EMPLOYMENT TRIBUNALS

Claimant **Respondent**

Miss M Lowo **v Structural Systems UK Limited**

Heard at: Watford **On**: 3,4,6, 7,10 September 2018

Before: Employment Judge Smail
Members: Mr W Dykes
Mr D Bean

Appearances

For the Claimant: In person, assisted by Mr T Akinsanmi
For the Respondent: Miss N Joffe, Counsel

JUDGMENT

The Claimant's claims fail and are dismissed.

REASONS

1. The claimant was employed by the respondent as a Financial Controller between 17 September 2014 and 31 July 2016. She was dismissed summarily, ostensibly for redundancy, with two months' notice paid in lieu.

2. This analysis was confirmed by Employment Judge Southam at a preliminary hearing on 24 March 2017. Accordingly, the claimant does not have two years' service with which to claim both general unfair dismissal and a redundancy payment.

3. The claimant had presented a claim form on 26 September 2016 at that stage she was claiming unfair dismissal, sex discrimination and a redundancy payment. The unfair dismissal claim was amended before Employment Judge Heal on 10 November 2017 to include a claim of automatic unfair dismissal alleging that the reason, or principal reason, for dismissal was that the claimant had made one or more protected disclosures.

4. The issues that we are to determine as set out at paragraphs 3 to 7 of the case management summary of Employment Judge Heal, following the preliminary hearing on 10 November 2017.

The issues

5. **Public interest disclosure claims**

5.1 Did the claimant say or write the following?

5.1.1 Around June/July 2016 when the claimant was 'doing the year end', she noticed that the account treatment of the directors' loan from the transferred company was not correct. The claimant spoke to the auditor, Kim, and said that the treatment of the directors' loan in the account is not correct. Non-business-related expenses had been posted on the system simply as business expenses with no receipt. The claimant discussed the same thing with Mr. Bharet Shah. He said that he was doing what he had been told and just to leave it.

5.1.2 The claimant noticed some negative balances paying a supplier without a receipt. In about May /June 2016 she asked Bharet Shah about it and he said he was told to make a payment but there was no invoice or email. The claimant offered to contact the supplier and spoke to her manager. She was told to put it down as 'ransom money'. The claimant was told by Anne or Tony McGann that the payment was made to prevent the contractor from leaving the project incomplete. There was no documentary confirmation of that. The claimant says that this is breach of legal obligation.

5.1.3 The claimant noticed some discrepancies in the accounting of two projects. Between April and July 2016, she spoke to Mr. Shah, Mr. Clemons and Mr. Stables to say that she had noticed that the respondent had received a lower value as per the order that she had in her file. She asked why it had happened. No-one could answer the claimant, so she approached Tony McGann for help. He directed her to Mark the Project Manager, who explained that when the project was about to be transferred there was a condition given that because the company was going into administration the suppliers did not trust the group to give them credit. Therefore, the project owners would supply the goods without delay and deduct the value of any goods being sent from the payment and pay the balance, plus a margin. None of the management was aware of that: there was no file in the organisation to confirm it. It was not properly accounted for to ensure the VAT was paid and therefore it was a breach of a legal obligation.

5.1.4 There was a transfer of two new cranes when PCH construction went into administration. It was added to the account that the claimant prepared, without documentation. From April to July 2017 the claimant spoke to Roger Stables and Mr. Shah about it: she said that she had found the value of two cranes in the fixed assets and she had no paperwork to tell her which account treatment to give to it. The value that was put into the account was a substantial value, so there was a need to have the paperwork to confirm that a fixed asset is properly accounted for, or the respondent is inflating its fixed assets without any backup to prove it. The claimant believes but did not say that it was done as window dressing to boost the respondent's credit.

5.1.5 The respondent did not pay the correct charge to the CITB: from early 2015 to the end of the claimant's employment, she said this to Mr. Shah, to Vince McLoughlin, to Richard Clemons, Mr Stables, and the Project Manager, Lee. The claimant was told by Mr McLoughlin and Mr Shah not to call CITB because it would result in the respondent having to pay a lot of money.

5.1.6 When PCH went into administration they posted 3.5 million as a bond from Head Office into the claimant's account. On or about 10 May 2016 she talked to Mr Shah about the money and he said that it was to secure the project of Royal Wharf and Lilley Square before the contractors come in in May. The claimant told him that due to lack of paper and proper accounting documents she did not think this was appropriate.

