Appeal No. UKEAT/0106/15/LA

EMPLOYMENT APPEAL TRIBUNAL

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

At the Tribunal
On 21 July 2015

Before

THE HONOURABLE MR JUSTICE LANGSTAFF (PRESIDENT)

MRS G SMITH

MISS S M WILSON CBE

FRENKEL TOPPING LIMITED — APPELLANT

MS G KING — RESPONDENT

Transcript of Proceedings

JUDGMENT

APPEARANCES

For the Appellant	MS KATHERINE REECE (Representative) Peninsula Business Service The Peninsula Victoria Place Manchester M4 4FB
For the Respondent	MISS JOANNE CONNOLLY (of Counsel) Direct Public Access

SUMMARY

UNFAIR DISMISSAL - Reason for dismissal including substantial other reason

UNFAIR DISMISSAL - Constructive dismissal

CONTRACT OF EMPLOYMENT - Implied term/variation/construction of term

An employee resigned, giving a number of grounds for doing so in her letter of resignation. She claimed she had been constructively dismissed, and that the principal ground for this was that she had made a protected disclosure. The Employment Tribunal accepted she had made such a disclosure, and had suffered detriment because of it, but rejected her claim that the dismissal was principally for that reason. It nonetheless held that she had been entitled to resign, and upheld her claim of unfair dismissal. The employer appealed against this conclusion, arguing that of the seven matters which the Claimant alleged had been breaches of contract toward her, those which she regarded as most serious were found by the Tribunal to be no breaches. As to the other grounds, it was held on appeal that the Tribunal did not set out its reasoning sufficiently on most of them, but it remained unchallenged that incidents on 17 February 2014 had been in part a reason for her resignation. A submission that they might not have been repudiatory, taken on their own, was rejected: in context, any court would have held them to be so. An argument that the resignation would have happened anyway, if the breach had not occurred, and that therefore there should have been no finding of constructive dismissal, was rejected: this was in effect to reinstate a test that a repudiatory breach established by an employee as the reason for her dismissal had to be the effective or principal reason for resigning, and that was not the law (applying **Wright v Ayrshire**). The appeal was dismissed.

Observations made about the need for Tribunals to be mindful that for there to be a breach of the implied term of trust and confidence the conduct complained of must be really serious.

THE HONOURABLE MR JUSTICE LANGSTAFF (PRESIDENT)

1. For Reasons given in a Judgment sent to the parties on 14 October 2014 an Employment Tribunal at Manchester (Employment Judge Sherratt, Mrs Jarvis and Mrs Clover) decided that the Claimant had made two protected disclosures, both in early January 2014, had suffered detriment by reason of unfair and inappropriate criticism following that in two meetings on 17 February 2014, because she had made those disclosures, and, thirdly, that she had been unfairly dismissed within the meaning of section 98 of the **Employment Rights Act 1996** but not contrary to section 103A. In other words the principal reason for her dismissal was not that she had made a protected disclosure.

2. The appeal focuses entirely upon the third of those decisions. It argues that the finding that the Claimant, who had resigned, had been constructively dismissed was in legal error.

The Facts

3. The facts we shall take from the Tribunal's Decision. Both parties, for their own purposes, have urged upon us facts which were not contained in that Judgment. They have made extensive and eloquent submissions in the light of those facts. But this is not, in our view, an appropriate way in which to present an appeal unless the provisions of the **Practice Direction** have been complied with and evidence put before the Tribunal, either by agreement or in default of agreement by reference to the Judge's notes, to show the Appeal Tribunal what the evidence actually was if that evidence is said to be of importance. It is also important that appeals are confined to the grounds upon which permission to appeal has been granted. This is part of the system for ensuring justice about which the EAT spoke in the case of **Chandhok v Tirkey** [2015] IRLR 195, noting that it is necessary to provide a focus for the legal argument in

any particular case. In the case of an appeal, it is the grounds which provide the necessary focus.

