

BETWEEN

SHAHMIR SANNI

Claimant

and

THE TAXPAYERS' ALLIANCE LIMITED

Respondent

GROUND OF RESISTANCE

A. THE PARTIES

1. The Respondent is a campaign group which supports the reform of the taxation system, and the protection of taxpayers' interests.
2. The Claimant worked for the Respondent as a Campaign Manager (Digital) from 13 March 2017 until he was dismissed with a payment in respect of one month's notice on 13 April 2018.

B. FACTUAL BACKGROUND

B.1 The Claimant's appointment to the role of Digital Campaign Manager

3. The Respondent placed advertisements for a Digital Campaign Manager in January 2017. A former employee of the Respondent, Jonathan Isaby, was aware that the Respondent was recruiting and recommended the Claimant. John O'Connell (Chief Executive of the Respondent) then emailed the Claimant a link to the advertisement and asked if he was interested in applying.

4. The Claimant indicated that he was interested, and Mr O’Connell and the Claimant spoke by telephone about the role, following which the Claimant provided a copy of his CV. The Claimant attended a first round interview at the Respondent on 2 February 2017 and the panel recommended that he be invited back for a second interview along with 3 other candidates on 16 February 2017. The second round interview panel concluded that the Claimant should be offered the role, and on 16 February 2017 the Respondent sent him a written offer of employment.

B.2 The Claimant’s lateness and absence record

5. The Claimant accepted the offer and began work on 13 March 2017. His contractual working hours were 8.30 am to 6 pm, and it was explained to him (and his colleagues) that the 8.30 start time was important because they needed to spend 15 minutes reading and digesting a morning media briefing before a team meeting which took place at 8.45. The Claimant was also told that it was important that he should notify the Respondent if he was going to be late.

6. Despite this, from the outset of his employment the Claimant frequently attended work late or failed to attend at all. The Respondent began keeping detailed records from September 2017. These show the following in respect of lateness:

Month	No. of days C due to attend work ¹	No. of days C was late	% of days late
Sept ‘17	13	8	62%

¹ For clarity, this table shows only the occasions on which the Claimant was due to attend work but was late. This figure therefore excludes sick leave, bereavement leave, holidays, days on which the Respondent agreed in advance to the Claimant’s request to work from home, the two weeks’ leave that the Claimant was given in March 2018, days on which the Claimant was asked to attend conferences or similar, and days that the Respondent’s employees were given leave because of snow and days on which the Claimant didn’t attend work without advance warning.

Oct '17	14	10	71%
Nov '17	15	10	67%
Dec '17	6	2	33%
Jan '18	18	11	61%
Feb '18	16	9	56%
Mar '18	5	3	60%

7. In addition, during the 13 months of his employment the Claimant:

(a) had 22 days off sick;

(b) took 3 days' leave following the death of his great-grandmother;

8. On 4 further occasions - 3 May 2017, 8 November 2017, 21 March 2018 and 22 March 2018 – the Claimant simply failed to turn up to work without notifying the Respondent in advance and without subsequently providing any good reason.

B.3 Examples of reasons given by the Claimant for lateness/absence

9. The Respondent sought to be sympathetic when the Claimant had a justified reason for absence or lateness – such as sickness or bereavement leave. However, frequently, there appeared to be no good reason, or the Claimant failed to notify the Respondent in advance when he should have done so. As examples, during the period from May 2017 to January 2018 the Claimant gave the following excuses:

(a) on 3 May 2017 the Claimant did not attend the office and did not contact the Respondent until 11.25 am, when he said that he had “a few personal issues all at one time so I wasn’t able to come into the office”;

- (b) on 27 June 2017 he was late because his alarm didn't go off;
- (c) on 25 August 2017 he was late and said that his "security alarm malfunctioned";
- (d) on 8 September 2017 the Claimant was late. He told the Respondent "First time waking up for work in my new house – turns out my other housemates wake up the exact same time as me so there was a queue for the bathroom.";
- (e) on 27 September 2017 he said "Sorry Sara, I'll be late again :(- housemate was in the bathroom for ages.";
- (f) on 8 November 2017 the Claimant didn't attend work and didn't inform the Respondent. At 18.55 that day he emailed to say that he had been "at the council trying to get some emergency cash";
- (g) the following day (9 November 2017) he told the Respondent "I have some cash coming any minute now so will be able to make it in to work, just not in time for the meeting!";
- (h) on 21 November 2017 he told the Respondent "Will be 20 mins late as I'm just on the phone with my lawyers for a quick briefing regarding the whole beleave stuff in the news hope that's ok"; the Claimant was in fact 50 minutes late that day;
- (i) on 22 November 2017 he said "...woke up a bit late was working on my project for course all night ON MY WAY NOW";

- (j) on 28 November 2017 he said “...only just got out of the house, my housemate took ages (40 mins) in bathroom”;
- (k) on 10 January 2018 the Claimant did not attend the office until 1 pm (having agreed a start time of 9.15) and said that he was “on the phone with family back home for several hours and making urgent calls to ensure things didn’t screw up”;
- (l) on 17 January the Claimant was late because he overslept;
- (m) on 19 January he was late because his bus was in traffic.

