this disclosure.

Detriment 1

143. The first detriment the claimant relies up is:

> *"C was given a first written warning on 23 August 2019 for misconduct arising out of an incident with a customer on 14 August 2019."*

144. The Tribunal find this was the third customer complaint the respondent had received about the claimant. The complaint is at page 797. The call was taken by Vanessa Strutton. The customer complained that the claimant had been hostile, was rude and aggressive, and that she was "worried as he knows where I live".

145. The Tribunal find that the respondent followed a proper disciplinary process in relation to this complaint. The claimant was invited to an investigation meeting (page 819) and an independent manager (JN) conducted the investigation meeting (pages 823-824). The claimant presented his statement of events (pages 861-867).

146. In fact the claimant had called the store prior to the customer complaint indicating that there had been an incident that day.

147. The investigating officer noted that the customer had no complaints history, having been a customer since 2012.

148. The claimant was invited to attend a disciplinary hearing which took place on 2 September 2019 chaired by Alison Jones. The meeting notes are at pages 917-

923. The Tribunal found Ms Jones to be a clear, coherent and straightforward witness. Ms Jones found that there was a dispute between the claimant's version of events and the customer's version of events. She had regard to the fact that the customer had been ordering with Tesco since 2012 and there had been no previous reports of delivery issues.

149. We find that the documentation provided to the disciplinary officer is as set out at paragraph 6 of her statement.

150. Ms Jones issued a first warning (page 924) for the customer incident on 14 August 2019. The warning indicated improvement was required for "behaviour towards customers and ensuring all customer training service is up to date".

151. The Tribunal find that to receive a warning is a detriment. The Tribunal turns to consider the causal connection between the claimant's disclosure of information to CEO Dave Lewis (which was copied to Lisa Allen of HR) involving the vehicle which killed a child in Surrey, and the disclosure in relation to Mr Keyes not having passed his dotcom driving test, and this warning.

152. Firstly, the Tribunal accepts Ms Jones' evidence that she was unaware of the email to Mr Lewis.

153. The Tribunal find that the claimant has not adduced any evidence to suggest there was a causal connection between the email to Mr Lewis and the first written warning he received from Alison Jones. The Tribunal is aware of the principle in Royal Mail Group Limited v Jhuti [2020] ICR 731 which relates to unfair dismissal for whistleblowing. That case states that if a person in the hierarchy of responsibility above the employee determines that for reason (a) the employee should be dismissed, but reason (a) should be hidden behind invented reason (b) which the decision maker adopts, it is the court's duty to penetrate through the invention rather than to allow it to infect its own determination. In other words, where an innocent decision maker is manipulated into dismissing a whistle-blower for an apparently fair reason and is unaware of the machinations of those motivated by the prohibited reason.

154. The Tribunal is not satisfied that there is any evidence to suggest a conspiracy of this type. Vanessa Strutton, who took the call from the customer (pages 799-818) was aware of protected disclosure 5 (see her statement, paragraph 58). However, there is no suggestion that Ms Strutton was hostile to the claimant because of that email. Indeed the opposite is true. At the meeting on 2 August 2019 where Ms Strutton met the claimant to discuss his email (pages 740-742) she and Ms Allen noted to the claimant there was a vacancy in the store on a Wednesday to work on the trolleys in the car park which would enable him to increase his hours at the same rate of pay and indeed the claimant's hours were subsequently increased to 36.5 hours when he accepted the trolley work.

155. The Tribunal find that Vanessa Strutton continued to be supportive of the claimant's wish to increase his hours. He was permitted to no longer work Saturday evening shift as he requested (page 1031), and she continued to respond to a request to swap a Friday shift to assist the claimant (see pages 1051-1052).

156. Accordingly, the Tribunal is not satisfied there is any connection between the email the claimant sent to Mr Lewis on 25 July 2019 and being issued a first written warning on 23 August 2019 in relation an incident where he was found to speak inappropriately to a customer on 14 August 2019.

Detriment 2

157. The second detriment relied upon by the claimant in relation to the fifth disclosure was:

> "*The claimant alleges the warning was treated differently in relation to this (Lytham) customer complaint as compared to an earlier one (Fleetwood) wherein he was exonerated after customers were telephoned about his behaviour."*

158. The Tribunal find the claimant is referring to the second customer complaint which was received on 11 June 2019. Brian Keyes took a note of the call (page 635). The customer complained that the claimant had been rude and aggressive whilst making a delivery.