4. The facts as taken from the Tribunal's Decision are that the Claimant, who worked from 2012 until her resignation in early 2014, was a solicitor who had a particular experience in the way in which state benefits interacted with financial compensation awarded at the conclusion of a personal injury or clinical negligence claim. She became a Welfare Benefits Case Worker for the Respondent, a well-known firm specialising in advising and assisting those involved in such cases.

5. She became concerned about the way in which her employers had acted towards her and others. In particular she found that the firm was keeping, or charging, 0.5% of the interest earned on personal injury trust accounts set up by it for clients. She thought that could not be justified since this appeared to be an ongoing fee though no ongoing service was being provided. The Tribunal found that she made a qualifying disclosure in respect of that at the end of the week beginning 13 January 2014. There is no appeal against that conclusion.

6. On 27 January 2014 an email was sent internally by a co-employee, a member of management team, which made an inappropriate joke about Arab Muslims. Though the Tribunal did not set out the detail of the joke, the material is contained in the papers before us, as it was before it, and we echo the Tribunal's general sense of unease and discomfort at its content. The Claimant complained about it.

7. Following making her disclosures the Claimant was called to a meeting on 17 February 2014. She had already met the Financial Director in relation to some of her concerns. At the

meeting on 17 February 2014 (see paragraph 24) the Claimant was, in effect, told that if her performance did not improve she might no longer be permitted to continue the work which she was doing one day a week voluntarily with the Child Poverty Action Group since she would be required to be in the office for five days a week.

8. There were two meetings on 17 February. The first was with the Managing Director and Finance Director. The second was a more public meeting in which she was criticised in front of her team and others. The Tribunal concluded that the criticism was unfair and inappropriate. It related to her performance, amongst other matters. The Claimant had been someone who, until the beginning of 2014 and the making of the disclosures, had been increasingly well-remunerated and there is no suggestion in any of the findings of fact that there had been any reason to criticise her performance prior to this. The Tribunal found (and there is no appeal against this finding) that the criticism of her performance was unfair and inappropriate and that the reason for it was that she had made the disclosures she had.

9. The Claimant pursued a grievance about the email and argued that the Respondent's reaction to it had not shown the appropriate level of seriousness which she would have wished. When the grievance was rejected, she exercised her right to appeal in respect of it. The response to her appeal was delivered at the end of the period provided for by the grievance policy or (it may be) just after, and she was unhappy about the length of time it had taken responding to her.

10. She gave notice on 25 February 2014 in a long letter of resignation, which was placed before us as it was before the Tribunal. That made a number of complaints about the way in which the Respondent firm had treated her.

11. The Claimant could only claim to have been unfairly dismissed if the employer had broken its contract with her, if the breach was sufficiently serious to be a repudiatory or, to use another description, fundamental breach of the contract, if she had resigned at least partly in response to the breach, and if before doing so she had not by her actions or inaction affirmed the contract. As to that, the Claimant alleged that there had been seven matters, each of which individually or all of which cumulatively constituted a repudiatory breach. The thrust of her case was that the breach or breaches upon which she relied were breaches of the implied term of trust and confidence. It is worth restating the classic formulation of that term, as derived from **Malik v BCCI** [1997] UKHL 23 though this formulation derived in turn from earlier cases, including in particular **Courtaulds Northern Textiles Ltd v Andrew** [1979] IRLR 84:

> **"… the employer will not, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee."**

12. We would emphasise that this is a demanding test. It has been held (see, for instance, the case of **BG plc v O'Brien** [2001] IRLR 496 at paragraph 27) that simply acting in an unreasonable manner is not sufficient. The word qualifying "damage" is "seriously". This is a word of significant emphasis. The purpose of such a term was identified by Lord Steyn in **Malik v BCCI** [1997] UKHL 23 as being:

> **"… apt to cover the great diversity of situations in which a balance has to be struck between an employer's interest in managing his business as he sees fit and the employee's interest in not being unfairly and improperly exploited."**

13. Those last four words are again strong words. Too often we see in this Tribunal a failure to recognise the stringency of the test. The finding of such a breach is inevitably a finding of a breach which is repudiatory: see the analysis of the Appeal Tribunal, presided over by Cox J in **Morrow v Safeway Stores** [2002] IRLR 9.

