EMPLOYMENT TRIBUNALS

Claimant		Respondents
Ms W Gao	**v**	**King's College London**

PRELIMINARY HEARING

Heard at: **London Central (by CVP videolink)**

On: **12 October 2021**

Before: **Employment Judge Brown**

Appearances
For the Claimant: **In Person**
For the Respondents: **Mr P Michell (Counsel)**

JUDGMENT

The Judgment of the Tribunal is that:

1. **It is not likely that on determining the complaint to which the application relates the Tribunal will find that the reason or principal reason for the Claimant's dismissal is that specified in s103A ERA 1996.**

2. **Interim relief is therefore not appropriate in this case.**

REASONS

The Complaints/Interim Relief Application

1. By a claim form presented on 6 September 2021, the Claimant brought complaints of unfair dismissal and automatically unfair dismissal as a result of making a protected disclosure. The claim contained an application for interim relief. This hearing was to determine that application.

2. It was agreed that, whilst witness statements had been provided for the hearing, there would be no live evidence.

3. I had a witness statements from: Professor Irene Julie Higginson, Executive Dean of the Respondent's Florence Nightingale Faculty of Nursing, Midwifery & Palliative Care; Deborah Tonkin, Institute Business Manager for the Cicely Saunders Institute (CSI); Mr Aris Magkoutis, People Partner for the Florence Nightingale Faculty of Nursing, Midwifery & Palliative Care; and Mr Imtiaz Ali, Senior People Partner in the Respondent's Department of Human Resources, for the Respondents. There were 2 Bundles of documents, one from each party. Page references in these reasons prefixed with R refer to the Respondent's Bundle only. Both parties relied on written skeleton arguments, as well as making oral submissions. The Claimant did not produce a witness statement, but relied on her skeleton argument and particulars of claim.

4. The Claimant was employed by the Respondent as Professor of Statistics & Epidemiology from 02/04/2007 until she was dismissed on 01/09/2021. The Respondent is a University.

5. The Claimant's relevant claim for the purposes of the interim relief application is the automatic unfair dismissal claim. The Respondent contends that the Claimant was dismissed for the potentially fair reason of a breakdown in the employment relationship. The Claimant claims that she was dismissed because of her alleged disclosure within *s.103A ERA*.

The Claimant's Case and Skeleton Argument

6. In summary, the Claimant says that she made a series of protected disclosures concerning the conduct of Professor Irene Higginson and that Professor Higginson dismissed the Claimant as a result.

7. She says that, in May 2021, Dr Lesley Henson, a talented researcher in the Claimant's team, had just returned from maternity leave when Professor Higginson suddenly asked the Claimant to consult Dr Henson regarding Dr Henson's dismissal because there was "no money" to employ Dr Henson. The Claimant says that, as Dr Henson's line manager, she believed that the funding for Dr Henson's post should not have been exhausted so quickly and she asked for details of how the money allocated Dr Henson's post had been spent.

8. The Claimant contends that, despite her repeated requests, Professor Higginson and Deborah Tonkin did not show the Claimant how the relevant money had been spent. Instead, they provided irrelevant information and therefore "covered up" the how the money had been spent.

9. The Claimant relies on a number of alleged protected disclosures which she contends she made in this regard, which she set out in her skeleton argument. She says that the following disclosures were disclosures of information which were made in the public interest and tended to show that a criminal offence had been committed; specifically that Professor Higginson had "misused public money":

   a) 13 May 2021, an email to Reza Razavi (Vice Principal of King's College London) which the Claimant says was intended "to expose [Professor] Higginson's financial cover up". The Claimant relies on the following words in the email, 'how much we earn, how we spend and on whom and what we spend etc. - all having been kept as secrets to herself only. I have been questioning her about why how

we spend the public money should be kept as a secret? She has never been able to give an answer. She does not even give me access to the necessary financial information which I need to do the redeployment consultation for staff members I line manage.' (Claimant's bundle: page 6)

b) 1st June 2021, email to Deborah Tonkins, Institute Business Manager of CSI, which the Claimant says was intended "to disclose that [Professor] Higginson had highly likely misused CSI's money, and made every effort to cover up her corrupt behaviour". The Claimant relies on the following words in the email, 'She used "numerous occasions" as if I have been given too much information. But in reality, she knows well how to keep people like me "informed"'; Claimant's bundle page 23