5.2 In any or all of these, was information disclosed which in the claimant's reasonable belief tended to show one of the following? Identify only the one/s upon which the claimant relies.

5.2.1 A criminal offence had been committed;

5.2.2 A person had failed to comply with a legal obligation to which he was subject;

5.2.3 Or that any of those things were happening or were likely to happen, or that information relating to them had been or was likely to be concealed?

5.3 If so, did the claimant reasonably believe that the disclosure was made in the public interest?

Unfair dismissal complaints

5.4 Was the making of any proven protected disclosure the principal reason for the dismissal?

5.4.1 Did the claimant have at least two year's continuous employment? No

5.4.2 If not, the burden is on the claimant to show jurisdiction and therefore to prove that the reason or if more than one the principal reason for the dismissal was the protected disclosures.

6. **Section 26: Harassment on grounds of sex.**

6.1 Did the respondent engage in unwanted conduct as follows?

6.1.1 In a management meeting early 2016 just after Mr Clemons joined the respondent, Mr. Roger Stables said 'shh shh' to the claimant when she was trying to put a point across;

6.1.2 In November 2015, an agency worker called Eileen arrived in the claimant's office. Mr. Jeff Boot spoke to the claimant rudely and said, 'who is this lady and what is she doing here?' And, 'no we have to trash it out right here.'

6.2 Was the conduct related to the claimant's protected characteristic?

6.3 Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

6.4 If not, did the conduct have the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

6.5 In considering whether the conduct had that effect, the Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

7. **Section 13: Direct discrimination on grounds of sex**

7.1 Has the respondent subjected the claimant to the following treatment falling within section 39 Equality Act, namely?

7.1.1 Dismissing her;

7.1.2 In a management meeting early 2016 just after Mr Clemons joined the respondent, Mr. Roger Stables said 'shh shh' to the claimant when she was trying to put a point across;

7.1.3 In November 2015, an agency worker called Eileen arrived in the claimant's office. Mr. Jeff Boot spoke to the claimant rudely

and said, 'who is this lady and what is she doing here?' And, 'no, we have to trash it out right here.'

7.1.4 In June/July 2016 Mr. Richard Clemons and the other managers would all sit together before the auditors came, but the claimant was not part of the management team to agree the time for the auditors to come**.** Consequently, the claimant was excluded from the management team preparing for the audit, including fixing the date of the audit.

7.1.5 The respondent failed to give the claimant a lap top so that she could work at home, therefore the claimant had to go into work on Saturdays and stay at work in the evenings;

7.1.6 The respondent selected the claimant for redundancy in the context of a history in which the respondent had kept men in secure positions.

7.1.7 Both Mr. Clemons and Mr. McLoughlin were providing the same services to the respondent. The R could and should have selected one of those two for redundancy to save cost, yet the respondent selected the claimant.

7.2 Has the respondent treated the claimant as alleged less favourably than it treated or would have treated the comparators?

7.3 If so, has the claimant proved primary facts from which the Tribunal could properly and fairly conclude that the difference in treatment was because of the protected characteristic?

7.4 If so, what is the respondent's explanation? Does it prove a non-discriminatory reason for any proven treatment?

~~*Equal pay*~~

~~The claimant says that her predecessor was paid more than her.~~

~~Was the claimant employed on like work to her predecessor?~~

~~If so, is the claimant 's contract modified pursuant to section 66 (2) of the 2010 Act.?~~

8. **Is the claim in time?**

   8.1 The claim form was presented on 27 September 2016. ACAS received notification on 27 July 2016 (day A) and an EC certificate was sent on 27 August 2016 (day B). Accordingly, any act or omission which took place before 28 April 2016 is potentially out of time, so that the tribunal may not have jurisdiction.

   8.2 Does the claimant prove that there was conduct extending over a period which is to be treated as done at the end of the period? Is such conduct accordingly in time?

   8.3 Was any complaint presented within such other period as the employment Tribunal considers just and equitable?

9. **Remedies**

   9.1 If the claimant succeeds, in whole or part, the Tribunal will be concerned with issues of remedy.

   9.2 There may fall to be considered reinstatement, re-engagement, a declaration in respect of any proven unlawful discrimination, recommendations and/or compensation for loss of earnings, injury to feelings and/or the award of interest.

10. The claims now are for automatic unfair dismissal on the basis that the reason, or principal reason for dismissal was that one or more protected disclosures were made, direct discrimination on the grounds of sex and harassment relating to her sex.

