Appeal No. UKEAT/0335/14/DM

EMPLOYMENT APPEAL TRIBUNAL

FLEETBANK HOUSE, 2-6 SALISBURY SQUARE, LONDON, EC4Y 8AE

At the Tribunal
on 24 March 2015
Judgment handed down on 8 April 2015

Before

THE HONOURABLE MR JUSTICE SUPPERSTONE

SITTING ALONE

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(1) CHERSTERTON GLOBAL LTD (TRADING AS CHESTERTONS) APPELLANTS
(2) MR NEAL VERMAN

Mr M. NURMOHAMED RESPONDENT

Transcript of Proceedings

JUDGMENT

APPEARANCES

For the Appellants	MR MARTIN PALMER (of Counsel) Instructed by Doyle Clayton Solicitors Ltd Sovereign House - Vastern Road Reading Berkshire RG1 8BT
For the Respondent	MS ALICE MAYHEW (of Counsel) Instructed by Winckworth Sherwood LLP Minerva House 5 Montague Close London SE1 9BB

SUMMARY

VICTIMISATION DISCRIMINATION

Whistleblowing

Protected disclosure

This appeal concerns the meaning of the words "in the public interest" inserted into section 43B(1) of the **Employment Rights Act 1996** by section17 of the **Enterprise and Regulatory Reform Act 2013**. The Respondent was Director of the Mayfair office of the First Appellant, a well-known firm of estate agents. He made three alleged protected disclosures, two to the Area Director for the Central London area and one to the Second Appellant, the First Appellant's Director of Human Relations. The Respondent stated that he believed the First Appellant was deliberately misstating £2-3million of actual costs and liabilities through the entire office and department network which affected the earnings of 100 senior managers, including himself.

The Employment Tribunal concluded that the disclosures were made in the reasonable belief of the Respondent that they were in the interest of 100 senior managers, and that that is a sufficient group of the public to amount to be a matter in the public interest. The decision of the Tribunal was that the Respondent was unfairly dismissed and automatically unfairly dismissed by the First Appellant and that the First and Second Appellants subjected him to detriments on the grounds that he had made protected disclosures.

The Appellants appealed on two grounds: first, that the Tribunal erred on concluding that disclosures made in the interest of the 100 senior managers was to a sufficient group of the public to amount to being a matter in the public interest; and second that it was for the Tribunal to determine objectively whether or not the disclosures were of real public interest, and this the Tribunal failed to do.

The Employment Appeal Tribunal rejected both grounds of appeal: (1) the question for consideration under section 43B(1) of the **1996 Act** is not whether the disclosure per se is in the public interest but whether the worker making the disclosure has a reasonable belief that the disclosure is made in the public interest; (2) the sole purpose of the amendment to section 43B(1) by section 17 of the **2013 Act** was to reverse the effect of **Parkins v Sodexho Ltd**. The words "in the public interest" were introduced to do no more than prevent a worker from relying upon a breach of his own contract of employment where the breach is of a personal nature and there are no wider public interest implications.

THE HONOURABLE MR JUSTICE SUPPERSTONE

Introduction

1. This appeal concerns the meaning of the words "in the public interest" inserted into section 43B(1) of the **Employment Rights Act 1996** ("the 1996 Act") by section 17 of the **Enterprise and Regulatory Reform Act 2013** ("the 2013 Act"), with effect from 25 June 2013. There is no authority on the point.

2. The First Appellant is a well-known firm of estate agents. The Respondent at the relevant time was Director of their Mayfair office. The Second Appellant is their Director of Human Relations. In this judgment I shall refer to the First and Second Appellants as "the Appellants", unless otherwise stated.

3. The Appellants appeal against the Judgment of an Employment Tribunal (chaired by Employment Judge Walker) sent to the parties on 4 June 2014, following a hearing held at London Central. The unanimous decision of the Tribunal was that the Respondent was unfairly dismissed and automatically unfairly dismissed by the First Appellant and that the Appellants subjected him to detriments on the grounds that he had made protected disclosures.

4. The Appellants accepted prior to the hearing that the circumstances in which the Respondent was dismissed amounted to an unfair dismissal. Consequently the Appellants do not appeal that part of the Judgment.

5. The Appellants submitted a notice of appeal on 7 July 2014 raising two grounds. The first ground is whether or not the Respondent had a reasonable belief that he was making a

protected disclosure. The second ground is whether the protected disclosure was made in the public interest.

