IN THE SUPREME COURT

UKSC/2026/0005 & UKSC/2026/0008

BETWEEN:

MR RICE

Appellant (Respondent)

-and-

WICKED VISION LIMITED

Respondent (Appellant)

AND:

BARTON TURNS DEVELOPMENTS LIMITED

Appellant

-and-

MS TREADWELL

Respondent

AND:

PROTECT (FORMERLY PUBLIC CONCERN AT WORK)

Intervener

PROTECT'S WRITTEN SUBMISSIONS

Introduction

1. Protect, formerly known as Public Concern At Work, is an independent whistleblowing charity, which has substantial experience of whistleblowing in the UK. Its stated aim is to stop harm by encouraging safe whistleblowing.

2. Protect advances a unique perspective in these Appeals by offering an alternative statutory construction of the Employment Rights Act 1996 (**ERA 1996**) which has not been advanced by the parties and moves beyond *Timis v Osipov (Protect intervening)* [2019] ICR 655 (***Osipov***).

3. Protect proposes that employees can always rely on s 98 ERA 1996, s 103A ERA 1996 and s 47B ERA 1996 where the detriment is dismissal; s 47B(2) is nothing more than a *boundary* between Parts V and X. In other words, Parts V and X operate in *parallel* such that together they create a seamless mechanism which ensures the universally effective protection of both workers and employees.

4. This interpretation draws on the way in which the ERA 1996 operates in practice which is based on Protect's expertise as a leading whistleblowing charity as explained in the witness statement of Sybille Raphael, joint Chief Executive Officer of Protect, which accompanies these written submissions. It contains a number of case studies which illustrate how the ERA 1996 operates in real life.

Significance of the Appeals: Guaranteeing the public good

5. It is critical to empower employees to speak up when the public good is threatened. In Protect's experience, it is this group who are often best placed to identify wrongdoing. Sybille Raphael comments as follows in her statement:

> "These case studies show what Protect sees regularly: it is crucial for those who may be the eyes and ears of their organisation to feel able to speak up without being subjected to detriment for doing so, for the benefit of the public interest and as an instrument of good corporate governance. This includes a variety of people, but clearly includes employees who are often embedded into organisations, and have a deep understanding of governance and safety practices." (paragraph 35) **F184**

6. Whistleblowers in the workplace are protected under the ERA 1996, which contains (at least) **three** potential causes of action. Each of these operates slightly differently.

7. **First**, under s 103A ERA 1996, which is located in Part X of the Act, whistleblowing employees have always been able to bring a claim against their employer for automatic unfair dismissal if they are dismissed and the reason (or, if more than one reason, the principal reason) for the dismissal was a protected disclosure by the employee. Compensation here is uncapped.

8. **Second**, they have also always been able to bring an "ordinary" unfair dismissal claim under s 98 ERA 1996[1], which also is located in Part X. Here, the fairness of the dismissal is judged against whether there is a potentially fair reason (capability, redundancy etc) and the same causation test applies to the identification of the reason (again, reason or principal reason). Compensation here is capped.

[1] Provided that the employee has the minimum level of service.

9. Whilst the availability of an automatic unfair dismissal claim under s 103A is important and useful, the high threshold of the causation test which underlies it does not deliver a positive or even safe environment for whistleblowing. So, a manager could dismiss an employee and be influenced by a protected disclosure but if there were another, more or even equally dominant reason for dismissal, there would be no breach of s 103A ERA 1996. If there was a potentially fair reason that was the principal reason (say redundancy) with the protected disclosure being the secondary reason, then the claimant could only theoretically succeed on an ordinary unfair dismissal claim under s 98 ERA 1996 (which has capped compensation), provided they have more than 2 years' service on the current requirements for qualifying service. If the claimant in question does not have 2 years' service, they will have no redress in this scenario at all.

10. It is easy to imagine these types of fact patterns. For example, an employee is repeatedly rude and disruptive at work. She then makes a protected disclosure concerning fraud. She is dismissed. She fails on s 103A ERA 1996 (and s 98 ERA 1996) because her disclosure is not the principal reason (which is her disruptive manner and hence also potentially fair under s 98(2)) even though the protected disclosure *does* influence the employer to dismiss her, albeit it is not the principal reason. In short, the fact that the employer acted adversely towards the employee because of the protected disclosure becomes legally irrelevant. Protect contends that this is a deeply unsatisfactory result, with consequences which are explained further below.

