



EMPLOYMENT TRIBUNALS

Claimant

Respondent

MR DAVID DAWES

V

**THE ROYAL COLLEGE OF NURSING
OF THE UNITED KINGDOM**

Heard at: London Central ET (by video)

On: 25 & 26 January 2023

Before: Employment Judge P Klimov (sitting alone)

Representation:

For the Claimant: in person

For the Respondent: Mr T Coghlin KC, counsel

RESERVED JUDGMENT

1. The Claimant's application to amend the claim is granted.
2. The Respondent's application to strike out the Claimant's remaining claims fails and is dismissed.
3. The Respondent's application for a deposit order fails and is dismissed.

REASONS

Procedural Background

1. By claim forms dated 18 February 2022 (the “**First Claim**”) and 20 May 2022 (the “**Second Claim**”) the Claimant brought complaints of a “whistleblowing” detriment under s.47B Employment Rights Act 1996 (“**ERA**”), unjustifiable discipline under s.64 and s.65 Trade Union and Labour Relations (Consolidation) Act 1992 (“**TULRCA**”), and for automatically unfair dismissal under s.103A ERA.
2. In short, the Claimant claims that he was subjected to various detriments, was unjustifiably disciplined, and unfairly dismissed by being removed from the Chair of the Council role and expelled from trade union membership on the ground that he has made several protected disclosures, including to the press. The disclosures were in main about various alleged wrongdoings at the Respondent, in which, it was alleged, the Respondent’s former Chief Executive & General Secretary was involved. The allegations were widely reported in the national press following the Claimant’s disclosures to several publications. The Claimant claims that he went to the press because he thought that the Respondent was going to cover up the alleged wrongdoings.
3. The Respondent denies all the claims. On 5 August 2022, the Respondent applied to have the Claimant’s claims struck out under Rule 37(1)(a) of the Employment Tribunals Rules of Procedure 2013 (“the **ET Rules**”), as having no reasonable prospect of success, and, in the alternative, for a deposit order under Rule 39(1) of the ET Rules.
4. This open preliminary hearing was called to consider the Respondent’s strike out/deposit order application.
5. The Claimant represented himself at the hearing, and Mr Coghlin KC appeared for the Respondent. I am grateful to both for their submissions and other assistance to the Tribunal.
6. The parties prepared three bundles of documents for the hearing: (1) the public hearing bundle containing 1,525 pages, (2) the private hearing bundle of 403 pages, and (3) the disputed documents bundle of 61 pages. The private documents bundle contained documents which are subject to the Tribunal’s privacy orders of 13 December 2022 made pursuant to Rule 50(1) and Rule 50(3)(a) of the ET Rules. The disputed documents bundle contained witness statements prepared by the parties for the purposes of the proceedings in front of the Trade Union Certification Officer (the “**TUCO**”) under section 108A TULCRA. In addition to the documents in the public hearing bundle, the Respondent submitted a further open document (5 pages)

– an email exchange between the Claimant and Mr Bruce Carr, KC of 13-15 March 2022. I accepted that document in evidence.

7. I find that the documents in the private hearing bundle are of limited assistance for the issues I need to decide. I accept that they reinforce the Respondent's submission that the Claimant knew that the documents he was leaking to the press were confidential and has done that consciously and deliberately, however, that fact was not in dispute.
8. There were no witnesses. The Claimant's written submissions contained a section called "My witness statement". This was treated as the Claimant's submissions on the relevant factual background and not as his evidence in chief. He was not cross-examined on his statement.
9. Both parties prepared written submissions which they supplemented by oral arguments at the hearing.
10. I was referred to various authorities in the joint bundle of authorities of 981 pages and two further authorities: *Revenue and Customs Comrs v Atholl House Productions* (CA) [2002] ICR, 1059 and *Unite the Union v Nailard* (EAT) [2017] ICR, 121.
11. At the end of the first day of the hearing, I converted the hearing to a private (closed) hearing to hear the parties' submissions on the documents in the private hearing bundle. The hearing resumed the following morning as a public (open) hearing.
12. At the end of the hearing, I gave an extempore judgment on the Respondent's strike out application with respect to the Claimant's s.103A ERA claim, granting the application. I decided to reserve my judgment on the remaining issues in the Respondent's application, and on the Claimant's application to amend, which he had made at the hearing.
13. My judgment with reasons to strike out the Claimant's s.103A ERA claim was sent to the parties on 26 January 2023. This Judgment deals with the Respondent's application for a strike out/deposit order in relation to the Claimant's remaining complaints, and with the Claimant's application to amend his claim form.
14. In this Judgement, I shall refer to the Claimant as "**the Claimant**", and to the Respondent as "**the Respondent**" or **the RCN**. Reference in the form [p. X] are to pages in the public hearing bundle.

Factual Background

15. The factual background set out below is limited to the facts that are not in dispute and is provided as the relevant background for better understanding of this Judgment. I make no findings of fact on the matters that are in dispute.
16. The Respondent is a professional organisation and trade union for nursing staff. It represents over 480,000 nurses, student nurses, midwives and nursing support staff across the United Kingdom and internationally. It is established by Royal Charter and is both a professional college and a Special Register Trade Union.
17. The RCN is run by the General Secretary & Chief Executive, who is supported by an Executive Team comprising ten senior members of staff. The Respondent also has an elected governing body known as the RCN Council ("**the Council**") to whom the General Secretary & Chief Executive reports. The Council provides leadership and direction to the RCN, setting strategy, agreeing the priorities of the RCN, acting as the guardian of the RCN's assets, and holding the RCN's management to account. The Chair of the Council is elected by Council members from among their number. The Chair's term of office is two years.
18. The Claimant is a long-standing member of the RCN. He was elected as the Chair of the Council in September 2020, after the previous Chair had resigned before the end of the term. The Claimant's term of office ran until 31 December 2021.
19. Dame Donna Kinnair ("**DDK**") was the Chief Executive & General Secretary of the RCN from April 2019, having previously held the role on an interim basis from August 2018.
20. On 18 June 2021, DDK was suspended from her duties pending the Respondent's investigation into allegations about her conduct. The decision to suspend DDK was taken by the Council.
21. On 25 June 2021, DDK and the Respondent signed a settlement agreement, which ended DDK's employment by the RCN. The terms of the settlement agreement are confidential.
22. On 30 June 2021, the Respondent commissioned a senior barrister, Mr Bruce Carr, KC ("**BC**") to conduct an independent investigation into the circumstances of the DDK's departure and other related matters, and to provide a report with his findings and recommendations.
23. On 9 July 2021, the Claimant was informed by the then acting Chief Executing, Ms Pat Cullen ("**PC**"), that several complaints by the RCN's members about the Claimant's conduct had been received, and that the

Respondent would be commissioning an external investigating officer to look into those complaints.

24. On 13 July 2021, the Respondent issued a statement to its members, informing them that complaints had been received against the Claimant, which would be investigated, and that the Claimant would be voluntarily stepping down from his Chair of the Council role pending the investigation, but would remain the Council member.
25. On 14 July 2021, the Claimant was informed that he was suspended as the Chair of the Council and also from active membership of the RCN pending the investigation into the complaints about his conduct ("**the Conduct Matter**"). On the same day, the Respondent issued a statement to its members confirming the Claimant's suspension.
26. The Conduct Matter chiefly concerned various tweets containing sexual content posted by the Claimant between 2011 and 2015, the style of his verbal and written communications with the staff and members, and his attempt to secure funding from the RCN to partially cover costs of his employment by a company he had set up together with other people with whom he was in professional and personal relationships.
27. On 4 August 2021, Ms Clare Fowler ("**CF**"), of YESS Law, who had been appointed by the Respondent to investigate the Conduct Matter, interviewed the Claimant.
28. In late August, the Respondent decided to change the format of its annual Congress from in-person to on-line. There were reports in the press linking that decision to serious allegations of sexual harassment at the RCN, which in turn wrongly linked the Claimant's suspension to those allegations. The Claimant spoke to the press about that matter, explaining that the decision to move the Congress on-line and the allegations of sexual harassment had nothing to do with him.
29. On 29 August 2021, the Claimant lodged two complaints, to the Information Commissioner's Office (the "**ICO**") about the Respondent breaching his data protection rights by making the announcement to the members about his suspension, and to the TUCO about the Respondent's handling of the Conduct Matter.
30. Between 29 August 2021 and 15 September 2021, the Claimant made six disclosures to the press. These were:
 - (i) Press Disclosure 1 to Andrew Jehring of the Daily Mail on 30 August 2021 ("**PD1**")

- (ii) Press Disclosure 2 to David Brown and Ben Ellory of the Times on 29 and 31 August 2021 (“PD2”)
- (iii) Press Disclosure 3 to Matt Bodell of Nursing Notes on 2 September 2021 (“PD3”)
- (iv) Press Disclosure 4 to Megan Ford of the Nursing Times on 2 September 2021 (“PD4”)
- (v) Press Disclosure 5 to Amy Reast of South West News Service on 6 September 2021 (“PD5”)
- (vi) Press Disclosure 6 to Kate Mansey of the Daily Mail on 15 September 2021 (“PD6”)

31. The Claimant’s disclosures were about the DDK’s suspension and subsequent settlement agreement, the Council commissioning an investigation into Joan Myers (a Council Member) and her resignation, the Respondent’s communication to the members about the investigation into the Claimant and his suspension. The level of detail in the disclosures varied. Some were accompanied by additional documents, such as copies of the Claimant’s complaints to the ICO, interview notes of the investigation meeting with CF, and the 14 July 2021 suspension letter.