6. At a preliminary hearing held before Langstaff J (President) on 9 December 2014 ground 1 was dismissed upon withdrawal. The appeal was set down for a full hearing on ground 2 only.

The Employment Tribunal Decision

7. The facts which the Tribunal found are set out at paragraphs 6-119 of its Decision.

8. At the relevant time the Claimant was responsible for the sales department of the Mayfair office. He reported to Ms Patricia Farley who was the area director for the central London area.

9. In January 2013 the First Appellant introduced a new commission structure. The Respondent was very unhappy about the change and very concerned it would impact on his income, and reduce it considerably; however on 22 February 2013 he largely adopted it although some special arrangements were made for him. Nevertheless he remained unhappy as he was concerned that it would reduce his income.

10. On 14 August 2013 the Respondent had a meeting with Ms Farley. Having, he said, carefully monitored the accounting information which was provided by the First Appellant, he made the "first alleged protected disclosure". Paragraph 45 of the decision records that he

> **"showed Ms Farley a series of spreadsheets, both in print-out form and some on computer. … Mr Nurmohamed said he used these records to show Ms Farley various discrepancies in the figures on the profit and loss of the Mayfair office as against the corporate figures. Ms Farley accepted in evidence in her witness statement that they had discussions and she summarised Mr Nurmohamed's assertions saying she recalled being told that senior management were manipulating the accounts to the benefit of the shareholders."**

11. The Tribunal added (at paragraph 46) that they

> **"make no finding that the accounts were either correct or incorrect. However, on their face, the accounts appeared incorrect and Mr Nurmohamed reported the inaccuracies he saw to Ms Farley".**

12. On 24 September 2013 the Respondent had a telephone conversation with the Second Appellant ("the second alleged protected disclosure"). He says he went through the same accounting matters as he had with Ms Farley. The Second Appellant accepts that he had a telephone conversation with the Respondent on that day, but denies any protected disclosure was made.

13. On 8 October 2013 the Respondent raised the accounting issues that concerned him for a second time with Ms Farley, again taking her to the various spreadsheets and records ("the third alleged protected disclosure"). Paragraph 88 of the decision records:

> **"Ms Farley again admits that they had a conversation of that nature and again she accepts that Mr Nurmohamed made points about the effect of this accounting system which she summarised as his saying that senior management were manipulating the accounts".**

14. The relevant parts of the "Conclusions" of the Tribunal in relation to the Protected Disclosure claim include the following:

> ***"Did the Claimant make a disclosure to Ms Farley on 14 August 2013?***
>
> **138. It is our view that the Claimant did make a disclosure on that date to Patricia Farley. In particular we rely on Patricia Farley's evidence that the Claimant did talk to her about the account. She accepted in evidence that he had produced the spreadsheets and various documents. She accepted that the Claimant had told her the figures were being manipulated to the benefit of the shareholders. …**
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> ***Did the Claimant make a disclosure to Mr Verman on 24 September 2013?***
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> **139. … we find that the disclosure took place… there clearly was a conversation akin to that described by Mr Nurmohamed and we accept Mr Nurmohamed's evidence about it.**
>
> ***Did the Claimant [make] a disclosure to Ms Farley on 8 September 2013?***
>
> **140. Miss Farley has conceded in her witness statement she and Mr Nurmohamed had a conversation and she recalled Mr Nurmohamed saying the accounts were being manipulated to the benefit of the shareholders. Once again, we are satisfied that this corroborates Mr Nurmohamed's assertion that on that date he went through the accounts and records again and repeated his assertion to Miss Farley.**
>
> **141. In the circumstances we accept that all three disclosures took place on the dates stated by Mr Nurmohamed and were made to the two people he refers to. …**

Did the disclosures made by the Claimants tend to show that there was a breach of a legal obligation or likely to be a breach of a legal obligation?