B.4 The Claimant was given support and was repeatedly told that his conduct was unacceptable

- 10. Mr O’Connell and Sara Rainwater (the Operations Director of the Respondent) spoke to the Claimant and sent him various emails about his lateness and failure to attend work without good reason/notifying the Respondent in advance. He was told many times about the importance of attending work on time and keeping the Respondent informed of his whereabouts.
- 11. At the Claimant’s staff review on 21 June 2017 (around 3 months after he started) the Respondent commented on his lateness and the day on which he had simply not turned up for work. It also expressed its concerns about the Claimant’s failure to follow basic procedures for keeping the Respondent informed of his whereabouts. For example, the day before the staff review, he had attended work, but had then informed the Respondent at 9.19 am that he was meeting Daily Mail columnist Sarah Vine that day at 11 and hence would be leaving the office. The Respondent considered that he should

have given more notice as this was a meeting which the Claimant had known about in advance.

12. Despite the Respondent having made it clear to the Claimant at his staff review that his lateness, absence and failure to comply with procedures were unacceptable:

- (a) the day after that review the Claimant asked to leave work early due to illness. He said that he was attending a big Brexit event that evening and wanted to be well enough to attend. The Respondent allowed him to leave early, and the Claimant then called in sick the next day;
- (b) within a week of the review meeting, on 27 June 2017, the Claimant was late again. Mr O'Connell emailed him on 27 June 2017 about lateness, and Ms Rainwater emailed him on 28 June 2017;
- (c) in the month following the review Ms Rainwater emailed the Claimant twice about his failure to follow the Respondent's procedures for keeping it aware of his whereabouts.

13. In addition to providing guidance to enable the Claimant to understand the importance of attending work regularly and on time, the Respondent also provided the Claimant with practical support. When the Claimant told Mr O'Connell on 8 November that he had not come in to work because he had been "at the council trying to get some emergency cash", Mr O'Connell explained that this was not acceptable, saying:

"I understand the embarrassment factor but you really can't simply not turn up to work without telling someone. This isn't us being strict – it's obviously just normal for any working environment."

14. Nonetheless, the Respondent arranged for the Claimant to have a £200 advance on his November 2017 salary (split between £100 paid into his bank account and £100 on an

Oyster card, as the Claimant had said that he could not attend work because he did not have enough money to travel).

15. Despite the Respondent's support and clear instructions to the Claimant, his attendance and punctuality did not improve. The Claimant's staff review on 5 December 2017 noted:

"Lateness, unreported absence, etc. Our operations procedures are often ignored, and [Mr O'Connell] and [Ms Rainwater] demonstrate a lot [of] understanding and flexibility despite this. Going forward [the Claimant] must respect these procedures and demonstrate more willingness to get into the office."

16. The following week the Claimant was late on 2 of the 3 days that he was due to be in the office. Ms Rainwater emailed him on 14 December 2017 about this lateness, and on 16 December Mr O'Connell sent a further message to the Claimant saying "We just discussed lateness at your review! What's goin' on??".

B.5 Initial consideration of dismissing the Claimant – January 2018

17. During the latter period of 2017 Mr O'Connell and Ms Rainwater had had a number of informal discussions between themselves concerning the Claimant's lateness and how best to deal with it.
18. In January 2018 they formally discussed dismissing the Claimant for his lateness/poor attendance. As noted above, on 10 January 2018 the Claimant did not attend the office until 1 pm. Mr O'Connell wrote to him that day saying:

"After we agreed that you could come in at 9.15, you said to [Ms Rainwater] that you would be in at 9.45, then 10.30, and after a much delayed update at around

11.45, you are saying you will be in at 1. As well as the constant shifting of the times, Brixton is not over an hour away from the office.

Things happen in life and we try to be accommodating. But we deserve and expect some respect in return. At the moment, it is all one-way traffic – we are flexible, helpful and try to work with you to help with what’s happening personally. We don’t get any sense that you are giving us the same levels of respect back by communicating with us.

We are left trying to guess what’s happening and your team members are left to pick up the slack.

Remember, we are paying you for all of this time. The lack of communication is unacceptable.

As well as that, other people also have stuff going on in their lives but seem to make much more of an effort to communicate, make it in, work later, pick up the slack etc. At the moment, we give you so much room and we pay for you for so much time when you are out of the office and not actually working, and the situation really can’t continue.

Either you need to make more of an effort, as we have discussed several times, or we are going to stick more firmly to the rules.

Happy to meet and discuss.” (emphasis from original text)

19. Despite the clear terms of this email from Mr O’Connell, within one week of receiving it, on 17 January 2018, the Claimant again did not attend work on time, and again did not

contact the Respondent in advance to explain his absence. When the Claimant did get in touch with the Respondent at 9.40 am he said:

"I overslept really badly!!!! :(((("

20. As set out above, the Respondent had already given the Claimant various informal warnings by this stage, culminating in the email of 10 January 2018, and Mr O'Connell and Ms Rainwater discussed (via GChat) what they should do in response to the Claimant's further failure to attend work on time.
21. Ms Rainwater considered that it would be appropriate to dismiss the Claimant, or at the very least send him a formal written warning. However, Mr O'Connell decided that he would send the Claimant an email explaining that this was his last chance to rectify his attendance and timekeeping.
22. Both a formal written warning and an alternative email explaining to the Claimant that his lateness/failure to attend work was unacceptable were drafted, but in the event neither were sent as Mr O'Connell was unable to focus upon human resources issues at work due to a critical illness and then bereavement in his close family.
23. Nonetheless, it is clear that from the Respondent's point of view the Claimant's inability to attend work regularly and on time was a serious problem by January 2018. Ms Rainwater felt that the Claimant should be dismissed, and Mr O'Connell that he should be given one last chance.