32. PD5 and PD6 included several confidential documents: copies of the Council’s internal business papers, the DDK’s suspension letter, and the DDK’s settlement agreement.

33. Between 6 September 2021 and 18 September 2021, there were various publications in the national press about the circumstances of the DDK’s departure, complaints about the Claimant, and the fact that the Respondent had commissioned BC to conduct an independent investigation into various matters concerning the Respondent.

34. In particular, on 18 September 2021, the Mail Online ran a story entitled *“Royal College of Nursing secretly paid former boss a £135,000 payoff after she was investigated over her links to Prince Charles’ donor George Farha”*. The article reported that DDK had been investigated for allegedly accepting hospitality from Mr George Fahra, whose company had been awarded a contract to provide PPE equipment to the UK Government. The article also said that DDK was accused of holding meetings with then Health Secretary Matt Hancock without telling the RCN, and that within a fortnight of the start of the investigation the RCN and DDK had *“struck a deal for her to walk away with a £135,000 payoff and an understanding that the entire episode would be kept secret”*. The Claimant’s suspension over the allegations that he was “hostile” to women, denied by the Claimant, and the moving of the Congress on-line were also mentioned in the article.

35. On 22 September 2021, the Respondent informed the Claimant that he was being investigated for breaches of duty of confidence and the Respondent’s

policy by reason of the Claimant's making the press disclosures ("**the Press Disclosures Matter**"). The investigation was undertaken by Shah Qureshi ("**SQ**"), a solicitor and the Head of Employment & Professional Discipline at Irwin Mitchell LLP.

36. On 11 October 2021, CF sent her investigation report into the Conduct Matter.
37. On 18 October 2021, the Respondent invited the Claimant to a Resolution Hearing to consider the Conduct Matter. The Resolution Hearing was scheduled for 15 and 16 December 2021. The Resolution panel was chaired by Ms Alice Mayhew (now KC), a barrister sitting as an independent Chair, Ms Carol Webley-Brown, a Council Member, and Lord Victor Adebawale, Chair of NHS Confederation (the "**Mayhew Panel**"). The Claimant raised various procedural objections, including in relation of the two lay members on the panel, because, in the Claimant's view, they were conflicted by reason of their relationship with DDK. The Claimant's objections were turned down by the Respondent. The Claimant attended the Resolution hearing to observe and to take notes, but otherwise did not participate in the hearing, despite being invited by the Panel to ask questions of witnesses and make submissions.
38. On 26 January 2022, SQ completed his investigation into the Press Disclosures Matter. He found that there was a case to answer and recommended that the matter proceeded to a Resolution Hearing.
39. On 8 February 2022, the Mayhew Panel delivered its findings in the Conduct Matter. The Mayhew Panel found that the Claimant was guilty of gross misconduct and removed the Claimant from membership of the RCN. The Claimant appealed.
40. On 1 and 2 March 2022, there was a Resolution hearing into the Press Disclosures Matter. The Resolution panel was chaired by Mr Adam Ohringer (now KC), a barrister sitting as an independent Chair, James Vaughan and Michael Appleby, a member of the RCN Council (the "**Ohringer Panel**").
41. On 3 March 2022, the Ohringer Panel delivered its decision on the Press Disclosure Matter. The panel found the Claimant guilty of gross misconduct and decided that he should be removed and disqualified from holding any office or other governance role within the RCN for a period of 5 years. The Claimant appealed.
42. The appeal against the Mayhew Panel's decision and the Ohringer Panel's decision was heard over two days on 17 and 18 March 2022 by a panel comprising Bruce Carr KC, Professor Judith Ellis OBE and Jeremy Benton (the "**Carr Panel**"). The appeal against the Mayhew Panel's decision was conducted by way of a hearing because of additional evidence the Claimant sought to introduce and the allegation of bias against the Mayhew Panel's

members. The appeal against the Ohringer Panel's decision was conducted as a conventional appeal and not as a fresh rehearing of the matter.

43. On 4 April 2022, the Carr Panel delivered its decision on both appeals. The panel found the Claimant guilty of two counts of gross misconduct with respect to the Conduct Matter, for each of which he was removed from membership of the RCN. With respect to the Press Disclosures Matter, the Carr Panel upheld the Ohringer Panel's decision that the Claimant was guilty of gross misconduct, however the panel concluded that the appropriate sanction was permanent removal from membership of the RCN.

The Claimant's particulars of claim

44. As mentioned above, the Claimant presented two claim forms. The First Claim was lodged on 18 February 2022, the Second Claim – on 20 May 2022. By an order of Employment Judge Deol of 11 July 2022, both claims were consolidated.

45. The particulars of claim (the “**PoC**”) in both claims are substantially the same. The notable difference between the two claim forms is that in the Second Claim form the Claimant added in box 8.2 of the ET1 (“background and details of your claim”) the following text:

“In March 2022 I was disciplined by the Royal College of Nursing (RCN) on the charge of disclosing information to the press. I was found guilty and removed from membership of the RCN as well as being removed from the Board of the RCN. I believe that these disclosures were protected disclosures under the Employment Rights Act 1996 and therefore I was subject to disciplinary proceedings for whistleblowing and improperly removed from office and from trade union membership.”

46. For the purposes of the issues in front of me the relevant paragraphs in the PoC in both claim forms read:

“Section 1 - Summary of Employment Tribunal Case

1. The summary of my case is as follows.

2. In March 2022 I was disciplined by the Royal College of Nursing (RCN) on the charge of disclosing information to the press. I was found guilty and removed from membership of the RCN as well as being removed from the Board of the RCN. I believe that these disclosures were protected disclosures under the Employment Rights Act 1996 and therefore I was subject to disciplinary proceedings for whistleblowing and improperly removed from office and from trade union membership.

Section 2 - Timeline of events

[...]

9. On the 29th August 2021, I made a protected disclosure to 2 qualifying bodies, namely the Trade Union Certification Officer and the Information Commissioner. The Information

Commissioner has already upheld the complaint (Attachment F) and ruled against the RCN and the Trade Union Certification Officer has scheduled a hearing in May 2022 to consider this complaint.

10. These disclosures were made on the 29th August 2021 and (sic) copies of the disclosures were sent to Matt Bodell of Nursing Notes on the 2nd September and Megan Ford of the Nursing Times as these were in the public interest.

11. I also sent copies of the disclosures to David Brown and Ben Ellery of the Times on the 31st August, Denis Campbell of the Guardian on the 29th August and Andrew Jehring of the Daily Mail on the 2nd September.

12. On the 16th November 2021, the Good Law Project published evidence obtained from the Department of Health under a Freedom of Information request that Dame Donna Kinnair had in fact provided a referral for NKD International which directly enabled them to secure a £130,000 contract through the Government's "VIP Lane" (Attachment F)."

[...]

Section 3 - The information that I disclosed that shows wrongdoing

22. I believe that there were several acts of wrongdoing as follows:

18a. that Dame Donna Kinnair (the RCN General Secretary) committed gross misconduct by acceptance of lavish personal hospitality from an external company run by George Fahra (including overseas holidays and lights) in return for helping this company secure a £130,000 PPE contract in April 2020 with the Department of Health. She also accepted a payment of £90,000 to the RCN Foundation from the same businessman. If proven this would be a breach of Section 2 of the Bribery Act 2010 which prohibits receiving payments to perform an improper activity and would therefore constitute a criminal offence. This is covered by Section 43B 1a) and Section 43B 1b) of the Employment Rights Act 1996.

18b. that Dame Donna Kinnair (the RCN General Secretary) committed gross misconduct by making a covert deal with Matt Hancock (the Secretary of State for Health) in early 2020 to deliberately undermine the RCN's Safe Staffing Campaign and therefore was against the best interests of the RCN. This was done with the active support of several senior RCN policy staff who are still working at the RCN but was deliberately hidden from Council. The covert deal with Matt Hancock happened at the same time as the PPE contracts were awarded to George Fahra's company and it is not clear whether these events were linked. If proven this would mean the General Secretary was failing to comply with a legal obligation to which she was subject. This is covered by Section 43B 1b) of the Employment Rights Act 1996.

18c. that there was a cover-up conducted by Pat Cullen (the current RCN General Secretary) of the suspension of Dame Donna Kinnair. This is covered by Section 43B 1f) of the Employment Rights Act 1996.

18d. that there was a cover-up of the subsequent investigation by Bruce Carr Q.C into Dame Donna Kinnair and that the investigation report into Dame Donna Kinnair was suppressed (sic). This is covered by Section 43B 1f) of the Employment Rights Act 1996.

18e. that the RCN had deliberately breached my confidentiality in July. This was a breach of both the Data Protection Act 2018 (DPA 2018) and the UK General Data Protection Regulation (UK GDPR) and this was confirmed by the judgment of the Information

Commissioner. This is covered by Section 43B 1a) and Section 43B 1b) of the Employment Rights Act 1996.¹

23. *The protected disclosures made explicit reference to 18c and 18e and I believe that they were instrumental in bringing 18a to the public attention. I also hoped that these disclosures would help bring 18b and 18d to the public attention.*"

47. In neither PoC or the claim forms did the Claimant specifically refer to PD5 or PD6. The exact content of PD5 and PD6 was not known to the Respondent until 21 July 2022 when the Claimant released copies of these disclosures pursuant to the Tribunal's order.