144. Mr Nurmohamed in his witness statement at paragraph 89 says with reference to the 8 October meeting that he expressed these concerns with reference to monthly management accounts, commission modellers, year to date accounts, and explained how the commission accountant was being supplied with wholly inaccurate profit and loss figures to calculate commissions, transitional payments and profit bonus calculations. He says he told Miss Farley that this affected over 100 senior managers earnings and he believed the Respondent was deliberately misstating between £2 and £3 million of actual costs and liabilities throughout the entire office and department network. We consider this points to the fact that the primary focus of his statements was that this affected over 100 senior managers earnings. We accept this shows that a breach of a legal obligation towards the senior managers in question. ... Ms Farley has said that Mr Nurmohamed's complaint was that the figures were being manipulated to the benefit of the shareholders. We are satisfied that the disclosures did convey facts and information and that there was a breach of a legal obligation or like to be one. …

Did the Claimant make the disclosure in the reasonable belief that they were in the public interest?

147. We are not aware of any case law in existence as yet, which identifies the proper meaning of public interest. In the circumstances we have had to consider for ourselves what it might mean. It is clear to us that it cannot mean something which is of interest to the entirety of the public since it is inevitable from the kind of disclosures which arise from time to time such as disclosures about hospital negligence or disclosures about drug companies that only a section of the public would be directly affected. With this in mind, it is our view that where a section of the public would be affected, rather than simply the individual concerned, this must be sufficient for a matter to be in the public interest.

148. In this case, the two potential groups of people who might be affected would be the 100 senior managers or anybody who relied on the accounts which had been incorrectly stated to the benefit of shareholders.

149. Mr Nurmohamed's assertions were to the effect that the effect of loading incorrect figures onto the office accounts was that senior managers received less of the bonus than they might otherwise receive, resulting in more money being retained by the company, and therefore the profits being increased so that the company would seem to be more profitable to the benefit of shareholders. It was suggested that, if in the future, the company were to be sold, those parties who bought the company would do so in reliance on accounts which had been incorrectly drawn up so that if they subsequently paid the correct amount to the office managers, they would make lower profits and have overpaid for the company. We have no evidence that Mr Nurmohamed had that issue in mind at the time.

[In 2011 the [First Appellant] had raised approximately £10 million from new independent shareholders and investors. [The Respondent had said] this had been raised with a view to developing the business and preparing for a future stock market flotation (para 23). In April 2013 the [First Appellant] issued B shares to certain senior managers (para 22)].

150. We note that Mr Nurmohamed's first disclosure [to] [Ms] Farley was before he says he had found [out] about the B shares. At some point he investigated the corporate records at Companies House and discovered there were B shares. We accept [Ms Farley's] references to his assertions that what he said on both occasions was to the effect that the management were manipulating the accounts to the benefit of the shareholders. On the first occasion on which Mr Nurmohamed made a disclosure the only shareholders he knew about would have been the ordinary shareholders.

151. Bearing all this in mind we conclude that the disclosures were made in the belief of Mr Nurmohamed at the time that it was in the interest of the 100 senior managers. We conclude that that is a sufficient group of the public to amount to being a matter in the public interest. We also conclude that the belief was reasonable. The over-inflation of the costs set against the office budgets would have decreased their profits and potentially reduced bonuses for all the senior managers. We are cognisant that the person Mr Nurmohamed was most concerned about was himself and that the recent amendments to the public interest legislation mean that there must be a public interest question and not a personal one. However, we are satisfied that Mr Nurmohamed did have the other office managers in mind. He referred to the central London area for which Ms Farley was responsible and suggested to Ms Farley that she should be looking at other central London office accounts. Therefore we conclude that this aspect of the test is satisfied."

The statutory framework

15. Section 43B of the **1996 Act**, inserted by the **Public Interest Disclosure Act 1998** ("the 1998 Act") and as amended by section 17 of the **2013 Act**, provides:

> **"(1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—**
>
> **(a) that a criminal offence has been committed, is being committed or is likely to be committed,**
>
> **(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,**
>
> **(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,**
>
> **(d) that the health or safety of any individual has been, is being or is likely to be endangered,**
>
> **(e) that the environment has been, is being or is likely to be damaged, or**
>
> **(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed."**

16. In **ALM Medical Services Ltd v Bladon** [2002] ICR 1444 the Court of Appeal considered the construction and application of the protected disclosure provisions inserted into the **1996 Act** by the **1998 Act** with effect from 2 July 1999. Mummery LJ stated (at paragraph 2):

> **"The self-evident aim of the provisions is to protect employees from unfair treatment (i.e. victimisation and dismissal) for reasonably raising in a responsible way genuine concerns about wrongdoing in the workplace. The provisions strike an intricate balance between (a) promoting the public interest in the detection, exposure and elimination of misconduct, malpractice and potential dangers by those likely to have early knowledge of them, and (b) protecting the respective interests of employers and employees. There are obvious tensions, private and public, between the legitimate interest in the confidentiality of the employer's affairs and in the exposure of wrong."**

17. The words "in the public interest" inserted into section 43B(1) of the **1996 Act** by the **2013 Act** were intended to reverse the effect of **Parkins v Sodexho Ltd** [2002] IRLR 109 in which it was held that a breach of a legal obligation owed by an employer to an employee under his or her own contract of employment may constitute a protected disclosure.