c) In the same email, the Claimant says that she "warned Debbie that she should not allow herself to be used as a tool to help [Professor] Higginson for covering up [her] misuse of CSI's money." She relies on the following words, 'In her eyes, the others are no more than tools/instruments. If things go well, all credit goes to her; if things go wrong, she won't hesitate a second to dump all the wrongs to her "tools/instruments". So, be careful when work[ing] with her. She can give you all the promises but when things go wrong…'. , Claimant's bundle: page 23. That email also contained the following words, "She claimed proudly & shamelessly that the academic posts prioritisation which she masterminded has "no assessment criteria, no feedback and no official records of any meetings". This is just one example of her ways of working/leading: no rule, no guideline, no good practice."

d) 19 July 2021 email to Professor Richard Trembath, Provost/Senior Vice President (Health) and Professor Higginson's line manager, Claimant bundle p42-43 and a 23 August 2021 email to Mr Brent Dempster, HR Director. The Claimant relies on the following words, 'And at last, Irene directed Debbie, the CSI's financial manager, to tell me that as the money has been used up, there is no need to know how the money has been spent.' and 'I also feel very sorry for Lesley, as a very talented young researcher with a bright future, who unfortunately became a victim just because she was in my team.' and 'Now things have become clear, Irene has made every effort and is firmly determined to keep the spending of CSI's money in black box for many years. It is very reasonable for us to believe that Irene has highly likely misused CSI's money and has been doing every effort to hide her misconduct. I just recalled that once I overheard that Irene once offered CSI's commercial contracts to her brother.' Claimant's bundle, page 46.

10. The Claimant contends that I should be satisfied that she had a reasonable belief that these disclosures tended to show that a criminal offence had been committed because, she says, "If there had been no misuse of public money, there ought to be no problem in showing the details on how the public money has been spent. If an individual deliberately refuses to show and has made every effort to cover up the details on how the public money has been spent, then it is common sense that the individual have likely misused the public money."

11. Regarding email d), the 19 July 2021 email to Professor Richard Trembath, Provost/Senior Vice President (Health), the Claimant also contends that the words that she used conveyed information which tended to show that Professor Higginson breached a legal obligation, in that she had discriminated against Dr Henson and tried to dismiss her unfairly.

12. The Claimant contends that she was clearly not dismissed because of a breakdown in the working relationship. She relies on the following matters:
    12.1. The Claimant has worked in Cicely Saunders Institute (CSI) for more than 14 years. Professor Higginson was the Director of CSI and the Claimant's line manager for 14 years. The Claimant had an excellent employment record during this time.
    12.2. During the 14 years, and during the Claimant and Professor Higginson's working relationship, CSI has grown as a world-leading research institute, and both women are established as respected professors in their field;
    12.3. At the time of the Claimant's dismissal, Professor Higginson was no longer her line manager and there was almost no working relationship between the two;
    12.4. Three out of the 5 things relied on to justify the Claimant's dismissal occurred more than 4 months previously. The most recent matter, on 1st June 2021, was the email disclosing Professor Higginson's likely misuse of CSI's money.
    12.5. The dismissal letter dated 1 September 2021, is illogical and does not adequately explain how the relationship had broken down, as follows:
        12.5.1. The first and second matters relied on related to matters which occurred some time previously, when Professor Higginson was the director of CSI and the Claimant's line manager; the Claimant was not dismissed then, but now, when Professor Higginson is the Dean of Faculty and no longer the Claimant's line manager.
        12.5.2. The second matter concerned the Claimant's bidding to the Faculty's open competition call for academic priorities. When the Claimant was informed that her application had failed, she asked for the assessment (scoring) criteria. The Claimant says that a bidder asking for assessment criteria is a reasonable request, which could not have an impact on the working relationship and is, in any event, not related to the "working relationship" in question, but to the bidding process.
        12.5.3. The third matter occurred in April 2021, more than 4 months ago. The Claimant contends that it is normal for a job applicant to ask the chair of the interview panel whether any conflicts of interest have been declared.
        12.5.4. The fourth matter relied on was the Claimant's enquiries about how the money had been spent in relation to Dr Henson. The Claimant had made the disclosure that Professor Higginson had misused CSI's money. The 1 September 2021 dismissal letter specifically said that the Claimant had made 'very serious…allegations' against Professor Higginson, Claimant's bundle: page 64.
        12.5.5. The fifth matter concerned Professor Higginson instituting an 'independent investigation' to investigate the Claimant's conduct under the disciplinary procedure on 13 July 2021, when Professor Higginson was not the Claimant's line manager and had no power to initiate disciplinary proceedings.