11. **Third**, there is s 47B ERA 1996, which is located in Part V of the Act and provides for workers to be protected against detrimental treatment "*on the ground that*" they have made a protected disclosure. In contrast to s 103A or s 98 ERA 1996, this formulation adopts a public-interest focused causation test which is satisfied if the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's treatment of the whistleblower.[2]

12. In the example posited in paragraph 10 above, if an employee who has been dismissed can rely on s 47B in respect of their dismissal, they *would* have a valid claim under s 47B – thereby accessing the public-interest focused causation test - even if their claims under s 103A ERA 1996 failed (along with or irrespective of a claim brought under s 98 ERA 1996). They could recover uncapped compensation. This is meaningful and effective protection which advances the public good.

[2] *Fecitt v NHS Manchester* [2012] ICR 372, paragraph 45.

13. For ease, **Annex A** contains a table setting out the material differences between the three potential causes of action discussed above.

14. The witness statement from Sybille Raphael further elaborates why and how s 103A alone is ineffective when it comes to protecting the public interest owing to the different causation test in comparison to s 47B (paragraphs 51 to 65).[3] It clearly demonstrates a society-wide and pressing need to ensure that whistleblowers have effective protections in place so as to protect the public good (see, especially, paragraphs 6 to 8).

15. Additionally, the Court of Appeal has recently restated the clear intention of Parliament to provide a remedy under s 47B in *Daniel Rogerson v Erhard-Jensen Ontological/Phenomenological Initiative Limited* [2025] EWCA Civ 1547 - a case concerning the ambit of judicial proceedings immunity in the whistleblowing context - where it held that:

> "The provisions of the Employment Rights Act 1996 demonstrate a clear intention on the part of Parliament to provide a remedy, available in the Employment Tribunal, for a worker who suffers a detriment as a result of making a protected disclosure. **For that remedy to be defeated** by a claim for judicial proceedings immunity in circumstances such as exist here **would be contrary to that clear parliamentary intention**" (paragraph 58, per Lord Justice Males, emphasis added). **G1316**

16. This context explains why the Appeals are so significant. They concern the extent to which dismissed employees can rely on causes of action in Part X and s 47B in Part V when bringing a claim that they have been dismissed as retribution for being a whistleblower. The employer Appellants ask the Court to block employees from utilising s 47B where the most extreme form of retribution (dismissal) is exacted. Protect (and the employee Respondents) ask the Court to construe the legislation holistically and purposively to provide effective and meaningful protection for dismissed employees, so that the public good is promoted in line with the aims of the legislation.

Tension within Court of Appeal decisions on the relationship between Part V and X

[3] Please note that Case Study 4, which relates to Mrs Henderson, has since been examined by the EAT in *Henderson v CCRM Limited and others* [2025] EAT 136. That case does not disturb the analysis in the witness statement.

17. The complexity of the interaction between Parts V and X has been considered by the Court of Appeal. In 2018, the Court of Appeal gave judgment in ***Timis v Osipov (Protect intervening)*** [2019] ICR 655 (***Osipov***). It is a nuanced and dense judgment, the orthodox interpretation of which is that it guarantees whistleblowing employees important legal protections if they are dismissed by way of recrimination. In particular, it has been widely understood as meaning that where an employee has been dismissed, it is open to them to bring a claim pursuant to s 47B ERA 1996 against their co-workers for subjecting them to the detriment of dismissal, and against their employer as vicariously liable for their co-worker's detriment. This places them in a similar position to that of workers under the same section. This is referred to as "the ***Osipov*** interpretation" in these submissions. **G1533-1564**

18. The important consequence of the ***Osipov*** interpretation is that it promotes a public-interest focused approach to whistleblowing employees, permitting them to have the benefit of a more achievable causation test under s 47B in comparison to s 103A ERA 1996, on par with their worker colleagues. This is crucial to ensuring that whistleblowers feel confidently protected to raise their concerns which are in the public interest, which in turn promotes and enhances the very purpose of the whistleblowing provisions in the ERA 1996.

19. In the Appeals, the Court of Appeal recognised that the ***Osipov*** interpretation was binding on it, but explained that it considered it to be flawed based on a textual analysis of the ERA 1996. Instead, the Court of Appeal considered that the meaning of s 47B ERA 1996 was plain: an employee who was dismissed was confined to bringing a dismissal claim under Part X only.

20. Protect respectfully disagrees with this analysis; there are multiple textual ambiguities in s 47B(2) rather than one plain reading. It also proposes a new way of interpreting s 47B ERA 1996 which was not considered by the Court of Appeal (it was presented but Protect recognised that the Court of Appeal could not adopt it due to the rules on precedent and did not seek to argue it there).