14. The test of what is repudiatory in contract has been expressed in different words at different times. They are, however, to the same effect. In **Woods v W M Car Services (Peterborough) Ltd** [1981] IRLR 347 it was "conduct with which an employee could not be expected to put up". In the more modern formulation, adopted in **Tullett Prebon plc v BGC Brokers LP & Ors** [2011] IRLR 420, is that the employer (in that case, but the same applies to an employee) must demonstrate objectively by its behaviour that it is abandoning and altogether refusing to perform the contract. These again are words which indicate the strength of the term.

15. Despite the stringency of the test, it is nonetheless well accepted that certain behaviours on the part of employers will amount to such a breach. Thus in **Bournemouth University Higher Education Corporation v Buckland** [2010] ICR 908 CA Sedley LJ observed that a failure to pay the agreed amount of wage on time would almost always be a repudiatory breach. So too will a reduction in status without reasonable or proper cause (see **Hilton v Shiner Builders Merchants** [2001] IRLR 727). Similarly the humiliation of an employee by or on behalf of the employer, if that is what is factually identified, is not only usually but perhaps almost always a repudiatory breach.

16. The Claimant in the present case asserted that seven matters reached this stringent standard individually or cumulatively. First, the employer was in breach by continuing to retain 0.5% interest on clients' accounts, having rejected her expressed concerns with regard to that, and was in breach of regulatory control. The Tribunal considered the point and thought there had been no regulatory breach. The employer was entitled to do what it did, though the Claimant for her part had been reasonable in her belief that it was not behaving properly.

17. Secondly, she relied upon the email having been sent. The Tribunal rejected that. It was not sufficiently serious. It had happened only once. It was, therefore, a finding that this did not indicate that the employer did not intend to be bound by the contract. She argued that the employer had failed to respond adequately to her grievance. That, too, the Tribunal rejected.

18. It accepted, however, that she had been subject to a detriment for submitting a grievance about the email. It found that the Respondent had "continued to pay unlawful referral fees to firms of solicitors and had rejected the Claimant's expressed concerns in this regard". Sixthly it had required one of the employees who reported directly to the Claimant to apologise to a solicitor client for something he did not do. She had said that was contrary to her express wishes that he should be supported, thereby undermining her position, but the Tribunal in fact found that he had been fully supported and that he had conceded this in cross-examination.

19. Seventh, the employer had operated a whistleblowing policy with a provision which was drawn from and echoed the public interest disclosure provisions of the **Employment Rights Act 1996** before they were amended to have their present formulation in section 43B *inter alia*. It thus had operated a policy which was "contrary to PIDA protection" once the statute was amended, thereby depriving her of a realistic opportunity of recourse to the Financial Conduct Authority which she would otherwise have taken.

20. The grounds of appeal challenge, in particular, three of those findings, the last three, the findings of the Tribunal on which we shall therefore set out in greater detail before we turn to the challenge.

21. As to the fifth complaint the Tribunal said this:

> **"50. As to the respondent continuing to pay unlawful referral fees to firms of solicitors and rejecting the claimant's expressed concerns in this regard we are aware that the respondent went to great lengths to instruct solicitors to advise specifically on a point concerning referral fees following the introduction of the Legal Aid Sentencing and Punishment of Offenders Act which came into effect on 1 April 2013 and banned the payment of referral fees in personal injury cases. The advice given to the respondent was that payments would be in breach of the new legislation. It was as a result of the claimant raising concerns that this legal advice was taken.**
>
> **51. Various documents were produced to the Tribunal which showed that in its accounting records the respondent was making provision for the payment of referral fees to firms of solicitors. Given that provision was made within the accounts we take the view that it was reasonable for the claimant to have believed that the respondent was paying unlawful referral fees whether it was or not. The evidence of the company was that it was not paying these fees notwithstanding what was shown in the records. Two members of the Tribunal take the view that the respondent as a matter of fact paid unlawful referral fees. The Employment Judge takes the view that the evidence does not support this given the contention for the respondent that the fees were not actually paid particularly when the making of such payments for a firm of this nature could be in breach of its obligations to its regulator and/or constitute a criminal offence. The majority view is that this action amounts to a breach of the implied duty to act in a manner that displays trust and confidence."**

