

B E T W E E N:

SHAHMIR SANNI

(Claimant)

-and-

THE TAX PAYERS ALLIANCE LIMITED

(Respondent)

PARTICULARS OF CLAIM

Parties

- (1) The Claimant was employed by the Respondent from 13 March 2017 to 13 April 2018. He was employed as a Digital Campaign Manager. His responsibilities included running the Respondent’s social media accounts, YouTube channel, and producing website content and video content.
- (2) The Respondent is a self-declared “grassroots campaigning group dedicated to reforming taxes, cutting spending and protecting taxpayers”. It is a lobbying group pursuing a right-wing political ideology. It operates from 55 Tufton Street, Westminster, an office block where seven other similar right-wing political organisations are based.
- (3) The Claimant was summarily dismissed by the Respondent on 13 April 2018.

Legal Claims

- (4) The Claimant advances claims of:
 - (a) Automatically Unfair Dismissal by reason of having made a protected disclosure (s.103A Employment Rights Act 1996 (“ERA”));
 - (b) Directly discriminatory dismissal (s.13 and s.39(2)(c) Equality Act 2010 (“EqA 2010”) because of his belief that protecting the integrity and sanctity of British democracy from taint and corruption was paramount, which is a philosophical belief protected by s.10 EqA 2010 and in accordance with the characteristics set out in *Grainger v Nicholson* [2010] ICR 360;
 - (c) Protected Disclosure detriment (s.47B ERA), namely:-

- (i) Causing or permitting a derogatory article to be written in Brexit Central; and
 - (ii) Instructing Wilsons LLP to write the letter wrongly threatening defamation proceedings; and
 - (iii) Permitting or causing the making of derogatory statements in public and the media on 4 July 2018.
- (d) Wrongful dismissal.

Facts

- (5) Prior to his employment with the Respondent, the Claimant was engaged as a volunteer for Vote Leave Ltd, the designated campaigning body in the campaign for the UK to leave the European Union (“the Leave Campaign”), which culminated in the referendum on 23 June 2016.
- (6) During his involvement in Vote Leave, the Claimant was closely integrated into the campaign. He was made aware of facts which demonstrated that the running of that campaign may have been illegal, although he was not aware at the time that the facts and events he observed demonstrated illegality.
- (7) In particular, the Claimant observed that a group on which he was primarily working, BeLeave, was in fact being directed by another campaign group, Vote Leave. Vote Leave was the group officially designated by the Electoral Commission as the main Leave Campaign group and as a result attracted a spending limit of £7m which was substantially greater than those of other campaign groups. BeLeave was an internal outreach group which was part of Vote Leave. About a month before the Referendum, Vote Leave officials assisted the Claimant and Darren Grimes to transform BeLeave into a nominally separate campaign group, of which the Claimant and Mr Grimes were the officers. However, in reality BeLeave continued to be a very small outreach group which worked under the direction of and coordinated closely with Vote Leave. The Claimant did not know at the time that it is illegal under the Political Parties Elections and Referendums Act for two co-ordinated campaign groups to declare separate spending; where a group co-ordinates with the designated group, all its spending should be declared by that designated group

- (8) Towards the end of the referendum campaign, the Claimant became aware that Vote Leave was nearing its spending limits. By this time, the Claimant had been appointed as Research Director, Secretary and Treasurer for BeLeave. Funds for BeLeave were very limited and the Claimant was unpaid and meeting his own travel expenses. In early June 2016, he was informed by Victoria Woodcock (Chief Operations Officer of Vote Leave) that a way had been found to procure funding for BeLeave. She informed the Claimant that £625,000 was being donated to BeLeave. However, the funding was made available on the condition that this money would be paid to a company called Aggregate IQ (“AIQ”).
- (9) The Claimant at the time understood that the various Leave Campaign groups were simply separate campaigning arms - effectively separate brands - of the same central organisation, Vote Leave. He believed this because this was how they were run in reality. He did not know that it was illegal for such coordinated groups to spend money jointly, or that the separate Leave Campaign groups ought to have been run and funded autonomously. The Claimant was only shortly out of university and although his job title was Research Director, in reality he deferred to and took instructions from the senior members of Vote Leave. William Norton, the Head of Compliance for Vote Leave, gave advice to the Claimant about how BeLeave should be set up in order to receive donations. However, nothing that Mr Norton said to the Claimant indicated that anything was amiss in how the Leave Campaign was being run. The Claimant did not have the wherewithal or authority to check the legality of how the campaign was being run by the more senior members of Vote Leave.
- (10) Aggregate IQ was the digital advertising company which was contracted by Vote Leave to run its digital campaigns. Mr Zack Massingham, a director of AIQ, was embedded in the Vote Leave campaign and the Claimant regularly saw Mr Massingham in the offices that Vote Leave shared with BeLeave. Mr Massingham was also active on chat apps that the Leave Campaign used in which Vote Leave and BeLeave campaigners would communicate, and to which the Claimant was a contributor. Mr Massingham primarily worked directly with Dominic Cummings (Vote Leave Campaign Director) and Henry de Zoete (Vote Leave Director of Digital), who were the de facto decision makers behind Vote Leave, and by extension, behind BeLeave.

- (11) The Claimant observed that a very limited amount of work was done by AIQ/Mr Massingham specifically for BeLeave. Primarily, this work was focussed on the targeting of online social media advertising. The success of this work was measured in engagements with individuals, and in particular email sign-ups and mobile numbers retrieved. The Claimant does not believe that these services could possibly have accounted for the £625,000 provided to AIQ by Vote Leave, ostensibly as a donation to BeLeave. After the referendum had concluded, the Claimant discovered that during the period of AIQ's work for BeLeave, 1,163 email sign ups and 1,005 mobile numbers were obtained. The Claimant does not know whether these were in fact procured as a result of work done by AIQ, or instead represented email address and mobile numbers which BeLeave already had on its database independently of any work done by AIQ for BeLeave. The Claimant believes that the cost of retrieving around 1,000 email addresses and telephone numbers would be in the region of £10,000.
- (12) On discovering that 1,163 email address and 1,005 mobile numbers had been retrieved, the Claimant did not believe that this represented a valuable service provided by AIQ to BeLeave, in light of the £625,000 fee: it amounted to £537 per email address and £621 per mobile phone number. By contrast, the Claimant recalls Dominic Cummings has subsequently stated that the AIQ work for Vote Leave resulted in a cost of around £10 per email address and phone number recovered.
- (13) In the circumstances, he infers that the vast majority of the £625,000 paid by Vote Leave to AIQ, and a further £50,000 paid by another donor to AIQ, ostensibly to pay for digital services to BeLeave was in fact used to fund digital services for Vote Leave.
- (14) The claimant further believes that the two campaigns co-ordinated their digital strategies after the donations were made, in particular by using data or information received by the Vote Leave campaign to inform digital strategy in the BeLeave campaign. AIQ was also providing services to Vote Leave at the same time and it is the Claimant's belief that the digital services provided were based on target audiences which combined Vote Leave and BeLeave potential voters. This constitutes a coordinated campaign. The Claimant is aware that AIQ's website carried a quote from Dominic Cummings which stated: "*Without a*

doubt, the Vote Leave campaign owes a great deal of its success to the work of AggregatIQ. We couldn't have done it without them". The quote was subsequently removed from the AIQ website.