Protect's alternative interpretation of s 47B ERA 1996

21. Protect supports the position advanced on behalf of the employee Respondents, Mr Rice and Ms Treadwell which support the ***Osipov*** interpretation. These submissions, however, will not focus on that argument, which will be addressed by Counsel for Mr Rice and Ms Treadwell. Instead, Protect's unique contribution is to demonstrate that there is also an *alternative* interpretation of s 47B which leads to the same ***Osipov*** destination. Protect's position is premised on a purposive

interpretation rooted in the language of the statute and the need to protect the public good, which is the very aim of s 47B ERA 1996 and is a pressing matter which Protect is well placed to explain to the Supreme Court.

22. By way of overview, Protect's alternative position proceeds as follows:

    a. **Proposition 1**: Section 47B ERA 1996 can bear multiple possible textual interpretations, which means there is no plain meaning of the statute. To arrive at the correct meaning, the Supreme Court must construe the section as best reflects its context and Parliament's intention.

    b. **Proposition 2**: A purposive interpretation of the ERA 1996, which respects the language of the statute and advances the public good by ensuring meaningful and consistent protection for employees and workers, should be deployed when construing s 47B.

    c. **Proposition 3**: This interpretation can be achieved, whilst respecting the language of s 47B, by reading s 47B(2) as amounting simply to a *boundary* that delineates between Parts V and X.

23. In other words, Protect invites the Court to find that s 47B(2) does not bar, deny or otherwise withdraw Part V from an employee as a potential cause of action simply because there is a simultaneous Part X claim available. It does not preclude employees from bringing a Part V and Part X at the same time in *parallel*. Indeed, there may be important reasons to bring both: see **Annex A** and the differences between the causes of action as to why.

Proposition 1: Section 47B is capable of bearing multiple possible meanings

24. The language of a statute must be at the heart of the process of statutory construction. Where there is sufficient doubt about the specific meaning of the words used, the indicators of the legislature's purpose outside of the provision in question must be given significant weight (*For Women Scotland v The Scottish Ministers* [2025] UKSC 16 (*FWS*), paras 10 – 14; *R (O) v Secretary of* **G758-760**

State for the Home Department [2022] UKSC 3, para 29; *Kemeh v Ministry of Defence* [2014] EWCA Civ 92; [2014] ICR 625, paragraphs 35 to 36).[4] **G1137** **G1001**

25. Accordingly, it is important to consider the extent to which s 47B(2) is clear and explicit. On the one hand, it is *plain* that s 47B(2) is intended to govern the relationship between Parts V and X. It is anticipated that this will not be in dispute. It is well accepted that dismissal (or termination of a contract) is but one form of detriment.[5] Accordingly, without s 47B(2), these causes of action would "bleed" into one another insofar as a claim was by an employee and covered the factual territory of a dismissal. This must be avoided because of the differences provided for by each of the causes of action identified in **Annex A**[6]. This point was first identified by the Court of Appeal in *Melia v Magna Kansei Limited* [2006] ICR 410:

> "15. As I have explained, sections 47B and 103A of the 1996 Act spring from the same root – the Public Interest Disclosure Act 1998. The two sections are **parallel** elements in the protection which Parliament has decided to give to whistleblowers. The sections would, in any event, be read together; if only because they are now sections in the same Act, the 1996 Act. But the fact they spring from the same root (the 1998 Act) – and the fact that section 47B is plainly made subject to the limitation imposed by subsection (2) with section 103A in mind – lead irresistibly to the conclusion that the two provisions are intended to be **complementary**. To put the point more simply: Parliament did not intend to confer a right under Part V of the 1996 Act for the protection of whistleblowers in circumstances where the worker (being an employee) would have a right under Part X of that Act in relation to the same loss or detriment". (Emphasis added) **G1029**

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[4] Protect do not disagree with the Appellants' Case in so far as it stresses the importance of examining the language of a statute as part of statutory construction. However, Protect stresses that there are multiple textual interpretations of s 47B(2) and rejects the notion that there is only one (narrow) textual meaning of the subsection.

[5] ***Osipov***, paragraph 17: "It will be seen that both Part V and Part X provide for substantially self-contained, albeit largely parallel, regimes governing the rights which they protect. However the draftsman appreciated that, absent provision to the contrary, dismissal would itself constitute a detriment, which would mean that a claim of dismissal on whistleblower grounds could in principle be brought under either Part". The notion – in this paragraph – that dismissal falls within the concept of detriment has never been challenged and is consistent with the language of s 47B(2) itself. **G1539**

[6] For example, this delineation ensures that interim relief is only available under s 103A; or that the statutory defence is only available for s 47B. See **Annex A** for further examples.