B.6 Events of March 21 and 22 2018

24. On 21 March 2018 the Claimant did not attend the office. He initially told the Respondent via Whatsapp that he could not attend on time because he had overslept. However, later that day he said that he would not be attending at all because he had

been involved in providing the evidence and commentary which he now relies upon as protected disclosure PD1 in these proceedings, and that he was meeting his lawyers and arranging a meeting with a journalist.

25. None of the evidence or commentary referred to by the Claimant in PD1 related to the Respondent, and none of it was provided to the Respondent. Rather, the Claimant provided that evidence and commentary to his own solicitors and to journalists. Hence, the Respondent was not aware of the detail of what the Claimant was saying.
26. Nonetheless, it was immediately clear to the Respondent from what the Claimant told it on 21 March that there would be significant press interest in what the Claimant was saying, and that some of that press interest would be focussed on the Respondent as the Claimant's employer. Mr O'Connell explained to the Claimant on 21 March that he felt that speaking to the press was not a good idea, as it would not be in the best interests of the Respondent. The Claimant nevertheless chose to go ahead.
27. Had the Claimant's failure to attend work on 21 and 22 March 2018 not been related to the matters which he now relies upon as protected disclosures, then given his lateness and attendance record as set out above, and the discussion of his dismissal in January 2018, this further failure to attend without good cause is highly likely to have been the final straw for the Respondent.
28. However, in the event, the publicity generated by the matters which the Claimant relies upon as protected disclosures was of such a degree that the Respondent was not sure how best to proceed. The Claimant was therefore told that he could take some leave from the office from 23 March 2018. This was in part in order to give the Respondent (and particularly Mr O'Connell) more time to decide what to do in the light of the events set out in this section and Sections B.2 – B.5 above, and in part because the Claimant had indicated that he was busy and stressed.

29. Over the following days the Claimant was involved in providing information to various different media sources (the matters he refers to as PD2 and PD3). According to the Claimant's Particulars of Claim he spoke to 16 different organisations. The level of media interest thus intensified over this period.

B.7 Decision to dismiss the Claimant

30. As set out in section B.5 above, the Respondent had seriously considered dismissing the Claimant for lateness and unreliability in January 2018. Hence, leaving aside the matters which he relies upon as protected disclosures, his failure to attend work on 21 and 22 March 2018 was likely to have triggered his dismissal unless it had been for a good reason.

31. The Claimant gave two different reasons for not attending work on 21 and 22 March (without notice to the Respondent) – initially he said that he had overslept, and later the same day he said that he was meeting with his lawyers and wanted to meet a journalist. These were not good reasons for failing to attend work in accordance with his contractual obligations to the Respondent, particularly given that these failures to attend were the latest in a long line of previous failure to comply with his contractual obligation to attend work regularly and on time.

32. Further, whilst the matters relied upon by the Claimant as protected disclosures did not relate to the Respondent, the subsequent publicity did affect it and its employees. Because the Respondent was not informed until after the Claimant had undertaken the first of the media interviews, from its perspective the story broke very suddenly and it found itself part of a story that was receiving intense media scrutiny without any opportunity to prepare its response.

33. Mr O'Connell and Ms Rainwater felt that the Claimant should have spoken to them sufficiently in advance of the story breaking to have enabled them to consider how the Respondent's interests might be affected and manage any press interest proactively. The matters which the Claimant relies upon as constituting protected disclosures generated enormous media interest, including interest in the Respondent, and they reasonably felt that the Claimant should have considered the Respondent's interests in the manner in which he dealt with the media, in accordance with his contractual obligations.
34. In addition to this, shortly after the Claimant had failed to attend work on 21 and 22 March the Respondent learned (through social media) that the Claimant was part of a new campaigning organisation called Fair Vote UK. As is clear from the list of interviews which the Claimant has described as PD2 and PD3, he was also undertaking a very wide range of media activities. The Respondent reasonably believed that it was likely that the Claimant's already unacceptable level of lateness and unreliability would only become worse as a result of these additional activities.
35. For all of these reasons the Respondent concluded that the employment relationship had broken down and that it no longer wished to employ the Claimant.
36. On 13 April the Claimant attended a meeting with Mr O'Connell at which he was told that his employment was being terminated and the reasons for that decision.
37. The Claimant was given payment in lieu of his entitlement to one month's notice.

C. RESPONSE TO THE FACTS SET OUT BY THE CLAIMANT

C.1 Paragraphs that the Respondent cannot usefully comment upon

38. Large sections of the Claimant's Particulars of Claim set out the Claimant's version of events and matters which are not within the Respondent's knowledge. The Respondent cannot usefully comment on these sections. For this reason, the Respondent neither agrees nor disagrees with the following paragraphs of the Particulars of Claim:

- (i) Paragraphs 5 – 24;
- (ii) Paragraphs 26 – 29;
- (iii) Paragraphs 33 – 34;
- (iv) Paragraphs 37 – 43;
- (v) Paragraphs 50 – 56;
- (vi) Paragraphs 58 – 60;
- (vii) Paragraph 95 – 97.

C.2 Paragraphs that are agreed

39. The following paragraphs are agreed:

- (i) Paragraph 1;
- (ii) Paragraph 4 – in that it is agreed that those are the claims that the Claimant advances. The Respondent's response to those claims is set out below;

- (iii) Paragraph 46 (save as to the final sentence). The matters which the Claimant relies upon as protected disclosures were not disclosed to the Respondent, and hence it cannot make any comment on their content;
- (iv) Paragraph 47;
- (v) Paragraph 57;
- (vi) Paragraph 61;
- (vii) Paragraph 71 (other than an immaterial error in the transcription of punctuation);
- (viii) Paragraph 75;
- (ix) Paragraph 80.