12.6. The Claimant made a disclosure on 23 August 2021 and 4 days later on 27 Aug 2021, Professor Higginson set up a dismissal meeting on 1 September 2021.

13. I asked the Claimant to clarify during the hearing what criminal offence she contends her information showed had been committed and what legal obligation had been breached. The Claimant said that the criminal offence was "misuse of public funds" and the legal obligation was an obligation not to unfairly dismiss Dr Henson and not to discriminate against Dr Henson.

14. The Claimant said, in her submissions, that she had been dismissed without notice and her internet access had been stopped immediately. She contended that this showed that the Respondent intended to prevent the Claimant from making any more protected disclosures.

The Respondents' Contentions and Evidence

15. In summary, the Respondents say that it is not "likely" the ET will find, at the Final Hearing, that any of the Claimant's various emails, as referred to in her ET1 and in her skeleton argument, constituted a protected disclosure.

16. Even if the Claimant did make protected disclosures, the Respondents say that it is also not "likely" that a Tribunal at a Final Hearing will find that the protected disclosures were the sole or principal reason for dismissal, rather than the way in which the Claimant conducted herself: her refusal to take on board information and explanations which the Respondent gave her on several occasions; her making of false allegations in rude and unprofessional terms, to a variety of recipients, even when advised to raise issues in a more appropriate way.

17. The Respondent relied on its witness statement evidence to support these contentions.

18. Mr Magkoutis's statement said that the Claimant had emailed him on 28 April 2021, making assertions about a lack of transparency within CSI in relation to finances and of secretive behaviour. He said that the Claimant had accused Professor Higginson of being a "big bully", without providing any details of this accusation. Mr Magkoutis said that, he had responded by email on 29 April 2021 (R68-69), saying that the Respondent's normal approach was to seek to resolve things informally in the first instance, but also reminded the Claimant that the next stage would be to raise a formal complaint if she felt that that was appropriate.

19. Mr Magkoutis said that the Claimant replied on 4 May 2021, R68, referring to Professor Higginson conducting "Blackbox operations", blaming others and being an "experienced system abuser and bully". Mr Magkoutis said that the Claimant did not give any specifics to support these comments. She said that she felt that she now knew "how to proceed to the next steps."

20. Professor Higginson's witness statement said that, in her email dated 1 June 2021 to Deborah Tonkin and Professor Higginson, the Claimant made sweeping, unspecific and unevidenced allegations of bullying against Professor Higginson.

21. Professor Higginson set out a history of the Claimant's correspondence with her and with Ms Deborah Tonkin and Mr Aris Magkoutis. Both Professor Higginson and Ms Tonkin's statements set out that the Claimant had been provided with the relevant information which she sought, but that the Claimant persisted in alleging that the information had been withheld from her.

22. Professor Higginson said that she felt that she could not ignore the fact that a member of the Faculty was repeatedly making false and obviously unevidenced allegations about her, in correspondence which was being copied to colleagues. She was also aware that Mr Magkoutis had spoken to the Claimant about the routes that were available to her if she wished to pursue a formal complaint or grievance. That would have been a means by which her allegations and insinuations against Professor Higginson could have been looked into by the Respondent to determine whether they had any validity. The Claimant, however, had taken no steps to do this.

23. Professor Higginson's statement said that she considered that the Claimant's behaviour was potentially bullying against her, because she was repeatedly making unevidenced allegations against Professor Higginson, but taking no action to have these investigated through proper College procedures.

24. Professor Higginson's statement said that the situation, which was escalating, could not be left unaddressed and, having discussed the matter with HR, it was agreed that an investigation would be carried out into Professor Higginson's concerns. This would also give the Claimant the opportunity to explain why she was behaving in this manner and to substantiate the various allegations which she had made
.
25. Mr Magkoutis's statement said that he had emailed the Claimant on 13 July 2021, inviting her to an investigation meeting with Professor Michael Escudier and Mr Magkoutis, to investigate matters which Professor Higginson had raised regarding the Claimant's conduct (R69). He said that, following this, the Claimant sent repeated emails, asking identical questions about the proposed process (R89), (R79-88), (R84-85), (R79-83), despite having been given answers to her questions. Mr Magkoutis said that the Claimant did not attend any investigation meeting.