22. The sixth matter was that of the instruction given to one of the Claimant's direct reports. As to that the Tribunal found these facts:

> **"52. On 13 February one of the claimant's Team was required to apologise to a client contrary to the claimant's express wishes that he should be supported. The documentation to which we were taken suggests that the claimant and other members of management supported the employee concerned until such time as another employee of the respondent telephoned the complaining client. It was after this that Mr Chan the team member signed a letter offering his apologies. The apology appears to have followed a business decision that it was appropriate to make it. There is no suggestion that Mr Chan was not supported not withstanding that he was instructed to sign the letter of apology and indeed in cross examination the claimant said senior management told her to tell him that they did support him."**

23. We observe that in her letter of resignation the Claimant had said that Mr Chan thought it very likely that a decision had been taken to disbelieve him and not to support him when he was made to sign the letter. These findings of fact, therefore, amounted to a rejection of that particular point made by the Claimant. The Tribunal continued:

> **"53. The Employment Judge takes the view that as a matter of business it was not in breach of the implied duty of trust and confidence in the claimant's contract of employment for management senior to her to require one of her team to apologise to someone for something that had not been done. The other two members of the Tribunal take the view that this action was a breach of the implied duty of trust and confidence that the respondent owed to the claimant as one of its employees."**

24. As to the whistleblowing policy, the policy was contractual. That emerges from the opening words of the statement of terms and conditions which read:

> **"This Statement, together with the Employee Handbook, forms part of your Contract of Employment …"**

Within the Employee Handbook was the policy in respect of whistleblowing. The provision was, or included:

> **"We encourage you to use the procedure if you are concerned about any wrong doing at work. However, if the procedure has not been invoked in good faith (e.g. for malicious reasons or in pursuit of a personal grudge), then it will make you liable to immediate termination of engagement or such lesser disciplinary sanction as may be appropriate in the circumstances."**

25. The wording upon which that was based was changed with effect from 25 June 2013. Currently section 43B of the **Employment Rights Act 1996** opens with the words:

> **"(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 of more of … "**

26. The Tribunal held that this had simply not been changed by the HR advisors to the Respondent by February 2014. It commented:

> **"56. The respondent's policy was clearly not in line with the law as it stood in February 2014 with regard to good faith. We accept that the claimant was affected by this in that she did not make a protected disclosure that she otherwise might have done.**
>
> **57. We take the view that this failure on the part of the respondent amounts to a breach of the implied duty of trust and confidence and indeed the employment contract itself because the claimant is entitled to be subject to proper and up to date policies that comply with the law."**

27. The Tribunal set out its conclusions in eight paragraphs from 74 to 81. It repeated what it had found to be breaches of contract. At paragraph 75 it looked at the way she felt about a number of the issues and thought that her feeling as she did allowed it to find that this amounted to a breach of duty of trust and confidence to the Claimant when viewed objectively. There is no ground of appeal directly against that finding, though in argument Ms Reece rightly pointed out that everything contained in paragraph 75 was, on any proper analysis, subjective rather

than objective and so should not have been held to amount to a breach. As we say, no ground of appeal arises.