The Respondent's Strike out/Deposit Order application

48. On 5 August 2022, the Respondent applied for an order to strike out the Claimant's claims, in whole or in part, on the ground that they had no reasonable prospect of success. In the alternative, for a deposit order in relation to any allegations or argument which is found to have little reasonable prospect of success.

49. On 17 January 2023, the Respondent narrowed down the grounds upon which it sought the strike out order. The narrowing down was: (i) to remove the argument that the Claimant had little or no reasonable prospect of showing that he held a reasonable belief that a legal obligation had been breached and/or that a criminal offence had been committed, and (ii) to accept that the Respondent was aware of the press report by Kate Mansey in the Mail On-line on 18 September 2021 and suspected that this was based wholly or in part by the Claimant's press disclosures. The Respondent confirmed that it was not aware of the precise content of PD6 until it was disclosed by the Claimant in these proceedings.

50. The Respondent's application, as amended, contains 12 grounds as to why the Claimant's claims should be struck out, in whole or in part, or in the alternative, why the Claimant should be ordered to pay a deposit as a condition to be allowed to continue to pursue such allegations or arguments. The 12 grounds are headed as follows:

- (1) *No protected disclosures.*
- (2) *Unjustifiable discipline: no protected conduct under s65(2)(c) TULRCA 1992.*
- (3) *Causation: the allegation in PD18e (breach of data protection laws).*
- (4) *Causation: the unpleaded disclosures.*
- (5) *Unjustifiable discipline: no "determinations" by the Ohringer and Mayhew panels.*

¹ I will refer in this Judgment to these matters as PD18a, PD18b, PD18c, PD18d and PD18c, respectively, and collectively as "the Relevant Failings".

- (6) *Causation: expulsion in relation to the charges relating to financial misconduct and inappropriate tweets.*
- (7) *Unjustifiable discipline and Respondent's s65(5) defence.*
- (8) *Unfair dismissal: no live claim.*
- (9) *Unfair dismissal: employee status.*
- (10) *Unfair dismissal: no dismissal.*
- (11) *Unfair dismissal: reason for dismissal.*
- (12) *Remedy.*

51. The grounds (8) – (11) relate to the Claimant's claim for automatically unfair dismissal under s.103A ERA, which has been struck out, for the reasons set out in my Judgment of 26 January 2023. Accordingly, I will not be dealing with those in this Judgment. I will deal with the remaining grounds in turn.

The Claimant's Application to Amend

52. Before turning to deal with the Respondent's application I must first decide whether to allow the Claimant's application to amend his claim.

53. In his written submissions the Claimant made an application to amend his claim to change paragraph 11 of the PoC to read (***emphasis added***):

*"11. I also sent copies of the disclosures to Andrew Jehring of the Daily Mail on the 31st August, Ben Ellery of the Times on the 31st August, Matt Bodell of Nursing Notes on the 2nd September, Megan Ford of the Nursing Times on the 2nd September, **May Reast of South West News on the 6th September and Kate Mansey of the Daily Mail on the 15th September.**"*

54. The application was opposed by the Respondent.

The Law

55. Under Rule 29 of the ET Rules employment tribunals have a wide discretion to allow amendments to a claim or a response. In exercising its discretion, the tribunal must have regard to the overriding objective under Rule 2 of the ET Rules, which requires employment tribunals to deal with cases fairly and justly.

56. In ***Selkent v Moore*** [1996] IRLR 661, EAT at [18] –[24], the EAT gave the following guidance to tribunals when dealing with applications to amend:

*"18 Procedure and practice for amendments
The rival submissions of the parties state the position at opposite extremes. Before we state our conclusions on this appeal, it may be helpful to summarise our understanding of the procedure and practice governing amendments in the industrial tribunal.*

[...]

21 (4) *Whenever the discretion to grant an amendment is invoked, the tribunal should take into account all the circumstances and should balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it.*

22 (5) *What are the relevant circumstances? It is impossible and undesirable to attempt to list them exhaustively, but the following are certainly relevant:*

(a) *The nature of the amendment*

Applications to amend are of many different kinds, ranging, on the one hand, from the correction of clerical and typing errors, the additions of factual details to existing allegations and the addition or substitution of other labels for facts already pleaded to, on the other hand, the making of entirely new factual allegations which change the basis of the existing claim. The tribunal have to decide whether the amendment sought is one of the minor matters or is a substantial alteration pleading a new cause of action.

23 (b) *The applicability of time limits*

If a new complaint or cause of action is proposed to be added by way of amendment, it is essential for the tribunal to consider whether that complaint is out of time and, if so, whether the time limit should be extended under the applicable statutory provisions, e.g., in the case of unfair dismissal, s.67 of the 1978 Act.

24 (c) *The timing and manner of the application*

An application should not be refused solely because there has been a delay in making it. There are no time limits laid down in the Rules for the making of amendments. The amendments may be made at any time – before, at, even after the hearing of the case. Delay in making the application is, however, a discretionary factor. It is relevant to consider why the application was not made earlier and why it is now being made: for example, the discovery of new facts or new information appearing from documents disclosed on discovery. Whenever taking any factors into account, the paramount considerations are the relative injustice and hardship involved in refusing or granting an amendment. Questions of delay, as a result of adjournments, and additional costs, particularly if they are unlikely to be recovered by the successful party, are relevant in reaching a decision.

57. The Presidential Guidance – General Case Management dated 22 January 2018 state at [5] - [7]:

“5. Relevant factors would include:

5.1 The amendment to be made. Applications can vary from the correction of clerical and typing errors to the addition of facts, the addition or substitution of labels for facts already described, and the making of entirely new factual allegations which change the basis of the existing claim. The Tribunal must decide whether the amendment applied for is a minor matter or a substantial alteration, describing a new complaint.

5.2 Time limits.

If a new complaint or cause of action is intended by way of amendment, the Tribunal must consider whether that complaint is out of time and, if so, whether the time limit should be extended. Once the amendment has been allowed, and time taken into account, then that matter has been decided and can only be challenged on appeal. An application for leave to amend when there is a time issue should be dealt with at a preliminary hearing to address a preliminary issue. This allows all parties to attend, to make representations and possibly even to give evidence.

5.3 The timing and manner of the application.

An application can be made at any time, as can an amendment even after Judgment has been promulgated. Allowing an application is an exercise of a judicial discretion. A party will need to show why the application was not made earlier and why it is being made at that time. An example which may justify a late application is the discovery of new facts or information from disclosure of documents.

6. The Tribunal draws a distinction between amendments as follows:

6.1 those that seek to add or to substitute a new claim arising out of the same facts as the original claim; and

6.2 those that add a new claim entirely unconnected with the original claim.

7. In deciding whether the proposed amendment is within the scope of an existing claim or whether it constitutes an entirely new claim, the entirety of the claim form must be considered.”

Submissions and Conclusion on the Application to Amend

58. The Claimant argued that he should be allowed to amend paragraph 11 in the PoC because this was a minor amendment, it did not raise a new distinct head of complaint, or added or substituted a cause of action, but simply clarified precisely which written disclosures had been sent and to whom. All these disclosures were part of the disciplinary process, were in the evidence bundles for his disciplinary and appeal hearings.
59. In his oral submissions the Claimant said that he had deliberately avoided referencing PD5 and PD6 in his First Claim because he wanted to protect the second “whistleblower” from being identified by the Respondent, he was pressed by BC at the hearing to provide copies of the disclosures because there were cues in PD5 and PD6 who that person was. When preparing his Second Claim he simply copied the PoC from the First Claim and omitted adding references to PD5 and PD6 by an oversight.
60. Mr Coghlin argued that the amendment should not be allowed because it had not been pleaded by the Claimant and that was the Claimant’s deliberate decision. The Claimant specifically denied at the Ohringer Panel’s hearing and the Carr Panel’s hearing leaking information to Amy Reast and Kate Mansey. Mr Coghlin said that the Claimant should not be allowed “*to have it both ways*”.
61. Furthermore, Mr Coghlin argued, while the amendment does not introduce a new cause of action, nevertheless, it is a substantial change as new facts are being pleaded, which substantially alter the Claimant’s theory of the case. The identity of the alleged protected disclosures is fundamental to the nature of the claim, and the Respondent so far defended the case based on the Claimant’s pleaded case, and it would be put at a substantial prejudice if the amendment were allowed, because that would mean that a year into the proceedings the Respondent would have to meet a new case.

62. Finally, Mr Coghlin submitted that the merits of the amended case were weak on the issues of containing “information tending to show”, causation, and reasonableness of the disclosure to the press (s.43G(3) ERA).