159. We find Mr Keyes spoke to the claimant (see page 640). We find the claimant walked out of the meeting.

160. We find the claimant was invited to a formal investigation meeting to discuss the complaint on 17 June 2019. The claimant was accompanied by his trade union representative. The reiterated his version that he had done nothing wrong. The investigatory officer determined he would take no disciplinary action as although he noted the customer complaint, he took into account the fact the claimant had received a lot of positive reviews and he proposed that he (the manager) would give the claimant one-to-one training about how to deal with conflict in a positive way.

161. The meeting was reconvened on 24 June 2019. The claimant declined to engage in the process. He was noted as "defensive throughout the session, he was becoming more entrenched in his view that he had done nothing wrong". The claimant then went to see Brian Keyes and told him that the manager who conducted that meeting was teaching him to "suck eggs" (page 679). The claimant was then off work sick from 28 June to 23 July 2019.

162. The Tribunal notes that the claimant considers it to be a detriment that he was issued with a warning on 23 August 2019 rather than no formal disciplinary penalty being issued on a previous occasion of a customer complaint.

163. The Tribunal relies on its reasoning above that the claimant was given a first written warning on 23 August for misconduct because of his behaviour arising out of an incident with a customer on 14 August 2019. Although she did not take it into account when awarding the penalty, the dismissing officer told us that she took into account there had been a pattern of behaviour of previous complaints.

164. The Tribunal turns to causation. The Tribunal is not satisfied that the claimant has adduced any evidence to suggest that the reason why he received a warning for the third complaint was because of his protected disclosures, and we rely on our reasoning above.

Detriment 3

165. The claimant relies on:

> *"C was instructed to attend a meeting with James Forsyth on an unspecified date in August 2019 where he was given an informal verbal warning with regard to his punctuality. He was signed out when others were given three minutes' leeway to their time of clocking on."*

166. There is no dispute that there was a meeting on 10 September 2019 (not August 2019) between Mr James Forsyth, the Dotcom Picking Manager, and the claimant (pages, 965, 970) about the claimant's lateness. We find on 24 September 2019 there was a further conversation about the claimant's persistent habit of clocking on a few minutes late (paragraph 22 of Mr Forsyth's statement).

167. We find that the claimant had a misunderstanding in relation to clocking on time. We find that the claimant (like other employees) was required to clock on at the time his shift started. However, if an employee was more than a few minutes late then payroll would deduct sums from that employee's wages. The claimant (and he says other employees) construed the fact that no deduction was made from their wages for the first three minutes they were late meant that he was "entitled" to be a few minutes late. The Tribunal accepts the evidence of the respondent's witnesses that that is a misunderstanding of the respondent's lateness policy.

168. The claimant also complained that Mr Forsyth, who is not his direct line manager, should not be able to reprimand him about lateness. The Tribunal accepts the evidence of Mr Forsyth that as a manager he was entitled to reprimand employees about lateness and it was not just the claimant whom he reprimanded. We find that he checked the clocking on times and where any employee was persistently slightly late he spoke to them informally about it. There is no dispute that the claimant did not receive any formal warning arising out of the conversation.

169. We do not dispute that the claimant considered it a detriment to be reprimanded about lateness by Mr Forsyth in September 2019. We turn to consider the issue of causation.

170. We accept the evidence of Mr Forsyth that his diary note at page 965 was a contemporaneous document. We accept his evidence that he had placed on the table a "let's talk" form on which he had prewritten his name, the claimant's name, and the date on it.

171. We accept Mr Forsyth's evidence that he had no knowledge of the email from the claimant to Dave Lewis on 25 July 2019 nor any knowledge of the other disclosures.

172. The claimant suggested there was some sort of conspiracy. We are not satisfied he has adduced any evidence to show there was any conspiracy in relation to the real reason for him being informally disciplinary by Mr Forsyth were his disclosures of information. We find the reason the claimant was informally warned about his lateness was because he was persistently a few minutes late on many

occasions and that Mr Forsyth, as a manager, was concerned about this and spoke to the claimant and to other employees about this.

Detriment 4

173. The claimant alleges:

> "*The meeting was a 'hijack' as the 'let's talk' was prepared and not written in the meeting. This was manager closing ranks. The claimant was seen as public enemy number one."*

174. The Tribunal find the meeting the claimant is referring to took place on 10 September 2019 not August 2019. Mr Forsyth refers to it in his diary note (page 965) and the claimant refers to it in an email which was sent to Lisa Allen on the same day (pages 986 and 987).

175. The Tribunal find that Mr Forsyth had spoken to Vanessa Strutton about a number of drivers who were persistently late and it was agreed that he would have an informal conversation with all three of them.