C.3 Response to the remaining paragraphs

40. As to the remainder of the Particulars of Claim, the Respondent submits as follows:

- (i) Paragraph 2 – the Respondent is accurately described in paragraph 1 above. The Claimant’s comments in this paragraph as to the other organisations which have offices in 55 Tufton Street are dealt with in sub-paragraphs 40 (xxxii) to (xl) below.
- (ii) Paragraph 3 – the Claimant was dismissed on 13 April and paid for one month’s notice.

- (iii) Paragraph 25 – the circumstances in which the Claimant applied for and was appointed to his job with the Respondent are set out above. The role was advertised by the Respondent in January 2017, and although the Claimant was recommended for it by Mr Isaby, he was not simply appointed without any process as implied by paragraph 25. Rather, the Claimant applied for the advertised role by sending his CV and attended two rounds of interview prior to being appointed. Insofar as paragraph 25 avoids mentioning the recruitment process it is misleadingly incomplete.

- (iv) Paragraph 30 is also misleadingly incomplete as it wholly fails to describe either the Claimant’s persistent lateness and poor attendance or the repeated occasions on which he was told that his conduct was unacceptable. An accurate description of what was said to the Claimant concerning lateness at his December 2017 performance review (taken from contemporaneous notes) is set out at paragraph 15 above. As set out above, by January 2018 Ms Rainwater of the Respondent wished to dismiss the Claimant for his persistent lateness and poor attendance, but Mr O’Connell wanted to give him one last chance.

- (v) Paragraph 31 – this paragraph is accurate in that Ms Rainwater did write to the Claimant on 14 December 2017. The email flagged that the Claimant had been late on two of the three days that he had been in the office that week.

- (vi) Paragraph 32 - The email from Mr O’Connell to the Claimant referred to in paragraph 32 is set out in paragraph 18 above. Within a week of that email, on 17 January 2018, the Claimant did not attend work on time and said that he had overslept. The fact that the Respondent had made it entirely clear to the Claimant in the email of 10 January that the situation could not continue, but the Claimant had nonetheless been late again within a week of receiving it, was part of the reason why Ms Rainwater felt that he should be dismissed at that stage.

- (vii) Paragraphs 33 and 34 – the Respondent is not in a position to comment on the Claimant’s beliefs or state of mind, nor whether those beliefs were reasonable in the light of the information known to him. However, the implication in these paragraphs that the Respondent was in favour of the UK leaving the European Union during the referendum campaign is incorrect. The Respondent was expressly neutral on that issue (as the Claimant himself notes in paragraphs 49(a) and 66 of the Particulars of Claim). A number of the Respondent’s employees were in favour of Brexit, and/or involved in pro-Brexit campaigns, but equally there were employees who opposed it.
- (viii) Paragraphs 44 to 45 – the events of 21 and 22 March are set out in section B.6 above. The Claimant’s account of events in these paragraphs is inaccurate and does not accord with his own contemporaneous account (published in the New Statesman magazine on 28 March 2018):

“John O’Connell, the CEO [of the Respondent] has been very professional and supportive....His view was “I don’t understand what’s going on, I’m going to let you handle it, this is up to the Electoral Commission to decide, I’m not going to get involved. I’m your employer and so I’ll give you leave to sort this out and then we’ll have a meeting.”

As to the penultimate sentence of paragraph 45, whilst the Respondent cannot comment on the impressions that the Claimant may have had, there was no basis upon which the Claimant could reasonably have formed that impression. The Respondent set out its neutral position on its website on 19 February 2016 including the following:

“having taken soundings from supporters over a long period of time, it is clear that opinion is far from universal among you as to whether you think the country should vote to Leave or Remain. Such a spread of views

is represented among our staff as well, so you will understand how unnecessarily divisive it would be for us corporately to take a position that would alienate some of you.”

(ix) Paragraph 49:

Sub-paragraph (a) - The Respondent’s whistleblowing policy was engaged – it specifically envisages the possibility of concerns relating to third parties (para 16.5.3) and as a matter of construction paragraph 16.2.2 is not an exhaustive list of the remit of the policy;

Sub-paragraph (b) - The Respondent cannot comment on the Claimant’s views;

Sub-paragraph (c) - The section of the policy set out in this sub-paragraph is accurate. The constitutional importance or otherwise of the matters which the Claimant relies upon as protected disclosures is not the relevant issue in determining whether it was appropriate for him to undertake the long list of media interviews described in his Particulars of Claim.

Sub-paragraph (d) - The long list of media interviews and appearances that the Claimant sets out in his Particulars of Claim, and particularly those at paragraph 59 cannot reasonably be argued to be appropriate under the terms of the policy.

Sub-paragraph (e) - Agreed.

Sub-paragraph (f) - The Respondent has no knowledge of the advice (if any) that the Claimant sought.