26. Protect endorses the use of the descriptors "*parallel*" and "*complementary*" but disagrees that these terms necessarily mean "*mutually exclusive*" which is the assumption in this passage. With the greatest of respect to Chadwick LJ, he has moved too swiftly from "*parallel*" and "*complementary*" to "*mutually exclusive*" without considering an alternative interpretation of s 47B(2), which is that s 103A and s 47B are parallel and complementary *yet jointly possible.*[7] Protect invites the Court to look afresh at how Parts V and X should be interpreted.

27. Beyond the plain intention of s 47B(2) being to govern the relationship between Parts V and X, how it is intended to operate in practice is – contrary to the reasoning in *Melia* – not straightforward at all. Section 47B(2) contains two relevant phrases, which are separate yet symbiotic, and are capable of bearing, multiple interpretations. To illustrate this, we explore next the various ambiguities within s 47B(2) and their possible means of resolution as a matter of textual construction.

    a. "*the detriment in question amounts to dismissal (within the meaning of Part X)*": **G195**

        i. One interpretation is to focus on the words in brackets (…) and conclude that they import something additional to the bare fact of a dismissal. What might that something be? For example, might it require that there has been a judicial determination that a right within Part X has been infringed before the exclusion of *any* s 47B[8] claim can take place?

        ii. Alternatively, it could be argued that the words in brackets may also mean that facts *capable* of amounting to unfair dismissal, for the purposes of *any* provision within Part X (i.e., not just the whistleblowing provisions), extinguish the right

[7] In Protect's view, these comments should be treated with some caution in any event. The legal issue before the Court of Appeal was how to calculate compensation where there is a potential overlap between s 103A and s 47B (see, especially paragraph 21). To Protect's knowledge, there was no argument before Chadwick LJ as whether Mr Melia could simultaneously have pursued a s 47B claim in respect of the act of dismissal.

Additionally, *Melia* is "out of date" in the sense that s 47B has evolved since then – it now has s 47(1B) and the related vicarious liability provisions which did not exist at that point (as explained by Underhill LJ in *Osipov* at paragraphs 85 and ff).

[8] The use of the word "any" here is deliberate since s 47B claims can be brought against multiple types of respondent: employer (directly), employer (via the vicarious liability provisions), co-worker and / or agent.

to bring *any* s 47B claim. For example, if an employee merely presented an unrelated Part X claim, such as s 104 (asserting a statutory right) or s 98 (ordinary unfair dismissal), would those claims extinguish the right for an employee to bring *any* s 47B claim?

iii. Another interpretation is that the words in brackets solely refer to the corresponding right in Part V and Part X, such that it is only if a s 103A claim is judicially determined that the equivalent Part V detriment (s 47B) is excluded.

iv. Another meaning may be that the words in brackets are superfluous. In other words, does the mere fact of an employee's dismissal extinguish their right to bring *any* s 47B claim in respect of that dismissal, regardless of whether the claim is levelled against a co-worker (which is the Appellant employers' argument)?

v. Another meaning is that only claims which could be brought directly against the employer i.e. those which could viably fall within Part X are excluded such that the extent of s 47B(2) rests on whether a claim is levelled against a coworker or not. On this construction, could a s 47B claim remain available to an employee, but only where the claim is against a co-worker or agent, for whom the employer is vicariously liable (as opposed to being levelled against the employer entity directly)?

vi. Further, is it necessary that the Part X claim is capable of being enforced, for example, where the employer is or is at risk of becoming insolvent in the course of proceedings?[9] And if so, could s 47B(2) become engaged and dis-engaged over the course of the litigation?

b. "*This section does not apply where …*": **G195**

i. Does this phrase render s 47B, s 98 and s 103A ERA mutually exclusive? In other words, is it a phrase which, when engaged, extinguishes s 47B entirely ?

[9] Indeed, the employer Appellants' case at paragraphs 106 to 107 posits this as an "alternative construction" of the provision. **B51-52**

If so, what falls into the bracketed phrase "*(within the meaning of Part X)*" becomes highly significant since it defines the excluded territory.

ii. Or does s 47B(2) simply create parallel regimes such that their bespoke rules – see **Annex A** - do not cross-contaminate but are jointly available? On this basis, is it a phrase *delineating* (but not extinguishing) the ambit of each right?

iii. Or does s 47B(2) merely require a claimant employee to elect either Part V or Part X? In this way, it would be a mechanism permitting only one cause of action to be advanced (and concomitantly, once s 103A is elected, s 47B is extinguished), albeit one in which "*(within the meaning of Part X)*" becomes again highly significant as its effect would be to bar the claimant from whatever falls within the definition of "*Part X"*.