176. Mr Forsyth said that the claimant refused to listen and insisted on his union representative attending, to which Mr Forsyth agreed. We find that once the union representative arrived the claimant said, "I don't have to stay". Mr Forsyth recorded that the claimant was impossible to manage.

177. A formal "let's talk" record is at page 970. The claimant's email to Lisa Allen dated 10 September 2019 gives the claimant's account. The tone of the claimant's email is impolite. It starts off, "Is anybody listening?". The email complains about Mr Forsyth questioning him about his instances of lateness by one or two minutes, and says "I'm sick of it but I promise you I'm not one to walk away from a fight!". It concludes, "Well done 2103 management" (2103 is a reference to Blackpool store).

178. The Tribunal notes that in that email the claimant confirms that Mr Forsyth gave him a brown envelope which contained details of his appeal against his warning and his two latest "wows".

179. The Tribunal turns to consider whether the meeting was a "hijack". The Tribunal is not satisfied that the meeting was a "hijack". The Tribunal find that the meeting was an informal meeting about lateness and Mr Forsyth as a manager at Tesco was entitled to speak to the claimant about his lateness over a period of time.

180. The Tribunal is not satisfied that the claimant was seen as "public enemy number one". The evidence from the respondent shows the opposite is true. The managers, in particular Mr Keyes and Ms Strutton, met regularly with the claimant, found him extra hours and dealt with him fairly.

181. The claimant seemed to have the impression that because he had received many customer positive reviews (the "wows"), a manager who was not his line manager, was not entitled to question him about his disputed lateness.

182. The Tribunal find that the "let's talk" form at page 970 was not prepared other than for the claimant's name and the date. It is clear that the content of the form

could not have been completed in advance because it says the claimant was "uninterested in hearing what I had to say and instead insisted this was a campaign of victimisation" and "Jeff walked out of the meeting". Mr Forsyth could not have known all this information in advance and accordingly the Tribunal is satisfied that only the date and the names of the parties were completed in advance of the meeting.

183. The Tribunal turns to consider whether detriment 4 is connected to the claimant's disclosures of information. The Tribunal relies on its reasoning above that there is no evidence of any conspiracy and accepts the evidence of Mr Forsyth that he had no knowledge of the claimant's protected disclosure.

184. For these reasons, all the claimant's claims that he suffered detriments because he made disclosures of information fail.

Constructive dismissal pursuant to section 95 and section 98 Employment Rights Act 1996

185. The first question for the Tribunal was: was the respondent in fundamental breach of contract? The claimant relies on the alleged acts of detriment laid out at Appendix 1 as amounting to a breach of the implied term of trust and confidence. In addition, he relies on:

- The events on 15 December as outlined in his resignation email regarding Mr Olive's conduct in refusing to sign for receipt of his fitness for work certificate;
- His resignation not having been accepted;

- The conduct of Louise Stamper at the subsequent meeting on 3 January 2020 (said to amount to the "last straw") in failing to either:

  (a) provide him with an alternative position at an alternative store or additional daytime shifts at #2103, and

  (b) failing to confirm that a "line would be drawn in the sand" regarding the claimant's email to Tesco CEO, Dave Lewis, on 5 December 2019.

186. The Tribunal turns to consider the first detriment which is relied upon as a breach of the implied duty of trust and confidence:

> "*C had a meeting with VS on 23 June 2018 during which VS refused to address the bullying C was experiencing from colleagues and sought to defend their behaviour."*

187. The Tribunal finds this is factually incorrect. It is undisputed that the claimant had a meeting with Ms Strutton on 23 June 2018. That was the meeting which the claimant covertly recorded. We find that the claimant raised concerns with Ms Strutton. We find she asked the claimant for the names of the individuals involved. We find she followed the matter up with an email (page 301) explaining that the claimant should raise concerns with his direct line manager but also that a meeting

would be arranged the following week to mediate his concerns about his colleagues. We find that Ms Strutton spoke to the claimant's line manager, Brian Keyes, and he held “let’s talk” meetings with each of the three colleagues about whom the claimant had complained, on 25 June 2018. At the time the claimant said the issue had been resolved (page 326) and he also emailed Ms Strutton where he said the other issue “seems now to have been resolved so we’re good there” (page 327). We therefore find it is factually incorrect to state that Ms Strutton refused to address the bullying the claimant was experiencing and sought to defend their behaviour. As we have found this is factually incorrect it cannot amount to a breach of the implied duty of trust and confidence.