- (x) Paragraph 62 – the circumstances of the Claimant’s dismissal and the reasons for it are set out in section B.7 above. Mr O’Connell does not recall using the phrase “with immediate effect”, but the precise wording is likely to be of limited importance given that it is agreed that the Claimant’s employment was terminated on that day. Mr O’Connell spoke about the Claimant’s lateness and failure to attend work. He did not say that the substance of the Claimant’s protected disclosures had caused a problem for the Respondent’s staff, although he had previously told the Claimant that staff were “shell-shocked”, which they had been given the magnitude of the media coverage and the seriousness of the claims. There was a discussion between the Claimant and Mr O’Connell, although it is correct that there was no formal process by which the Claimant was invited to respond to what he describes in this paragraph as “the allegations against him”. The Respondent did email a letter of dismissal to the Claimant shortly after the meeting.
- (xi) Paragraph 63 – the Respondent will rely upon and refer to the terms of the letter of 13 April 2018 as necessary. The Claimant’s lateness and failure to attend work were set out in detailed terms along with the Respondent’s concerns about his dealings with the media. Any reasonable person reading that letter, and certainly one who was aware of the facts as to the Claimant’s attendance set out above, would consider that his failure to attend work on time (and sometimes at all) was misconduct. In fact, the Claimant did not have two years’ service, and hence the issue of whether there was a potentially fair reason for dismissal – that is, whether there was a reason falling within section 98(2) of the Employment Rights Act 1996 – is irrelevant. The Respondent sets out below its

position in response to the Claimant's claim that his dismissal was automatically unfair.

- (xii) Paragraph 64 – see section D.3 below.

- (xiii) Paragraph 65 – this paragraph notes that the letter of dismissal criticises the Claimant for absences from the workplace, which appears inconsistent with the Claimant's assertion in paragraph 63 that "nothing in the letter could reasonably be said to amount to misconduct". Further, the Claimant appears in this paragraph to have misread the criticisms in the letter, which relate to his persistent lateness and absences prior to 23 March 2018 (as set out in detail above), by suggesting that these criticisms related to his agreed leave from 23 March 2018. The letter is clear that the criticisms of the Claimant relate to the period prior to his being granted leave. Hence the justifications of the Claimant's conduct set out in paragraph 65 do not address the criticisms actually made.

- (xiv) Paragraph 66 – the Respondent accepts that the Claimant is bringing the claim set out in this paragraph and that it was, as the Claimant asserts, neutral as to the outcome of the referendum to leave the European Union. It is not correct to assert that the Respondent's entire staff supported the Leave campaign; some supported remain and the Claimant was aware of this because at least one colleague with whom the Claimant worked was vocal in his support for remaining in the EU. The Respondent is a politically active organisation, but insofar as the Claimant is suggesting in this paragraph that the political beliefs and identities of the Respondent's staff are central to its ethos he is incorrect. The Claimant is similarly wrong to assert that the Respondent treated anything he said or believed as an attack on its ethos. The Respondent's response to the claim for automatically unfair dismissal is set out in section D.1 below.

- (xv) Paragraph 67 – the letter of dismissal does not demonstrate that the matters relied upon by the Claimant as constituting protected disclosures or the Claimant’s alleged protected belief were the main or a substantial reason for his dismissal. The Claimant’s assertion in this paragraph that he has “dealt with” the complaints about his punctuality and attendance in that letter in a preceding section of the Particulars of Claim is incorrect. He has (deliberately or otherwise) only provided a justification for absences from 23 March 2018. These were never the subject of complaint. His Particulars of Claim do not address the many complaints which were in fact made relating to the Claimant’s lateness and failure to attend work. As set out in detail in sections B.2 to B.6 above the Claimant was persistently late and on a number of occasions failed to attend work without good cause and without notifying the Respondent. This is conduct which is entirely capable of justifying dismissal.
- (xvi) Paragraph 68 – the relevant section of the dismissal letter is not accurately set out in this paragraph – the insertion of the word ‘punctuality’ in square brackets does not accurately reflect the full meaning of the letter. Further, it is potentially misleading without the context of the surrounding paragraphs. In any event, the section relied upon by the Claimant does not constitute a statement (still less an explicit statement) that the matters relied upon by the Claimant as protected disclosures or the alleged Protected Belief caused his dismissal. The Respondent has set out in section B.7 above its reasons for dismissing the Claimant and responds to the legal claims below in sections D.1 to D.4 below.
- (xvii) Paragraph 69 – the Respondent has set out in sections B.2 – B.6 above the Claimant’s lateness and attendance record and the reasons given by the Claimant for his lateness/absence. These show an unacceptably high level of absence and failure to attend work, and constituted sufficient reason to dismiss

the Claimant. As noted above, Ms Rainwater felt that the Respondent should dismiss the Claimant for these reasons as early as January 2018.

(xviii) Paragraph 70:

Sub-paragraph (a) - agreed;

Sub-paragraph (b) - the Respondent cannot comment on what the Claimant has or has not seen, but the statement in the letter of dismissal was accurate. If the Claimant wished to respond to the letter of dismissal he could have done so.

Sub-paragraph (c) - the Respondent does not know when the Claimant made the relevant preparations. His lateness and attendance record are set out in sections B.2 – B.6 above. The Claimant told the Respondent on 21 March (after he had failed to attend work without notifying the Respondent) that he was meeting a journalist later that day.

Sub-paragraph (d) - this was not intended to be a complaint against the Claimant. It was intended to reflect the fact that the Claimant had accepted (because he had said so publicly) that he had been given leave for the reason set out.

(xix) Paragraph 72 – it is agreed that the Claimant was on authorised leave on 26 March 2018. The Respondent was aware of the Claimant’s decision to go ahead with media interviews because some of those interviews received significant publicity. Given the Claimant’s record of lateness and failure to attend work, the

Respondent was concerned that the additional role that he had taken on would make things even worse. This was not a question of the Claimant's plans or intention, but of the Respondent's daily experience of dealing with the Claimant over the previous 13 months. The Respondent does not know what the Claimant may or may not have said in public prior to his dismissal.