- (15) The first occasion on which the Claimant realised something was amiss was on 22 June 2016, the day before the referendum vote. He was part of a Vote Leave campaign day in Dover, which included a media event and press call. Although he and Darren Grimes were officers of BeLeave, they were instructed to campaign on behalf of Vote Leave in Vote Leave branded clothing. After the event, the assembled Vote Leave and BeLeave staff had lunch together. Stephen Parkinson, national organiser of Vote Leave instructed Darren Grimes of BeLeave (the nominal head of BeLeave) to pay the bill for the lunch. The Claimant thought that this was unreasonable because Mr Grimes had no income from his work, and had previously expressed to the Claimant how worried he was about his personal finances during the Leave Campaign. The Claimant therefore understood that Mr Grimes would be paying personally from his own pocket, which he could not afford to do. The Claimant expressed to Mr Grimes that it was not reasonable for him to be paying from his own pocket. Mr Grimes assured the Claimant that it was OK, and he paid the bill. The Claimant observed that Mr Grimes was nevertheless upset to be doing so. The Claimant did not understand why Mr Grimes was paying and felt uneasy about this, but did not query the issue further.
- (16) Subsequently, the Claimant came to believe that this may have been an attempt to represent a Vote Leave event as a BeLeave event (thereby categorising the spending at the event to BeLeave's campaign spending limits and not Vote Leave's).
- (17) The following day was the referendum itself, and in the celebrations that followed the result, the Claimant did not interrogate his concerns further.
- (18) On or about 8 June 2016, the Claimant read an article on the BuzzFeed website by Marie Le Conte and Jim Waterson headlined "Why Did Vote Leave Donate £625,000 to A 23-Year-Old Fashion Student During the Referendum?" The article was about spending by BeLeave during the referendum campaign and about the £625,000 received by Darren Grimes in particular. The article did not make a

direct allegation of illegality, but stated “A spokesperson for the Electoral Commission confirmed that while it was acceptable for one campaign to donate to another “all expenditure they spend working together would be reported under expenditure of Vote Leave”. The Claimant knew that this had not in fact been the case and that expenditure reported under BeLeave had in fact been incurred while working closely with Vote Leave (and indeed at Vote Leave’s instruction).

- (19) At this stage however, the Claimant was of the view that the referendum campaign had been fairly and legally run. He continued to rely on the more senior Vote Leave officials who reassured him and Mr Grimes that the article was not true and that there was nothing to worry about. As a result, the BuzzFeed article did not immediately change his view. However, it unsettled him that the quote from the Electoral Commission appeared to indicate that there had been something wrong in how Vote Leave and BeLeave had conducted themselves.
- (20) Following the BuzzFeed article, Mr Grimes told the Claimant that he was being pursued by other journalists about the £625,000 donation. The Claimant saw that a “line to take” had been circulated by Victoria Woodcock to various former Leave Campaign staff to respond to journalists’ enquiries. Mr Grimes and the Claimant deferred to the senior former Vote Leave staff in how to deal with this, including Victoria Woodcock, Antonia Flockton (Vote Leave Finance Director) and Paul Stephenson (Vote Leave Press Director) and Stephen Parkinson. Broadly, their approach was to describe the press interest as being the action of “Remoaner” journalists, meaning people who had campaigned against leaving the EU, refused to accept the result and were in effect re-litigating the referendum. The Claimant accepted this, because the more senior staff were significantly more experienced than him, and because their expertise was evident from the success of the Leave Campaign.
- (21) The Claimant remained friends with Mr Grimes, and saw that over time, the journalists’ enquiries continued to be made to Mr Grimes. The Claimant observed this causing distress to Mr Grimes, which was compounded when the Electoral Commission made initial enquiries into BeLeave spending. On 9 September 2016, the Claimant was told by Mr Grimes that the Electoral Commission had written to him asking for a statement. As they had done with

the press enquiries, the Claimant and Mr Grimes sought assistance from more senior ex-Vote Leave staff.

- (22) Mr Grimes asked the Claimant to delete his Vote Leave emails. At this point, the Claimant still did not think that anything improper had taken place on the Leave Campaign and did not think anything of this request. He complied with Mr Grimes' request, but only because he thought it was "housekeeping" and because Mr Grimes seemed upset. Because he did not think it was a particularly important request, the Claimant deleted emails from his inbox, but forgot to delete emails from his sent items.
- (23) As the press enquiries continued to be made to Mr Grimes, the Claimant became more uneasy about the situation and began to believe that he and Mr Grimes may have been used by the officials in the campaign. On 1 March 2017, Mr Grimes contacted the Claimant to ask the Claimant's help in responding to a further query by the Electoral Commission who had decided to open an investigation. The Claimant advised him to respond to the Electoral Commission as he had been advised by the senior ex-Vote Leave staff. The Claimant had never received any training on electoral or campaign finance law, and relied entirely on the direction of more senior Vote Leave staff both during and after the campaign. Their assurances to him and to Mr Grimes that nothing untoward had taken place were taken at face value by the Claimant.
- (24) During 2017, the Claimant was in also in a sexual relationship with Stephen Parkinson, and the Claimant discussed with Mr Parkinson how the Claimant would respond to any queries if they were ever made to him, and how Mr Grimes was responding to the queries that were being made to him. The Claimant trusted that Mr Parkinson would be honest in his advice and would not advise the Claimant or Mr Grimes to do anything which could cause them any difficulty.
- (25) From 13 March 2017, the Claimant was employed by the Respondent. He had initially applied for a job with Brexit Central as a Deputy Editor, and had interviews with Jonathan Isaby and Matthew Elliot. He was not appointed to this job, but was instead offered a role with the Respondent. Although both Mr Elliot and Mr Isaby were former Chief Executives of the Respondent, they had no formal role with the Respondent at the time that they interviewed the Claimant.

- (26) By summer 2017, with press inquiries continuing to be made, and with the benefit of reading the press reports that had been published, the Claimant began to understand that there was substance behind the concerns being raised about the Leave Campaign's financing. The Claimant realised that he could still access the BeLeave shared drive. He saw that on 17 March 2017, it appeared that Victoria Woodcock had made amendments to the drive by removing access to 140 documents on the drive for Dominic Cummings, Henry de Zoete and Ms Woodcock herself.
- (27) The Claimant could think of no legitimate reason why Ms Woodcock would do this. He realised that if alterations were made to the drive, it would make it harder for an outside observer to understand the extent to which BeLeave was in fact directed by the senior staff of Vote Leave. It was at this point that the Claimant's previous concerns about potential wrongdoing crystallised into a stronger belief of wrongdoing. He became worried that he and Mr Grimes were becoming implicated in the wrongdoing after the event by the statements that they were being given by the senior ex-Vote Leave staff to give to the press and the Electoral Commission.
- (28) The Claimant confided in his friend Chris Wylie, who was speaking to Carole Cadwalladr of the Guardian, who was investigating the Leave Campaign funding. Mr Wylie advised the Claimant to speak to Ms Cadwalladr, which initially the Claimant was unwilling to do. Mr Wylie informed the Claimant that Bindmans LLP were advising him, and in November 2017 asked the Claimant to attend Bindmans' offices so that a copy of the shared drive could be taken and certified so as to preserve evidence in case it was later destroyed or altered. The Claimant did so.
- (29) The Claimant was a staunch believer that the UK should exit the EU and had been extremely proud of the role that he had played in securing the referendum result. He therefore found himself somewhat conflicted: on the one hand wanting to ensure that any wrongdoing around the Leave Campaign should be properly investigated; but on the other keen not to do anything that could undermine the result of the referendum if this could be avoided or was not justified, and keen not to expose some of his friends and colleagues - and in particular Mr Grimes - to any distress because of their role in the campaign

which in any event had been unwitting. From late 2017 until spring 2018 therefore, the Claimant continued to speak with Ms Cadwalladr on the proviso that his information was kept confidential. She complied with this request. In the course of these conversations, the Claimant became increasingly of the view that wrongdoing had taken place and had corrupted the referendum result.