The law

11. The relevant statutory provisions will be inserted at this point in any written reasons document. I do however want to emphasize at this stage the definition of a qualifying disclosure for the purposes of protected disclosure.

12. By s.43B ss.1 of the Employment Rights Act 1996, a qualifying disclosure means any disclosure of information which in the reasonable belief of the worker making the disclosure is made in the public interests and tends to show one or more of the following:

    a) Criminal offence
    b) A failure to comply with any legal obligation
    c) Miscarriage of justice
    d) A breach of health and safety
    e) Damage to the environment, or
    f) Information tending to show any of those matters was concealed.

13. In discrimination cases the burden of proof is an important concept. That is provided for by s.136 of the Equality Act 2010.

14. By ss.2, if there are facts from which the court could decide in the absence of any other explanation that a person A contravened the provision concerned, the court must hold that the contravention occurred. Ss.3 provides that ss.2 does not apply if A shows that A did not contravene the provision. What this means is that a claimant must show a prima facie breach of the Equality Act 2010. If that happens the burden transfers to the employer to show that discrimination played no role whatsoever in relation to the relevant act, omission or decision.

15. We have been referred to a number of authorities but the most important, as acknowledged by Ms Joffe, is the case of Kilraine v The London Borough of Wandsworth a decision of the Court of Appeal neutral citation number 2018 EWCA Civ 1436. In that case Lord Justice Sales gave some guidance on what needs to be shown to establish a protected disclosure. At paragraph 35 of his judgment he wrote the following:

> "The question in each case in relation to s.43B ss.1 as it stood prior to amendment in 2013, that was the law on the facts of this case but there is parallel to ours in this context, is whether a particular statement or disclosure is a disclosure of information which in the reasonable belief of the worker making the disclosure tends to show one or more of the matters set out in sub paragraphs A to F. Grammatically the word information has to be read with the qualifying phrase which tends to show etc. As for example in that case information which tends to show that a person has failed or is likely to fail to comply with any legal obligation to which he was subject. In order for a statement or disclosure to be a qualifying disclosure, accordingly to this language, it has to have a sufficient factual content and specificity such as is capable of tending to show one of the matters listed in ss.1"

16. So, the guidance we get from this case is that a qualifying disclosure has to have a sufficient factual content and specificity such as is capable of tending to show one of the listed matters.

Findings of fact relating to the issues

17. The claimant was throughout employed as the Financial Controller of a company called Structural Systems UK Limited, shortened to SSL. That was a company within the PC Harrington Holdings Group of companies. The claimant is a fully qualified accountant.

18. In May 2015 PC Harrington Contractors Limited, referred to as Contractors, went in to administration. It was the largest subsidiary. We understand that it owed £25 million in unsecured debt. The group of companies is engaged in the building trade. KPMG were appointed as the administrators of Contractors on 5 May 2015. The Group engaged Mr Richard Clemons on 5 October 2015 as Interim Financial Director. He became the Group Chief Financial Officer on 4 January 2016 and remained in the business until 20 December 2017. His tasks were to save the group of companies financially. The Group had revenue of £150 million a year. Prior to administration

contractors ceased trading. However, two major contracts were salvaged by novating them to the present respondent.

19. One of the first decisions of Mr Clemons was to centralise the Financial Team at the Group Head Office in Dean Way, Southall; this involved the claimant moving from Collett Way, which was relatively nearby. There had also been a Finance Team in HTC Plant Limited in Sheffield. The work of that group transferred to head office. The team in Sheffield was eventually TUPE'd across to a company that became known as HTC Wolffkran Limited. HTC Plant Limited had been bought by a German company call Wolffkran. That company owned cranes.

20. The claimant moved offices in or around February 2016. Mr Clemons tells us that having established the financial team at central head office he looked at the opportunity for making further costs savings given the pressures on the group. He says he determined that the role of Financial Controller of SSL should be deleted and the post made redundant. He says he was seeking to introduce business wide processes requiring less technical expertise. He felt that SSL did not require a fully qualified Accountant in the claimant's role. She was on a salary of £45,000. In his witness statement Mr Clemons goes so far as to suggest that given the financial difficulties she knew the respondent was in, she should not have been surprised at the proposal to make her redundant. Indeed, he expressed the view that her position was "self-selecting" for redundancy. The claimant was however surprised having only recently been asked to move office in to head office. Of course, she did not self-select for redundancy that was a proposal of Mr Clemons which was accepted by the Board.