- (xx) Paragraph 73 – the Respondent has set out in section B.1 above the process by which the Claimant was recruited. He was not interviewed by either Mr Isaby or Mr Elliott as part of his application to the Respondent. Mr Elliott left his office in 55 Tufton Street in March 2015 and last visited in March 2016. The Respondent had nothing at all to do with the article referred to by the Claimant. It did not know that the article was being written, nor did it contribute to it in any way. The article does not demonstrate anything about the Respondent, because it had nothing to do with the Respondent. This paragraph makes wholly unfounded allegations of collusion which are incorrect and have no evidential basis. Insofar as this sub-paragraph is alleging that the Respondent personally attacked the Claimant, or that Messrs Elliott or Isaby were in any way involved in the decision to dismissed the Claimant, it is incorrect.

- (xxi) Paragraph 74 – on the assumption that the Claimant's reference to "this organisation" is taken from the letter of dismissal at page 3, he is wrong. It is a reference to the Respondent as a legal entity. There is no wider network of right wing entities which act in cohort with one another. The decision to dismiss the Claimant was taken by Mr O'Connell, Ms Rainwater and Andrew Allum, the Chairman of the Respondent. The only other person with whom the issue was discussed was the Respondent's solicitor (for the avoidance of doubt privilege in that advice is not hereby waived), but with this exception no other people or organisations had any input into the decision to dismiss the Claimant.

(xxii) Paragraph 76 – the section of the letter of dismissal quoted in paragraph 75 refers to the Respondent’s understanding (from newspaper reports) that the Claimant had first made contact with journalists in August 2017. Mr O’Connell reasonably believed that the Claimant should have given the Respondent notice that he intended to speak to the press, so that the Respondent’s interests could be considered. The Claimant’s media interviews were not made in accordance with the Respondent’s whistleblowing policy.

(xxiii) Paragraph 78 – the section of the dismissal letter quoted in paragraph 78 refers to the Claimant’s conduct on 21 and 22 March 2018 which is detailed above. The suggestion that the Claimant’s lateness could not have caused the decision to dismiss fails to consider the reality, which was that the dismissal had a variety of causes. The assertion that the decision to grant the Claimant leave is evidence that his lateness and failure to attend work was no part of the reason for his dismissal is similarly artificial. The Respondent gave the Claimant leave whilst it decided how best to proceed.

(xxiv) Paragraph 79 – there are two Whatsapp messages from the Claimant saying that he will be late because of meetings with lawyers. It is correct that these messages were not “put to” the Claimant prior to his dismissal. They were messages written by him, and it is not clear what sort of response he could have given.

(xxv) Paragraph 81

Sub-paragraphs 81(a) and (b) – the words “this organisation” refer to the Respondent and the letter is not disingenuous. The Respondent was neutral in the referendum campaign (as noted by the Claimant in paragraphs 49(a) and 66 of the Particulars) and both the referendum and its outcome were entirely

separate to the mission of the Respondent. It is for the Respondent rather than the Claimant to define its mission.

Sub-paragraph 81(c) – The Respondent cannot comment on the Claimant’s beliefs or the extent of his knowledge as to its donors. Its response to his legal claims is set out in sections D.1 to D.4 below.

(xxvi) Paragraph 82 – the Claimant asserts in paragraph 82 that nothing he has done has been of relevance to the Respondent. This is inconsistent with his assertions of a link between his disclosures and the Respondent’s mission in paragraph 81. The reasons for the Claimant’s dismissal are set out in section B.7 above. It is agreed that the Claimant made no allegations against the Respondent, but he repeatedly breached the terms of his contract despite being told that his conduct was unacceptable as set out in sections B.2 – B.6 above.

(xxvii) Paragraph 83 – the Claimant has repeatedly behaved in a way which conflicted with the activities of the Respondent by failing to attend the office on time (or at all on some occasions) without good cause. The Claimant was repeatedly told that this behaviour was unacceptable – that it put unfair strain on his colleagues and caused difficulties for the Respondent. It constituted a repeated breach of his contractual obligations to the Respondent. Further, his conduct as set out in section B.6 above were also such that the Respondent reasonably believed he was not concerned about the Respondent’s interests. The Respondent does not agree that the Claimant’s activities were in furtherance of its mission and there is no evidence to support that.

(xxviii) Paragraph 84 – the Claimant’s discussion with Mr O’Connell occurred only very shortly before the story broke in the media. The Respondent’s reasons for

considering that the Claimant had behaved inappropriately are set out in section B.7 above.

- (xxix) Paragraph 85 – this section of the letter of dismissal means precisely what it says. Given the Claimant’s previous attendance and lateness record and the messages which he sent saying that he was going to be late because of meeting his lawyers/a journalist, the Respondent believed that some of the reasons for his repeated lateness/failure to attend were due to these activities and not for the reasons he gave. On 21 March 2018, for example, the Claimant initially told the Respondent that he was going to be late because he had overslept (a reason which he had given on a number of previous occasions during his employment). However, later on the same day he told the Respondent that he would not be coming to work because he was meeting his lawyers/a journalist. The last sentence of paragraph 85 is difficult to follow, but the Respondent notes that its officers first discussed dismissing the Claimant in January 2018, and that he had more than used up the last chance which Mr O’Connell wished to give him in January by the date of his dismissal.

- (xxx) Paragraph 86 – this paragraph is incorrect. The Respondent’s reasons for dismissing the Claimant are set out in section B.7 above.

