

## Success for Joel Kendall in whistleblowing claim against Oxford's Saïd Business School

Last week the Reading Employment Tribunal handed down its reserved judgment in the case of Heslop v Oxford Saïd Business School Ltd & Dr Andrew White. The Claimant was employed as a Director of Custom Programmes by Oxford Saïd Business School Ltd (the First Respondent). In August 2018 she made disclosures to her employer, in particular her line manager (the Second Respondent) in relation to its having, amongst other things, misled the UK government over the School's £22m "major project leadership academy programme" designed to equip those working in government with the skills needed to drive large and complex projects. The tribunal found that these were protected disclosures.

Shortly after making these disclosures the Claimant went on annual leave. At this point, the Claimant had been employed for around 2½ years and there had never been any substantial issues raised concerning her work or performance by the Second Respondent or anyone else. On the contrary, the Claimant's performance reviews had been very positive. On her first day back from holiday the Claimant attended a meeting with the Second Respondent when she was told that her team had lost confidence in her and that he did not want her to return to work. There followed a sequence of events which led to the Claimant's resignation in early November 2018.

The tribunal found that:

- The Second Respondent had held the meeting for the purposes of ending the Claimant's employment, outside any recognised disciplinary procedure. This was a detriment
- On the central question of why the Second Respondent did so, the tribunal found that the meeting, what was said in it and subsequent detriments were "materially influenced" by the protected disclosures within the meaning of Fecitt v NHS Manchester [2011] EWCA Civ 1190, and accordingly were done "on the ground" of the protected disclosure for the purposes of the whistleblowing legislation
- The Claimant was constructively unfairly dismissed, with no reduction for contributory fault
- While she did not establish that the dismissal was automatically unfair, following the conclusions in the Court of Appeal case of Timis v Osipov [2018] EWCA Civ 2321, the claim succeeded against the Second Respondent for the detriment of dismissal, with the First Respondent being vicariously liable for that detriment
- Accordingly the Claimant is entitled to a remedy for the consequences of her dismissal under the terms of the whistleblowing legislation, in addition to the remedy for ordinary unfair dismissal. Her claim for compensation will therefore be uncapped.

A provisional remedy hearing has been fixed for May 2021.

Joel Kendall of 12KBW acted for the successful Claimant, instructed by Royds Withy King."