26. Professor Higginson's statement said that, on 23 August 2021, the Claimant made a complaint by email against Mr Magkoutis to the College's Director of Human Resources (Claimant's bundle 44-45), and included in the email also a "background" section, consisting of a series of allegations against Professor Higginson, in broad and unspecific terms, copied to a number of people in the College.

27. Professor Higginson said that she was contacted by Imtiaz Ali, People Partner in the HR team, who alerted her to the email. She said that, on 24 August 2021, Mr Ali and she considered the situation, which was was deteriorating further, and the fact that the Claimant had not cooperated with the College investigation which had been initiated in July. They agreed to convene a meeting to consider whether the working relationship with the Claimant had irretrievably broken down.

28. Professor Higginson said that she wrote to the Claimant on 27 August 2021 (R45-47/C47-49) to invite her to a meeting on 1 September 2021 to consider the situation and decide whether her employment should be terminated. In this letter, she summarised the concerns about the Claimant's email correspondence, including that the Claimant had made repeated allegations of a lack of transparency, and of impropriety, in relation to Faculty finances, budgets and decision-making processes; had made repeated and persistent requests for information which had already been shared with her, alleging or implying that this information was being deliberately withheld from her; had made repeated and persistent demands for answers to the same questions, ignoring the fact that answers had already been provided and repeatedly and incorrectly alleging that there had been no response to her questions and persisting in raising these in a way which took no account of the responses provided to her; had made numerous serious allegations against Professor Higginson, in correspondence copied to colleagues, including allegations of "Blackbox operations"; operating without rules or guidelines, treating people like "tools/instruments", and making unevidenced allegations of bullying against unnamed colleagues. Professor Higginson said that she noted that the Claimant had made no attempt to bring these allegations under the College's formal grievance procedures in a way which allowed them to be investigated and determined.

29. Professor Higginson said that the Claimant had not attended the meeting on 1 September 2021. At it, Professor Higginson said that she had decided that the Claimant's employment should be terminated on the basis which she had set out in her letter of 27 August 2021. Professor Higginson referred, in her statement, to her dismissal letter, sent to the Claimant by email at 15:55 on 1 September 2021 (R92-94).

Documents

30. The Bundles of documents submitted by the parties contained the emails on which the Claimant relies as her protected disclosures. They also contain other emails sent by the Claimant and relied on in the Respondent's witness statements.

31. The Bundles contained the invitations to the hearing on 1 September 2021 and the dismissal letter dated 1 September 2021. The dismissal letter said,

" The reasons for holding the meeting were set out in my letter of 27 August 2021. In light of those reasons, and the email communications summarised in my letter of 27 August 2021, I have concluded that:

• you are persistently unable or unwilling to accept the legitimacy of Faculty decision making processes, challenging these in communications copied to senior colleagues which make unjustified and personalised allegations of impropriety against me, including in relation to decisions which were made collectively with senior colleagues

• you have made repeated and unjustified allegations of a deliberate lack of transparency and that information is being deliberately withheld from you, including instances when the information concerned has already been shared with you or you have had access to it

• you are persistently unwilling or unable to accept information and explanations provided to you, resulting in prolonged and unnecessary email communications in which you take no account of answers which have already been provided and incorrectly allege, in an unprofessional manner, that there has been no response to your questions.

• an untenable situation has been created in which you have made a series of very serious and unsubstantiated allegations against me, including in correspondence copied to colleagues, which you have taken no action to pursue under formal processes and have refused to participate in or recognise the legitimacy of a formal investigation process into your conduct. This means that these serious issues cannot be determined or resolved through appropriate formal processes.

These issues have created a state of perpetual conflict which is impossible to resolve. I have seen no evidence that this situation will change or improve or that professional and courteous working relationships can be restored. I consider that matters have deteriorated to a point where there is a fundamental and irretrievable breakdown in working relationships.

I have therefore concluded that your employment with the College should be terminated on the above grounds."

32. After the dismissal letter was sent, the Claimant submitted a formal public interest disclosure document to the Respondent's whistleblowing team, at 16.07 on 1 September 2021.