- (xxxi) Paragraph 87 – the letter of dismissal was accurate. In any event, it is misconceived to argue that the contents of a letter of dismissal, sent after the termination of the employment relationship, could be a breach of the implied term of trust and confidence.

- (xxxii) Paragraphs 88 – 97: the Respondent makes the general comment that the relevance of these paragraphs to the Claimant’s claim is unclear. Nobody outside the Respondent organisation (other than the Respondent’s solicitor in

respect of whose advice privilege is not waived) had anything to do with the Claimant's dismissal. As with paragraph 73, these paragraphs make wholly unfounded allegations of collusion which are incorrect and have no evidential basis. The Respondent responds specifically to the individual paragraphs below.

- (xxxiii) Paragraph 88 – there are 11 different organisations based in the same office building as the Respondent. It is not clear what the Claimant means by saying that seven of these organisation “pursue different strands of the same political goal”. As set out above (and in paragraphs 49(a) and 66 of the Particulars of Claim), the exit of the UK from the European Union is not a goal of the Respondent – it remained neutral during the referendum campaign.
- (xxxiv) Paragraph 89 – it is agreed that this is a list of some of the other organisations which use office space in 55 Tufton Street, although the Respondent believes that the registered address of the Centre for Policy Studies is 57 Tufton Street.
- (xxxv) Paragraph 90 – it is agreed that these two organisations are also based at 55 Tufton Street. Insofar as this paragraph contains an implicit assertion that the other organisations based there follow “the same agenda” as the Respondent, this is incorrect.
- (xxxvi) Paragraph 91 – the organisations which the Claimant has listed at paragraph 89 are not a “closely co-ordinated group” as he asserts.

Sub-paragraph 91(a) – the Claimant's description of the Tuesday meetings is wholly inaccurate. The Tuesday meetings are held monthly and over 750 people receive email invitations to them, including people who work in politics, policy, journalism and academia. Students, businesspeople and others also often attend. An employee of the Respondent does the secretarial work for the

meetings and Mr Isaby usually hosts them. The purpose of the meeting is not as set out in sub-paragraph 91 (a) - there is no “agreed” set of talking points, nor is any joint action across all attendees ever agreed upon. Rather, they are a forum for discussion at which anything between 40 and 120 people attend to talk about their current work and exchange ideas. Even if it were thought desirable for an agreed line to be adopted (and it is not, given that there would be no purpose in it) that would be impossible given the wide range of views and differing positions of the attendees. On the issue of the UK leaving the European Union, as an example, there is significant divergence of opinion among attendees, with a number supporting the Remain campaign and continuing to support the UK remaining in the EU.

Sub-paragraph 91(b) – it is not clear precisely what the Claimant means by this sub-paragraph. The Respondent does not know what appointment processes any of the other organisations based at 55 Tufton Street adopt, but has set out in Section B.1 above the application and interview process by which it appointed the Claimant (and other staff).

Sub-paragraph 91(c) – Again, the Respondent does not know of the appointment processes of other organisations. However, insofar as it refers to the Respondent, this sub-paragraph (and the relevant sections of paragraph 25 of the Particulars of Claim to which it refers) appears to have been drafted in such a way as to imply that there was no application and interview process for employment at the Respondent, and is in that respect misleadingly incomplete.

Sub-paragraph 91(d) – the Respondent and the Institute for Economic Affairs do jointly host a “Think Tent” venue at the Conservative Party conference, and do jointly discuss plans for the venue. These discussions do not include other organisations at 55 Tufton Street and did not occur at the Tuesday meetings.

Sub-paragraph 91(e) – the staff of the various organisations at 55 Tufton Street, as well as staff of other organisations sometimes meet for drinks or other social events. The implication in this sub-paragraph that there are specific social functions arranged between all of the 9 organisations that the Claimant has picked out to list in his Particulars of Claim is not correct. That said, the Respondent is aware that some of the staff from organisations based in 55 Tufton Street (and indeed, staff from many other organisations) do congregate at local pubs and other venues after work.

- (xxvii) Paragraph 92 – the different organisations based at 55 Tufton Street are not an “individual lobbying group” and do not, to the best of the Respondent’s knowledge, pursue “the same political agenda” as alleged by the Claimant. There being no agreed or shared agenda, it follows that no particular views are central to it, and that there could be no “perceived attack” on that agenda.
- (xxviii) Paragraph 93 – the Claimant is wrong. Nobody outside the Respondent organisation (other than the Respondent’s solicitor in respect of whose advice privilege is not waived) had any input into the decision to dismiss the Claimant.
- (xxix) Paragraph 94 – it is agreed that the Claimant received a letter from the Respondent’s solicitors dated 27 April 2018. It is not agreed that the letter was unnecessary, high handed or oppressive.
- (xl) Paragraph 101 – the Respondent was not in any way influenced in its treatment of the Claimant by any other organisation or person, nor did it discuss the Claimant’s employment (or dismissal) with any other organisation. The allegations relating to the Respondent’s relationship with some of the other organisations which operate from 55 Tufton Street are wrong.