63. I find that the balance of injustice and hardship lies in favour of allowing the application for the following reasons:

- (i) In my view, the nature of the amendment is further particularisation of the Claimant’s pleaded case. The Claimant’s Second Claim form at box 8.2 and at paragraph 2 in the PoC summarises his claim. There he refers to him being disciplined for disclosing information to the press and that “*these disclosures*”, in his view, were protected disclosures under the ERA. In the PoC, at paragraph 9, he refers to his disclosures to the ICO and the TUCO. On my reading of paragraphs 10 and 11, he says there that those two disclosures, to the ICO and the TUCO, were also sent to various journalists. I, however, do not read these three paragraphs 9,10 and 11 as the Claimant providing an exhaustive list of “*these disclosures*” referred to in box 8.2, for which the Claimant claims he was disciplined. Furthermore, at paragraph 18 (paragraph 22 in the Second Claim) the Claimant lists the Relevant Failings which clearly refer to the alleged wrongdoings included in PD5 and PD6.
- (ii) On 21 July 2022, by responding to the Respondent’s request for further information, the Claimant provided full details of PD5 and PD6. As admitted by the Respondent, at the time of disciplining the Claimant it was aware of the information leak to Kate Mansey and suspected that the Claimant was behind it. Although the Respondent would not have known the precise details of the information disclosed by the Claimant in PD6 until 21 July 2022, based on the content of the Mail On-line article of 18 September 2021 it would not have been too difficult to ascertain the nature of the information disclosed and the likely content of the disclosure. Accordingly, the key factual matters related to PD5 and PD6 have been known to the Respondent for some time. Indeed, the Respondent has prepared its strike out application taking into account PD5 and PD6 as “unpleaded disclosures”.
- (iii) Therefore, I find that there is no material prejudice or hardship to the Respondent in allowing this amendment. The proceedings are still at an early stage. There was no documents disclosure, except for this hearing. No witness statements had been prepared and exchanged. Allowing the amendment will not cause any material delay in the progression of the case to the trial, which is still to be listed. The Respondent can easily deal with any issues arising from the amendment by submitting an amended response, if so advised. Considering that the Respondent has already prepared to deal with

these disclosures as part of its strike out application, any additional costs arising from preparing and submitting an amended response is unlikely to be significant.

- (iv) On the other hand, if the amendment was refused the prejudice to the Claimant will be significant. He will be deprived from relying on what appears to be the most significant and detailed press disclosures, which resulted in the negative publicity for the Respondent, which, it appears, then led to the Press Disclosure Matter investigation and the disciplinary process against the Claimant resulting in his expulsion from the RCN. In addition, the total number of press disclosures made by the Claimant may also be a relevant factor in the overall assessment of the case.
- (v) As the amendment does not introduce a new cause of action, but, as I have concluded, provides a clarification of the already pleaded claim, the time limit issue does not arise.
- (vi) With respect to the timing of the application, the Claimant provided information about PD5 and PD6 on 21 July 2022, as he was ordered to by the Tribunal. It is not until the Respondent has made its strike out/deposit order application on 5 August 2022 that the Claimant was put on notice that the Respondent considered that PD5 and PD6 were not part of the Claimant's pleaded case. This issue was set to be determined at this preliminary hearing, in preparation to which the Claimant had made his application to amend. I find that the Claimant acted promptly in making his application.
- (vii) I do take into account the fact that, as admitted by the Claimant, he deliberately chose not to include references to PD5 and PD6 in his First Claim, and that he tried to conceal making those disclosures at the Ohringer and Carr Panel's hearings. This, however, in my judgment, is not a sufficiently strong factor not to allow the amendment, considering other factors in favour of granting it. In any event, what the Claimant said or did not say at his disciplinary hearings cannot determine the scope of the Claimant's claim in these proceedings.
- (viii) Finally, for the reasons explained below, I do not accept the Respondent's submission that the Claimant's claim, as amended, on its merits is so weak as to make it liable to be struck out, and therefore allowing the amendment would be futile.

64. It follows that the Claimant's application to amend is allowed. Therefore, in considering the Respondent's strike out/deposit order application I must take the Claimant's case at its highest and as amended.

Strike Out/Deposit Order Application

65. I shall now consider the Respondent's application, dealing with each of the remaining relevant grounds in turn.

The Law

66. The relevant legal principles were summarised by Mr Coghlin in his written Skeleton at paragraphs 6 to 24. The Claimant's written submissions also contained his representations on legal authorities he considers are relevant for the determination of these issues. I am grateful to both parties for their submissions on the relevant law. In coming to my decision, I duly considered and where relevant applied the authorities submitted by the parties.

67. I shall start by outlining the main legal principles. I will deal with specific legal points raised by the parties in the Submissions and Conclusion section of the Judgment, where necessary.

Strike out Order

68. Rule 37 of the Employment Tribunals Rules of Procedure 2013 ("**the ET Rules**") states:

"At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds-

(a) that it is ... has no reasonable prospect of success..."

69. The key principles derived from the case law with respect to the tribunal's exercise of its strike out powers can be summarised as follows:

- (i) A decision to strike out is a draconian measure, given that it deprives a party of the opportunity to have their claim or defence heard. It should, therefore, only be exercised in rare circumstances: (see, for example, ***Tayside Public Transport Company Limited v Reilly*** [2012] IRLR 755 at [30]).
- (ii) Additional caution must be exercised by tribunals when dealing with strike out applications of discrimination and "whistleblowing" claims, as such cases are generally fact-sensitive and require full examination of all relevant facts to make a proper determination (see ***Anyanwu v South Bank Student Union*** [2001] ICR 391, HL and ***Ezsias v North Glamorgan NHS Trust*** [2007] ICR 1126, CA).
- (iii) The power to strike out on the no reasonable prospect ground is designed to weed out claims and defences, or parts thereof, which are

bound to fail. The issue, therefore, is whether the claim or contention “has a realistic as opposed to a fanciful prospect of success” (see, for example, **Ezsias** at [26]).

- (iv) The tribunal should not conduct a mini-trial of the facts and therefore would only exceptionally strike out where the claim or contention has a legal basis, if the central or material facts are in dispute and oral evidence is therefore required in order to resolve the disputed facts. There may, however, be cases in which factual allegations are demonstrably false in the light of incontrovertible evidence, and particularly documentary evidence, in which case the tribunal may be able to come to a clear view (see, for example, **Ezsias** at [29]).
- (v) Subject to this point, the tribunal must take the case of the respondent to the application to strike out (in the present case the Claimant’s claim) at its highest in terms of its factual basis and ask whether, even on that basis, it cannot succeed in law.
- (vi) The fact that a given ground for striking out is established gives the tribunal a discretion to do so – it means that it “may” do so. The concern of the tribunal in exercising this discretion is to do justice between the parties in accordance with the overriding objective under Rule 2 of the ET Rules. Therefore, the tribunal should not normally strike out a claim or response which has a reasonable prospect of success simply on the basis of the quality of the pleadings. It would normally consider the pleadings and any written evidence or oral explanation provided by a party with a view to determining whether an amendment would clarify or correct the pleaded case and render it realistic and, if so, whether an amendment should be allowed (see **Soo Kim v Yong** [2011] EWHC 1781).
- (vii) Obviously, particular caution should be exercised where a party is not legally represented and/or is not fully proficient in written English (see the discussion in **Hassan v Tesco Stores Limited** UKEAT/0098/16 and **Mbuisa v Cygnet Healthcare Limited** UKEAT/0109/18).

Deposit Order

70. Rule 39(1) of the ET Rules provides:

“(1) *Where at a preliminary hearing (under rule 53) the tribunal considers that any specific allegation or argument in a claim or response has little reasonable prospect of success, it may make an order requiring a party “the paying party” to pay a deposit not exceeding £1,000 as a condition of continuing to advance that allegation or argument.*”

71. The Employment Appeal Tribunal provided a summary of the principles applicable to the tribunal's power to make a deposit order in **Arthur v**

Hertfordshire Partnership University NHS Foundation Trust per HHJ Eady QC at [22] to [24]. By way of summary:

- (i) The test for making a deposit order is distinct from the no reasonable prospect of success test which it is necessary to establish prior to the striking out of a claim.
- (ii) The distinction is highlighted by the purpose of a deposit order, which is to identify at an early stage those claims with little reasonable prospect of success and to discourage the pursuit of those claims by requiring a sum to be paid and by creating a risk of an adverse costs order being made.
- (iii) When determining whether to make a deposit order the tribunal is not restricted to considering purely legal questions.
- (iv) Rather the tribunal is entitled to have regard to the likelihood of a party being able to establish the facts essential to its case. The tribunal, in doing so, is entitled to reach a provisional view as to the credibility of the assertions being put forward by a party.
- (v) The purpose of a deposit order is not, however, to make it difficult to access justice or obtain a striking out of a claim by the back door.

Claim for Whistleblowing Detriment under s.47B ERA

Qualifying disclosure

72. Section 43A of the ERA states,

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

73. Section 43B of the ERA states,

“(1) In this Part a “qualifying disclosure” means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—

(a) that a criminal offence has been committed, is being committed or is likely to be committed,

(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,

[...]

(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.”

74. Section 43F ERA states:

“43F.— Disclosure to prescribed person.

(1) A qualifying disclosure is made in accordance with this section if the worker—

(a) makes the disclosure to a person prescribed by an order made by the Secretary of State for the purposes of this section, and

(b) reasonably believes—

- (i) that the relevant failure falls within any description of matters in respect of which that person is so prescribed, and
- (ii) that the information disclosed, and any allegation contained in it, are substantially true.

(2) An order prescribing persons for the purposes of this section may specify persons or descriptions of persons, and shall specify the descriptions of matters in respect of which each person, or persons of each description, is or are prescribed.”

75. Section 43G ERA states:

Disclosure in other cases.