18. During the passage of the 2013 Act an amendment to clause 14 of the Bill (now section 17) was tabled which would automatically preclude a disclosure relying on a breach of a contract of employment from constituting a qualifying disclosure. In the Committee debate on the Bill on 3 July 2012 Mr Norman Lamb, the Parliamentary Under-Secretary of State for Business, Innovations and Skills (the promoter of the Bill) stated:

> **"The amendment would, in addition to the inclusion of the public interest test that we propose, disallow Public Interest Disclosure Act claims based on breaches of an individual's employment contract. In a sense, the amendment seeks to add an additional hurdle for claimants to clear on top of what the Government intend.**
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> **Setting out the issue that the Government seek to address might be helpful. The original aim of the public interest disclosure legislation was to provide protection to individuals who made a disclosure in the public interest – otherwise known as blowing the whistle. The clause seeks to make that public interest clear, and the hint is in the title of the original legislation, which was designed to deal with public interest disclosure – that is what we are talking about."**

19. The Minister continued:

> **"To return to my explanation of the purpose of the clause and of why the Government have designed it in such a way, the decision in the case Parkins v Sodexho Ltd has resulted in a fundamental change in how the Public Interest Disclosure Act operates and has widened its scope beyond what was originally intended. The ruling in that case stated that there is no reason to distinguish a legal obligation that arises from a contract of employment from any other form of legal obligation. The effect is that individuals make a disclosure about a breach of their employment contract, where this is a matter of purely private rather than public interest, and then claim protection, for example, for unfair dismissal…**
>
> **The clause will amend part IVA of the Employment Rights Act 1996 to close the loophole that case law has created… The clause in no way takes away rights from those who seek to blow the whistle on matters of genuine public interest.**
>
> **…**
>
> **The clause will remove the opportunistic use of the legislation for private purposes. It is in the original spirit of the Public Interest Disclosure Act that those seeking its protection should reasonably believe that their raising an issue is in the public interest. Including a public interest test in the Bill deals with the Parkins v Sodexho Ltd case in it entirety. Therefore there is no need to disallow claims based on an individual's contract, as suggested in the amendment. Indeed, although our aim is to prevent the opportunistic use of breaches of an individual's contract that are of a personal nature, there are also likely to be instances where a worker should be able to rely on breaches of his own contract where those engage wider public interest issues. In other words, in a worker's complaint about a breach of their contract, the breach in itself might have wider public interest implications.**
>
> **The blanket restriction of claims involving breaches of an employee's contract, which the Opposition amendment would introduce, could have unintended adverse consequences for individuals who are legitimately concerned about a breach of their contract that has wider public interest implications. Such a restriction would not reflect the intention or the spirit of the legislation and would unfairly and unduly restrict the number of cases in which an individual could bring a public interest disclosure case."**

The parties' submissions

20. Mr Martin Palmer, for the Appellants, makes two principal submissions. First, he submits that the Tribunal erred in concluding that disclosures made in the interest of the 100 senior managers was a sufficient group of the public to amount to being a matter in the public interest. Second, he submits that it was for the tribunal to determine objectively whether or not the disclosures were of real public interest, and this the Tribunal failed to do.

21. In response Ms Alice Mayhew, for the Respondent, submits first, that having regard to the findings of fact made by the Tribunal, the tribunal was entitled to conclude that disclosures made in the interests of the 100 senior managers were a sufficient group of the public to amount to being a matter in the public interest. Second, the issue was whether the Respondent's belief that the disclosures were made in the public interest was objectively reasonable, not whether the disclosures were of public interest.