Legal framework

33. *Section 128 Employment Rights Act 1996* provides:

'128. Interim relief pending determination of complaint
(1) An employee who presents a complaint to an employment tribunal that he has been unfairly dismissed and –
(a) that the reason (or if more than one the principal reason) for the dismissal is one of those specified in –
(i) section 100(1)(a) and (b), 101A(1)(d), 102(1), 103 or 103A,
……
may apply to the tribunal for interim relief.

(2) The tribunal shall not entertain an application for interim relief unless it is presented to the tribunal before the end of the period of seven days immediately following the effective date of termination (whether before, on or after that date).
(3) The tribunal shall determine the application for interim relief as soon as practicable after receiving the application.
(4) The tribunal shall give to the employer not later than seven days before the date of the hearing a copy of the application together with notice of the date, time and place of the hearing.
(5) The tribunal shall not exercise any power it has of postponing the hearing of an application for interim relief except where it is satisfied that special circumstances exist which justify it in doing so'.

34. The question to be considered upon an application for interim relief is set out in *s129 ERA 1996*:
'129. Procedure on hearing of application and making of order
(1) This section applies where, on hearing an employee's application for interim relief, it appears to the tribunal that it is likely that on determining the complaint to which the application relates the tribunal will find –
(a) that the reason (or if more than one the principal reason) for the dismissal is one of those specified in –
(i) section 100(1)(a) and (b), 101A(1)(d), 102(1), 103 or 103A,
….".

35. Interim relief can therefore be ordered where the Tribunal finds that it is likely that a final hearing will decide that the reason (or principal reason) for dismissal was the employee having made protected disclosures contrary to *s 103A ERA1996.*

36. The meaning of the word 'likely' for these purposes has been considered in several cases. In *Taplin v C Shippam Ltd* [1978] IRLR 450, [1978] ICR 1068 EAT, decided under similar provisions relating to interim relief applications in dismissal for trade union reasons, the EAT (Mr Justice Slynn) held that it must be shown that the claimant has a 'pretty good chance' of succeeding, and that that meant something more than merely on the balance of probabilities. That approach to the word 'likely' has been followed in subsequent decisions, *Dandpat v University of Bath* (2009) UKEAT/0408/09 UKEATPA/1284/09 UKEATPA/1285/09 UKEATPA/1391/09 unreported at para 20, *Ministry of Justice v Sarfraz* (2011) UKEAT/0578/10, [2011] IRLR 562 at paras 16–17 and *His Highness Sheikh Khalid Bin Saqr Al Qasimi v Robinson* UKEAT/0283/17/JOJ, unreported (Qasimi v Robinson), at paras 8–11.

37. A 'pretty good chance' of success was interpreted in the whistleblowing case of *Ministry of Justice v Sarfraz* [2011] IRLR 562, EAT, as meaning 'a significantly higher degree of likelihood than just more likely than not'. Underhill P stated in *Ministry of Justice v Sarfraz* [2011] IRLR 562 that,

"in this context 'likely' does not mean simply 'more likely than not' – that is at least 51% - but connotes a significantly higher degree of likelihood." (para 16).

38. There are policy reasons why the threshold should be thus. Underhill P said, in *Dandpat v The University of Bath and anor* (unrep, UKEAT/0408/09/LA),

"If relief is granted the respondent is irretrievably prejudiced because he is obliged to treat the contract as continuing and pay the claimant, until the conclusion of proceedings: that is not a consequence that should be imposed lightly." (para 20)

39. The Claimant must show the necessary level of chance in relation to each essential element of *s103A ERA 1996* automatic unfair dismissal*,* see *Simply Smile Manor House Ltd and ors v Ter-Berg [2020] ICR 570.*

40. The Claimant must therefore show that it is likely that the Tribunal at the final hearing will find each of the following:

40.1. she disclosed information to the appropriate entitty;

40.2. she believed that the information tended to show one or more of the matters itemised in the ERA 1996 s 43B(1);
40.3. she believed the disclosure(s) was or were made in the public interest
40.4. her belief in both these matters was reasonable; and
40.5. the disclosure(s) was or were the principal cause of the dismissal.

41. "Protected disclosure" is defined in s43A Employment Rights Act 1996: "In this Act a "protected disclosure" means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H."

42. "Qualifying disclosures" are defined by s43B ERA 1996,

"43B Disclosures qualifying for protection
(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…
(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.".