28. The above permutations (and there may be others) demonstrate that the contested provision could bear multiple meanings. In other words, the language alone does not offer an easy solution to s 47B(2); there is sufficient doubt about the specific meaning of the words used in s 47B(2).

Proposition 2: The Court must adopt an interpretation of the ERA 1996 which respects the statutory language and advances its purpose, namely the public good

29. Protect invites the Court to adopt a purposive approach which respects the language of the statute, but also reflects the context and underlying social purpose of the legislation The House of Lords illustrated this approach in ***Fothergill v Monarch Airlines*** [1981] AC 251:

> "I start by considering the purpose of article 26, and I do not think that in doing so I am infringing any "golden rule." Consideration of the purpose of an enactment is always a legitimate part of the process of interpretation, and if it is usual – and indeed correct – to look first for a clear meaning of the words used, it is certain, in the present case, both on a first look at the relevant text, and from the judgments in the courts below, that no "golden rule" meaning can be ascribed. The purpose of article 26, on the other hand, appears to me to be reasonably clear … Accordingly, in approaching the construction of section 7(1) we should, in my judgment, give a construction to the statutory language that is not only

consistent with the actual words used but also would achieve the statutory purpose" (page 272). **G847**

30. An illustration of this approach in the employment field is ***Harrods Ltd v Remick*** [1998] ICR 156. In rejecting the statutory construction contended for by the employer, the Court of Appeal adopted an interpretation of the Race Relations Act 1976 (now part of the Equality Act 2010) by adopting a construction which was " … *not only consistent with the actual words used but also would achieve the statutory purpose of providing a remedy to victims of discrimination who would otherwise be without one*" (pages 162C to 163F). **G884-885**

31. In the context of s 47B ERA 1996, what does a purposive construction mean? This requires examining the purpose of the legislation. The Court of Appeal in ***Sullivan v Isle of Wight Council*** [2025] ICR 1299 recently described the purpose of the whistleblowing provisions in the ERA at paragraph 6~~8~~2, stating that: **G1413**

> "…the legislation aims to protect the public by ensuring that those in work who make disclosures of information about wrongdoing, or dangers to health and safety or the environment, to their employers (or, in defined circumstances, to others) are protected from dismissal or being subjected to any detriment in their employment as a result of having disclosed information in the prescribed way."

32. Protect agrees, and only suggests that a more precise way of framing this aim is to **safeguard the public good**. This notion of the public good is clear from paragraphs 82 to 84 in ***Sullivan*** which sets out the speech of Lord Borrie when introducing the legislation, as follows: **G1418-1419**

> " … The official reports in recent years into the Zeebrugge ferry disaster, the rail crash at Clapham Junction, the explosion on Piper Alpha and the scandals at BCCI, Maxwell, Barlow Clowes and Barings have all revealed that staff were …. well aware of the risk of serious physical or financial harm but that they were too scared to raise their concern or …. did so in the wrong way or with the wrong person. This culture which encourages decent ordinary citizens to turn a blind eye when they suspect serious malpractice in their workplace, has not only cost lives and ruined livelihoods, but it has also damaged public confidence in some of the very organisations on which we all depend." (Hansard (HL Debates), 11 April 1998, col 889.)

33. Protect emphasises this point because s 47B ERA 1996 goes beyond the individual employees (or workers) and their interests. Of course, the *means* by which the ERA 1996 protects the public good is by providing a legal framework in which whistleblowers are effectively protected against adverse treatment.[10] But the overarching aim is protecting the public good: the significance and importance of this aim cannot be overstated and it is crucial to the exercise of legislative construction.

34. This overarching aim is also elucidated by ***Woodward v Abbey National*** [2006] I.C.R. 1436, where Ward LJ asked himself whether Parliament could have "*seriously intended*" to afford a whistleblower protection where he remained employed, but not to protect him from detriment after his employment ended (paragraph 66). Answering that question in the negative, he observed the purpose of s 47B in the following terms: **G1758**

> "[…] The public interest, which led to the demand for this Act to protect individuals who make certain disclosures of information in the public interest and to give them an action in respect of that victimisation, would surely be sold short by allowing the former employer to victimise his former employee with impunity. It simply makes no sense at all to protect the current employee but not the former employee, especially since the frequent response of the embittered exposed employer may well be dismissal and a determination to make life impossible for the nasty little sneak for as long thereafter as he can. If it is in the public interest to blow the whistle, and the Act shows that it is, then he who blows the whistle should be protected when he becomes victimised for doing so, whenever the retribution is exacted" (paragraph 68). **G1758**