Discussion

22. Mr Palmer submits that in construing the words "in the public interest" the Tribunal should have examined the subject matter of the disclosures to determine whether or not they were of real interest to the public in general or a sufficient section of the public. The Tribunal did not, he contends, properly address that issue. It is, he contends, for the tribunal to determine objectively whether a disclosure is of real interest to the public. The public interest must have a quality of real interest to the public (see observations of Baroness Hale in **Jameel (Mohammed) v Wall Street Journal Europe Sprl** [2007] 1 AC 359 at 409 on qualified privilege in defamation law).

23. Mr Palmer submits that the disclosures were not in the public interest. They were made in the context of a dispute between the Respondent and the First Appellant arising out of the terms

of his personal contract of employment. The consequences of the alleged manipulation of the accounts by the First Appellant would limit the amount of commission payable to him, and give rise to a personal claim for breach of contract.

24. Mr Palmer does not suggest that a qualifying disclosure related to private contractual obligations between an employer and an employee can never be in the public interest. He acknowledges that a complaint by an employee about an employer operating a racially discriminatory policy may be in the public interest because public policy is directed against discrimination in society at large on grounds of race. However the subject matter of disclosures in the present case are more analogous, he suggests, to concerns raised by an employee as to his holiday pay.

25. Mr Palmer also does not contend that the numbers of those affected is of singular importance in determining whether or not a qualifying disclosure is in the public interest. Accordingly he takes no point in relation to the number of senior managers in the group. I agree with Ms Mayhew that a relatively small group may be sufficient to satisfy the public interest test. What is sufficient is necessarily fact-sensitive.

26. Mr Palmer's contention is that the fact that the manipulation of accounts may impact on the commission payable to senior managers, other than the Respondent, makes the disclosures no more in the public interest than if the manipulation affected the Respondent alone. In each case the matters about which complaint is made which led to the disclosures concern personal contracts of employment between the First Appellant and its employees. That being so the public interest test, he submits, has not been satisfied. Indeed Mr Palmer submits the Tribunal failed to explain how it reached the conclusion that it did, other than by reference to the number

of senior managers potentially affected. The number affected is irrelevant; the dispute remains one of a private nature between the First Appellant and its workers.

27. In considering Mr Palmer's submissions I observe at the outset that his contention that the tribunal must itself determine whether the disclosures have in fact been made in the public interest is not one that appears in the Notice of Appeal that he settled. Ground 1, which was a challenge to the finding made by the tribunal that the Respondent had a reasonable belief that he was making protected disclosures, was withdrawn (see paragraph 6 above). Ground 2 as formulated indicates that the Appellants accept that the question to be determined is whether or not the Respondent had a reasonable belief that his disclosures were made in the public interest (see paragraphs 22-24 of the Notice of Appeal).

28. I agree with Ms Mayhew that the question for consideration under section 43B(1) of the 1996 Act is not whether the disclosure per se is in the public interest but whether the worker making the disclosure has a reasonable belief that the disclosure is made in the public interest.

29. The language of reasonable belief in section 43B(1) pre-dates the introduction of the public interest test. By virtue of the 2013 amendment the worker must not only establish that he had a reasonable belief that the disclosure tends to show one or more of the matters falling within the statutory categories, but that he also had a reasonable belief the disclosure was made in the public interest. The test of reasonable belief in section 43B(1) has, in my view, remained the same.

30. In **Babula v Waltham Forest College** [2007] ICR 1026 a whistleblower believed that a criminal offence had been committed. However it was common ground that it is not permissible, as a matter of construction, to adopt a different interpretation of what is meant by

"reasonable belief" when applying that phrase to any of the situations in section 43B(1)(a) to (f). The test, as it applied to the old section 43B, is set out by Wall LJ in his judgment:

> **"81. … An employment tribunal hearing a claim for automatic unfair dismissal has to make three key findings. The first is whether or not the employee believes that the information he is disclosing meets the criteria set out in one or more of the paragraphs in section 43B(1)(a) to (f) of ERA 1996. The second is to decide, objectively, whether or not that belief is reasonable. The third is to decide whether or not the disclosure is made in good faith.**
>
> **82. In this context, in my judgment, the word 'belief' in section 43B(1) is plainly subjective. It is the particular belief held by the particular worker. Equally, however, the 'belief' must be 'reasonable'. That is an objective test."**

31. Section 18(1)(a) of the **2013 Act** repeals the requirement in section 43C of the **1996 Act** that the disclosure be made in good faith, and section 17 inserts in section 43B the requirement that it be made in the public interest.