- (30) On 5 December 2017, the Claimant attended a staff review meeting with John O’Connell and Sara Rainwater. They told the Claimant that they were very impressed with the Claimant’s work and his performance. They said that there was “one thing” that they wished to criticise, which was his punctuality. This was explicitly said not to be a criticism of his work, but that they had processes to which staff, including the Claimant, need to adhere. No indication was given that this could form the basis of a disciplinary, much less a dismissal.
- (31) On 14 December 2017, Sara Rainwater of the Respondent wrote to the Claimant following the staff review meeting on 5 December 2017.
- (32) On 10 January 2018, John O’Connell of the Respondent wrote to the Claimant, again referring to the Claimant’s punctuality. The Claimant no longer has a copy of this communication, but does not recall that Mr O’Connell was alluding to any form of disciplinary taking place.
- (33) In March 2018, Mr Wylie instructed counsel to prepare a full opinion for the Electoral Commission and the Claimant agreed to prepare a witness statement setting out his experiences in the Vote Leave campaign. Counsel Clare Montgomery QC, Helen Mountfield QC and Ben Silverstone of Matrix Chambers provided their final advice on 20 March 2018, although the Claimant had been told in advance of 20 March 2018 what the advice was likely to be. When it was completed, the advice confirmed what the Claimant had been less formally told previously. In particular, Counsel advised that:
- (a) The Political Parties, Elections and Referendums Act 2000 (“PPERA”) imposes limits on referendum expenses which individuals and bodies involved in campaigning at a referendum are entitled to incur in relation to their campaign. Under the European Union Referendum Act 2015 (“EURA”), referendum expenses incurred as part of a plan or other arrangement between a designated organisation and another campaign group, as defined

in paragraph 22 of Schedule 1 (“**Common Plan Expenses**”), are treated as having been incurred by the designated organisation and must be reported by *that* organisation.

- (b) Every individual or group which campaigned in the EU referendum and which incurred expenses of more than £10,000 during the referendum period was required to provide the Electoral Commission with a return setting out (among other things) the expenses it had incurred, including any Common Plan expenses. PPERA provides for criminal offences where such individuals or groups exceed their spending limits or fail to provide a statement of all of their referendum expenses in their spending return to the Commission.
- (c) On the basis of this information of which the Claimant was aware, there were strong grounds to infer that Vote Leave was involved in the decision by which the AIQ payments were made (by it, to AIQ, ostensibly on behalf of BeLeave), that it was aware of the scope of the work which would be conducted pursuant to those payments, and that the payments were incurred by Vote Leave to promote the outcome for which Vote Leave campaigned, and/or in concert with BeLeave and that the two campaigns conducted a common plan and any expenses incurred were incurred as part of that plan.
- (d) Those expenses should have been declared to the Electoral Commission as Vote Leave expenses. Had they been so declared, Vote Leave would have exceeded the campaign spending limits imposed under PPERA. They were in fact declared under BeLeave’s return, thus falsely misrepresenting the campaign spending and falsely recording Vote Leave’s spending as being beneath the spending limit imposed upon it.
- (e) It appeared that attempts had been made after the referendum and in response to the Electoral Commission’s investigation into Leave Campaign spending, to obscure the fact that BeLeave spending had in fact been incurred by Vote Leave, including in the instruction to delete emails and in the manner in which Mr Grimes and the Claimant were given “lines to take”

to the Electoral Commission investigation that concluded in September 2016.

- (f) To the extent that offences had been committed, and were committed with the knowledge, assistance and agreement of other senior figures/officers in Vote Leave, then those senior figures/officers would be guilty of conspiring to commit those offences. They may also be guilty of the substantive offences as aiders and abettors.
 - (g) That Mr Halsall (designated as Vote Leave’s “responsible person” under PPERA) delivered an expenses return which did not comply with the statutory requirements; and that Mr Halsall had therefore made a false declaration in the declaration submitted with the Vote Leave return, which was also potentially a criminal offence.
- (34) By this stage, the Claimant had resolved that he should take steps to address the illegality in the referendum result. He felt that it was incumbent on him personally to do so because he was in a unique position given his direct experience with Vote Leave. The Claimant remained a staunch advocate for the UK leaving the European Union, but his overriding belief (which informed and guided his view of the UK’s membership of the EU) was in the sanctity of British democracy. The illegality of the Vote Leave campaign, combined with the Claimant’s belief in the sanctity of British democracy, therefore dictated the Claimant’s decision to take steps to address this illegality by sharing his knowledge of it.
- (35) The Claimant did not believe he could share his concerns with his employer. Many of the Respondent’s staff had formal roles in Vote Leave, or alternatively worked for the Respondent or connected organisations before or after working on the Leave Campaign. Some of these individuals figure in the Claimant’s Protected Disclosures. The nature of his concern was that it called into question the legality of the referendum result, and the Claimant reasonably believed therefore that he could be subjected to a detriment because the Respondent, its associated organisations and the individuals that work for them have a strong political belief in the UK leaving the EU. As a result the Claimant believed that were he to share his concerns with his employer, this could result in him being

subjected to a detriment. He was aware that this could include him losing his job with the Respondent.

(36) Among the individuals in the Leave Campaign with strong connections to the Respondent or to organisations closely linked to the Respondent were:

- (a) Matthew Elliot was the Chief Executive of Vote Leave, and was founder and is a former Chief Executive of the Respondent. He subsequently launched a website named “Brexit Central”, of which he is the editor-at-large.
- (b) Jonathan Isaby was the Respondent’s Chief Executive, and is now editor of Brexit Central. As the Respondent was nominally neutral on the Leave Campaign, he did not play a part in it; however, since taking post at Brexit Central, he is vociferously pro-Brexit. The website he edits has also strongly (and prior to his dismissal) criticised the Claimant for his Protected Disclosures.
- (c) Hugh Bennett worked with the Claimant on the referendum campaign, and is now employed by Brexit Central.
- (d) John O’Connell was the Development Director of Vote Leave, and is the Chief Executive of the Respondent.
- (e) Chloe Westley was a senior individual on Vote Leave (who set up BeLeave’s Twitter account) and is the Campaign Manager of the Respondent.
- (f) Tom Banks was Vote Leave’s operations manager in Yorkshire, and was appointed after the referendum to be the Respondent’s grassroots campaigns manager.
- (g) Sara Rainwater was the Operations Assistant to Matthew Elliot at Vote Leave and is the Operations Director of the Respondent.
- (h) Lee Rotherham set up “Veterans for Britain”, a group similar to BeLeave, also an internal outreach group which received services from AIQ via a donation from Vote Leave during the referendum campaign, and is a Research Fellow for the Respondent.

- (i) Andrew Whitehurst worked on IT for Vote Leave, and had previously worked for the Respondent.
 - (j) Rob Oxley worked at the Respondent and then worked on the Leave Campaign.
 - (k) William Norton was the Head of Compliance for Vote Leave and regularly attended the Respondent's offices, although the Claimant does not know in what capacity.
 - (l) Darren Grimes worked with the Claimant at BeLeave, and now works for Brexit Central.
- (37) It was clear to the Claimant that serious wrongdoing had occurred and that it was a matter of significant public interest given that it demonstrated that there were grounds to suspect cheating by Vote Leave in the referendum campaign. He was concerned that evidence would be lost or destroyed if he did not come forward and describe what he had seen. He considered this cheating to be an affront to democracy and although it could undermine the result of the referendum, that result in his view was illegitimate because Counsel's advice gave the Claimant the reasonable belief that the result had been illegally obtained. The Claimant decided to do what he could to ensure that his knowledge entered the public domain so that the public could know that the Leave Campaign had been illegally conducted.

The Protected Disclosures

- (38) The Claimant agreed to assist Mr Wylie by providing evidence to submit to the investigation by the Electoral Commission (which was renewed in November 2017 after it had initially cleared the Respondent of wrongdoing). The Claimant therefore prepared a witness statement and then provided further evidence pursuant to a request from the Commission.
- (39) On 20 March 2018, Mr Wylie submitted the Claimant's witness statement and documents to the Electoral Commission [PD1]. This set out, among other information, what the Claimant knew about the involvement of AIQ, the manner in which BeLeave had been directed by Vote Leave and information showing that

attempts had been made to obscure the involvement of Vote Leave individuals in the running of BeLeave.