D. RESPONSE TO THE LEGAL CLAIMS

D.1 The claim under section 103A Employment Rights Act 1996 (Paragraphs 98 – 99 PoC)

41. The Respondent has considered this ground of claim and concluded that it may face significant litigation risk in defending the claim of automatically unfair dismissal on the grounds of whistleblowing. The Respondent's position in identifying the merits of the Claimant's case is made particularly difficult by the fact that this is an unusual claim in which the matters relied upon by the Claimant as protected disclosures were not made to the Respondent, and did not concern the Respondent's conduct. Inevitably, therefore, the Respondent cannot know whether the Claimant will succeed in showing that he made protected disclosures.
42. In terms of whether these matters were reason for the Claimant's dismissal, the Respondent's position is that events relevant to the matters relied upon by the Claimant as protected disclosures were amongst the relevant factors in its decision to dismiss. However, it was not the substance of those matters (which had nothing to do with the Respondent), but rather the circumstances and manner in which the Claimant publicised them that was relevant to his dismissal.
43. This makes defending the claim complex and unpredictable. In particular, it is hard to predict at this early stage of the litigation whether the Tribunal will accept that there is a meaningful distinction between the things that the Claimant said and the way that he went about saying them.
44. What is certain, is that the Respondent will be obliged to pay significant legal costs if this matter proceeds to a fully disputed hearing, and that those costs are highly unlikely to

be recoverable whatever the outcome. Significant sums of public money will also be spent in resolving this dispute.

45. In these circumstances, having weighed up the litigation risk and the legal costs of defending the Claimant's claim under section 103A ERA, the Respondent has decided that it will formally concede this head of claim. The concession is made on pragmatic grounds, and on the basis of the Respondent's case as set out in this Grounds of Resistance. It does not denote any agreement or acceptance of any facts or allegations made by the Claimant.

D.2 The claims under section 47B Employment Rights Act 1996 (paragraphs 100 – 102 PoC)

46. As to the claims for detriment under section 47B ERA, again the Respondent is placed in a difficult position by not being able to say whether the disclosures relied upon were protected as a matter of law. It does not consider that the Claimant's claims should succeed, but has considered whether it is proportionate to fight this aspect of the claim in the light of its decision to concede the issue of automatically unfair dismissal.

47. It has concluded that it would not be proportionate, given that the costs involved in the Tribunal determining the claim under section 47B were it to be fully contested would be nearly as great as the claim under section 103A. For these reasons, and on the same basis as the concession of the claim under section 103A ERA, the Respondent therefore formally concedes the Claimant's claim under section 47B ERA.

D.3 The claim under section 39(2)(c) Equality Act 2010 (Paragraphs 98 – 99 PoC)

48. It is not clear what the Claimant means when he refers to protecting the "sanctity" of British democracy; nor what he means by suggesting that protecting that democracy from taint and corruption was "paramount". The word "paramount" would normally imply a view as to the comparative importance of competing principles or interests, and

it is not clear what it means in the context given by the Claimant. The Respondent would need clarification on these points before being able to say whether the “Protected belief” relied upon by the claimant met the test set out in *Grainger v Nicholson*.

49. The Respondent respectfully submits that this aspect of the claim is misconceived as:
- a. at the date of the Claimant’s dismissal the Respondent had no knowledge of the Claimant’s beliefs about British democracy, nor did it have any details of the matters which the Claimant now relies upon as constituting protected disclosures. Insofar as the Claimant holds the views about British democracy set out in his Particulars of Claim he did not at any stage tell the Respondent about these views, and nor was it otherwise made aware of them. It follows that no such views could have been the reason why the Respondent dismissed the Claimant.
 - b. in any event, the employees of the Respondent who were involved in the Claimant’s dismissal all believe in the importance of democracy in the UK. Any beliefs which the Claimant may hold about British democracy played no role whatsoever in the decision to dismiss him and the Respondent did not do any act (or omit to do any act) on the grounds of any such belief.
50. In the light of these points, and the concessions made in sections D.1 and D.2 above, the Respondent invites the Claimant to withdraw this head of claim.

D.4 The claim for wrongful dismissal (Paragraphs 98 – 99 PoC)

51. This claim is also misconceived. The reasons in the termination letter were not false. But in any event, the contents of a letter of termination, sent after the end of an employment relationship cannot constitute a breach of the implied term of trust and confidence. The implied term exists during the course of employment, and both parties

cease to be bound by it once a contract of employment is terminated. Nothing which happens after the end of employment is capable of constituting a breach of the implied term of trust and confidence.

52. The claim is also academic. No remedy is pursued by the Claimant in respect of it, and no remedy could be due given that the Claimant was paid his notice entitlement in full. The Claimant is invited to withdraw this head of claim.

E. REMEDY

53. The following remedy issues are likely to be in dispute between the parties:

- (a) How long the Claimant would have remained employed by the Respondent had he not been dismissed? The Respondent will rely, amongst other evidence, upon the matters set out in sections B.2 to B.6 above in support of its submission that the Claimant would not have remained employed for more than a few months even in the absence of the matters which he relies upon as constituting protected disclosures;
- (b) Has the Claimant taken appropriate steps to mitigate his loss? The Respondent will request full mitigation details from the Claimant, including:
 - i. Evidence of any efforts he has made to seek new work;
 - ii. Details of any money that he has earned since the dismissal. Although the Claimant's ET1 form (which is dated 17 July 2018) says at Box 7.1 that he has not found another job, he sent a message to a former colleague on 9 July 2018 saying "I'm working part time in soho [sic] now". The Respondent will seek credit for any money earned by the Claimant since his dismissal, including any sums earned from media appearances.

- (c) What is the appropriate award for injury to feelings? The Respondent will respectfully submit that any such award must be restricted to appropriate compensation for the injury to feelings caused by the matters pleaded by the Claimant as constituting section 47B ERA detriments. The vast majority of the events set out by the Claimant in his Particulars of Claim (including the events which he describes as causing the most significant injury to his feelings) were either matters which were wholly unrelated to the Respondent or which fall outside his section 47B ERA claims.