- (1) A qualifying disclosure is made in accordance with this section if—
 - [...]
 - (b) the worker reasonably believes that the information disclosed, and any allegation contained in it, are substantially true,
 - (c) he does not make the disclosure for purposes of personal gain,
 - (d) any of the conditions in subsection (2) is met, and
 - (e) in all the circumstances of the case, it is reasonable for him to make the disclosure.
- (2) The conditions referred to in subsection (1)(d) are—
 - (a) that, at the time he makes the disclosure, the worker reasonably believes that he will be subjected to a detriment by his employer if he makes a disclosure to his employer or in accordance with section 43F,
 - (b) that, in a case where no person is prescribed for the purposes of section 43F in relation to the relevant failure, the worker reasonably believes that it is likely that evidence relating to the relevant failure will be concealed or destroyed if he makes a disclosure to his employer, or
 - (c) that the worker has previously made a disclosure of substantially the same information—
 - (i) to his employer, or
 - (ii) in accordance with section 43F.
- (3) In determining for the purposes of subsection (1)(e) whether it is reasonable for the worker to make the disclosure, regard shall be had, in particular, to—
 - (a) the identity of the person to whom the disclosure is made,
 - (b) the seriousness of the relevant failure,
 - (c) whether the relevant failure is continuing or is likely to occur in the future,
 - (d) whether the disclosure is made in breach of a duty of confidentiality owed by the employer to any other person,
 - (e) in a case falling within subsection (2)(c)(i) or (ii), any action which the employer or the person to whom the previous disclosure in accordance with section 43F was made has taken or might reasonably be expected to have taken as a result of the previous disclosure, and
 - (f) in a case falling within subsection (2)(c)(i), whether in making the disclosure to the employer the worker complied with any procedure whose use by him was authorised by the employer.
- (4) For the purposes of this section a subsequent disclosure may be regarded as a disclosure of substantially the same information as that disclosed by a previous disclosure as mentioned in subsection (2)(c) even though the subsequent disclosure extends to information about action taken or not taken by any person as a result of the previous disclosure.”

76. This means that when a “whistleblower” makes an external disclosure (i.e., not to their employer or to the relevant prescribed person) to get statutory protection under s.47B ERA:

- (i) the “whistleblower” must reasonably believe that the information

- disclosed, and any allegation contained in it, is substantially true,
- (ii) the “whistleblower” must not have made the disclosure for the purposes of personal gain,
- (iii) one of the conditions in S.43G(2) must be met, and
- (iv) in all the circumstances of the case, it must be reasonable to make the disclosure.

77. In **Jesudason v Alder Hey Children’s NHS Foundation Trust** 2020 ICR 1226, CA, the Court of Appeal said that the question of reasonableness must be assessed as at the time the complaint or concern is raised, not with the benefit hindsight. The test is objective and in assessing the reasonableness of the disclosure the tribunal must take into account the factors set out in section 43G(3).

78. In the same judgment, the Court of Appeal said at [49] that the requirement of reasonableness allows the tribunal to refuse to give protection to a worker when he/she made a disclosure to the media containing a host of complaints, which were unjustifiably disclosed to the media, on the basis that amongst them there is one issue which it might have been reasonable to disclose.

79. In **Williams v Brown** UKEAT/0044/19/OO, EAT, HHJ Auerbach explained at [9] the correct application of s.43B ERA as follows:

“9. It is worth restating, as the authorities have done many times, that this definition breaks down into a number of elements. First, there must be a disclosure of information. Secondly, the worker must believe that the disclosure is made in the public interest. Thirdly, if the worker does hold such a belief, it must be reasonably held. Fourthly, the worker must believe that the disclosure tends to show one or more of the matters listed in sub-paragraphs (a) to (f). Fifthly, if the worker does hold such a belief, it must be reasonably held.”

Reasonable belief that the disclosure was in the public interest

80. In **Chesterton Global Ltd v Nurmohamed** [2017] IRLR 837, the Court of Appeal provided guidance on the public interest test at [27]-[31], [34] and [37]. The Court held that when considering whether a disclosure was made by a worker in the reasonable belief that it was made “in the public interest”, there were no absolute rules, and it was instead for the employment tribunal to decide whether a disclosure was made in the public interest on the circumstances of a particular case. The essential point is that to be in the public interest the disclosure must serve a wider interest than the private or personal interest of the worker making the disclosure. In deciding this question, the tribunal will be assisted by examining such factors as the numbers in the affected group, the nature of the interests affected and the extent to which they were affected, the nature of the wrongdoing, and the identity of the alleged wrongdoer.

Detriment

81. Section 47(1)B of the ERA states,

“(1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.

Causation: meaning of “on the ground that”

82. In **Fecitt and ors v NHS Manchester (Public Concern at Work intervening)** 2012 ICR 372, CA, Elias J said at [45],

“45 In my judgment, the better view is that section 47B will be infringed if the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer’s treatment of the whistleblower.”

83. As in discrimination cases the question of causation in whistleblowing complaints is fact sensitive, and it is important that the tribunal looks not only at each alleged incident separately, but at the entire picture to see whether they add up to more than the sum of their parts (see **Anya v University of Oxford** [2001] IRLR 377, CA).

Complaint of unjustifiable discipline

84. Section 64 TULRCA states:

“64.— Right not to be unjustifiably disciplined.

(1) An individual who is or has been a member of a trade union has the right not to be unjustifiably disciplined by the union.

(2) For this purpose an individual is “disciplined” by a trade union if a determination is made, or purportedly made, under the rules of the union or by an official of the union or a number of persons including an official that—

(a) he should be expelled from the union or a branch or section of the union,

[...], or

(f) he should be subjected to some other detriment;

and whether an individual is “unjustifiably disciplined” shall be determined in accordance with section 65.

[...]

(5) The right not to be unjustifiably disciplined is in addition to (and not in substitution for) any right which exists apart from this section; and, subject to section 66(4), nothing in this section or sections 65 to 67 affects any remedy for infringement of any such right.”

85. Section 65 TULRCA states:

“65.— Meaning of “unjustifiably disciplined” .

(1) An individual is unjustifiably disciplined by a trade union if the actual or supposed conduct which constitutes the reason, or one of the reasons, for disciplining him is—

(a) conduct to which this section applies, or

(b) something which is believed by the union to amount to such conduct;

but subject to subsection (6) (cases of bad faith in relation to assertion of wrongdoing).

(2) This section applies to conduct which consists in—

[...];

(c) asserting (whether by bringing proceedings or otherwise) that the union, any official or representative of it or a trustee of its property has contravened, or is proposing to contravene,

a requirement which is, or is thought to be, imposed by or under the rules of the union or any other agreement or by or under any enactment (whenever passed) or any rule of law;

[...]

(5) This section does not apply to an act, omission or statement comprised in conduct falling within subsection (2), (3) or (4) above if it is shown that the act, omission or statement is one in respect of which individuals would be disciplined by the union irrespective of whether their acts, omissions or statements were in connection with conduct within subsection (2) or (3) above.

(6) An individual is not unjustifiably disciplined if it is shown—

(a) that the reason for disciplining him, or one of them, is that he made such an assertion as is mentioned in subsection (2)(c), or encouraged or assisted another person to make or attempt to vindicate such an assertion,

(b) that the assertion was false, and

(c) that he made the assertion, or encouraged or assisted another person to make or attempt to vindicate it, in the belief that it was false or otherwise in bad faith,

and that there was no other reason for disciplining him or that the only other reasons were reasons in respect of which he does not fall to be treated as unjustifiably disciplined.

(7) In this section—

“conduct” includes statements, acts and omissions;

[..]”

86. In ***Transport and General Workers’ Union v Webber*** 1990 ICR 711, EAT, Mr Justice Wood MC (the EAT President, as he then was) in considering the meaning of the word ‘determination’ in section 64(2) said:

“Approaching the question of interpretation with these policy considerations in mind, it would seem that before a decision can constitute a ‘determination to expel’ within the provisions of S.3(5)(a) [the equivalent provision in the Employment Act 1988 replaced by s.64 TULRCA], it must be one which achieves a disposal of that issue; one which does not contain within it a condition subsequent. A decision that an expulsion be effected upon a date in the future would not render it any the less an effective determination, but the facts in the present case indicate that there remained an uncertainty whether or not the Applicant was to be expelled. It was not an effective determination in the sense which we have expressed above.”

87. Pursuant to s.66 TULRCA, a member who claims that he or she has been unjustifiably disciplined can make a complaint to an employment tribunal. If the complaint is successful, the tribunal must make a declaration to that effect. The successful applicant can lodge a separate application for compensation not earlier than four weeks and not later than six months from the date of the tribunal’s declaration. If such an application is made, the tribunal can award such compensation as it considers “just and equitable in all the circumstances”, subject to the maximum of the aggregate of 30 times the maximum of a week’s pay for calculating a basic award in unfair dismissal cases and the maximum compensatory award in unfair dismissal cases. A statutory minimum award (£10,628 as from 6 April 2022) also applies where, on the date the application for compensation was made, the determination infringing the claimant’s right not to be unjustifiably disciplined has not been revoked, or the union has failed to take all the steps necessary for securing

the reversal of anything done for the purpose of giving effect to the determination (s.67(8A) TULCRA).