(40) PD1 was a Protected Disclosure pursuant to s.43B ERA because:

- (a) The Claimant was disclosing information which he reasonably believed was in the public interest and tended to show:
 - (i) That criminal offences had been committed (including as set out at paragraph (33) above);
 - (ii) That a person had failed to comply with legal obligations to which they were subject. The persons were Vote Leave and its senior staff, including Mr Halsall, Mr Parkinson and Mr Cummings.
 - (iii) That information relating to the criminal offences and failures to comply with legal obligations had been and was likely to be deliberately concealed; in particular the attempt to remove access of Ms Woodcock and others to the BeLeave documents on the shared Google Drive, and the dissemination of “lines to take” by senior Vote Leave staff in response to the Electoral Commission investigation that concluded in September 2016.
- (b) In compliance with s.43C(1)(b) ERA, PD1 was made to the Electoral Commission, which had legal responsibility for breaches of electoral and referendum financing laws.
- (c) Further or in the alternative, PD1 was also made in compliance with s.43H ERA because:
 - (i) The Claimant reasonably believed that the information disclosed and any allegation within it was true;
 - (ii) He did not make the disclosure for purposes of personal gain;
 - (iii) The relevant failure was of an exceptionally serious nature; and
 - (iv) It was reasonable for him to make the disclosure, given that it was to the Electoral Commission; disclosed a very serious (potentially criminal) failure to comply with electoral law; the failure was continuing because the Electoral Commission had erroneously

absolved BeLeave of wrongdoing in September 2016; and was not made in breach of any duty of confidentiality owed by the Claimant.

- (d) Further or in the alternative, PD1 was also made in compliance with s.43G ERA because:
- (i) The Claimant reasonably believed that the information and any allegation within it was true;
 - (ii) He did not make the disclosure for purposes of personal gain;
 - (iii) At the time that he made the disclosure, he reasonably believed that he would be subjected to a detriment by his employer if he made the disclosure to his employer;
 - (iv) At the time that he made the disclosure, he also believed that information relating to the substance of the disclosure would be concealed or destroyed if he made the disclosure to his employer. This was because of the close relationships between the Respondent and associated organisations and senior individuals from the Leave Campaign and because he anticipated that if he disclosed information to his employer that this information would then be shared with former Leave Campaign individuals; and because he had already observed information being concealed and/or destroyed when he had observed what appeared to be Ms Woodcock attempting to delete the names of Vote Leave staff from BeLeave documents on the shared Google Drive.
 - (v) It was reasonable for him to make the disclosure, given that it was to the Electoral Commission; disclosed a very serious (potentially criminal) failure to comply with electoral law; the failure was continuing because the Electoral Commission had erroneously absolved BeLeave of wrongdoing in September 2016; and was not made in breach of any duty of confidentiality owed by the Claimant.

- (41) The Claimant did not believe that the Electoral Commission would be able to resolve all the issues that he had raised. The most that the Electoral Commission could do was to issue a relatively small fine, and refer the matter to criminal investigation. Neither the Electoral Commission nor any subsequent criminal investigation could directly cause another (fair) vote to take place, which would avoid the illegalities of the June 2016 referendum. The Electoral Commission was relatively modestly resourced and had already investigated (and incorrectly exonerated) BeLeave. Any fresh investigation could take several months or longer. Alternatively, if the facts of which the Claimant was aware became more widely known, there was a possibility that political pressure could cause the referendum to be re-run. Such publicity however could not wait until the end of the investigation because by this time the UK might be too far through the process of leaving the European Union for another, legitimate and fair vote to be conducted.
- (42) The Claimant therefore believed that public awareness of the detail of his complaint to the Electoral Commission could create political pressure for the referendum result to be revisited democratically. The Claimant therefore believed that it was in the public interest for his concerns to be raised in the media which would potentially result in a popular or political consensus to emerge about whether the Leave Campaign had been so illegitimately pursued as to require a fresh referendum to take place.
- (43) The Claimant also believed that his name and his personal experience and former role at Vote Leave should be attached to his concerns as this would give them extra weight and therefore increase the possibility that these concerns would be adequately and promptly addressed. The Claimant saw this as his moral obligation as a citizen of the UK.
- (44) On 21 March 2018, the Claimant told John O'Connell that he had made PD1, and that he intended to further disclose information to the media, and Carole Cadwalladr of the Guardian and the Observer in particular. He did so notwithstanding that he had concerns that it could result in him being subjected to a detriment.

- (45) Upon being told by the Claimant of his intentions to disclose information to Ms Cadwalladr, Mr O’Connell advised the Claimant not to do so. Mr O’Connell called the Claimant on several occasions on or about 21 March 2018 to ask about the information that the Claimant would be disclosing. The Claimant said that he would be telling the truth about what he had seen while working on the Leave Campaign. The Claimant got the impression that Mr O’Connell was putting questions to the Claimant and seeking to relay his answers to other former Leave Campaign staff. The Claimant was uncomfortable with this.
- (46) In their various calls on 21 March 2018, Mr O’Connell advised the Claimant not to speak to the media. He said on more than one occasion words to the effect “*it’s up to you, and you should do what you want, but if it was me, my best advice would be to not to come forward.*” Mr O’Connell was explicit however that this was merely his advice, and was not an instruction. The Claimant and Mr O’Connell agreed that issues around the Leave Campaign were not work-related, even though others of the Respondent’s staff were involved with the Leave Campaign. The Claimant assured Mr O’Connell that he would not be disclosing any information about the Respondent. Mr O’Connell accepted this, and in the event the Claimant kept to this assurance.
- (47) As part of these telephone calls, Mr O’Connell referred the Claimant to his employment contract. He told the Claimant that it was a term of the contract that he could not bring the Respondent into disrepute. He also referred to there being a Whistleblowing policy.
- (48) The Respondent’s Whistleblowing policy is non-contractual. It provides that:
- (a) At Paragraph 16.2.2:
- If you have any genuine concerns related to suspected wrongdoing or danger affecting any of our activities (a whistleblowing concern) you should report it under this policy.*
- (b) At Paragraph 16.3:
- 16.3.1 We hope that in many cases you will be able to raise any concerns with the Operations Director... They may be able to agree a way of resolving your concern quickly and effectively.*

16.3.2 *However, where the matter is more serious, or you feel that the Operations Director has not addressed your concern, or you prefer not to raise it for any reason, you should contact the Chief Executive.*

(c) At Paragraph 16.5:

External Disclosures

16.5.1 *The aim of this policy is provide an internal mechanism for reporting, investigation and remedying any wrongdoing in the workplace. In most cases you should not find it necessary to alert anyone externally.*

16.5.2 *The law recognises that in some circumstances it may be appropriate for you to report your concerns to an external body such as a regulator. It will very rarely if ever be appropriate to alert the media. We strongly encourage you to seek advice before reporting a concern to anyone external. The independent whistleblowing charity, Public Concern at Work, operates a confidential helpline...*

16.5.3 *Whistleblowing concerns usually relate to the conduct of our staff, but they may sometimes relate to the actions of a third party, such as a customer, supplier or service provider. The law allows you to raise a genuine concern with a third party, where your reasonably believe it relates mainly to their actions or something that is legally their responsibility. However, we encourage you to report such concerns internally first. You should contact the Operations Director.*

(49) In the circumstances, the Claimant complied with the Respondent's Whistleblowing policy in the manner in which he raised his disclosures:

(a) The policy was not engaged. The Claimant's concerns were not about "suspected wrongdoing or danger affecting any of [the Respondent's] activities" (Policy paragraph 16.2.2) or "wrongdoing in the workplace" (Policy paragraph 16.5.1). The wrongdoing was by Vote Leave during the referendum to leave the European Union. The Respondent as an organisation had taken a neutral position on the referendum to leave the

European Union and no wrongdoing had been done by the Respondent or in the Respondent's workplace.

