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Monaco Solicitors

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**Grievance letter: Appeal after fraud whistleblowing**

**[Name]**
Group HR Director
**[Company name]**
**[Company address]**

**[Date]**

Dear **[Name]**

**GRIEVANCE APPEAL OF [CLAIMANT 1] AND [CLAIMANT 2] AGAINST THE GRIEVANCE OUTCOME**

**LETTER OF [Date]**

Thank you for your letter dated **[Date]** to my Clients (‘the Outcome Letter”). As you will appreciate they were deeply disappointed by **[Name]**’s findings and troubled by the limited and shallow findings, which failed to address a considerable number of core matters that they had asked to be determined in their grievance letter.

My Clients provided considerable evidence and it is asserted that **[Name]** failed to give this adequate weight. Instead he has relied upon witness statements that have not been disclosed. Further, they are yet to be in receipt of all the minutes that were relied upon in the factual findings and used to reject their grievance.

In the circumstances, my Clients are not in a position to set out their entire grounds of appeal and reserve their right to submit further grounds in due course. In advance of any Appeal meeting, they will furnish the Appeal Officer with a statement of appeal and will expect this document to be kept entirely confidential to line-management in view of the sensitivity of its content.

In the meantime, I set out the grounds of my Clients’ appeal:

1. Undertaking a shallow investigation;
2. Making perverse findings of fact;
3. Conducting a biased and one-sided investigation;

The Outcome Letter reveals a shallow investigation, which failed to take account significant areas of my Clients’ grievance.

The fact that there are passing references to ‘whistleblowing’, demonstrates how the focus of the investigation has been to disconnect their treatment from the matters they were required to investigate. The fact that they made protected disclosures has been ignored and the Company have failed to take any or appropriate action over the unlawful conduct. No reassurance has been offered that **[Name]** remains actively investigating the allegations of fraud and the only correspondence has been to say that there will be no mechanism to report findings to my Clients [see letter from **[Name]** to Monaco Solicitors dated **[Date]**].

Without such a reassurance, they can feel no confidence and will firmly believe that the Company is taking a less than transparent approach and wish to brush the allegations under the carpet. Given the re-employment of **[Name]**, despite the very serious allegations levelled against him, there is a strong suggestion that the investigation of wrongdoing may very well be complicit in allowing these matters to go unchecked (see later comments about the concerns about the budgetary discussions).

The Outcome Letter shows that **[Name]** decided to cherry-pick from the grievance letter those questions, that he could find easy answers for and even that he did with only a limited degree of success.

Allegation 1

In responding to allegation 1, we rely upon the misrepresentation that was made to **[Claimant 1]** in moving from the Commercial Division to Health and Care and the package offered to take up his current role. This fundamentally failed to recognise the reality of an achievable remuneration package. There is a failure to mention this matter at all in the Outcome Letter.

Furthermore, in purporting to answer the complaint about the failure to remunerate him adequately – it is suggested that **[Claimant 2]** should feel happy that his commission was 60% below his, and the Company’s, expectations. There is no mirror statement for **[Claimant 1]**, presumably because this would have led to a finding that would have supported a finding in my Clients’ favour.

Part of **[Name]**’s acknowledged remit [see letter from **[Name]** to Monaco Solicitors dated **[Date]**], prior to the Grievance meeting, was that he would have some oversight in the fraud that gave rise to my Clients’ protected disclosures. Rather than tackling any of the issues, the Outcome Letter fails to acknowledge the issues at the core: that the individuals (**[Claimant 1]** and **[Claimant 2]**) who have been embedded in a lengthy and complex investigation of fraud have failed to have their endeavours recognised by the Company and have suffered financial hardship. This is a legitimate and genuine grievance.

**[Name]** made a series of bold assertions that **[Claimant 1]** and **[Claimant 2]** spent a reasonable amount of time on “business as usual new business sales” but did not put this question to my Clients in the course of the grievance meeting. Instead, he appears to rely on evidence presented by **[Name]** (who was not in the business as the relevant time) and **[Name]** (who was the MD of the Commercial Division prior to **[Claimant 1]** joining the Health and Care Division) and therefore did not have significant oversight of the day to day responsibilities of either individual at the material times.

Clearly, **[Name]** failed to address the core facts and made perverse findings that no reasonable adjudicator could have reasonably concluded.

Allegation 2

In the course of the meeting with **[Name]**, my Clients gave a very honest and open explanation about how they were affected by the matters that were investigated. They are professional and resilient individuals who discussed their considerable concerns and described the stress they suffered. They gave evidence that their line-management made no attempt to check their wellbeing, but merely expected them to get the job done and protect the Company. During the course of their investigation they were required to meet with clients who were threatening legal action and reporting matters to the Police. This was a time of considerable stress. Despite all the evidence presented to the contrary, **[Name]** concludes that they were offered moral support. This testimony is, purportedly, from a manager who had no direct involvement in their day-to-day activities and one who had yet to join the business.

Allegation 3

My Clients firmly believe that they have suffered considerable reputational damage within the wider Company as a consequence of their findings of wrongdoing. They were able to point to an inter-management email, which reveals a highly detrimental view of both individuals that was, probably, mistakenly sent to **[Claimant 1]**.**[Name]** erroneously suggested that this was sent by **[Name]** directly to **[Claimant 1]**. This is not the case. In fact that the comment was embedded in a longer email.