28. At paragraphs 76 and 77 the Tribunal came to the crunch:

> **"76. We next ask ourselves what was the principal reason for the claimant's resignation? In submissions Counsel for the claimant submitted that the main issue for the claimant was the way in which the joke issue had been handled by the respondent.**
>
> **77. In our judgment the principal reason for the claimant's resignation was the breakdown of trust and confidence on the basis of all of the matters set out above from the resignation letter and not specifically that the claimant had made either or both of the protected disclosures which we found were made in respect of items 1.1 and 1.2 above."**

It rejected an argument that the real reasons for the dismissal were not the reasons given in the resignation letter.

29. Before turning to the grounds of appeal we would observe that, by referring to the principal reason here, the Tribunal was not in our view echoing the error into which the Tribunal fell whose decision was considered in the case of **Wright v North Ayrshire Council** [2014] IRLR 4. In that case it was pointed out that the test to be applied is not what is the principal or effective cause of a resignation, but it is whether the Claimant resigned at least in part by reason of some or all of the conduct which is said to amount to a repudiatory breach.

30. The use of the word "principal", in our view, was because the Tribunal was considering a case, which it rejected, that the dismissal was automatically unfair as being contrary to section 103A of the **Employment Rights Act**. That required the identification not just of a reason but the principal reason: it is not the same test as applies in order to determine if a resignation is a dismissal. Reading the two paragraphs, 76 and 77, together that becomes amply clear. We do not consider that the Tribunal was in error, particularly given the fact that it directed itself in

accordance with the proper test in the list of issues which it adopted at the outset of its Judgment.

The Grounds of Appeal

31. There are three grounds, each developed discursively. The first related to the inadequacy of reasons given for the finding in respect of referral fees; ground 2, that the finding that there was a fundamental breach of contract because the whistleblowing procedure was not up to date and the Claimant therefore felt prevented from raising a grievance was wrong in law. This essentially argued that a Claimant was not entitled contractually to an up-to-date compliant policy, and that to require an up-to-date policy such that it would be a repudiatory breach of contract not to provide one would have the effect, in respect of any employee of any employer, that that employee would be entitled to resign on the basis that there had been a repudiatory breach of their contract in any employment where the public interest disclosure policy of the employer had not been updated to recognise the change in law in June 2013.

32. The third ground was that the Tribunal failed to consider whether the breaches which were substantiated, bearing in mind that only four out of seven were, were the principal reason for the Claimant leaving. In this ground, "principal" was used in the sense which was condemned in **Wright v North Ayrshire Council**. It does, however, echo the word used by the Tribunal, though as we have said we have read that in a different sense. It is argued that the Tribunal failed to consider the fact that the main issue for resigning was the joke email, the grievance taken in respect of that, and the slow resolution of that grievance, in respect of none of which had the Tribunal found there to be any breach of contract. Ms Reece argued that the dismissal would not have occurred had it not been for these matters, yet none was a breach. But for them, there would have been no resignation. Therefore she argued that it could not be said

that the breach, if indeed any finding of breach remained standing after her sustained attack upon the three last findings that we have referred to (5, 6 and 7), the breach then amounting at most to the unfair allegations made against the Claimant on 17 February, would not have resulted in a resignation and therefore could not found a claim for constructive dismissal.

33. In paragraph 21 of the grounds, this last ground shaded into a complaint in respect of the sixth matter which the Claimant had alleged to be a repudiatory breach, that is the behaviour of the employer towards her co-employee, Mr Chan. The way in which the appeal was put was:

> **"21. The issue about the Claimant's colleague being asked to apologise to a client was of a minor nature. …"**

34. It is not clearly said, argues Miss Connolly who appears for the Claimant, that this could not be a breach of the Claimant's contract because the employer's conduct was not directed towards her but was directed towards another. It does, however, contain as a last sentence:

> **"21. … There is no explanation as to whether the substantiated breaches were sufficient to allow the Claimant to resign."**

35. In response Miss Connolly begins with what we have concluded is a powerful point. She argues that it is sufficient to answer this appeal and to uphold the decision of the Tribunal to focus upon that which was undisputed: the breach of contract in respect of the way the Claimant was treated on 17 February. If that was a breach of the implied term of trust and confidence, or if it was simply a repudiatory breach of a different term, then there was no doubt in this case that the Tribunal's finding of fact was that the Claimant had resigned, at least in part, in reliance upon it. That is because, in paragraph 77 quoted above, the Tribunal accepted that the reasons for her resignation were as set out in the resignation letter in respect of the "matters set out above", one of which was the episode of 17 February. There being no question

of affirmation, the only issue there could possibly be would be whether this breach was sufficiently serious.