- (b) There was nothing in the Claimant's view that the Operations Director (Policy paragraph 16.3.1) or the Chief Executive (Policy paragraph 16.3.2) could conceivably have done to address his concerns. In any event, the Claimant did report to the Chief Executive (Mr O'Connell) on 21 March 2018.
 - (c) Alternatively, in the event that the policy did apply to the disclosures, the policy acknowledged that in some cases it is necessary to alert someone externally (albeit that this acknowledgment is implied in the sentence "*In most cases you should not find it necessary*" (policy paragraph 16.5.1)). On any view, a set of disclosures that called into question the result of an internationally significant constitutional referendum was not "most cases".
 - (d) Similarly, the policy acknowledges that in some circumstances it will be appropriate to alert the media (implied in the sentence that it will "*very rarely if ever*" be necessary (policy paragraph 16.5.2)). The nature of the Claimant's disclosures are of a unique and substantial nature which have never previously had cause to be made, thus satisfying this element of the policy.
 - (e) Given that the disclosures were not about the work of the Respondent, any disclosure to the Respondent would have been "*external*" to the organisation (Vote Leave) about whom the disclosures were being made.
 - (f) The Claimant had complied with the policy's encouragement to seek advice before reporting a concern to anyone external (policy paragraph 16.5.2). He had taken advice from solicitors prior to disclosing information to the Electoral Commission.
- (50) The Claimant's disclosure to the Electoral Commission was given to Ms Cadwalladr and to Channel 4 News and the New York Times and he gave them permission to publish it. The information that he gave them formed the basis of an article written by Ms Cadwalladr and published in the Observer on 25 March 2018. Channel 4 News broadcast an interview with the Claimant. The New York

Times also published an article. These articles contained the specific information which the Claimant believed demonstrated the illegality of the Leave Campaign as set out at paragraph (33) above. Collectively, the information given to the Observer, Channel 4 News and the New York Times was a Protected Disclosure [PD2].

(51) PD2 was a protected disclosure because:

- (a) The Claimant was disclosing information which he reasonably believed was in the public interest and tended to show the same facts as under PD1 (above).
- (b) Further or in the alternative, PD1 was also made in compliance with s.43H ERA because:
 - (i) The Claimant reasonably believed that the information disclosed and any allegation within it was true;
 - (ii) He did not make the disclosure for purposes of personal gain;
 - (iii) The relevant failure was of an exceptionally serious nature; and
 - (iv) It was reasonable for him to make the disclosure, given that it was to reputable news organisations and journalists who had been working on the issues in the Claimant's disclosures since the referendum; disclosed a very serious (potentially criminal) failure to comply with electoral law; the failure was continuing because the Electoral Commission had erroneously absolved BeLeave of wrongdoing in September 2016 and was not expected to resolve the fresh concerns raised in PD1 with any degree of urgency; and was not made in breach of any duty of confidentiality owed by the Claimant.
- (c) Further or in the alternative, PD2 was also made in compliance with s.43G ERA because:
 - (i) The Claimant reasonably believed that the information and any allegation within it was true;
 - (ii) He did not make the disclosure for purposes of personal gain;

- (iii) No person is prescribed under s.43F (via the Public Interest Disclosure Order 2014) and the Claimant reasonably believed that that it was likely that evidence relating to the substance of his disclosures would be concealed or destroyed if he made the disclosure to his employer, in light of the connections between his employer and senior members of Vote Leave (paragraph **Error! Reference source not found.** above) and the apparent attempted removal of access of Vote Leave staff to BeLeave documents on the shared Google Drive and the dissemination of “lines to take” by senior Vote Leave staff during the Electoral Commission inquiry into Vote Leave that concluded in September 2016.
- (iv) It was reasonable for him to make the disclosure, given that it was to reputable news organisations and journalists who had been working on the issues in the Claimant’s disclosures since the referendum; disclosed a very serious (potentially criminal) failure to comply with electoral law; the failure was continuing because the Electoral Commission had erroneously absolved BeLeave of wrongdoing in September 2016 and was not expected to resolve the fresh concerns raised in PD1 with any degree of urgency; and was not made in breach of any duty of confidentiality owed by the Claimant.

(52) The information contained within PD2 was to be published by the Observer on Sunday 25 March 2018. Ahead of this, on a date before Friday 23 March, individuals who would be named in the article were notified of the pending publication by the Observer and Channel 4 news and were approached for comment by Ms Cadwalladr and the other media. Stephen Parkinson, who had recruited the Claimant to Vote Leave, was National Organiser of the Vote Leave campaign, and had subsequently become the Prime Minister’s Political Secretary in Number 10 Downing Street, was so approached. The Claimant had been in a sexual relationship with Mr Parkinson during the referendum campaign and subsequently. The Claimant’s sexuality was not known to his family. Mr Parkinson knew this, but his response to the media contained a statement referring to the Claimant’s sexuality. Dominic Cummings, Vote Leave’s

campaign director, published it on his blog. The Claimant believes that Mr Cummings was leaked Mr Parkinson's statement by Mr Parkinson or someone acting on his behalf. Mr Cummings' blog was removed following correspondence from Bindmans LLP, but on Friday 23 March 2018, Number 10 Downing Street sent an email to the New York Times marked [Official] which disclosed the Claimant's sexuality publicly.

- (53) The Claimant had no foreknowledge that his sexuality would be disclosed in such a public manner. This caused severe distress to the Claimant. He was forced to call his mother and tell her his sexuality for the first time. He also had to contact other members of his family. Several of his family live in Pakistan, and the Claimant and his family feared that members of his Pakistan-based family could be subject to violence because the Claimant had been named by Number Ten Downing Street as being gay. The Claimant and other of his family had to contact his family in Pakistan, appraise them of the situation and assist them to leave their homes at very short notice in case they were attacked. These events caused the Claimant immense distress.
- (54) Ahead of publication of the article the following day, the Claimant appeared on Channel 4 News on 24 March 2018. He discussed the substance of his disclosures. This was a Protected Disclosure [PD3].
- (55) PD3 was a protected disclosure because:
- (a) The Claimant was disclosing information which he reasonably believed was in the public interest and tended to show the same facts as under PD1 (above). In addition, the Claimant discussed on Channel 4 News his involuntarily "outing" by Number Ten Downing Street. This was a breach of a legal obligation by Number Ten to protect his Article 8 right to a Private and Family Life, and it was in the public interest for breaches by the Prime Minister's office of the European Convention on Human Rights to be made public.
 - (b) PD3 was also made in compliance with s.43H and/or s.43G ERA for the same reasons as PD2.
- (56) In response to the publication of PD2, the Foreign Secretary Rt Hon Boris Johnson MP issued a statement calling the content of the Claimant's disclosures

“utterly ludicrous”. It was not clear whether or how the Foreign Secretary had seen the evidence that the Claimant had provided to the media. In effect however, the Claimant was being called a liar in the press by one of the most senior members of the British state. This, together with his public outing by Number Ten Downing Street two days previously meant that the Claimant was placed under immense strain. Mr Johnson was a public supporter and key figurehead of Vote Leave.

(57) On 25 March 2018, the Claimant was contacted by John O’Connell. He offered the Claimant paid leave for a week, which the Claimant agreed. Mr O’Connell referred to the fact that the Claimant’s evidence had been reported in the media, but gave no indication that the Claimant should not have provided this, nor that he should desist from doing so further.

(58) The Claimant made further public statements and appearances over the following days. He made no negative statements about the Respondent.

(59) The Claimant gave interviews to:

(a) Print media:

- (i) Washington Post (William Booth)
- (ii) Financial Times (Aliya Ram)
- (iii) The Times (Sam Coates)
- (iv) New York Times (David D. Kirkpatrick)
- (v) The Independent (Lizzy Buchan)
- (vi) The New Statesman (George Eaton)

(b) Broadcast media:

- (i) Sky News
- (ii) Good Morning Britain
- (iii) BBC - World this Weekend, BBC News and the Daily Politics
- (iv) LBC News

(c) Media focussed on young and/or gay audiences:

- (i) Dazed and Confused

(ii) Gay Star News

(iii) Pink News

(60) Each of these was a further protected disclosure (together “**The Press Disclosures**”). They were protected disclosures for the same reasons as PD3, save that:

(a) As well as the information disclosed under PD1, the Claimant was also disclosing that Number Ten Downing Street had “outed” him, in breach of its legal obligation to him under Articles 8 and 10 of the European Convention on Human Rights.