21. There was a meeting on 13 July 2016 at which the claimant was informed of the proposal. At the same time as being given a letter inviting formal consultation the claimant was handed a "without prejudice" offer to leave under a compromise agreement; £2,500 was offered. The respondent has waived any privilege involved in that offer, the tribunal has the full details.

22. Unsurprisingly, the claimant was most upset at these events. It offended her professionalism as she saw it as being a qualified accountant.

23. Were this a general claim for unfair dismissal which the claimant was allowed to bring, the tribunal would have to look hard at whether there was a genuine consultation process or whether the matter had been determined, to use the language of Mr Clemons, with closed minds. We would have had to look at whether Mr Stables genuinely was independent for the purposes of an appeal when it appears that the board had approved the proposal to make the claimant redundant in the first place. So, all the usual matters of potentially unfair selection for redundancy would have had to be looked at by the tribunal. However, and this will have been clear from the preliminary hearing with Employment Judge Southam onwards and the further preliminary hearing with Employment Judge Heal. Because the claimant did not have two years' service and we have no doubt that that factor will have

played a role in Mr Clemons thinking as to how to handle the matter, the only argument the claimant may make if supported on the facts is that if the reason, or principal reason for dismissal was protected disclosure, then she can argue that the ostensible reason of redundancy and costs saving was a pretext for the real reason that she had been dismissed because she had made one or more protected disclosures. That issue has formed the bulk of the enquiry of this case over the five days it has taken.

24. Further, or in the alternative, the claimant says that the decision to dismiss her was direct discrimination on the grounds of her gender and that there are aspects of her treatment which amount to harassment relating to gender. So, protected disclosures? As we say the bulk of the case has been looking at whether;

    24.1 The claimant made a protected disclosure, and

    24.2 The likelihood of whether such was the reason, or principal reason, for the proposal to make her redundant and the eventual decision confirming that both following apparent consultation meetings and following appeal.

25. By way of preliminary observation, we note that there are very few documents indeed, if indeed any, from the claimant recording a disclosure of information tending to show breaches of obligation. In fact, there are really only three documents that are in the bundle. The first is an email from the claimant to Bharet Shah, Group Financial Controller and Mr Stables, General Manager and subsequent Chief Executive Officer, dated 2 October 2015. The context of the email is that the claimant was about to go on holiday. There had been a phone conversation and Mr Shah and the claimant was seeking to answer some of his questions before going on holiday. The first heading was PCH Contractor. I am going to read out all of this because it is one of the few documents that we have got. She wrote under the heading PCH Contractor:

> "You've challenged the inter-company balance for PCH Contractor declared as a figure over £4 million and I've given you the answers to this question same as what Ariel told you before you called me back. The difference is that we've used the Applied Retention Value, a figure over £600,000 instead of the Certified Retention Value that we've always been using with the account amounts a figure over £480,000. But you've said that because PCH Contract closes its inter-company account in April with the certified value SSL must use the April closing figure in the May account because that was the figure that the Group had submitted to the administrators."

26. The next heading was ransom money.

> "Ransom money paid pay SSL to PCH Contractors supplies in May 2015. You have allowed for within the May Inter-Company account balance as per our telephone conversation £142k, approx. but we have allowed for this within our creditors balance stated in the account. We've agreed that you'll make the necessary adjustment to show this as an Inter-Company and will advise

> accordingly. PCH Contractor is our landlord but you have stated that we should not have accounted for the normal monthly recharge rent, rate management charges and other for the month of May but I have. Therefore, you will take this off and then the charges will become debateable among the management of who will now start recharging for this cost. SSL now pay for the insurance with the group but as I mentioned to you that I do not understand the accounts as there were so many transactions posted without paperwork as a result of cancelling the PCH premium and setting it up with SSL name. Then you've promised to look into it of which you did but unfortunately we do not have the time to sit together and work out the charges that belong to each company. I wish this would be done on my return but any recharge that you've decided to make kindly email me the paperwork in order for me to be able to flow with the trend.
>
> Slip Form
> Also you've mentioned that Slip Form had accrued income against SSL of the certified work figure over £115,000 but unfortunately we do not receive any information and Roger has not informed me. Thanks for the email got it now. I believed that I've mentioned all that we discussed today but if I'm missing anything kindly email to remind me. As mentioned whatever adjustment that you intend to make within the account kindly discuss it With Roger but if it is accounting intense please send me an email and I will try my best to help."

27. That email reads as though it is raising everyday accounting discussions that might be had between two financial controllers at the respondent group.