36. On this point, in response, Ms Reece argued that it could not be said to be sufficiently serious: it would not necessarily be a repudiatory breach meeting the high standards which we have set out at the start of this Judgment. She points out that an allegation of unfair and inappropriate criticism of performance need not necessarily be repudiatory. We agree. But this is not such an allegation taken in isolation. This is one in which the Tribunal, in its findings of fact, identified at least two further other features which seem to us, taking full advantage of the experience of the lay members sitting on this Tribunal, to make it absolutely clear that the behaviour of the employer could not be anything other than repudiatory. That is because, first, it was repeated. There were two episodes on 17 February. This was not an isolated occurrence. On the second of those occasions, as Miss Connolly points out, the Claimant was effectively humiliated in front of others at the workplace. Those who were her critics were the Managing Director and Finance Director. Secondly, the reason for their doing so had nothing to do with her performance, as the Tribunal found. It was simply that she had raised a disclosure which should have been protected. The employer here advertised in its policy that employees were free, without any threat, to raise such disclosures. The finding of the Tribunal meant that they were not honouring what they had said to their employees.

37. At paragraph 24 there is some detail which includes what is undeniably a threat that the Claimant might find her hours increased so that she would no longer have freedom to work for the Child Poverty Action Group as she wished. We do not see any reasonable prospect that any court, considering those matters in the context described here, would conclude that the conduct was anything other than repudiatory. Though it is right that the Tribunal did not separately

single out this allegation and give it that appellation, it is the effect of what it found. We consider Miss Connolly was well-founded when at the start of her submissions she made these points and argued that she need respond no further, though she then did.

38. As to the balance of the appeal, however, we take a rather different view. At paragraph 51 the Tribunal was, in effect, making a serious finding of unlawful conduct by the Respondent firm. The conduct was such that it would be liable to regulatory action which might threaten its very future. There plainly was a dispute about whether referral fees had been paid or not. We cannot say that the conclusion to which the Tribunal came was necessarily perverse. But, just as in the context of an employer considering whether an employee had been guilty of misconduct which amounts to a criminal offence, so too an Employment Tribunal considering an allegation that an employer has in its conduct been guilty of unlawful and possibly criminal conduct, with references to dubious accounting practices, needs to set out in sufficient detail why it has reached that view. Our view is that not enough is said in paragraph 51 to explain the reasons why the Tribunal decided as it did. It simply set out in the opening words the view which the Claimant took of what the records showed. It recited the evidence of the company as to what was actually happening. It then rejected that evidence by a majority in the next sentence without saying why. Nor did the Employment Judge go on to say what extra material he considered was missing, but necessary if he were to reach the conclusion which his colleagues had indicated.

39. It is right to say that a Tribunal Judgment should not normally be condemned for its brevity. But it nonetheless does have to say sufficient to tell the parties why, on a central issue, they have won or (as it may be) have lost, to indicate to a court of appeal on review that it has not taken into account matters it should not have or, alternatively, left out of account those it

should have brought to mind and, thirdly, to indicate to the public that it is faithfully doing its job in resolving what are often serious issues. We take the view that not enough is said in paragraph 51 to discharge that obligation, set out not only in general law but also in the **Tribunal Rules 2013**.