188. The second part of this allegation of detriment was:

> *“Following C’s disclosure the attitude towards him changed from VS and BK. He went from being considered for the Trainee Management Programme (Options) and being given a Gold Superstar Service Award to be passed over for increased hours and progression from March 2018 onwards.”*

189. Once again, the Tribunal finds that this is factually incorrect. The Tribunal finds that Ms Strutton and Mr Keyes were supportive of the claimant throughout his employment.

190. The Tribunal finds, as we have explained in our factfinding, that both Ms Strutton and Mr Keyes went to considerable efforts to find additional hours for the claimant including other non-driving shifts such as trolley shifts or checkout shifts where he was paid at the same rate. We find that Ms Strutton had nominated the claimant for the Gold Superstar Service Award. We find that when the claimant raised a concern in a back to work meeting on 19 March 2019 which he covertly recorded, saying “the answer I’ve been worried about is whether or not you want me back”, and went on to say, “I’ve been making your life a bit difficult recently and I’m aware of that”. Mr Keyes replied positively: “Of course I want you back”.

191. We find the claimant has misunderstood the position in relation to a Trainee Management Programme (Options). We find that the claimant never applied for that programme and that it was never discussed. We rely on Ms Strutton’s evidence that there was no obvious career progression for delivery drivers.

192. The Tribunal finds the claimant was not passed over for increased hours. The Tribunal relies on its evidence that the claimant was originally employed on a 7.5 hour evening contract; when he started as a driver he was working 16 hours as an evening shift worker and that the respondent sought to accommodate his request for additional hours due to his personal financial situation.

193. The Tribunal finds there was no automatic progression available for a dotcom delivery driver and the claimant was not passed over for progression.

194. Accordingly, the Tribunal finds that there was never any change in attitude towards the claimant from Ms Strutton and Mr Keyes. For example, on 5 April 2019 (page 550) when the claimant refused to take his van out he was not disciplined for matters when other employers may have done so. Both managers were supportive,

and he was certainly not passed over for increased hours. Accordingly, because this allegation is factually incorrect it cannot amount to a breach of the implied duty of trust and confidence.

195. The next allegation of detriment is:

> "*As above, C was passed over for additional hours and progression."*

196. This is a repetitious allegation, and we find that it is incorrect as we have stated above and cannot amount to a breach of the implied duty of trust and confidence.

197. The next allegation of detriment is that:

> *"In addition BK became more hostile towards C in his attitude."*

198. We find no evidence that Mr Keyes became more hostile towards the claimant. The claimant did not provide any evidence of this to the Tribunal.
199. We find in an email on 2 September 2019 sent to Lisa Allen the claimant said:

> "As suspected, most of the (previously friendly) department managers within the store are no longer making eye contact with or speaking to me (or was this a Team 5 directive I wonder?)."

200. We find at this time the claimant's mental health was deteriorating. This email refers to "the devil makes work for idle hands to do" and Lord Lucan.

201. The Tribunal entirely accepts Mr Keyes' evidence at his paragraph 60. We find Mr Keyes to have been a kind and supportive manager. We find this allegation to be factually incorrect and therefore it cannot amount to a breach of the implied duty of trust and confidence.

202. The next allegation is:

> *"There were two meetings with VS in June 2018, the second of which was 23 June, during which she refused to increase his hours and permitted the bullying to continue."*

203. The Tribunal finds we have already dealt with the meeting on 23 June 2018 which the claimant recorded covertly. The claimant requested to increase his hours and by 12 July 2018 the claimant's hours were increased to 25.5 hours (pages 327-328). Accordingly, we find it is factually incorrect to say that Ms Strutton refused to increase the claimant's hours.

204. So far as the alleged bullying is concerned, we find it is factually incorrect to suggest Ms Strutton permitted the bullying to continue. We refer to our finding of fact above that she arranged for manager Mr Keyes to discuss with the colleagues (the source of complaint) about their behaviour, and the claimant said at the time that the matter was resolved. We therefore find this is factually incorrect.

205. In relation to the bullying, one of the individuals with whom the claimant did not get on later raised a grievance against the claimant regarding an incident about a door, where the other employee alleged the claimant had assaulted him. There was an investigation followed by a disciplinary hearing which took place with the claimant on 20 August 2018. No disciplinary action was taken against the claimant.

206. The Tribunal therefore finds this allegation is factually incorrect so it cannot amount to a breach of the implied duty of trust and confidence.