35. Importantly, the need to protect the public good through the effective protection of whistleblowers has become an ever growing priority in society. The history to the protection of whistleblowers is outlined in the statement of Sybille Raphael at paragraphs 17 to 28. As explained in the Appellant's Case, the protections for whistleblowers have expanded since 1999 when protections were first added to the ERA 1996 (paragraphs 21 to 28). As we will explain later, this expansion in rights, and the growing recognition of the need to protect whistleblowers, is important when it comes to construing the legislation as a living instrument which is "~~*living instrument*~~*always speaking*" **(*R (Quintavalle) v Secretary of State for Health*** [2003] 2 AC 687, **G1107**

[10] *ALM Medical Services Ltd v Bladon* [2002] ICR 14442, paragraph 2, *Fecitt v NHS Manchester (Public Concern at Work intervening)* [2012] ICR 372, paragraph 43 & *Henderson v CCRM Limited and others* [2025] EAT 136, paragraph 51.

paragraphs 8 to 9). It also, in Protect's submission, validates examining s 47B ERA 1996 on **its own terms,** notwithstanding the fact that it happens to be situated within Part V, where other causes of action for proscribed forms of 'detriment' can be found.

Proposition 3: Section 47B(2) amounts simply to a *boundary* that delineates between Parts V and X as opposed to creating mutually exclusive regimes

36. Turning now to Protect's textual analysis of s 47B ERA 1996 which advances the public good through the effective protection of whistleblowers whilst respecting the statutory language. It invites the Court to construe s 47B as follows:

    a. Section 47B(1): A worker, which includes an employee, has the right not to be subjected to any detriment by any act or any deliberate failure to act done by their employer on the ground that the worker has made a protected disclosure. There is no limitation on what is meant by detrimental treatment and it includes dismissal or termination.

    b. Section 47B(1A): A worker, which includes an employee, has the right not to be subjected to any detriment by any act or any deliberate failure to act done by their co-worker or an agent of their employer on the ground that the worker has made a protected disclosure. There is no limitation on what is meant by detrimental treatment and it includes dismissal or termination.

    c. Section 47B(1B): A claim under s 47B(1A) can also be brought directly against the employer since the employer is liable for the co-worker or agent.

    d. Section 47B(1C): The employer cannot defend a claim under s 47(1B) on the basis that it had no knowledge or did not approve.

    e. Section 47B(1D): The employer can escape liability, however, by showing that it took all reasonable steps to prevent a co-worker (not an agent) from acting in breach of s 47B.

    f. Section 47B(1E): The co-worker or agent also has a defence if they can show they were relying on certain types of statement by the employer.

    g. Section 47B(2): When an employee brings any claim under Part X in which they allege that they have been subject to detrimental treatment in the form of dismissal (so on its face s

47B would also apply), s 47B and Part X claims are separate. Section 47B and its bespoke provisions (see above and **Annex A**) do not cross-contaminate Part X. It is a *boundary*. Section 47B(2) does no more than prevent Parts V and X from expanding or otherwise limiting one another. In other words, Parts V and X operate in *parallel* such that together they create a seamless mechanism which ensures the universally effective protection of both workers and employees.[11]

37. These submissions now consider the consequences of Protect's interpretation.

38. **First**, there is no conceptual difficulty with the employer being liable for a dismissal under Part X (s 103A ERA 1996) and simultaneously under s 47B ERA 1996 either directly or through the vicarious liability provisions. In ***Cusack v Harrow London Borough Council*** [2013] UKSC 40, the Supreme Court considered the construction of "*two independent provisions in the same statute*" (paragraph 63) with "*overlapping aims and […] overlapping ~~consequences~~applications*" (paragraph 61). The Court found that this structure did not necessarily mean that they should be construed so as to "*avoid, or at least to minimise, any overlap*" between them (paragraph 63). Ultimately the Court concluded that the two provisions were available simultaneously (paragraph 55 is the clearest statement of this conclusion). Lord Carnwath emphasised that the fact that two provisions "*may confer an alternative power to achieve the same object […] is beside the point*" (paragraph 27). The same reasoning applies to the simultaneous existence of s 47B and s 103A. **G483** **G482** **G483** **G474**

39. **Second**, the Protect interpretation has the benefit of construing Parts V and X holistically so as to ensure that whistleblowers have effective protection via a "multi track approach". An employee can, on its analysis, simultaneously bring claims under s 47B, s 98, s 103A and perhaps even s 104 ERA 1996 (if the facts so dictate). The Employment Tribunal can then consider which cause(s) of action apply with the benefit of a hearing in which all evidence is considered. This approach is consistent with the House of Lords in ***Customs and Excise Commissioners v Zielinski Baker and Partners Ltd*** [2004] 1 WLR 707 which stated that statutes should be construed holistically and as a whole (paragraph 38). To find that an employee is forced to bring only a s 103A claim, with its less attractive causation test, whilst

[11] Seamless protection does not mean that there is scope for double recovery. If an employee succeeds in claims under s 47B and Part X, Protect does not contend that double recovery can or should be possible.

workers are not so limited, would be the opposite of a holistic, whole Act approach; and would ignore the very purpose of the legislation.