40. We take a similar view of that which is said at paragraph 53. We do not accept the absolutist argument at one stage advanced by Ms Reece, though she did retract from it in argument, that the breach of a contract of a co-employee could have no impact upon the breach of the contract of a Claimant. Plainly it may have in some circumstances. As Miss Connolly points out, it did so in **Malik v BCCI**. But here more would need to be said. It is not self-evident, in particular having rejected the reason the Claimant had given for thinking that this was a breach of contract toward her in that she considered that Mr Chan would feel unsupported and, it might be argued, by extension she too would fear being placed in a similar position. Something more needed to be said as to why precisely the behaviour of the employer towards Mr Chan amounted to a breach of the duty of trust and confidence toward her. On the face of it we are inclined to think that the ground of appeal that is insufficiently serious may have something to be said for it but without knowing the full reasons we cannot say.

41. As to the question of the whistleblowing policy, we have great difficulties with the Tribunal's finding in respect of this. It asserts that a delay in changing the terms of the contract to accord with the applicable law amounted, first of all, to a breach of contract and, secondly, to one so serious that it might justify the employee in resigning. The breach is said to be a breach of the implied term. Unless the implied term is to be considered as an incident of the contract of employment, to be implied as a matter of law whatever the contract happens to say, this becomes a difficult argument since the contract itself laid down what the procedures were. Act

of Parliament aside (and none was relied on) the employer could hardly be in breach of contract because of what the contract itself provided. A more developed argument might be to the effect that the contract became unlawful and void in this respect once the law had changed, that that then gave room for the implied term of trust and confidence to operate as a proper implied term, since it would no longer be contrary to the express terms of the contract, and that the delay in making the change was such that it was to be treated more seriously than it might otherwise have been. The Tribunal engaged in no consideration of this kind, nor was such an argument put to it.

42. We do not, therefore, see sufficient reasoning to justify the conclusion the Tribunal reached. Moreover we would note that the reality of this allegation was not as to the contractual terms under which the Claimant operated. The reality, as we see it, was that the Claimant feared that, if she were to make a further complaint (she had in mind, according to her documentation, a complaint to the Financial Conduct Authority) that she would be subject to further detrimental treatment of the sort she had already experienced having made the two protected disclosures which the Tribunal found. That feeling, and its chilling effect upon making protected disclosures, is unfortunately not uncommon whatever the formulation of the statute may be. The statute does give protection. It is a sad fact of life that that protection often operates in retrospect when it should not. But the argument here was in the context of whether there was a breach of contract. The conclusion at paragraph 56 that the Claimant was affected in that she did not make a protected disclosure does not identify what the protected disclosure was, nor what it was about the wording of the policy which meant that she did not do so. On the face of it, she would not have been acting in anything other than good faith. She would not have been acting for a malicious reason or in response of a personal grudge. On the face of it, there might be no more reason for supposing that an employer would accuse her of that than

that an employer would accuse her of not having a reasonable belief that the disclosure was made in the public interest within the terms of section 43B. In short, we do not think that the reasoning of the Tribunal here justified its conclusion.

43. We turn, then, to the substance of the rest of ground 3, which in our view we have already answered by endorsing the submissions Miss Connolly made at the outset of hers. It is not necessary, in our view, that the Claimant should prove that the reason, or one of the reasons, upon which she relied for thinking herself entitled to resign was a reason which on its own would have caused her to do so. The test is not a "but for" test. It is not a test which substitutes for "part of" the reason the words "principal" or for that matter "effective" reason. The law is simply that, providing it is a reason, or part of the reason, for resignation, it is enough. As we have already said, despite the errors of law identified in part of the reasoning of the Tribunal, this is not material to the conclusion that here the Claimant was entitled to resign because there had been a breach of contract, as to which the Tribunal did say sufficient and which, for the reasons we set out at the start of this Judgment, could not reasonably be said to be anything other than a breach of the implied term of trust and confidence or, for that matter, independently repudiatory, meeting the standards of severity which a breach of the term needs to reach in order to justify a constructive dismissal.

44. For that reason, although as we have indicated, we have been sympathetic to many of the arguments which Ms Reece has put before us, we are obliged to and do reject the appeal.