Rather than finding in their favour, **[Name]**  concludes that there can have been no malice and that the language was unfortunate. Clearly such a finding is perverse. Furthermore, he fails to recognise that this reveals language that is offensive and derogatory, which mirrors, in all likelihood,

In view of their fear that this does represent a wider example of how they are viewed, they seek full disclosure of correspondence where they are the subject under the Data Protection Act 1998. The full details of the request will be outlined under the cover of a separate letter.

Allegation 4

As stated in the course of the grievance investigation meeting, my Clients gave a clear and coherent account of what they were required to investigate and the impact that this had on them. **[Name]**  concludes that experienced individuals within the Industry would have been exposed to “challenging situations” and he “did not believe that the situation that **[Claimant 1]** and **[Claimant 2]** were asked to resolve to be either extraordinary or more stressful than the challenge of bringing in net new business.”

It is not clear whether **[Name]** fails to have a clear comprehension of what my Clients have unearthed or whether he finds it easier to ignore the matters at their core. On any view, his conclusions are perverse and bring into question his judgement and therefore his ability to adjudicate over this issue.

Evidently, my clients have been required to work in a wholly remarkable situation and have coped with the considerable stresses. Furthermore, they are very likely to find that their future reputations will to be affected by their involvement with the unlawful conduct.

Allegation 5

Over the course of the last three months, my Clients have been engaged in matters relating to the budgeting for the FY17 and the targets that senior management have sought to impose. The forecasting has been based on entirely false figures from previous years. My Clients remain very concerned that the Company risks presenting a financial forecast that is known to be false that could give rise to breaches of the UK Corporate Governance Code. Within the Division, **[Claimant 1]** has had a series of meetings that show there is a limited comprehension or, he suspects, myopia about the concerns he has with the forecasts. Both **[Claimant 1]**and **[Claimant 2]** have been set unrealistic objectives
and ultimately have been set up to fail.

**[Claimant 2]**  has sent several emails to Senior Management expressing huge concerns over the budget and has asked on numerous occasions for sight of the budget-build and a clear plan to define roles and responsibilities, which to date have not been received.

Their greater concern is the interplay between the grievance and the discussions that **[Claimant 1]** had with **[Name]** on **[Date]**.**[Claimant 1]**held a meeting with **[Name]** to question the basis of the budget proposed and breakdown of the budget-build. During the course of the conversation, **[Name]** became flustered and evasive and then claimed that he was struggling to connect to a Wi-Fi network to check some figures. He ended the call prematurely and then suggested they speak the following day but has since failed to engage on the issue.

Whilst **[Claimant 1]** has waited for the explanation to be provided, the Grievance Outcome was sent. This reveals that there have been some discussions about the budgeting for FY17.

The Grievance Outcome claims that the FY17 target of 12,000 continues to be a combined target of New Business and renewals. This is false as the connection target is 12,000 connections for new business only. This represents a clearly unrealistic jump from the previous year’s budget-build and targets.

It seems that the presentation suggested to **[Name]** in the interim was different from the one that **[Name]** attempts to impose.

In the course of a meeting on **[Date]**, **[Name]** once again reiterated that the target was 12,000 new connections and that the renewals and upgrades would be a target for AHC and not form part of their target. During the meeting, past performance was once again highlighted as forming part of the reasoning behind 12,000 connections with FY14 made an example. This again highlights the point that the budget could not be measured against a previous year, which contained a high percentage of fraudulent activity in its connection number.

Allegation 6

In the original grievance and subsequent correspondence, I have raised the significant unilateral changes that have been imposed on my Clients. Not least, the change in the focus of their duties to New Business and no renewal and account involvement, which made up the biggest parts of their roles and the budget for FY16.

There remains a significant and fundamental change in their duties and it has been made clear to **[Claimant 1]** that he must report to **[Name]** and that he is no longer to have line management responsibilities to **[Name]** and **[Name]** (see email dated 16 May 2016.)

Furthermore, the areas of even greater concern have failed to be addressed. In my email to **[Name]** dated **[Date]** it was made clear that **[Name]** entering the line management chain amounted to an unacceptable and untenable position. The Outcome Letter is silent on this topic. In addition, **[Name]** fails to address the matters raised about the appointment of **[Name]**. They consider this is a further protected disclosure and note that his continued employment and the requirement that they are subject to his line management amounts to a further and ongoing detriment under the Employment Rights Act 1996.

Conclusion

We look forward to confirmation that this matter will now be passed to a senior appeals manager with sufficient standing and objectivity within the Company to undertake a fair and balanced appeal. It is apparent that **[Claimant 1]** and **[Claimant 2]** have exposed considerable and very serious evidence of criminal wrongdoing and there seems to be a collective desire to sweep this wrongdoing under the carpet. Their protected disclosures have resulted in them suffering ongoing detriments. Should matters not be satisfactorily settled they will have no choice but to issue proceedings to the Employment Tribunal.

They are deeply concerned by the considerable failures to perform a fair and objective investigation of the grievance presented. The flaws in the Grievance Outcome are considerable and give little choice but for my Clients to conclude that **[Name]** may be complicit in the decision to hide the truth. His investigation has sought to downplay the seriousness of the allegations as well as the work of**[Claimant 1]** and **[Claimant 2]** that they were undertaking during the course of 2015 and the early part of 2016.

I look forward to hearing from you in due course.

Yours sincerely

Monaco Solicitors