(b) The Claimant was disclosing to a broader range of press and media because his initial disclosures had resulted in personal attacks upon him (including the “outing” by Number Ten Downing Street and a statement by the Foreign Secretary that the Claimant’s disclosures were “*utterly ludicrous*”), in light of which the focus had been shifted from the essence of his disclosures, which the Claimant believed demonstrated that the referendum campaign had been irretrievably corrupted, to a distracting and undermining focus on his sexual relationship. On the same day that PD2 was published, the Mail On Sunday front page headline was “PM’S AIDE IN TOXIC SEX ROW OVER PRO-BREXIT CASH PLOT”. The Claimant strongly believed in the sanctity of democracy and an untainted vote, and his disclosures related to exceptionally serious failures which sought to pervert the course of democracy. In such circumstances, he believed he was compelled to make these additional protected disclosures in order to ensure that the substance of them was not buried in the coverage of his “outing”.

(61) On or about 1 April 2018, Mr O’Connell called the Claimant again and advised him to take a further two weeks’ leave. The Claimant agreed.

Dismissal

(62) On 12 April 2018, the Claimant was invited to a meeting with Mr O’Connell the following day. On arrival at the meeting, which took place on 13 April 2018, the Claimant was told that he was being dismissed with immediate effect. Mr

O'Connell told him that the reason for the dismissal was because his punctuality had been an issue, because of absences from the office and because the substance of his protected disclosures had caused a problem for the Respondent and its staff. Mr O'Connell emailed a dismissal letter to the Claimant shortly after the meeting. There was no discussion and the Claimant was offered neither the opportunity to respond to the allegations against him, nor the opportunity to appeal.

- (63) Although it is not explicitly stated, it appears that the Respondent was purportedly relying on the reason of conduct in order to justify the Claimant's dismissal. The allegations against the Claimant were purportedly in relation to punctuality and the manner (but not the substance) in which he made his Protected Disclosures. However, nothing in the letter could reasonably be said to amount to misconduct or to any other potentially fair reason for dismissal. It is the Claimant's claim that any supposed concerns about his conduct were not genuinely the reason for his dismissal, and that the real reason for his dismissal was the substance of his Protected Disclosures. The Claimant invites the Tribunal to draw adverse inferences from the false reasons for the Claimant's dismissal advanced by the Respondent in the dismissal letter.
- (64) Further or in the alternative, the Claimant avers that the real reason for his dismissal was because of his belief that protecting the integrity and sanctity of British democracy from taint and corruption was paramount, which is a philosophical belief (the Claimant's "**Protected Belief**") protected by s.10 EqA 2010 and in accordance with the characteristics set out in *Grainger v Nicholson* [2010] ICR 360, and accordingly his dismissal constituted unlawful direct discrimination pursuant to s.13 and s.39(2)(c) EqA 2010.
- (65) The letter criticised the Claimant for absences from the workplace. His absences from the workplace had been agreed with Mr O'Connell in advance. The Claimant had been publicly "outed" by Number 10 Downing Street, his family put in peril, and he had been attacked in the press by the Foreign Secretary. This was deeply distressing for the Claimant and had necessitated legal advice both immediately before and in response to the disclosure from Number 10 Downing Street. In the circumstances, the Claimant's agreed absences were:

- (a) Entirely reasonable and understandable, and in no way the basis to conclude that he had repudiated his employment contract.
 - (b) Likely only to be short lived.
 - (c) Incapable of justifying a dismissal.
 - (d) Not explored or interrogated by the Respondent in reaching a conclusion that the Claimant should be dismissed.
- (66) It is the Claimant's claim that the reason for his dismissal was that he had raised Protected Disclosures which called into question the legality of the Leave Campaign and/or his Protected Belief. Although the Respondent as an organisation had remained neutral on the referendum to leave the European Union, its entire staff (to the Claimant's knowledge) supported the Leave Campaign, with many of them working on various aspects of it. The Respondent is a politically active organisation, and political beliefs and identities are central to its ethos. The substance of the Claimant's disclosures and/or his Protected Belief have therefore been treated by the Respondent as an attack on its ethos and have elicited the Claimant's dismissal.
- (67) The letter dismissing the Claimant demonstrated that his Protected Disclosures and/or his Protected Belief were the main or substantial reason for his dismissal. The first page of the dismissal letter sets out complaints against the Claimant's punctuality and attendance. These are dealt with above, and the Claimant asserts that they are incapable of justifying dismissal.
- (68) On the second page of the dismissal letter it is explicitly stated that the Claimant's Protected Disclosures and/or his Protected Belief caused the dismissal:

The various [punctuality] issues above had already led us to consider terminating your employment. There were many verbal discussions among senior management and I took the decision to continue to give you a chance and look at your role. These existing issues have now been compounded and brought to a head by recent events concerning referendum donations (hereafter referred to as "the funding issue") and the new campaign you are working on.

(69) It is therefore explicit that whatever the significance of the Claimant's punctuality (and the Claimant says that these are of no significance), they did not amount to a reason to dismiss the Claimant until after he had raised his protected disclosures and/or the substance of his Protected Belief. Therefore it was the Claimant's protected disclosures and/or his Protected Belief which elicited the dismissal.

(70) The second page continues:

(a) *"... you said you were intending to speak to Carole Cadwalladr at the Observer. In a subsequent phone call that day I advised you that I didn't feel that was a good idea as I didn't feel it was in the best interests of the TPA..."*

As set out above, Mr O'Connell had referred the Claimant to the Whistleblowing policy, and had said words to the effect that *"if it was me, I would not go public"*. There was no instruction from Mr O'Connell to the Claimant not to speak with Carole Cadwalladr or the press, nor any indication to the Claimant that any disciplinary or dismissal could arise from him doing so.

(b) *"You appeared on Channel 4 News, having done a pre-recorded interview. This led to negative attention about the TPA on social media and an inference that the TPA might have been in some way, directly or indirectly, involved in your actions."*

The Claimant has not seen any negative comments about the Respondent on social media in relation to his disclosures, and would expect to see evidence of this in the Respondent's disclosure. Who or what organisation made a *"negative inference"* is not specified. The nature of the meeting in advance of the letter being provided to the Claimant was such that there was no opportunity for the Claimant to interrogate this statement and therefore to attempt to answer it.

(c) *"You appeared on the front page of The Observer and in various other media outlets with your allegations about the funding issue... The features included videos and a photoshoot which I must assume were being prepared some time ago. None of this was reported to me (or the*

TPA generally) and I question whether this was, to some extent, the reason for time you took out of the office as well as general absence and lateness.

The allegation that the Claimant was late or absent because of “preparations” was not put to the Claimant before he was dismissed. In fact the Claimant had taken annual leave immediately prior to the story being published by the Observer, and it was in this time that preparations were made.

- (d) *“We agreed that, given the unfolding events, the stress you were likely under as events unfolded, combined with some shell-shocked colleagues at the TPA, it would be best for you to take the week as additional paid leave and would schedule a meeting after Easter. You have in part referred to this conversation in your dealings with the media.*

It is correct that, when asked in one interview about the reaction of his employer to his disclosures, the Claimant answered the question by saying that his employer had granted him time away from the office. He was not in any way negative about the Respondent. Mr O’Connell, in granting leave to the Claimant, had not indicated that this leave was in any way confidential or should not be discussed by the Claimant. The statement by Mr O’Connell that *“you have in part referred to this conversation in your dealings with the media”* is incapable of generating a complaint against the Claimant, as it appears intended to do.

(71) On page three of the letter it is stated:

“Monday 26 March: You spent much of the day undertaking media interviews and attending/speaking at a media function. This included “Good Morning Britain”, “Daily Politics” and an evening event at the Frontline Club. Whilst I gave you this week off as additional paid leave (for the reasons set out above), it is clear that you are determined to push ahead with as much exposure regarding the funding issue as possible with little regard for your employment with the TPA or any adverse publicity this organisation has or may receive though no fault of its own.”