Submissions and Conclusion on Strike-out/Deposit order application

Ground 1 – no protected disclosure

88. The Respondent submits that the Claimant has no reasonable prospect of showing that he has made a qualifying disclosure. That is because, Mr Coghlin argued, in order to amount to a qualifying disclosure, it must include “*sufficient factual content and specificity such as is capable of tending to show one of the matters listed in subsection*” (***Kilraine v London Borough of Wandsworth*** [2018] ICR 185 at [35]).
89. The Respondent submits that the Claimant says that the information he disclosed tended to show various Relevant Failings, as set out at paragraph 18 (paragraph 22 in the Second Claim) of the Claimant’s PoC (see paragraph 43 above). However, on a proper analysis of his disclosures they did not contain any such information.
90. The Respondent’s submission on this ground is focused on PD3 only (and contending that PD1, PD2 and PD4 are not materially different in their content). Mr Coghlin analyses the content of the Claimant’s email to Matt Bodell [p.190] to show that on a proper reading of that email it does not contain any information, which the Claimant says at paragraph 18 of the PoC he disclosed.
91. However, the Claimant’s disclosures were not limited to PD3. The Claimant’s PD1 contains not only his covering email to the journalist but also copies of his complaint to the ICO, the Respondent’s letter of suspension of 14 July 2021 and the CF’s investigation meeting interview notes. These documents contain far more information than the email to Matt Bodell. The same documents are part of PD2. PD4 is materially the same as PD3.
92. Furthermore, in light of my decision on the Claimant’s application to amend, PD5 and PD6 must also be taken as part of the Claimant’s disclosures in deciding whether taken together the Claimant’s disclosures contain information “tending to show” the Relevant Failings.
93. The Respondent acknowledges that PD5 and PD6 contain more information than PD3, but argues that they do not assist the Claimant because these are not part of the Claimant’s pleaded case (this issue has been resolved by my decision on the Claimant’s application to amend), and secondly, because it was unreasonable for the Claimant to make these disclosures to the press. I will deal with the second point later in the Judgment.

94. Considering the contents of all six disclosures, I find that it cannot be reasonably said that the Claimant has no or little reasonable prospect of showing that at the time of making these disclosures he reasonably believed that the information contained in the disclosures tended to show that a criminal offence had been, was being, or was likely to be committed, or that a legal obligation had been, was being, or was likely to be breached, or that the information tending to show these wrongdoings had been, was being or was likely to be deliberately concealed.
95. The disclosures have sufficient factual content about the alleged wrongdoings and the Respondent's actions with respect to those. The nature of the alleged wrongdoings and the Respondent's actions in the disclosures are such that it cannot be reasonably argued that the information disclosed could not have possibly "tended to show" matters falling within s.43B(1)(a), (b) and (f) ERA. In deciding the Respondent's application, I must take the Claimant's case at its highest. There is nothing on the face of these disclosures that could sensibly lead me to conclude that in making them the Claimant could not have reasonably believed that the information in the disclosures tended to show the Relevant Failings.
96. Mr Coghlin argued that even if I were to allow the Claimant's application to amend and accept PD5 and PD6 as being part of the Claimant's case, I should still strike out a part of his claim (or make a deposit order) in so far as it relies on other disclosures because the Claimant has no (or little) reasonable prospect of success in establishing that those other disclosures (PD1-PD4) contained information tending to show the Relevant Failings as pleaded at paragraph 18 of his PoC.
97. I decline to do that for the following reasons:
- (i) PD1 and PD2 contain far greater factual content than PD3 and PD4. In particular, these include some 60 pages of the CF's investigation meeting interview notes where the Claimant gives a detailed account of the events leading up to his suspension, including the circumstances of the departure of DDK.
 - (ii) Even taking PD3 and PD4 in isolation, read as a whole, in my judgment, it cannot be said that the Claimant has no (or little) reasonable prospect of establishing that he had reasonable belief that the information contained in those emails tended to show a breach of a legal obligation or a concealment, as pleaded at 18c and 18e in his PoC. There are statements in those emails about the suspension and investigation into DDK not being disclosed to the RCN members, and about the Respondent publishing a false and defamatory statement about the Claimant, together with the content of that statement. I find that without hearing the Claimant's evidence as to why he held that belief, there is no basis upon which I can reasonably conclude that he has no or little reasonable prospect of succeeding in establishing that

he reasonably believed that PD3 and PD4 contained information tending to show the Relevant Failings.

- (iii) In any event, considering that all six PDs were made in quick succession and seek to convey substantially the same information with a different degree of detail, I find that it would be inappropriate to strike out some of them, as such “intervention” will fragment and distort the factual matrix, against which a future tribunal considering the Claimant’s claim on the merits will need to make relevant findings and conclusions.
- (iv) Even accepting that some of the six PDs might not contained “information tending to show” that can be readily and directly linked to all of the Relevant Failings pleaded at paragraph 18 of the Claimant’s PoC, I consider it would be wrong for me to engage in a kind of “blue penciling” exercise by striking out certain allegations or making a deposit order in relation to them. The Claimant’s case is not that each of the six PDs contained information that in his reasonable belief tended to show all of the Relevant Failings, but that the six PDs taken together contained such information. Therefore, all six PDs will need to be considered individually and as a whole to enable the tribunal to form a fair view and not to lose “the wood for the trees”.
- (v) Finally, as well as the content of PDs, the total number of PDs the Claimant has made might well be a relevant factor on the issue of causation.

98. I am also unpersuaded by Mr Coghlin’s argument that “*a cover up of a suspension is not the same as concealment of wrongdoing*” (under s.43B(1)(f) ERA). The fact that the Claimant might have considered that the DDK’s suspension was appropriate, personally instructed BC to investigate the matter and report to the Council, and knew that the settlement with DDK was confidential is not sufficient to show that he has no (or little) reasonable prospect of showing that he reasonably believed that the information in his six PDs tended to show that the Respondent, by not making the fact of and the reasons for the DDK’s suspension known to its members, was breaching a legal obligation, or that he reasonably believed that that information tended to show that the alleged wrongdoings for which DDK had been investigated was being concealed from the members. In my view, these two matters are not mutually exclusive, and the genuineness and reasonableness of the Claimant’s belief that there was such a breach or a concealment could only be established once his evidence are heard and tested.

99. Even if the Claimant did not specifically identify in his claim form the source of the legal obligation to inform the members is not a good reason to strike out his claim. This issue can be clarified by way of further information, if required.

100. Finally, whether or not the Respondent was in fact under a legal obligation to disclose the DDK’s suspension and investigation to its members is not

determinative. What is relevant is whether the Claimant reasonably believed that his PDs contained information tending to show that by not sharing such information with its members the Respondent was in breach of a legal obligation or engaged in deliberately concealing the alleged wrongdoings. Obviously, if it is found that the Claimant knew all too well that there was no such obligation on the Respondent, this will be a relevant factor for the tribunal to consider when deciding whether the Claimant held such reasonable belief at the time of the disclosures. However, such assessment necessarily requires hearing from the Claimant and possibly other witnesses.

101. For the same reasons I find that it cannot be reasonably said that the disclosure about the alleged cover-up of the BC's investigation is doomed to fail. Whether the Claimant reasonably believed that his disclosures contained information which tended to show that the investigation into the circumstances of the DDK's suspension had been suppressed cannot be sensibly determined without considering all relevant evidence and in particular hearing from the Claimant. The arguments Mr Coghlin makes in his written submissions on this point (at paragraph 31 c) (iii)) are all fair points, but they cannot be taken as conclusive until they are put to the Claimant and he is given an opportunity to deal with them in his evidence.

102. The Claimant's case is that he had instructed Mr Carr to conduct the investigation. He was involved in determining the scope of the investigation. Considering his involvement in the DDK's suspension and his position at the Respondent, he was expecting to be interviewed by Mr Carr as part of the investigation. That did not happen after two months of the investigation, even though Mr Carr spoke with other key people involved in the matter: PC and the DDK's personal assistant. The Claimant claims that he then saw how the brief to Mr Carr was altered to broaden the scope of the enquiry, thus, in his view, "watering down" the investigation into the circumstances of the DDK's suspension. He claims that the final report was not shared with the members, and that the report incorrectly states that BC was commissioned to investigate the matter in September 2021, when in fact he was instructed in June 2021. The Claimant considers that this was a deliberate concealment of the alleged DDK's wrongdoings. Therefore, taking at its highest, it cannot be sensibly said that the Claimant has no (or little) reasonable prospect of success of showing that he held such a belief and him holding that belief was reasonable.

103. For completeness, the fact that the Claimant could have asked Mr Carr whether his report was being suppressed or raised the matter internally may be a factor in deciding whether the Claimant held a reasonable belief of the alleged concealment, but it must be considered against the totality of evidence, and by itself is not sufficient to demonstrate that the Claimant's case on this point is bound to fail.

104. I shall now turn to deal with the Respondent's submissions on the Claimant's case on PD18e ("breach of data protection laws"). Mr Coghlin argued that the Claimant claim had no reasonable prospect of success because his email to Mr Bodell did not suggest that the Claimant considered that any legal obligation had been breached, and it made no reference to a breach of his confidentiality, or to the Data Protection Act 2018 or to the GDPR. For the reasons I have explained at paragraphs 91-97 above I find that it is not appropriate to consider PD3 in isolation. The Claimant's other PDs include information about his complaint to the ICO and a copy of his complaint. Therefore, plainly it cannot be said that the Claimant's case that he reasonably believed that his other disclosures contained information tending to show a failure to comply with a legal obligation in relation to data protection has no or little reasonable prospect of success.
105. The Respondent further submits that there is no reasonable prospect of success for the Claimant to show that he believed that the disclosure was in the public interest on the application of the factors identified by in ***Chesterton Global Ltd v Nurmohamed*** at [32]- [37]. However, as the Court of Appeal said in that judgment at [37], these factors are only "*a useful tool*" but "[t]he question is one to be answered by the tribunal on a consideration of all the circumstances of the particular case".
106. A consideration of all the circumstances of a particular case requires the tribunal to examine all relevant evidence. Without such examination it is impossible to say whether the Claimant has no or little reasonable prospect of success to establish that he reasonably believed his disclosures with respect to PD18e was in the public interest. He submits that they were in the public interest because he was the most senior elected member of the Respondent, a disclosure of personal information in breach of the Data Protection Act 2018 is a criminal offence, the ICO found that the Respondent's disclosure of the Claimant's personal information was a breach of the GDPR legislation. Whether that gave him sufficient grounds to form a belief that the disclosure was in the public interest and whether such belief was reasonable could only be decided once the Claimant's evidence on this issue is heard and he is cross-examined on this.