43. The disclosure must be a disclosure of information, of facts rather than opinion or allegation (although it may disclose both information and opinions/allegations), *Cavendish Munro Professional Risk Management v Geldud* [2010] ICR [24] – [25]; *Kilraine v LB Wandsworth* [2016] IRLR 422. For example, “you are not complying with health and safety requirements” is “so general and devoid of specific factual content that it could not be said to fall within the language of s.43B(1) so as to constitute a qualifying disclosure” (ibid, paras 32 and 35, per Sales J). Further Ms Kilraine had asserted “there have been numerous incidents of inappropriate behaviour towards me, including repeated side-lining, all of which I have documented.” Langstaff J held, and the CA agreed (at paras 21 & 38), that such an assertion “does not sensibly convey any information at all”.

44. The disclosure must, considered in context, be sufficient to indicate the legal obligation in relation to which the Claimant believes that there has been or is likely to be non-compliance, *Fincham v HM Prison Service* EAT 19 December 2002, unrep; *Western Union Payment Services UK Limited v Anastasiou* EAT 21 February 2014, unrep. In *Blackbay Ventures Ltd v. Gahir* [2014] IRLR 416, EAT, para 98, Judge Serota said, “… the source of the obligation should be identified and capable of certification by reference for example to statute or regulation”.

45. ‘Legal’ must be given its natural meaning. A belief that an employer’s actions were morally or professionally wrong, or contrary to its own procedures, may very well not be sufficient, *Eiger Securities LLP v. Korshunova* [2017] IRLR 115, EAT, per Slade J: “… Actions may be considered to be wrong because they are immoral, undesirable or in breach of guidance without being in breach of a legal obligation”.

46. *Harvey* advises: "there must be breach of a legal duty of sorts, not just a moral or professional one; thus, a breach of company rules or immoral conduct is not per se enough".

47. The test for "reasonable belief" is a two-stage test, *Chesterton Global Ltd v Nurmohamed* [2017] IRLR 837, at para 29. The two stages are:
a. Did the claimant have a subjective genuine belief that the disclosure (i) tended to show one of the matters set out in s.43B(1) ERA, and (ii) was in the public interest? If so,
b. Did the claimant have objectively reasonable grounds for so believing in both such cases?

48. This is a two-stage test, which the ET must follow, and the two stages ought not to be elided, *Ibrahim v. HCA International* [2020] IRLR 224, CA, para 17, per Bean LJ.

49. In determining whether the reason for the Claimant's dismissal was her alleged disclosure, it is not sufficient for the disclosure to be "in the employer's mind" or for it to have influenced the employer. The Tribunal must consider whether that disclosure was the "sole or principal reason" for her dismissal, *Eiger Securities LLP v Korshunova* [2017] IRLR 115).

50. Underhill LJ said, in *Chesterton Global Ltd v Nurmohamed* [2017] IRLR 837, para [31], that the meaning of 'in the public interest' was not defined by Parliament. Instead, ".. the intention must have been to leave it to employment tribunals to apply it as a matter of educated impression". However, "the essential distinction" to be drawn was "between disclosures which serve the private or personal interest of the worker making the disclosure and those that serve a wider interest".

51. Underhill LJ also explained at paras [36] and [37]:

"… [36] the broad intent behind the amendment of section 43B(1) is that workers making disclosures in the context of private workplace disputes should not attract the enhanced statutory protection accorded to whistleblowers…

[37] "…where the disclosure relates to a breach of the worker's own contract of employment (or some other matter under section 43B(1) where the interest in question is personal in character), there may nevertheless be features of the case that make it reasonable to regard disclosure as being in the public interest as well as in the personal interest of the worker…. The question is one to be answered by the Tribunal on a consideration of all the circumstances of the particular case, but [counsel for the employee's] fourfold classification of relevant factors which I have reproduced … may be a useful tool. As he says, the number of employees whose interests the matter disclosed affects may be relevant, but that is subject to the strong note of caution which I have sounded in the previous paragraph."

Causation

52. The protected disclosure must be the sole or principal reason for the dismissal. A distinction may be drawn between the fact of a protected disclosure and the manner in which it was made, *Panayiotou v Chief Constable of Hampshire* [2014]

IRLR 500, EAT. In that case, at para [49] Lewis J said, in the context of a protected disclosure detriment claim that an employer "may be able to say that the fact that the employee disclosed particular information played no part in a decision to subject the employee to the detriment but the offensive or abusive way in which the employee conveyed the information was considered to be unacceptable...".