207. The next allegation is that:

> "*VS refused to allow the claimant to mentor other drivers, denying him additional valuable experience to allow him to progress."*

208. We find that from September 2019 Lisa Allen was trying to arrange a meeting with the claimant about various concerns he had expressed in emails to her (see pages 907-1151).

209. We find that Ms Strutton was included in the effort to try and arrange a meeting, although the claimant had indicated he wanted his appeal against his written warning to be dealt with first (see Lisa Allen email to claimant suggesting meeting at page 1102; claimant's suggestion meeting be after the appeal at page 1101; and Ms Strutton's attempt to arrange a meeting at page 1101).

210. In responding to the email on 20 October the claimant stated (page 1109):

> "Yet I'm still not mentoring new drivers and you still haven't explained to me why this is so?" It beggars belief that you are not permitting me to mentor new drivers with the only explanation being (and I quote you saying) 'I'm happy with my choice of who I choose to buddy up new drivers'."

211. When the claimant met with Lisa Allen in the presence of his union representative on 9 December 2019 his request to mentor new drivers was raised. In her summary of the meeting dated 13 November 2019 Lisa Allen noted, "Jeff would like to be able to mentor new drivers and feels that this would support his CV and he could do a great job of supporting new colleagues". She noted that she "agreed to speak to the managers on the department about this and no decision could be made today and would come back to Jeff with an answer regarding this. If the answer was 'no' then an explanation as to why would be discussed".

212. We find that the claimant resigned on 15 December 2019 before Ms Allen had a chance to deal with the issues he had raised.

213. The claimant alleges he first raised his concerns about being allowed to mentor in August 2019.

214. The Tribunal relies on the evidence of Vanessa Strutton that another driver, G, was asked to mentor. We rely on her evidence that G was an established mentor with patience, had the ability to do the job in the dark, was able to find addresses

and did not receive any customer complaints. We rely on her evidence that she did not want the claimant to be a mentor to other colleagues as he was struggling to make deliveries on schedule, running late, and he was not in the optimum position to train people when he himself had some improvements that were required.

215. We turn to consider whether not permitting the claimant to mentor new drivers could be regarded as a breach of the implied duty of trust and confidence calculated or likely, without proper cause, to destroy the relationship of trust and confidence between the parties.

216. We find Ms Strutton was a senior manager. In assessing the most appropriate person to mentor new drivers she needed to have regard to their skillset and their ability to do the job. Although the claimant had many reviews completed by customers which were positive (the "wows"), the claimant also had some complaints and it is evident from the emails within the bundle that there had been a need to speak to the claimant about lateness, and the manager (James Forsyth) had said the claimant had become aggressive with him when he had spoken to him about it. Mr Keyes had to remind the claimant that "Jeff, you do go off the handle" (page 442).

217. Therefore, the Tribunal is satisfied that Vanessa Strutton had cogent reasons which were fair and acceptable for not offering the role of mentor to the claimant and accordingly this cannot amount to a breach of the implied duty of trust and confidence.

218. We turn to the next allegation:

> *"C's permanent contract of employment was removed from him on 19 March 2019*."

219. We rely on our finding of fact that this is incorrect. The claimant continued to be employed on a permanent contract. What changed in early 2019 was that (at the claimant's request) he was put on temporary increased hours when another driver took a career break. Given that it is factually incorrect that the claimant's permanent contract of employment was removed from his it cannot be a breach of the implied duty of trust and confidence.

220. We turn to the next allegation:

> "*BK was instructed to remove hours from the claimant*."

221. We find this refers to the fact that the claimant had a temporary increase of hours in early 2019 when another driver went on a career break. We find Mr Keyes was not instructed to remove hours from the claimant. Rather, once the other driver was due to return to work the temporary increase in hours was due to reduce. The Tribunal relies on the fact that at a meeting on 19 March when Mr Keyes reminded the claimant that the change was temporary and that he had told him "in the van, the two of us sat in van, I said it's only a temporary contract until D comes back", the claimant said, "well I don't recall that". Later on in the same meeting the claimant

said, “well I’ve misunderstood what you said” (page 503). He referred to the fact that the contract said it was permanent.

222. When the other driver returned the claimant initially refused to sign a change of hours form (pages 553 and 558). Mr Keyes wrote, “Jeff refused to sign the change of hours form yesterday, he says he has a full-time contract and is not going to give it up. He said he will clock in on the full-time contracted hours and if he is not out driving or don’t have any other jobs for him to do he will go up and sit in the staff restaurant for the length of his shift then clock out”. The claimant did eventually sign a change of hours form on 9 April 2019, reducing his temporary 36.5 hours to 25.5 hours (page 559).