- (72) The Claimant was on agreed leave on 26 March 2018. The Respondent made no attempt to identify with the Claimant his future intentions to “*push ahead with ... exposure*” and did not explain why any such plans were incompatible with his employment. As set out above, the Claimant had not referred in any way negatively to the Respondent in any public forum prior to his dismissal.
- (73) By the time of the dismissal on 13 April 2018, the Claimant’s appearances in the media had been covered by Brexit Central, whose editor (Jonathan Isaby) and editor-at-large (Mr Elliott) had originally interviewed the Claimant as part of his recruitment by the Respondent. Mr Elliott remained a periodical presence in the Respondent’s offices until the end of the Claimant’s employment, and would attend Away Days that the Respondent held from time to time. The Brexit Central article was published on 28 March 2018, and authored by Hugh Bennett, Deputy Editor of Brexit Central. The article (“*Revealed: The Inconsistent and Inaccurate Claims of the Brexit ‘Whistleblower’*”) was a slanted and inaccurate piece, designed to unfairly cast the Claimant in a negative light and in so doing to undermine the substance of his disclosures. It is the Claimant’s case that this piece demonstrated the Respondent’s reaction to the substance of the Claimant’s protected disclosures and/or Protected Belief, and the reference to his appearance at the Frontline Club demonstrates that it was the substance of his disclosures and/or belief, and not the venue or manner in which he made his disclosures, which elicited his dismissal. It is further the Claimant’s case that the publication of this article demonstrated why his protected disclosures and/or Protected Belief led to his dismissal: the Respondent was part of a wider pro-Brexit organisation that needed to rebut the Claimant’s disclosures and/or his Protected Belief, because they put in jeopardy Britain’s exit from the European Union. This was done by personally attacking the Claimant. This approach could not feasibly be pursued if the Claimant remained in the Respondent’s employment.
- (74) It is further the Claimant’s case that the reference to “this organisation” (“*the TPA or ... this organisation*”) is not a reference to the Respondent as a legal entity but is reference to a wider network of right wing entities which act in cohort with one another and from which the decision to dismiss ultimately emanated. These right wing entities are set out below (“The Nine Entities”).

(75) The third page continued:

“It is very disappointing that you did not first come to me when you were approached by the media at least to discuss matters properly so that we could consider the TPA and all who work in it might be affected.”

(76) This is contrary to what Mr O’Connell had said to the Claimant when the Claimant had approached him, which was to consider the Whistleblowing Policy. Mr O’Connell advised the Claimant not to “go public” but did not instruct him not to do so. The Whistleblowing Policy makes no reference to a meeting with the Chief Executive to discuss how such disclosures might affect the Respondent and its staff.

(77) The third page continued:

“You continued to be late to work (not always notifying in advance and seeking authority) because of meetings with lawyers”.

(78) At the date of dismissal, the Claimant had been given two periods of special leave: the first for a week, the second for two weeks. All instances of lateness took place before these periods of leave. The lateness could not therefore reasonably have caused the decision to dismiss the Claimant because if they were a material reason then the Claimant would have been dismissed instead of being granted leave. The real reason for the dismissal was the Claimant’s protected disclosures and/or his Protected Belief.

(79) It is also not the case that the Claimant was late because of meetings with lawyers. This allegation was not put to the Claimant before the dismissal and he was given no opportunity to respond to it.

(80) The third page of the letter continued:

This has already had, and is likely to continue to have, the (inadvertent or otherwise) consequence of the TPA being the spotlight for reasons not of its own making or wish and not to its benefit. One immediate consequence is that we have lost the support of at least one donor. Whilst the reasons given are personal to the donor (and I repeat that the funding issue is not a matter upon which I or TPA [sic] wish to be involved in), the fact that your stories to the media and your association with the TPA appears to be damaging our

reputation, could lead to more loss of support and is now inevitably going to be a distraction, for both [sic] you, everyone else in the TPA and the entirely separate mission of this organisation.”

(81) To the extent that “*this organisation*” refers to the Respondent, it is disingenuous of Mr O’Connell to state that the Claimant’s disclosures are “*entirely separate to the mission of this organisation*”:

- (a) Elsewhere in the same letter, he states “*the TPA advocates transparency, fairness and all parties abiding by the rules in these matters*”. This was explicitly the Claimant’s desired outcome in making his protected disclosures.
- (b) On the Respondent’s website, it defines its mission as to “*Change the perception that big government is necessary and irreversible; explain the benefits of a low tax economy; give taxpayers a voice in the corridors of power*”. It promotes transparency and activism to disclose wrongdoing, stating that the organisation “*uses the Freedom of Information Act to uncover information previously hidden from taxpayers... our enthusiastic campaign team communicates our research through the media. We receive over 600 media hits each month and work closely with journalists to respond to a wide range of news stories and collaborate on special exposés*.” The Claimant’s disclosures, which demonstrated in his reasonable belief that a major constitutional referendum had been illegally won promoted transparency to allow the public to be aware that there had been cheating in a referendum of major constitutional importance, thus giving them the knowledge to enable their voice to be heard in the “*corridors of power*” - without the information that he had disclosed, “*taxpayers*” would not be able to be “*heard in the corridors of power*” about anything they wished to say about irregularities in the Leave Campaign, because they would not know that those irregularities had taken place. The Claimant’s disclosures were not critical of the Respondent and were not made with the Respondent in mind. However, neither were they “*entirely separate from the mission*” of the Respondent, at least as far as the Respondent

chooses to declare its mission: his disclosures were in keeping with the Respondent's declared mission.

- (c) The Claimant has no knowledge whether or which of the Respondent's donors have withdrawn funding, or the circumstances in which they have done so. The Claimant will seek disclosure of documents relating to this withdrawal of funding and the reasons for it from the Respondent in these proceedings. To the Claimant's knowledge, all or substantially all of the Respondent's donors are strong supporters of the UK's departure from the European Union. The Claimant therefore believes that it was the substance of his Protected Disclosures, and not the manner in which he made them, which would have elicited any withdrawal of funding by a donor, if any such withdrawal took place. To the extent that this caused the Claimant's dismissal, it was a dismissal caused by his protected disclosures and/or his Protected Belief, and not because of any misconduct by the Claimant, or because anything done by the Claimant was in conflict with stated mission of the Respondent.

(82) The third page of the letter continued:

Your employment contract states:

- *Clause 2.4.1 - you must at all times promote the interests and further the business of the TPA and not do anything which may be prejudicial or detrimental to the business of the Company.*
- *Clause 2.4.2 - you must act with due diligence, propriety and regard to the good name and standing of the Company.*

Nothing that the Claimant has done has been of relevance to the Respondent. The Claimant has made no allegations against the Respondent. The Claimant has not breached this term of his contract.

(83) The third page of the letter continued:

The Staff Handbook states:

- *Part II, Section B (Conflicts and Potential Conflicts of Interest)*

- *Not to be engaged in any activity ... which in the opinion of the Chairman and/or Chief Executive, conflict directly with an activity or activities carried out by the TPA or is likely to interfere with our independent exercise of judgment in the TPA's best interest.*

Nothing that the Claimant has done has been in conflict with an activity or activities carried out by the Respondent, or, to the extent that it has, the Respondent has not specified how it has. The Claimant's activities have been in furtherance of the Respondent's mission as identified both in the dismissal letter and on the Respondent's own website (paragraph (81) above).

(84) The fourth page of the letter continued:

- *Acting in the best interest of the TPA is paramount and conflicts of interest should be avoided. Should you be in doubt as to whether an activity involves a conflict you should discuss the situation with the Operations Director or Chief Executive.*

As set out above, the Claimant had discussed the matter with the Chief Executive, prior to the publication by the media. The Chief Executive had not stated that there was a conflict of interest, nor instructed the Claimant not to release information to the media, nor indicated that the Claimant could face disciplinary or dismissal.

(85) The fourth page of the letter continued:

I believe that some, at least, of your absences, lateness and failure to perform your job has been due to your involvement with regard to the funding issue and not for the reasons given at the time of such absence/lateness.

This confirms that the reason for the dismissal was the substance of the protected disclosures and/or Protected Belief, and not for absence or lateness. The Claimant denies that the reason for any absence or lateness was his Protected Disclosures, but in any event the dismissal letter affirms that instances of lateness or absence were not cause for disciplinary if they were not

related to the protected disclosures and/or Protected Belief, but were a justification for dismissal if they could be said to be so related.