Discussion and Decision

53. I had to assess whether it appeared likely that a Final Hearing would find that the Claimant had succeeded in each of the elements of an automatically unfair dismissal claim under *s103A ERA 1996.*

Qualifying Disclosure

54. The Claimant contends that she disclosed information which she believed tended to show that a criminal offence had been committed, or that a person had failed, was failing or was likely to fail to comply with any legal obligation to which he is subject. The relevant legal obligation was "misuse of public funds" and the relevant legal obligation was a duty "not to unfairly dismiss" or discriminate against" an employee.

55. In the Claimant's 13 May 2021, an email to Reza Razavi (Vice Principal of King's College London) said, 'how much we earn, how we spend and on whom and what we spend etc. - all having been kept as secrets to herself only. I have been questioning her about why how we spend the public money should be kept as a secret? She has never been able to give an answer. She does not even give me access to the necessary financial information which I need to do the redeployment consultation for staff members I line manage.' (Claimant's bundle: page 6)

56. I considered that it was not "likely" that a Final Hearing would find that this disclosed information, rather than a generalized allegation. The words contain no specific allegation, no date, no description of what was done on any particular occasion. I considered that there was at least a 50% likelihood that, as in *Kilraine v LB Wandsworth* [2016] IRLR 422, the Final Hearing would find that these words were "so general and devoid of specific factual content that it could not be said to fall within the language of s.43B(1) so as to constitute a qualifying disclosure"; they did not sensibly convey any information at all.

57. Furthermore, I considered that it was not "likely" that a Final Hearing would find that, in the Claimant's reasonable belief, this disclosure tended to show that a criminal offence had been committed. The words relate to secrecy, rather than the use (or misuse) of funds.

58. In the Claimant's 1st June 2021 email to Deborah Tonkins, Institute Business Manager of CSI, Claimant said, 'She used "numerous occasions" as if I have been given too much information. But in reality, she knows well how to keep people like me "informed"'; 'In her eyes, the others are no more than tools/instruments. If things go well, all credit goes to her; if things go wrong, she won't hesitate a second to dump all the wrongs to her "tools/instruments". So, be careful when work[ing] with her. She can give you all the promises but when things go wrong…'., Claimant's bundle: page 23.

59. Again, I considered that it was not “likely” that a Final Hearing would find that this disclosed information, rather than a generalized allegation. Again, the words contain no specific allegation, no date, no description of what was done on any particular occasion. Again, I considered that there was at least a 50% likelihood that, as in *Kilraine v LB Wandsworth* [2016] IRLR 422, the Final Hearing would find that these words did not sensibly convey any information at all.

60. I considered that it was not “likely” that a Final Hearing would find that, in the Claimant’s reasonable belief, this disclosure tended to show that a criminal offence had been committed. The words relate to general interpersonal behaviours, rather than misapplication of funds.

61. Regarding the following words in that email, “She claimed proudly & shamelessly that the academic posts prioritisation which she masterminded has "no assessment criteria, no feedback and no official records of any meetings". This is just one example of her ways of working/leading: no rule, no guideline, no good practice.” I considered that it was “likely” that a Tribunal would consider that this disclosure was of information – it conveys a specific instance of what Professor Higginson said.

62. However, I did not consider that it was “likely” that that a Final Hearing would find that, in the Claimant’s reasonable belief, this disclosure of information tended to show that a criminal offence (“misuse of public funds”) had been committed. The words do not relate to the misapplication of funds at all.

63. In her 19 July 2021 email to Professor Richard Trembath, Claimant bundle p42-43 and in her 23 August 2021 email to Mr Brent Dempster, HR Director, the Claimant said, ‘And at last, Irene directed Debbie, the CSI's financial manager, to tell me that as the money has been used up, there is no need to know how the money has been spent.’ and ‘I also feel very sorry for Lesley, as a very talented young researcher with a bright future, who unfortunately became a victim just because she was in my team.’ and ‘Now things have become clear, Irene has made every effort and is firmly determined to keep the spending of CSI’s money in black box for many years. It is very reasonable for us to believe that Irene has highly likely misused CSI’s money and has been doing every effort to hide her misconduct. I just recalled that once I overheard that Irene once offered CSI’s commercial contracts to her brother.’ Claimant’s bundle, page 46.