223. Prior to that there was an informal discussion with Simon, the Store Manager, and after the meeting the claimant refused to take out his van (page 550). There was a further meeting on 9 April with the claimant, Ms Strutton and with Mr Keyes as a notetaker. Ms Strutton explained that should the claimant attend on his full-time hours and sit in the canteen to fill them she needed to clarify that should he do that he would not get paid. Following that meeting the claimant agreed to go back to the hours he was working before the temporary increase.

224. Accordingly, the Tribunal finds it is factually incorrect that Mr Keyes was instructed to remove hours from the claimant. The claimant was on a temporary increase in hours which reverted to his original hours once the colleague had returned from his career break. However, even if the Tribunal is wrong about that and Mr Keyes was instructed to remove hours from the claimant in the sense that the claimant was returned to his original hours, the Tribunal finds there is no breach of the implied duty of trust and confidence. The respondent, as a goodwill gesture, gave the claimant an increase in hours when a colleague was on a lifestyle break. It had been explained to the claimant, although he later misunderstood, that his hours would revert once the colleague returned. Initially the claimant said he had “misunderstood” and “forgotten”, but later he seemed to suggest the documentation had been forged. The Tribunal finds there was no evidence of that.

225. Furthermore, the Tribunal notes that in fact when the claimant came back to work from sick leave on 25 March 2019 the respondent gave him, temporarily, three day shifts at 9.5 hours as an adjustment (page 510).

226. Accordingly, there was no breach of the implied duty of trust and confidence.

227. The Tribunal turns to the next allegation:

> *“R knew it was C who had made the disclosure because he had raised the issue (with Protectorline) verbally two days earlier with BK.”*

228. The claimant said in his statement of evidence and in cross examination that he raised the issue of six colleagues having gone home from work and died with Mr Keyes when he called in after visiting his doctor (he was absent from work with stress at the time) on 20 February 2019. Initially the claimant appeared to suggest he had raised the issue of the coffee machine with Mr Keyes but on being cross examined further he then said he wanted to change his answer and he had spoken

to Mr Keyes only about the people who died – he had not mentioned the coffee machine.

229. The Tribunal is not satisfied that Mr Keyes knew the claimant had raised the issue with Protectorline because he had done it anonymously.

230. However, if the Tribunal is wrong about that and any of the witnesses suspected the claimant had raised a concern with Protectorline, we are not satisfied that it amounts to a breach of the implied duty of trust and confidence. The claimant had raised the concern anonymously but asked the respondent to investigate. Page 584 shows that to carry out an investigation the Regional Operation Risk Manager (RORM) had to speak to the Store Manager in relation to who provided the coffee machine mentioned by the claimant in his disclosure to Protectorline. In these circumstances the Tribunal is not satisfied that any disclosure of that information to the respondent and managers amounts to a breach of the implied duty of trust and confidence. It was necessary information for the risk assessment of the coffee machine to proceed.

231. The Tribunal turns to the next allegation:

> *"The respondent ensured the claimant was given the most stressful and difficult shifts i.e. four evening shifts and Saturday evening/Sunday day shift pm 14 April 2019."*

232. The Tribunal considered this with the next allegation:

> *"This was done with the intention to drive out the claimant."*

233. The Tribunal finds this is incorrect. The Tribunal relies on its previous reasoning. The claimant had originally joined the respondent working 7.5 hours and then became a driver working 16 hours, evening shifts only. For his own reasons he wanted to increase the number of hours worked. He found working evenings stressful and preferred to work day shifts. Part of the reason he wanted to drop the Saturday shift was because they were antisocial hours. We find the respondent worked hard to increase the claimant's hours to help him financially as he requested. We entirely accept the respondent's evidence that from a business perspective it was difficult to recruit new drivers for purely antisocial shifts. We rely on the evidence of Lisa Allen that there was no medical evidence to suggest the claimant was unable to work evening shifts or antisocial shifts (see page 1094 Occupational Health report).

234. We rely on the respondent's evidence at the Tribunal that at least one driver had shifts which had to be honoured because he had transferred in.

235. The Tribunal finds that the respondent was not trying to drive out the claimant. The Tribunal relies both on Mr Keyes' comment to the claimant on 19 March, "of course I want you to stay", together with the evidence of the respondent in trying to find additional hours for the claimant.

236. The Tribunal turns to the next allegation:

> *"The claimant was given a first written warning on 23 August 2019 for misconduct arising out of an incident with a customer on 14 August 2019."*

237. The Tribunal relies on its earlier detail finding of fact in relation to the detriment allegation. The respondent was entitled to apply the disciplinary process and issue the claimant with a warning for his conduct arising out of the complaint.