28. The second document that we have been shown is much later, it is dated 10 May 2016. It is an email from Mr Shah to Mr Clemons, Mr Stables and the claimant. The subject is Revised March 16 management accounts. It is principally addressed to Mr Clemons it says:

> "Hi Richard,
>
> Attached please find revised March 16 Management Accounts for SS UK and P&A and also the Consolidation accounts. Points to note:
>
> 1. There were three audit journals which Margaret had not reversed at 1 June 2015. This has been done now.
> 2. £3.5 million advance payment has been revered and is in the P&L at 31 March 2016. All other accruals made at 31 May 15 including for Royal Wharf and Lillie Square has been revered.

Pausing there, Royal Wharf and Lillie Square were the two novated contracts.

> 3. Made an accrual of a figure in excess of £1,200,000. For P&E sale invoices not yet issued to SS UK relating to Royal Wharf and Lillie Square.
> 4. We made an accrual in February 16 of £1.5 million to reduce the profit in SS UK. This accrual is still in the accounts.
> 5. The current profit now in SS UK is a figure of £1,200,000. Which is reasonable. We can still adjust slightly if need be.
> 6. P & E man accounts the profit has increased to £991,000. Due to bringing in the doctor's accruals for SS UK of £1.2 million. We can think of reducing this in the meeting.

> 7. The above will assist in finalising March 16 Management Accounts."

8. Prior to the decision to propose the claimant's redundancy. Those are the only two documents that have been referred to us in the context of the list of the six protected disclosures listed by Employment Judge Heal. On top of that it is probably right to refer to the claimant's grounds of appeal statement argued before Mr Stables. The claimant, as we have already noted, was insulted by the "without prejudice" offer which included a compromise agreement which will have had provisions about confidentiality in it. As items 5 to 7 in her appeal grounds, she wrote the following:

> "5. I was being bullied to be submission to their gagging orders and restriction orders stated within the letter of offer arrangement "without prejudice" as I had noticed that the management had labelled me to be a potential whistle-blower after expressing my professional concerns found within the year ended 31 May 2016 Management Account.
> I had noticed that the management wanted to keep me silent after I had reviewed the letter of offer arrangement "without prejudice". I am now aware of the reasons why Richard was putting me under pressure to sign the agreement and his emphasis for me to leave with immediate effect and logging me out of the system. All is to stop me unwrapping my findings and concerns found within the reporting management account to the public.
>
> 7. As a professional person I would not have disclosed such information according to the professional ethic but I believe that management has dismissed many of my suggestions and contributions during board meetings therefore there is no trust in the working relationship."

9. That letter does not disclose any details to the concerns the claimant says she had in respect of the management accounts of 31 May 2016. Ms Joffe has made the point in cross examination that if there were any matters genuinely amounting to the need to make protected disclosures then it is right that there is a professional code of conduct requiring a qualified accountant to raise matters. We note that there was no matter raised or escalated internally in the company in terms of making qualified disclosure and certainly there was nothing made in the context of a professional code of conduct.

10. Nonetheless we now turn to the list of suggested protected disclosures in the issues set out by Employment Judge Heal.

4.1.1

11. The first 4.1.1 relates to the matter of director's loans. There was no example put before us of where a non-business related expense, incurred by a director, had been posted on the system to a business account without receipt. This is a family owned company. Mr Harrington and his daughter Ann McGann, having as we understand it, company credit cards and their disposal. We understand and indeed saw from the accounts that where one of the directors incurs expenditure which is not supported by a business

receipt, the expenditure is credited against the director's loan account. We are told that this is perfectly normal accounting in a privately-owned company such as this. There was no example of the reverse happening, that is to say personal expenditure being credited against the business. We accept from Mr Clemons that no question around the director's loans was ever escalated to an issue which had to be dealt with and which could have had any material bearing on the proposal to make the claimant redundant. There is no issue of mis-accounting in the context of director's loans raised on the documentation. No such issue to his recollection was raised. Evidentially then, bearing in mind the guidance from the Kilraine case that we need, we do not find that the claimant made a protected disclosure in respect of director's loans. We note that director's loans were not raised as a specific example in the claimant's grounds of appeal or for that matter, anywhere else.