Method of disclosure

107. The Respondent further submits that the Claimant's disclosures were not protected disclosures within the meaning of s.43A ERA because they were not made to the Claimant's "employer" (the Respondent for this purpose) and the conditions in s.43G ERA for disclosures to third parties were present and satisfied.

108. The Respondent does not raise issues with respect to the conditions s.43G(1)(b) and s.43G(1)(c), but submits that there is no reasonable prospect for the Claimant to satisfy the condition s.43G(1)(d), because he cannot get himself under one of the conditions in s.43G(2), and in any event there is no reasonable prospect for the Claimant to satisfy the objective test of reasonableness of the disclosure to the press under s.43G(1)(e).
109. Mr Coghlin argued that the Claimant had no reasonable prospect of showing that he reasonably believed he would be subjected to a detriment by the Respondent if he had made the disclosure to the Respondent (s.43G(2)(a)), because the Claimant had offered “*no coherent explanation for saying that he held such a belief*”.
110. Mr Coghlin further argued that the Claimant had no reasonable prospect of showing that he had made a disclosure of substantially the same information in accordance with s43F ERA (s.43G(2)(c)(i) or (ii)), because to the extent he had raised any issues with the Respondent these had nothing to do with any “cover-up”, and any issues he had raised with respect to the alleged DDK’s wrongdoings had been raised before the settlement agreement with her and therefore were “superseded” by the settlement agreement.
111. The Claimant’s disclosures to the ICO and the TUCO, Mr Coghlin argued, were not in accordance with s.43F because these disclosures fell wholly or partially outside the remit of the ICO and the TUCO as “prescribed persons” under the Public Interest Disclosure (Prescribed Persons) Order 2014, and the Claimant could not have reasonably believed that he had made a disclosure of substantially the same information to a prescribed person, because he had admitted during his interview by Mr Carr that he did not believe corruption and undermining the safe staffing campaign was within the TUCO’s remit.
112. The Respondent also submits that the Claimant has no reasonable prospect of showing that it was reasonable in all the circumstances to go to the press (s.43G(1)(e)) because:
- (i) he had not reasons to believe that there was a “cover-up” which had occurred, was occurring or was likely to occur. The Claimant knew that Mr Carr had been instructed to conduct an investigation and had no reason to doubt the impartiality or thoroughness of the investigation,
 - (ii) he had a number of internal routes to raise his concerns,
 - (iii) his actions were in breach of express and implied duties of confidentiality,
 - (iv) he did not wait for the determination of his complaints by the ICO and the TUCO,
 - (v) his disclosures were malicious and retaliatory, intended to inflict damage on the Respondent and DDK in retribution to the Respondent’s public announcement about the Claimant’s suspension,

- (vi) he is an experienced “whistleblower” and had received legal advice before making the disclosures to the press, and
- (vii) he was very well aware of the confidential nature of the documents he leaked to the press.

113. The Claimant’s submissions on this point can be summarised as follows:

- (i) On the issue of reasonable belief that he would be subjected to a detriment by the Respondent, the Claimant says that he was suspended from his role, subjected of a disciplinary process, not allowed to apply to extend his term in the office. In those circumstances, he argued, he had a well-founded and reasonable belief that he would be subjected to further detriments if he were to make these disclosures to the Respondent.
- (ii) On the issue of disclosure of substantially the same information (s.43G(2)(c)(ii)), the Claimant argued that everything he had disclosed to the press he had previously disclosed to the Council.
- (iii) On the issue of reasonableness going to the press (s.43G(1)(e)), the Claimant argued that because the Council was aware of the disclosed wrongdoings and was covering them up, which made it complicit in the cover up (and that includes covering up the BC’s investigation), and because there were no governing body above the Council, the only way for him to expose the wrongdoings and cover-up was to go to the press.

114. These were the Claimant’s submissions and not his evidence. He was not cross-examined on these issues, and they cannot be regarded as established facts. However, for the purposes of considering whether the Claimant’s claim has no (or little) reasonable prospect of success, I must take his case at its highest. Taking these submissions at their face value I find that it cannot be sensibly concluded that the Claimant’s case on the issues arising from the application of the conditions in s.43G ERA has no (or little) reasonable prospect of success.

115. I accept Mr Coghlin’s argument that in considering the Claimant’s submissions I must not abandon my critical faculties². However, I do find that the Claimant’s submissions, when analysed against the documentary evidence in the bundle, and considering the timeline of the key events in this matter, cannot be said to be so implausible as to be dismissed without any further enquiry.

116. In coming to this conclusion, I am alive to the apparent inconsistency in the Claimant’s submissions that the reason he had decided to make the disclosures to the press was because he reasonably believed that he would be subjected to a detriment by the Respondent if he had made those disclosures to the Respondent (s.43G(2)(a) ERA), and that he in fact had

² See, *Calland v Financial Conduct Authority* [2015] EWCA Civ 192 at [29]

previously disclosed substantially the same information to the Respondent (s.43G(2)(c) ERA). However, I see no reason in principle why on particular facts both conditions cannot be satisfied, and in any event, the Claimant needs to meet just one of them to come under s.43G(2) ERA.

117. I also note that both the Ohringer Panel and the Carr Panel (and indeed Mr Shah Qureshi in his investigation) all concluded that the Claimant's disclosures to the press were not protected disclosures within the meaning of s.43A ERA. With all due respect to them and without questioning their knowledge and expertise on the matter, their determinations do not make this question *res judicata* for this Tribunal. In any event, it is to be noted that they came to that conclusion only after the Panels (and Mr Qureshi) had interviewed the Claimant and other relevant witnesses. To make a proper determination of this issue, the Tribunal too will need to do the same.

118. Finally, I accept Mr Coghlin's submission that the test of reasonableness under s.43G(1)(e) is objective, and it does not matter whether the Claimant genuinely thought it was reasonable for him to go to the press in those circumstances. However, an objective assessment requires the Tribunal to consider all relevant circumstances and to make primary findings of fact, upon which it can then base its conclusion on the issue of reasonableness. Considering the underlying dispute between the parties as to some key facts (such as whether the Respondent was engaged in a cover-up of the alleged DDK's wrongdoings), I find that the question of whether in those circumstances it was reasonable or unreasonable for the Claimant to make the disclosures to the press cannot be safely answered until such key facts are established.

Causation – Grounds (3),(4) and (6)

119. I shall deal with the three grounds related to causation together, because, although they aim at different aspects of the Claimant's claim, in my view, they all have the same underlying problem, namely being based on factual assertions, which are not accepted by the Claimant, and which have not been tested by the Tribunal to turn them into established facts.

120. Mr Coghlin's submissions on the causation grounds can be summarised as follows:

The Claimant has no (or little) reasonable prospect of success in showing that:

- i. PD18e (data protection breach disclosure) was a material reason for any detrimental treatment because the fact or substance of it was not mentioned as amounting to a disciplinary matter during the disciplinary process, and the Claimant's own

case on causation is that he was subjected to a detrimental treatment because he had gone to the press about “*the circumstances surrounding the departure of Dame Donna Kinnair and Joan Myers.*”

- ii. PD5 and PD6 influenced the decisions of the Ohringer Panel and the Carr Panel, because both panels expressly proceeded on the basis that the Claimant had made no such disclosures.
- iii. the decisions of the Mayhew Panel and the Carr Panel on the Conduct Matter was influenced by the disclosures because the matters they had dealt with had nothing to do with the press disclosures, the reasons the panels gave for their decisions speak for themselves, and the Claimant does not suggest any hidden motivation on the Respondent’s part.

121. The Claimant’s answers to these submissions are that:

- (i) he has shown that his disclosures were the direct cause of the disciplinary actions against him and how the disclosures affected the disciplinary process,
- (ii) the Respondent was aware of PD5 and PD6 at the relevant times,
- (iii) the Mayhew panel process was biased and unfair and the matter is currently being considered by the TUCO and therefore it will be wrong to strike down his claim pending the TUCO’s determination on this issue.

122. There is clearly a dispute between the parties on some key facts, in particular the level of knowledge of the Ohringer and Carr Panels’ members about the Claimant’s disclosures to the press, and what influence that had on their decision making.

123. I note that SQ’s investigation report records [p. 616] his findings that the Claimant had shared “*details of the settlement agreement with Dame Kinnair as well as speaking with multiple journalists, and caused the national press to write various articles which bring the RCN into disrepute*”, and that the Claimant disclosed to the press “*not only the existence of the settlement agreement with Dame Kinnair but also details of the settlement. There is evidence that he has confirmed the existence of a settlement agreement with Dame Kinnair and inferences can be drawn that he likely also confirmed the amount of the settlement to the Mail on Sunday*”.

124. Furthermore, the Respondent’s letter of 2 February 2022, which set out the disciplinary charges against the Claimant in relation to the Press Disclosure Matter states [p.619] as one of the allegations: “*Your disclosures to the Times and the Daily Mail regarding the circumstances surrounding the departure of Dame Donna Kinnair*”.