238. Once again the Tribunal reminds itself of the principle in the case of Malik . The Tribunal finds was no breach of the implied duty of trust and confidence.

239. The Tribunal turns to the next allegation:

> *"C alleges that the warning was treated differently in relation to this (Lytham) customer complaint as compared with an earlier one (Fleetwood) wherein he was exonerated after customers were telephoned about his behaviour."*

240. The Tribunal finds there is no breach of the implied duty of trust and confidence by actioning a third complaint from a customer by dealing with it through the disciplinary process. For the second customer complaint the Tribunal has found no disciplinary action was issued but the claimant was asked to engage in a learning/training process, and he declined to engage with the process. The Tribunal finds therefore that it is unsurprising that when there was a further customer complaint the respondent initiated the formal disciplinary process. The Tribunal finds no breach of the implied duty of trust and confidence.

241. The Tribunal turns to the next allegation:

> *"C was instructed to attend a meeting with James Forsyth on an unspecified date in August 2019 where he was given an informal verbal warning in regard to his punctuality. He was signed out when others were given three minutes' leeway with regard to their time of clocking on."*

242. The Tribunal relies on its findings of fact above in relation to the detriment claim. The Tribunal finds that the claimant was regularly late by a few minutes, as were other drivers, and Mr Forsyth (although he was not the claimant's immediate line manager) was entitled to raise formally concerns about lateness with him. As we have previously found, the claimant is factually incorrect that others were given three minutes' leeway with regard to their time of clocking on. Accordingly, we find no breach of the implied duty of trust and confidence.

243. We turn to consider the next allegation

> *"The meeting was a hijack as the 'let's talk' was preprepared and not written in the meeting. This was a manager closing ranks as the claimant was seen as 'public enemy number one'."*

244. The Tribunal has found that the meeting was not a "hijack". The Tribunal finds only the header of the claimant's name, Mr Forsyth's name and the date were completed before the meeting. We find that the claimant was resistant to any form of

criticism. We find the respondent was entitled to raise concerns with him about persistent marginal lateness as they did with two other employees. We find no breach of the implied duty of trust and confidence.

245. We turn to the next allegation:

> *"The events of 15 December 2019 as outlined in his resignation email regarding Mr Olive's conduct in refusing to sign for receipt of his fitness for work certificate."*

246. The Tribunal reminds itself that the claimant had attended a meeting to consider all his concerns with Lisa Allen of HR and his union representative on 9 December 2019. The meeting was described as an amicable meeting and was followed up in writing by Ms Allen in a follow-up letter dated 13 December 2019 (page 1163).

247. The date the claimant commenced his sick leave is not entirely clear, but it appears to have commenced on or around 7 December 2019. The claimant was signed off until 25 December 2019.

248. The claimant made no reference to this incident involving his fit note in his witness statement. We heard no clear explanation when cross examined why that was so, other than he is a litigant in person. In cross examination it was put to the claimant that he became aggressive with Mr Olive when he brought in his sick note and Mr Olive declined to give him a receipt for it. The claimant said, "no, he stormed off".

249. The Tribunal found Mr Olive to be a mild-mannered man who gave clear and consistent evidence. The Tribunal notes that the claimant had limited contact with Mr Olive, the lead manager at the Blackpool Extra store where the claimant was based. Mr Olive was manager for 27 people who reported into him and as the claimant was not in his immediate team, he had limited contact with him. In fact the only significant interaction between the claimant and Mr Olive was that Mr Olive had overturned the claimant's written warning at the appeal hearing he heard in October 2019.

250. The Tribunal entirely accepts Mr Olive's evidence that he took the claimant's fit note when he gave it to him, but when claimant asked him to "sign for it", he declined to do so. Mr Olive said he had not been asked to do this by anyone else previously and explained to the claimant that he would pass the note to the Customer Relations team. We accept his evidence that the claimant then became argumentative and angry and stormed out of the store.

251. When asked, the claimant told us that he had not asked any other manager to sign for his fit note before. The reason he had asked Mr Olive to do so was because he was suspicious given "all that had happened to him".

252. The Tribunal is not satisfied that Mr Olive stormed off.

253. The Tribunal finds that declining to sign for a fit note is not a breach of the implied duty of trust and confidence. We accept Mr Olive's evidence that it was not the usual procedure and that he, the senior manager at the store, had reassured the claimant that he would pass his fit note on. The claimant had no reason to distrust Mr Olive. Indeed Mr Olive was a manager who had overturned a disciplinary warning against the claimant only a few weeks earlier.