- (86) The Respondent further made no attempt to identify any connection between the Claimant's "*involvement with regard the funding issue*" (his protected disclosures) or even to identify any particular instance of lateness related to his protected disclosures and/or Protected Belief. The Respondent did not even ask him. The Claimant claims that the reason for this is that absences and lateness were a false pretext for his dismissal, the real reason for which was that the Claimant had made his Protected Disclosures and/or because of his Protected Belief.
- (87) In all the circumstances, the dismissal letter materially misrepresented the real reasons for the Claimant's dismissal and constituted a breach of the implied duty of good faith owed by the Respondent to the Claimant.

The Reason to Dismiss - The Nine Entities

- (88) The Respondent is one of seven organisations located at or with links to 55 Tufton Street, who each pursue different strands of the same political goals. One of these is the exit of the UK from the European Union.
- (89) The other organisations are:
- (a) The office of Peter Whittle, former leader of the UK Independence Party;
 - (b) Civitas: Institute for the Study of Civil Society Europe;
 - (c) The Adam Smith Institute;
 - (d) Leave Means Leave;
 - (e) The Global Warming Policy Foundation;
 - (f) Brexit Central;
 - (g) The Centre for Policy Studies (although its registered address is at 55 Tufton Street, its offices are elsewhere); and
 - (h) The Institute for Economic Affairs.

- (90) A further political organisation, Big Brother Watch, is based at Tufton Street but does not follow the same agenda as the other tenants. Another organisation, the Africa Research Institute is also based at Tufton Street, but its involvement with the rest of the tenants is limited.
- (91) The Respondent plus those organisations listed at paragraphs (89) (together, “the Nine Entities”) are a closely co-ordinated group:
- (a) Meetings take place at 55 Tufton Street every other Tuesday (“The Tuesday Meetings”). Attendance at the Tuesday Meetings varies, but is usually attended by all or substantially all of the Nine Entities. The Respondent and its staff lead the Tuesday Meetings, which are typically chaired by Mr Isaby. The purpose of the Tuesday Meetings is to agree a common line on political topics in the news between the Nine Entities, and to co-ordinate the public messaging that the individual organisations can then issue on that topic. This might include a new policy announcement by the Labour Party, developments in the Brexit negotiations or any other political news story. Individual themes within the common line are agreed and apportioned between some or all of the Nine Entities at the Tuesday Meetings. The express purpose of this is to provide a single set of agreed right wing talking points on a given topic in the media and to give texture to that view by providing for publication pre-agreed and mutually-complimentary message variations from different organisations, thereby getting more media coverage than a single message from a single organisation, thus securing more exposure to the public for the overall pre-agreed right wing line to take.
 - (b) There is a revolving door of employment among individuals in the Nine Entities (see paragraph (36) above).
 - (c) Staff who apply for employment with one organisation are appointed to another (as the Claimant was, see paragraph (25) above).
 - (d) At Conservative Party Conference each year, the Taxpayers Alliance and the Institute for Economic Affairs jointly host a venue called “The Think Tent” at which events are held. Conservative Party conference is the main annual gathering of conservative and right wing individuals,

organisations and politicians and significant planning and preparation goes into it. The programme of events at the Think Tent is agreed between the Taxpayers Alliance and the Institute for Economic Affairs in advance and discussed between the Nine Entities at the Tuesday Meetings.

- (e) Formal and informal social functions take place between the Nine Entities on a regular basis both at 55 Tufton Street and externally.
- (92) The Nine Entities together present an individual lobbying group pursuing the same political agenda. Central to that agenda is the belief that the UK should leave the European Union. A perceived attack on that agenda is perceived as an attack on all of the Nine Entities individually and collectively. The Claimant's Protected Disclosures have been perceived as an attack on that agenda because the Protected Disclosures cast doubt on the legality of the Leave Campaign.
- (93) The Claimant therefore believes that some or all of the Nine Entities (other than the Respondent) materially influenced the Respondent's decision to dismiss him. The Claimant believes that his Protected Disclosures and/or Protected Belief were discussed at a Tuesday Meeting, and that a concerted response to his Protected Disclosures and/or Protected Belief was discussed and agreed between the Nine Entities, and that this response included his dismissal.
- (94) On 27 April 2018, the Respondent received a letter from Wilsons LLP, solicitors for the Respondent. This letter threatened the Claimant with defamation proceedings because the Claimant had publicly stated that he would be instigating these proceedings. This letter was unnecessary, high handed and oppressive:
- (a) Wilsons must have known that there was no prospect of any defamation proceedings being possible against the Claimant for his true statement that he would be bringing these proceedings.
 - (b) The Claimant has instructed solicitors, and yet Wilsons wrote directly to the Claimant.
- (95) The receipt of a letter purporting to threaten legal proceedings was distressing for the Claimant.

- (96) On 3 July 2018, press reports were published which suggested that the Electoral Commission was shortly to publish a report which concluded that Vote Leave had breached electoral law as alleged by the Claimant in his protected disclosures. The reports stated that the Electoral Commission had written to Vote Leave individuals summarising its draft conclusions and seeking their comment on the same.
- (97) The following day, on 4 July 2018, Mr Elliot gave a series of press interviews in which he referred to the Claimant as a “fantasist”, a “so-called whistleblower” and stating that the Claimant was “completely lying” in the substance of his disclosures.

Unlawful dismissal

- (98) Accordingly, and by reason of the matters aforesaid, the Claimant claims that he has been unlawfully dismissed pursuant to s.103A ERA and/or pursuant to s.13 and s.39(2)(c) EqA 2010.
- (99) Further or in the alternative, the Claimant was wrongfully dismissed. It was an implied term of his contract that the Respondent would comply with its duty of good faith. In choosing to provide in the termination letter false reasons for the Claimant’s dismissal, the Respondent breached the duty of good faith, dismissed the Claimant in breach of contract and therefore wrongfully dismissed him.

Protected disclosure detriments

- (100) The Claimant further claims that he was unlawfully subjected to two detriments, contrary to s.47B ERA, by the Respondent on the ground that he had made any or all of the Protected Disclosures set out above, namely:
- (a) Causing or permitting the derogatory article to be written in Brexit Central (as set out in paragraph (73) above); and
 - (b) Instructing Wilsons LLP to write the letter (as set out in paragraph (94) above) falsely threatening defamation proceedings; and
 - (c) The derogatory statements to the press made by Mr Elliot on 4 July 2018 (paragraph (97) above).
- (101) The Claimant believes that the Respondent was materially influenced to subject him to those detriments as a result of the close connections between it and the

Nine Entities. In particular that the Nine Entities operate in close concert with each other and pursue common aims. One of those aims is to ensure the exit of the UK from the European Union. The Claimant's protected disclosures disclosed potential illegality by the Leave Campaign, whose former staff include individuals now employed by or otherwise connected to the Nine Entities. The disclosures therefore pose risks both to those individuals and to the UK's exit from the European Union. As a result, the Claimant pleads, the Respondent was materially influenced to subject the Claimant to detriment:

- (a) In retribution for his protected disclosures;
- (b) In order to protect those individuals tainted by his disclosures; and
- (c) To mitigate the risk to the UK's exit from the European Union.

Accordingly, the Claimant will seek disclosure from the Respondent of documents in which the Claimant's protected disclosures were discussed between the Respondent and others of the Nine Entities, including any documents relating to the discussion of the Claimant at any Fortnightly Meeting.

(102) Insofar as may be necessary for his s.47B claims, the Claimant claims that it would be just and equitable for time to be extended.

AND THE CLAIMANT CLAIMS:

(103) Damages and interest thereon at such rates as the Tribunal sees fit, including but not limited to an award for injury to feelings and/or aggravated damages and/or financial loss, arising out of the Claimant's claims for:

- (a) Automatically unfair dismissal (s.103A Employment Rights Act 1996).
- (b) Directly discriminatory dismissal (s.13 and s.39(2)(c) Equality Act 2010).
- (c) Protected disclosure detriment (s.47B Employment Rights Act 1996).

13 July 2018

**Bindmans LLP
Solicitors for the Claimant**

**Schona Jolly QC
Cloisters Chambers**

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