4.1.2 Ransom payments.

12. Ransom payments in this context represent the situation where a new company carrying out business transferred form an old company has to pay monies owed to suppliers or contractors by the old company pre-transfer as a condition of the supplier or contractor continuing on the project with the new company after transfer. If these are not paid the concern is that the business sis lost and that the company will be in breach of contract with the client and liquidated damages clauses will bite. In order for that not to happen the new company agrees to pay the contractors or the suppliers what they are owed. The claimant's pint seemed to be that there were no invoices supporting the payments meaning that there would be a negative balance in that situation on the relevant ledgers. But it seems that action was taken by the respondent to address this matter. So, for example, on 13 July 2015, Liam XXX, a member of the Finance Team, sent an email entitled "Invoices to be credited and re-invoiced to HTC Plant Limited". He wrote:

> "We require a credit note for PC Harrington Contractors Limited for a figure in excess of £47,000. We then require two invoices to be sent over to us for SSL, one of these should be for a figure over £25,000. That was for the Lillie Square contract, and one should be for a figure in excess of £22,000, that was for the Royal Wharf contract".

13. The description on the invoice is needs to say as agreed between Ann McGann, owner's daughter and Jerry McGann her husband who also works in the company.

14. So, it does seem that paperwork was sought to be arranged so as to reflect the fact that ransom payments had been made.

15. We accept, from Mr Clemons, that there is no necessary impropriety in the fact that the company makes ransom payments. Indeed, there is evidence to suggest that this was approved both by auditors and the administrators of Holdings.

16. The email I have made reference to was dated 13 July 2015. There is refence to ransom money in the claimant's email dated 2 October 2015 but that is eight months earlier than the proposal to make her redundant.

17. In our judgment the claimant does not show she made a protected disclosure in the context of a ransom payment. Ransom payments hav9ing been accounted for as we see we do not see they could generate any reason for the respondent to propose the claimant's redundancy.

4.1.3 Concerns about the accounting in respect of the novated agreements

18. As we understand it the claimant had concerns about the operation of the novated agreements. One aspect of the management of the contact was that it had been agreed that a supplier would send an invoice to the client of the respondent missing out the respondent from the payment chain. The value of the invoice would be deducted from the contract price with the respondent by the client. The documentation process was thus short-circuited. The claimant made what was essentially a book-keeping point about that that there was no proper paper trail as she saw it. We are satisfied that Mr Clemons is right that the mechanism was ultimately accounted for in the audited accounts by the auditors. Another aspect of her concern as we understand it was how that £26 million revenue was accounted for. In 2016 we see that only £23.1 million was accounted for but a figure of £5.3 million revenue was treated in the 2015 accounts. Combining the two then met the totality of the revenue.

19. In the issues before Employment Judge Heal the claimant raised a VAT aspect to this. We see no VAT aspect whatsoever in the contemporaneous documents. This issue of VAT did not figure in the limited documentation that we have from the claimant on these matters.

20. Accordingly, we do not find a disclosure of information with the requisite specificity indicating a breach of obligation the respondent was under. Further, we do not find that this influenced the decision to propose to make the claimant redundant.

4.1.4 Two cranes

21. The respondent sold two cranes to contractors just before contractors went in to liquidation. They did this to raise money for the payment of salaries of contractor's staff. After the liquidation the cranes were sold along with we believe, 13 others to the company that became HTC Wolffkran. KPMG, as administrators for contractors, confirmed that this was in the interests of the creditors, the employees, and was not done at an undervalue. The claimant may well have mentioned that there was no paperwork by way of a bookkeeping point for this matter, but she did not disclose information indicating there was any breach of any obligation that SSL or the Group was under. There was no identification of any unlawfulness. Again, this matter did not furnish a reason for Mr Clemons to propose redundancy.

4.1.5 Construction Industry Training Board

22. The claimant is likely to have pointed out in discussions that in the ledger there was no invoice for an amount of £26,000 that was entered in respect of CITB. That meant that there was a negative balance. CITB had not raised an invoice against which the balance could be set off. It seems that it is right that the respondent had taken a position not to respond to an invitation from CITB to conduct an audit. Given the transfer of some staff from contracting into SSL, there was a good chance that the fees to be paid to CITB would be in exceeds of £26,0000 and we accept form the claimant that she is likely to have raised this as an accounting, book-keeping issue. There is no evidence however that she raised this matter inwriting or escalated it to be an issue as such. There is no evidence of her making a disclosure with the requisite specificity of a breach of any obligation. She did not escalate this matter anywhere as far as we can see.

23. So again, the claimant fails to show here that she made a protected disclosure because she did not raise breach of any civil obligation.

24. The respondent here assumed a tactical position which was to wait and see what CITB would do. In the meantime, they essentially got a credit for the sums they would eventually pay.