254. The Tribunal turns to the next allegation:

> "*His resignation not having been accepted*."

255. The Tribunal finds this cannot amount to a breach of the implied duty of trust and confidence. The claimant resigned by email on 15 December 2019 (see page 1174). The claimant describes Mr Olive as treating him in a "frivolous way". The claimant refers to the incident as being a "last straw". The claimant refers to some of his disclosures of information.

256. The claimant's decision to resign is unequivocal. He sent it to Lisa Allen and his union representative. He headed it "to whom it may concern". He stated:

> *"It is with regret I feel I have no choice other than to tender my resignation from my position as dotcom customer delivery driver at Blackpool #2103 due to my position there having been made untenable."*

The claimant goes on to say:

> *"I feel that I have no choice other than to contact ACAS and pursue a claim for constructive dismissal."*

257. The Tribunal finds that the respondent did not immediately accept his resignation. The Tribunal finds this was a gesture of goodwill by the respondent, who said "I would very much like to meet with you prior to your resignation being accepted and allow you the opportunity to withdraw this if you so wish".

258. Not accepting the claimant's resignation cannot be a breach of the implied duty of trust and confidence because the claimant had already resigned. In legal terms, once a claimant has made a decision to leave by resigning, the relationship with the respondent is over.

259. The Tribunal finds this act does not amount to a breach of the implied duty of trust and confidence, and secondly it makes no sense in law because it can not contribute to the decision to leave because the claimant had already resigned.

260. The Tribunal turns to the last allegation:

> *"The conduct of Louise Stamper at the subsequent meeting on 3 January 2020."*

261. For the reasons outlined above, once the claimant has resigned, any conduct by the respondent afterwards cannot amount to a breach of the implied duty of trust

and confidence calculated or likely to destroy the relationship which causes the claimant to resign, because the claimant has already resigned.

262. For the avoidance of any doubt, the claimant did not dispute that Louise Stamper was kind and sympathetic when she met with him on 3 January 2020, listening carefully to all his concerns.

263. Unfortunately, at that time the claimant remained unwell and was insistent that the offensive email he had sent to the Chief Executive, Mr Lewis, on 5 December was an appropriate email. We find the respondent acted responsibly and kindly to the claimant at that meeting, offering him an opportunity to rescind his rescind his resignation and we find cannot amount to a breach of the implied duty of trust and confidence because the claimant had already resigned.

Conclusion

264. In conclusion, therefore, the Tribunal has not found any individual or cumulative breach of the implied duty of trust and confidence calculated or likely to destroy the relationship between the claimant and the respondent. Accordingly, the claim for constructive dismissal must fail at that point and there is no need for us to go on and consider the further issues, such as affirmation.

Automatic unfair dismissal pursuant to section 103A Employment Rights Act 1996

265. The Tribunal turned to consider was the sole or principal reason for the claimant's constructive dismissal because he made one or more of the alleged protected disclosures?

266. The Tribunal has already found there was no breach of the implied duty of trust and confidence calculated or likely to destroy the relationship between the claimant and the respondent and so there was no constructive dismissal.

267. Accordingly, given there was no breach of contract, the protected disclosures which we found were protected and qualifying (i.e. 3 and 5) cannot be relevant to any breach because we have found there were no breaches. Accordingly, this claim also fails.

268. For the sake of completeness, in case we are wrong about that, we considered whether there was any casual connection between disclosures 3 and 5 and the claimant's resignation.

269. We find no such evidence. The claimant's complaint to Protector line was investigated and the claimant was advised of the outcome. (Disclosure 3). The Tribunal is not satisfied there was any evidence to connect the claimant's complaint to his resignation many months later.

270. The Tribunal is not satisfied there was any evidence to connect the claimant's complaint in July 2019 to CEO Mr Lewis about a newspaper article referencing the

death of a child in Surrey and his concerns about his manager's lack of dot com driving qualification to the claimant's decision to resign, many months later in December 2019. (disclosure 4).

271. There was no reference to either disclosure in the claimant's resignation letter. p1196. These issues were not raised either by the claimant at his meeting with Lisa Allen(p1156) which was arranged to discuss his various concerns, where he was primarily concerned about the shifts he was allocated.

272. Therefore this claim also fails.

Employment Judge KM Ross

Date: 29 July 2022

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON

1 August 2022

FOR THE TRIBUNAL OFFICE