40. **Third**, it is recognised that the language of s 47B(2) is replicated in other provisions: see the employer Appellants' case at paragraphs 19-20. This inevitably raises the question: does the Protect interpretation of s 47(2) ERA 1996 have implications for these provisions too? Protect answers that point very simply: however the Court chooses to construe s 47B(2), it does *not* follow that other provisions with the same language in the ERA 1996 inevitably have the same meaning (although this question is untested). This point is important and requires careful unpacking.

41. When legislation covers a wide range of diverse circumstances (the breadth of Part V is itself a good illustration), it may not be possible to provide an identical interpretation to all provisions which use the same language. There is no absolute rule, only a presumption, that one word (or, by extension, phrase) should have the same meaning within the same section, subsection, or part of an Act (see: *For Women Scotland Ltd v Scottish Ministers* [2025] UKSC 16, paragraph 176 (noting that s 47B(2) is not a "*defined term*"), *Bunyan v Fridays Limited* [2025] EWCA Civ 666, paragraphs 49 and 65, *Secretary Of State For Home Department v Immigration Appeal Tribunal* [2001] EWHC Admin 261; [2001] QB 1224, paragraph 35). **G796** **G376-379** **G1226**

42. Protect suggests that this is a case where the presumption properly can be rebutted and a different interpretation of s 47B is justified. This is because section 47B ERA 1996 has an important and **pressing** social function because it seeks to guarantee the **public good** through protecting whistleblowing workers, which underpins its very purpose, context and inclusion: there is a pressing social need to protect whistleblowers because of the serious consequences for the public which have occurred time and time again when people have been afraid to speak out. As such, a distinction from the other provisions is justified). Paragraphs 31 to 33 above are repeated here.

43. Further, the Protect interpretation recognises that statutes are living instruments which may need to evolve in order to reflect changes in society (***Quintavalle***). This is important because, unlike the other provisions referred to by the employer Appellants which replicate the wording of s 47B(2), s 47B has been uniquely evolved by Parliament to elevate and protect the public importance of whistleblowing. For example, as the Appellants' case points out at paragraphs 26-28, ***Fecitt*** identified a lacuna in respect of an employer's vicarious liability for its workers **B24-25**

under s 47B. In response, on 24 June 2013, Parliament only remedied this lacuna for whistleblowers and not, for example, jurors (under s 43M). Parliament's deliberate choice to only enact this change for s 47B supports Protect's contention that s 47B(2) can be construed differently to the other rights afforded by Part V. Further, s 43K creates a bespoke extended definition of "*worker*" for whistleblowing claims only which defines the scope of s 47B. Moreover, s 43J is also a bespoke provision which illustrates the specific context and purpose of the whistleblowing provisions. In other words, the legislative history of s 47B demonstrates Parliament's intention for s 47B to confer a right with unique and heightened remit.

44. The Protect interpretation also remedies the inherent illogicality of the Appellants' principal case, which is that their interpretation would afford workers better whistleblowing protection than employees by way of a reduced causation threshold for the act of dismissal. As was noted in ***Uber BV v Aslam*** [2021] UKSC 5; [2021] ICR 657, workers are an "*intermediate class*" of individuals with a more limited set of employment rights than employees (paragraph 38). The Appellants' construction starkly reverses that conception. Indeed, it creates the absurd position that, from an employer's standpoint, it would be better advised to dismiss employee whistleblowers, rather than subjecting them to other, less severe detriment. Put differently, whichever interpretation of s 47B is adopted by the Court, a degree of tension will arise. If the Protect interpretation is adopted, then s 47B may work differently to the rest of Part V (although, and noting, that it already does by virtue of s 47B(1A) etc); but if the Appellants' interpretation is adopted, there is an illogicality as between Parts V and X, resulting in absurd consequences for employees which undermine the very purpose of the legislation.[12] In those circumstances, a purposive interpretation as proposed by Protect is to be preferred, as it better reflects the provision's context: the need to create effective, meaningful protection against whistleblowing victimisation for both employees and workers. **G1604**

45. Ultimately, Protect reflects and respects that it is likely not possible to find a construction of the ERA 1996 which *perfectly* accounts for every aspect of that vast and diverse Act. The Court should not avoid giving s 47B ERA 1996 an effective and meaningful interpretation simply because it may create minor tensions in other parts of the legislation. The Court must do the best it can to construe the Act in a way that respects the language adopted by Parliament, and gives effect to the purpose of the legislation, which is to protect whistleblowers in order to

[12] Importantly, this absurdity point supports Protect's argument that the *context* demonstrates that the language of s 47B(2) can be interpreted in multiple ways.

promote the public good. The Protect alternative interpretation achieves that aim; it ensures a more even parity between employees and workers; and reflects the particular importance Parliament itself has attached to s 47B, as can be seen from, for example, the unique amendment to s 47B from 24 June 2013 and the need to advance the public good.