25. This matter did not furnish a reason for the respondent proposing to make her redundant. We accept form Mr Clemons that it had no influence at all on his decision making.

4.1.6 The Bond

26. In respect of the Royal Wharf novation the client Oxley Wharf had paid in advance to contractors £3.5 million. That amount was lost in the administration. Oxley Wharf was not going to write that figure off. They intended to recover it by way of a series of deductions from the contract price with the respondent under the novated agreement. We understand that the respondent took out a bond with an insurance company to cover the liability for the £3.5 million should they, themselves, be unable to perform the contract. That did not happen, they performed the contract rather than breaching it so as to trigger all the liquidated damages clauses and so on.

27. How to account the £3.5 million was difficult. It was the subject of discussion within the Finance Team. We see from Mr Shah's email dated 10 May 2016 we have cited above, that this matter was mentioned. The matter was also the subject of discussion with the Auditors, BDO, who changed the way the management accounts had treated it. We accept from Mr Clemons that this matter did not generate a reason for him to propose redundancy. This was a matter which Mr Clemons knew would have to be discussed with the auditors. There is no evidence that the claimant herself disclosed information with the requisite specificity alleging breach of any obligation. All that we have is the reference to it in 10 May 2016 email.

28. So, in conclusion on the matter of protected disclosures:

    28.1 The claimant does not establish that she made any protected disclosure with the requisite content of information and specificity tending to show a breach of civil obligation applying to SSL or any of the other relevant potential matters to make a qualifying disclosure.

    28.2 That being the case there is no matter of public interest for us to examine.

    28.3 Any matters that she did raise principally, orally, as we know, were matters of day-to-day accounting short of being matters of protected disclosure.

    28.4 In any event, none of the claimant's actions in respect of any of these matters generated a reason for Mr Clemons to propose redundancy. They were all day-to-day accounting matters.

    28.5 We accept from Mr Stables that these matters were not the subject of detailed consideration on appeal and had not figured in his discussions with Mr Clemons about the proposal to make the claimant redundant.

    28.6 In a nutshell, there is no causal link between these alleged disclosures and the proposal to make the claimant redundant.

29. Turning then to the matter of sex discrimination.

    <u>The dismissal</u>

30. There is no comparator in a materially similar position under s.23 ss.1 of the Equality Act 2010. That provides that there must be no material difference between the circumstances of the comparator in each case. We should perhaps record the team structure as it was when it came in to Head Office. Mr Clemons was in charge of all matters financial. There was then Mr Shah was the Group Financial Controller for all companies in the Group. There was the claimant whose responsibilities were to manage the accounts of SSL and a company called Heavy Lifts which we understand was predominantly dormant, to do the VAT returns for SSL, to look over the ledgers and to run the banking and the cash book. As a part-time Contractor there was Vince McLoughlin, a previous Financial Director of the company who would work something like two days a month on average to deal with payroll salaries and property. There were then Linda James, an Accounts Assistant, Liam Ruffle, an Accounts Assistant and Sue Griffin, a Payroll Assistant.

31. In her claim at issue 6.1.7, the claimant suggests that Mr Clemons or Mr McLoughlin should have been selected for redundancy instead of her but they were not in comparable positions. Mr Clemons was in charge of all

financial matters. We accept form him that he had a substantial strategic role for the group as a whole, charged with saving the group financially. The claimant's role, whilst of course important, was not at that strategic level. Mr McLoughlin had retired as a direct employee and was working very much part-time on a self-employed basis. His costs were significantly less than the claimant's package which was approximately £58,000. The role of Mr McLoughlin was uncertain going forward, it being the case that he had indicated that he did wish to retire. So, the claimant is unable to argue that she was treated less favourably than Mr Clemons or Mr McLoughlin because they were not in a comparable position.

32. Accordingly, there is no prima facie evidence of less favourable treatment on the grounds of gender. The fact that the claimant is a woman is not enough to give rise to a prima facie case.

33. Also in the issues is perhaps a rather loose allegation from the claimant which says that the respondent selected the claimant for redundancy in the context of a history in which the respondent had kept men in secure positions. Well that is an allegation in relation to which no, or no prima facie evidence has been adduced by the claimant. It is essentially a political statement for which there is no supporting evidence. Again, that allegation fails to get off the ground. There is no prima facie evidence for it.