32. Wall LJ observed (at paragraph 75) in **Babula**:

> **"Provided [the worker's] belief (which is inevitably subjective) is held by the tribunal to be objectively reasonable, neither (1) the fact that the belief turns out to be wrong – nor (2) the fact that the information which the claimant believed to be true (and may indeed be true) does not in law amount to a criminal offence – is, in my judgment, sufficient, of itself, to render the belief unreasonable and thus deprive the whistleblower of the protection afforded by the statute".**

33. That this is so follows from the purpose of the statute which, as Wall LJ notes, is "to encourage responsible whistleblowing". He observes (at paragraph 80):

> **"To expect employees on the factory floor or in shops and offices to have a detailed knowledge of the criminal law sufficient to enable them to determine whether or not particular facts which they reasonably believe to be true are capable, as a matter of law, of constituting a particular criminal offence seems to me both unrealistic and to work against the policy of the statute".**

The same reasoning applies, in my view, in relation to sub-paragraph (b) of section 43B(1) which is in play in the present case.

34. I accept Ms Mayhew's submission that applying the **Babula** approach to section 43B(1) as amended, the public interest test can be satisfied where the basis of the public interest

disclosure is wrong and/or there was no public interest in the disclosure being made provided that the worker's belief that the disclosure was made in the public interest was objectively reasonable.

35. In my view the Tribunal properly asked itself the question whether the Respondent made the disclosures in the reasonable belief that they were in the public interest. The Tribunal proceeded to answer that question at paragraphs 146-151 of the decision (see paragraph 14 above). The Tribunal concluded (at paragraph 151) that the disclosures were made in the belief of the Respondent at the time that it was in the interests of the 100 senior managers and that that belief was reasonable. There is now no challenge to the finding that the Respondent had a reasonable belief that he was making protected disclosures (see paragraph 6 above).

36. The objective of the protected disclosure provisions is to protect employees from unfair treatment for reasonably raising in a responsible way genuine concerns about wrongdoing in the workplace (see **ALM Medical Services Ltd v Bladon** at paragraph 16 above). It is clear from the parliamentary materials to which reference can be made pursuant to **Pepper (Inspector of Taxes) v Hart** [1993] AC 593 that the sole purpose of the amendment to section 43B(1) of the **1996 Act** by section 17 of the 2013 Act was to reverse the effect of **Parkins v Sodexho Ltd.** The words "in the public interest" were introduced to do no more than prevent a worker from relying upon a breach of his own contract of employment where the breach is of a personal nature and there are no wider public interest implications. As the Minister observed: "the clause in no way takes away rights from those who seek to blow the whistle on matters of genuine public interest" (see paragraph 19 above).

37. I reject Mr Palmer's submission that the fact that a group of affected workers, in this case the 100 senior managers, may have a common characteristic of mutuality of obligations is

relevant when considering the public interest test under section 43B(1). The words of the section provide no support for this contention.

38. In the present case the protected disclosures made by the Respondent concerned manipulation of the accounts by the First Appellant's management which potentially adversely affected the bonuses of 100 senior managers. Whilst recognising that the person the Respondent was most concerned about was himself, the tribunal was satisfied that he did have the other office managers in mind. He referred to the central London area and suggested to Ms Farley that she should be looking at other central London office accounts (paragraph 151). He believed that the First Appellant, a well-known firm of estate agents, was deliberately mis-stating £2-3million of actual costs and liabilities throughout the entire office and department network. All this led the Tribunal to conclude that a section of the public would be affected and the public interest test was satisfied.

39. In the course of argument Mr Palmer accepted that if the First Appellant was a publicly listed company then disclosure of manipulation of their accounts would be in the interest of the public. However he suggests that this is not so in the present case as the First Appellant is a private company. In my view whether or not the disclosures which potentially affected the bonuses and commissions to be paid to the 100 senior managers were made in the public interest does not turn on the First Appellant being a private, rather than a public, company.

40. I am grateful to both counsel for the researches they have conducted, at the suggestion of the President at the preliminary hearing, into other areas of law for the purposes of considering whether they provide any assistance in construing the words "in the public interest" in section 43B(1) of the **1996 Act**. In my view they do not.

Conclusion

41. For the reasons I have given this appeal is dismissed.