64. Regarding these emails, while again I considered that it was likely the Tribunal would find that they contained some mere allegations, rather than information, I considered that it was likely - that there was a 'pretty good chance' - that a Tribunal would find that the Clamant had disclosed information when she said, ‘It is very reasonable for us to believe that Irene has highly likely misused CSI’s money and has been doing every effort to hide her misconduct. I just recalled that once I overheard that Irene once offered CSI’s commercial contracts to her brother’. This was specific information about a specific act which Professor Higginson allegedly did.

65. Furthermore, I concluded that there was a pretty good chance that a Final Hearing would find that, in the Claimant’s reasonable belief, the information tended to show

that a criminal offence had been committed, in that the Claimant specifically alleged that Professor Higginson had misused public money by offering commercial contracts to a family member.

66. I also considered that it was "likely" that a Final Hearing would decide that, in the Claimant's reasonable belief, the information was disclosed in the public interest. The Claimant's words related directly to the use of 'public" funds. On the face of it, they did not relate solely to the Claimant's personal interest, but to the wider public interest in proper spending of public money.

67. I therefore decided that there was a "pretty good chance" that, with regard to that specific wording in the 19 July and 23 August 2021 emails, a Final Hearing would decide that the Claimant had made a protected disclosure.

Reason for Dismissal

68. In order for the Claimant to be entitled to interim relief, I would need to assess that it was likely that the Tribunal would find that the protected disclosure was the principal reason for the dismissal.

69. It does not appear to be in dispute that the Claimant's email correspondence, including the emails of 19 July and 23 August 2021, led to the Claimant being invited to a hearing on 1 September 2021 and dismissed.

70. However, I would need to find that it was likely that a Tribunal would conclude that the principal reason for the dismissal was the protected disclosure I have identified. It would not be enough that it was one of a number of reasons for dismissal.

71. On the material available to me, I did not consider that it was "likely" that a Tribunal would conclude that the protected disclosure was the principal reason for dismissal.

72. I considered that there was substantial documentary evidence available to a Tribunal showing that the Claimant had also made, along with the sole protected disclosure, numerous unspecific allegations over a long period of time, against a colleague, in emails sent to a large number of people.

73. On the available evidence, the Respondent is likely to show that most of the communications which caused the Respondent to invite the Claimant to the dismissal meeting were not protected disclosures.

74. The Respondent's witness statements further say that it was not the raising of issues which was problematic; rather, that it was the Claimant's reluctance or refusal to take on board information and explanation, along with her making allegations in rude and unprofessional terms, to a variety of recipients, even when advised to raise issues in a more appropriate way.

75. The Respondent is able to point to evidence that the Claimant's correspondence included descriptions of Professor Higginson as a "big bully", that she "is an experienced system abuser and bully"; that "others are no more than [Professor Higginson's] tools/instruments".

76. It does not appear to be in dispute that the Claimant declined to use any formal whistleblowing or grievance process until after she was told she had been dismissed.

77. The wording of the letter of dismissal describes the way in which the Claimant had conducted herself in her email correspondence, in a way which was unacceptable to the Respondent, quite apart from any protected disclosure she may also have made.

78. There is therefore, from the email correspondence and dismissal letter, substantial evidence to support the Respondent's argument that the Claimant's disclosure of particular information was not the reason for dismissal, but the offensive or abusive way in which she did it, in accordance with *Panayiotou v Chief Constable of Hampshire* [2014] IRLR 500,

79. Accordingly, on all the material before me, I did not assess that there was 'a significantly higher degree of likelihood than just more likely than not' that the Tribunal would decide that the protected disclosure was the sole or principal reason for dismissal. On other hand there was substantial evidence that the Claimant made many other allegations, which the Respondent found unacceptable, and did not amount to protected disclosures. Furthermore, even though she may have made a protected disclosure, there was substantial evidence that she did so in the course of correspondence which, as a whole, was abusive and undermining to the employment relationship.

80. Interim relief is therefore not available to the Claimant.

Further Hearings

81. The claim will be listed for a case management Preliminary Hearing.

13 October 2021

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Employment Judge Brown

Sent to the parties on:

13/10/2021

For the Tribunal:

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