46. Finally, Protect recognises that its interpretation may appear to create a tension with the Supreme Court in ***Royal Mail v Jhuti*** [2019] UKSC 55; [2020] ICR 731 (para 58). However Protect's position is that the dictum in this paragraph is *obiter*. ***Jhuti*** was strictly concerned with the reason for dismissal in circumstances where a dismissing officer unknowingly adopts a reason based on a protected disclosure under s 103A (as set out in paragraph 1). The present Appeals are an important opportunity to now squarely address how Parts V and X interact. **G1331**

Summary of reasons in favour of the Protect interpretation of s 47B ERA 1996

47. Protect invites the Court to conclude that:

    a. There are various plausible interpretations meaning of s 47B(2), such that there is sufficient doubt about the specific meaning of the words used;

    b. The Court must choose the interpretation that best reflects Parliament's intention, which means to construe the section purposively within the boundaries of the language;

    c. The public good of whistleblowing protection; and the unique status given to statutory whistleblowing protections by Parliament, must form part of that purposive construction;

    d. The employer Appellants' construction would lead to absurdity, in that workers would be in a better legal position than employees; and employers would be better advised to dismiss an employee rather than subject them to detriment; and

    e. Accordingly, the Court is respectfully invited to adopt Protect's interpretation, namely that employees can simultaneously advance claims under s 98 ERA 1996, s 103A ERA

1996 and s 47B ERA 1996 where the detriment is dismissal; and s 47B(2) merely delineates the boundary between the different causes of action.

SCHONA JOLLY KC
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8 April 2026

Annex A: Material differences between s 103A, s 98 and s 47B ERA 1996

	S 103A (Part X)	**S 98 ERA (Part X)**	**S 47B (Part V)**
Claimant	Employee (no minimum service period)	Employee (two years' service period)[13]	Worker (which is broader than employee)
Respondent	Employer only	Employer only	Employer and / or co-workers and / or agents of employers
Vicarious liability of employer	Employer always liable	Employer always liable	Defence available to the employer under s.47B(1D) in relation to co-workers only. This is referred to colloquially as "the statutory defence."
Interim relief	Yes (s.128)	No	No
Causation (reason)	"*the reason (or, if more than one reason, the principal reason) for the dismissal was a protected disclosure*" (s 103A)	"*the reason (or, if more than one reason, the principal reason) for the dismissal … is either a reason falling into subsection (2)*[14] *or some other substantial reason*" (s 98)	"*on the ground that*" the employee made a protected disclosure (s 47B)

[13] Shortly due to reduce to six months on 1 January 2027 under section 25(2) of the Employment Rights Act 2025.

[14] Subsection (2) lists the potentially fair reasons as capability or qualifications, conduct, redundancy, or the employee could not continue to work in the position without contravening a duty or restriction imposed by another enactment.

Burden of proof (causation)	If the employee has less than 2 years' service: Employee to show causation.[15] If the employee has 2 or more years' service: Employee needs to show that there is a real issue as to the reason for dismissal, at which point it is for the employer to prove the reason / disprove that it is contrary to s 103A.[16]	Employer to show causation (s 98(1))	The employer must prove that the alleged detriment was not on the grounds that the employee made a protected disclosure (s 48(2)).[17]
Final remedy	Basic award (s 119) Compensatory award (s 123) Reinstatement (s 114) Re-engagement (s 115)	Basic award (s 119) Compensatory award (s 123) Reinstatement (s 114) Re-engagement (s 115)	Declaration (s 49(1)(a)) Compensation (s 49(1)(b))[18]

[15] See *Ross v Eddie Stobart Ltd* UKEAT/0068/13/RB, paras 21 & 23 & *Smith v Hayle Town Council* [1978] ICR 996, page 1003E-G.

[16] *Kuzel v Roche Products Ltd* [2008] ICR 799, paras 57 to 60.

[17] See International Petroleum Ltd v Osipov EAT 0058/17 at para 115.

[18] There is some controversy as to which losses are recoverable, but this does not impact on the present Appeals.