125. The Respondent admits that it was aware of the reporting by Kate Mansey in the Mail On-Line on 18 September 2021 and suspected that this was based wholly or in part by the Claimant's press disclosures, though, it says, it was not aware of the precise content of PD6. Both panels had Council members, who, on the Claimant's case, would have been given extensive briefings by the Respondent's executive team about the press reports and how the Respondent was planning to deal with those. That, the Claimant claims, would have influenced their decision making on the disciplinary charges against him. The Claimant referred me to emails at [p.1136-1139] and at [p.1473] which appear to corroborate his assertions.
126. I accept that the Panels' decision and the interview notes of Mr Ohringer by Mr Carr suggest that both panels proceeded on the basis of PD3 alone and by accepting the Claimant's evidence that his other press disclosures had substantially the same content. This, however, is just one evidence which by itself is not sufficient to dispense with a proper enquiry into all relevant circumstances of the case. Therefore, until such an enquiry is concluded, and the relevant witnesses are questioned, I find that it would be wrong to decide in a summarily fashion that the Claimant's case on causation with respect to PD5 and PD6 has no or little reasonable prospect of success.
127. I also find it will be inappropriate to strike out (or make a deposit order with respect to) the Claimant's allegation that PD18e was one of the disclosed wrongdoings, which disclosure caused the detrimental treatment. Firstly, PD18e was not a separate disclosure, but part of disclosures containing other information. The Claimant's case is not that a particular aspect of his disclosures was the cause of the detrimental treatment. He relies on all his disclosures and their content. For the reasons set out above (see paragraphs 91 - 97 and 106) I find it is inappropriate at this stage of the proceedings to dissect the Claimant's disclosures in the way Mr Coghlin suggests by his submissions.
128. For the same reason, I see no reason to single out the Mayhew Panel's and the Carr Panel's decisions and the process on the Conduct Matter. The Claimant's case is not that those particular decisions were made because of his disclosures. His case is that he was subjected to this disciplinary process (which he considers biased and unfair) and the resulting disciplinary actions because he called off the alleged wrongdoings by DDK, and some of her supporters retaliated against him in that matter. When he later realised that the Respondent was going to cover up the alleged wrongdoings, he went to the press, which then resulted in further retaliatory actions by the Respondent.
129. All that may or may not be true, and I make no findings of fact on these matters. They can only be properly determined when all relevant evidence are duly examined. Until such examination is done, and taking the Claimant's

case at its highest, his allegations that the Conduct Matter process and its outcome were influenced by his disclosures cannot be said to have no or little reasonable prospect of success. Based on the evidence in front of me, I cannot say that what the Claimant asserts has no real substance or otherwise flies in the face of contemporaneous documentary evidence.

130. The fact that the Mayhew Panel and Carr Panel provided detailed and well-reasoned findings and conclusions on the Conduct Matter is certainly very relevant and might very well be highly persuasive evidence. However, the due process requires such evidence to be tested in an open hearing.

131. For all these reasons, I find that the Respondent's application to strike out, in whole or in part, the Claimant's "whistleblowing" claim under s.47B ERA, or, in the alternative, make a deposit order in relation to the corresponding allegations and arguments, must fail.

Complaint of being unjustifiable discipline

132. I shall now deal with the Respondent's application in relation to the Claimant's complaint of being unjustifiably disciplined under s.64 TULRCA.

133. The Respondent submits that the Claimant's complaint of unjustifiable discipline has no (or little) reasonable prospect of success because:

- (i) The only relevant "assertion" of a relevant breach in the Claimant's PD3 was in relation to PD18e (breach of data protection laws) and therefore there were no "assertions" with respect to PD18a to PD18d.
- (ii) the allegation with respect to PD18e is bound to fail on causation for the same reasons as apply to the whistleblowing detriment complaint,
- (iii) there were no "determinations" by the Ohinger Panel and the Mayhew Panel because their decisions did not take place immediately and were automatically suspended upon and pending the Claimant's appeal.
- (iv) with respect to the discipline for the Conduct Matter the complaint is bound to fail on causation for the same reasons as apply to the whistleblowing complaint,
- (v) anyone who leaked confidential information to the press with intention of causing harm would have been disciplined in the same way even if they had not made an "assertion" – s.65(5) TULCRA.

134. Grounds 133(i), 133(ii) and 133(iv) stand to be dismissed for the same reasons as apply to them in the context of the strike out/deposit order application with respect to the Claimant's whistleblowing detriment complaint - see paragraphs 89-97, 127, and 128-130, respectively.

135. I do not accept that the decisions of the Ohringer Panel and the Mayhew Panel were not “determinations” within the meaning of s.65 TULRCA. Unlike in the case of **TGWU v Webber** (upon which the Respondent relies), these were not mere “recommendations”, these were definitive sanctions applied by the panels (see [p. 740]), and [pp. 569, 570], respectively). There were no “condition subsequent” for these decisions to come into effect. The fact that the Claimant had the right to appeal and that he exercised that right, does not make them less of effective determinations. These were the conclusive decisions imposing the definitive sanctions on the Claimant which stood, unless overturned on appeal.
136. In any event, the Respondent accepts that the Carr Panel’s decisions were “determinations”. The Claimant’s claim is that the entire process was him being “unjustifiably disciplined”. Therefore, I see little practical sense in the Respondent’s attempt to single out the Ohringer Panel’s and the Mayhew Panel’s decisions for the purposes of considering the prospect of success of the Claimant’s complaint of unjustifiable discipline.
137. For these reasons, I find that the Respondent’s application for strike out/deposit order on this ground must fail too.
138. Finally, the question of whether or not anyone else who leaked confidential information to the press but made no “assertion” would have been treated in the same way as the Claimant, is a question of fact and can only be answered when all relevant evidence are duly considered. The EAT decision in **Coxhill v Unite the Union** 2021 IRLR 911, EAT supports that conclusion, where at [46] HHJ Taylor said (*my emphasis*):
- “The determination of what the union would have done absent the protected component is difficult. In some cases, there may be evidence about what the union has done in similar circumstances that may be of key importance in determining how the union would have acted in the circumstances under consideration. In other cases, the tribunal may have to assess the evidence of a witness who answers the hypothetical question, would the member have been subject to the same disciplinary sanction absent the protected component of the conduct for which the member was disciplined. However, considerable care needs to be taken in assessing such evidence. [..]”**
139. Despite the Respondent’s submission that “*there is no reason to think otherwise*” (i.e., that anyone else would have been disciplined in the same way in these circumstances), the Claimant clearly does think otherwise. He gives his reasons for that, which taking them at their face value cannot be said to be so improbable and fanciful as to be disregarded without any further examination of the relevant facts. It follows that I do not find that the Respondent’s s.65(5) defence is so unequivocally obvious and strong that it is bound to succeed.
140. For these reasons, I conclude that the Respondent’s application for strike out/deposit order with respect to the Claimant’s complaint of unjustifiable discipline must fail.

Remedy

141. Finally, the Respondent submits that the Claimant's claim for the remedy of reinstatement to membership of the RCN has no reasonable prospect of success because no such remedy can be awarded by the Tribunal under the relevant provisions of the ERA and the TULRCA, and even if such power existed, there is no reasonable prospect that the Tribunal would exercise it in the Claimant's favour, because of the decisions on the Conduct Matter containing "*frankly unanswerable finding of gross misconduct*".

142. The Claimant submits that if he succeeds on his claims and the Tribunal makes a declaration to the effect that his expulsion was unlawful, there will be considerable public pressure on the Respondent to readmit him. If the Respondent fails to do that, he will consider making an application for compensation.

143. Section 113 ERA gives the Tribunal the power to order reinstatement or re-engagement of an unfairly dismissed employee. However, the Claimant's claim for unfair dismissal has been struck out. There are no equivalent powers in s.49 ERA with respect to whistleblowing detriment complaints or s.67 TULRCA with respect to complaints of unjustifiable discipline.

144. Therefore, to the extent the Claimant seeks a remedy of reinstatement as an order to be made by the Tribunal, that part of his claim has already been struck out together with his substantive claim for automatically unfair dismissal.

145. Insofar as the Claimant says that a declaration by the Tribunal to the effect that the Respondent has subjected him to a detriment on the ground that he has made a protected disclosure and/or that he was unjustifiably disciplined by the Respondent will cause the Respondent under the public pressure to readmit the Claimant, I regard this as the Claimant seeking the relevant declaration, which the Tribunal has the power (and indeed the obligation) to make if it finds in the Claimant's favour.

146. I note that in both ET1s the Claimant ticked the box "Compensation only" as the remedy sought. He does mention "reinstatement" in his second ET1 as something he is looking for, however, I do not read it as him seeking that as an order by the Tribunal.

147. Therefore, I find that with the Claimant's unfair dismissal claim being struck out there is simply no other claim for reinstatement remaining in the case.

Overall conclusion

148. The Respondent's application to strike out the Claimant's remaining complaints in the claim or make those subject to a deposit order fails and is dismissed. All the Claimant's remaining complaints in the claim shall proceed to be considered and decided on their merits at a final hearing to be listed by the Tribunal.

Case Management Orders made pursuant to Rule 29 ET Rules.

149. There shall be a case management preliminary hearing to finalise issues in the claim, list the claim for a final hearing and give further case management directions.

150. Within 14 days of the date this Judgment is sent to the parties, the parties must write to the Tribunal giving their dates to avoid from April 2023 to September 2023.

Employment Judge Klimov

13 February 2023

Sent to the parties on: 14 February 2023

For the Tribunals Office: *Melanie*

Public access to employment tribunal decisions

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