6.1.4

34. 6.1.4 has more cogency. The claimant says that on 21 June 2016 she was not invited to a meeting with the company's usual auditors, Goldblatts. She is right about that, she was not invited to the meeting. Representing the Company at that meeting was Mr Clemons, Mr Shah along with Mr Stables as we can see form the agenda. The Agenda was to include VAT, XXX CIS assistance on recovery from HMRC, group structure changes, statement of accounts, 2015/16 audit preparation with the details of the audit, status with KPMG, taxes in Ireland, legal entity in Ireland, Middle East business valuation and group structure. Mr Clemons says to us that the matters on the agenda were at a group and strategic level. It would not have been appropriate for the claimant, in her role, to be in attendance at that meeting. We find there is credibility in Mr Clemons position; she was not invited for reasons of seniority, not for reasons of gender. There is no prima facie evidence of sex discrimination there.

35. The claimant makes some allegations which are said to be both allegations of harassment and sex discrimination also. She says that in a management meeting in early 2016, Mr Stables said to her in a meeting "Shhh! Shhh!" in order to stop her talking. She says those words were discriminatory and offensive, they would not be said to a man. Both Mr Clemons and Mr Stables have a recollection of this meeting; they recall the claimant talking over on multiple occasions Mr Bharet Shah. They say that the claimant was asked once not to do it but she persisted in doing it and they accept that Mr Stables said words along the lines of "shhh shhh!". We do not find that that discloses a prima facie evidence of harassment relating to gender or of less

favourable treatment on the grounds of gender. The behaviour is explained by the fact it seems the claimant was talking over Mr Shah. That is the reason for those words, it was not that the claimant is a woman.

36. The next allegation is a relatively historic one, November 2015, some 10 months before the claim form was presented in which complaint is made of rude behaviour by Mr Geoff Booth. There is some corroboration for the behaviour in a statement prepared by Eileen O'Connor, who was agency staff, who came to start work that day in early November. She says that upon arrival she met Geoff Booth and Anne Marie by the gate to say that she was here to see the claimant. She was told to go to the office where someone would show her the claimant's office:

> "While making introductions Geoff, a colleague of Margaret, came to Margaret's office and unnecessarily, abruptly, interrupted our conversation by asking Margaret in a very aggressive unprofessional manner saying, "Who is this lady and what is she doing here". Immediately Margaret answered him saying "Her name is Eileen and she was sent over from PCH to come and assist with the backlog". Geoff was not ready to listen to Margaret's explanation but he continued with more questions."

37. She then heard Margaret saying to him:

> "Geoff, can I please talk with you in your office" and Geoff replied, "No we have to trash it right here". And then asked Margaret in an angry and shouting manner at the entrance to Margaret's office asking if Margaret had undergone the Health and Safety brief with Ms O'Connor as it was her first day in the building. Margaret was annoyed that Geoff interrupted conversation and his manner responding to all replied to questions."

38. Two things, first of all, if Mr Booth behaved in that way it is not obvious that that behaviour was in any sense connected with gender. If we are wrong about that this matter has nothing whatsoever to do with the decision to make the claimant redundant. It is many months before then, it does not involve Mr Clemons or Mr Stables. If it were an incident in its own right of sex discrimination it would be out of time. It would not be just and equitable to extend time and it certainly has no causal relationship, no continuing relationship, with the proposal to make her redundant.

39. Again, there is no documentation from the claimant following this matter escalating it as an issue to anyone, respondent, witnesses which did not include Mr Booth suggest it was characteristic over zealousness from Mr Booth with his Health and Safety responsibilities.

40. Whatever be the case, even if this were a matter of sex discrimination, it is of historic relevance and out of time.

41. The last matter raised by the claimant is a matter of a laptop. This is said to be direct discrimination on the grounds of sex. She says that in mid-2015, so as to help with her ever increasing workload following he novated contracts, she suggested she says to Mr Stables being given a laptop so

she could catch up at home. She is right that colleagues, including male colleagues who work in the field as Project Managers and so forth, are provided with laptops. Mr Stables' position is that he had acknowledged the rising workload of the claimant and had addressed that by recruiting assistants. He says he did not want the claimant to work from home. It was noted at the time that the claimant was unwell. He did not want her taking work home or working at the weekends. We accept that that was his position. His reason then for not issuing a laptop was not on the basis of gender, it was on the basis on not wanting the claimant to work in her own time.

42. In all the circumstances then, the claimant's claims are unsuccessful and we dismiss them.

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Employment Judge Smail

Date: 16/10/2018

Sent to the parties on: 22/10/2018

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For the Tribunal Office