



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Q Gao

**Respondent:** R&F Properties QS (UK) Co Ltd

**Heard at:** London South Employment Tribunal

On: 26, 27, 28 and 29 September 2022

**Before:** Employment Judge L Burge

## Appearances

For the Claimant: In person

For the Respondent: N Dilworth, Counsel

JUDGMENT having been delivered orally on 29 September 2022 and written reasons having been requested by the Claimant in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013 ("ET Rules"), the following reasons are provided:

# REASONS

## Introduction

1. Having commenced his employment on 14 September 2020, the Claimant was dismissed at the end of a probationary period on 29 January 2021. The Claimant says that he was dismissed for having made a protected disclosure, the Respondent says he was dismissed mainly because his communication style was not a good fit for the Respondent.

## The Hearing

2. The Claimant gave evidence on his own behalf. Lillian Wang (Personal Assistant to the Chairman), Zhenhua Wang (Human Resources), Stephen O'Driscoll (Development Director), Zhixiong Guan (Chairman) and Bo Yang gave evidence on behalf of the Respondent. Two of the Respondent's witnesses were assisted

by a Mandarin interpreter. Peter Buckley (Construction Director/Construction Lead) provided a witness statement but his plane was delayed en-route back to the UK and he was unable to attend the Tribunal within the time allocated. I attached minimal weight to his witness statement because the Claimant had not had an opportunity to cross examine him.

3. The parties provided a hearing bundle of 1365 pages and one supplementary document was provided part way through the hearing. I only read the pages that I was taken to in evidence or submissions. Many documents in the bundle had the Mandarin original but had also been translated into English. While there was some disagreement about certain translations, the alternative suggested meanings did not make a difference to my conclusions.
4. Mr Dilworth provided a skeleton argument and both the Claimant and Mr Dilworth provided oral closing submissions.
5. The issues for me to decide were agreed at the start of the hearing:

Protected disclosure

- a. Did the Claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996? The Claimant says he made disclosures on these occasions:
  1. At the end of 30 September 2020 he raised with Mr Yang his manager by text message that he had heard the Respondent owed money and said we must pay ("First Alleged Disclosure");
  2. Early in October 2020 in a large meeting including Mr Guan the Claimant said the Respondent owes the design consultants for the Queen's Square project (they said they a have planning department so you should not have overstepped your boundaries) ("Second Alleged Disclosure");
  3. On 26 November 2020 the Claimant texted his line manager in relation to the Queen's Square project and confirmed that the Respondent owed various design consultants for the project ("Third Alleged Disclosure");
  4. On 4 December 2020 at a meeting chaired by HR about self-reflection the Claimant made it clear the money the Respondent owed to various companies was a major issue ("Fourth Alleged Disclosure");
  5. On 4 January 2021 the Claimant sent a text to Mr Yang about the Queen's Square project saying he should chase Mr Guan if the Respondent wanted to re-launch the design as they still owed people money and they needed to start paying that ("Fifth Alleged Disclosure");

6. On 5 January 2021 at a meeting chaired by company chairman Mr Guan with Mr Yang and other colleagues the Claimant flagged the issue with the Queen Square project again to the chairman (“Sixth Alleged Disclosure”); and
7. The Claimant spoke to his line manager Mr Yang daily and on many occasions he raised with him that the Respondent was not paying (or paying late) their contractors, building control and design consultants (“Seventh Alleged Disclosure”).

ii. Did he disclose information?

iii. Did he believe the disclosure of information was made in the public interest? The Claimant says that there is an interest to the people who are owed money and if the Respondent does not pay building control there is a danger that the works are not complying with building regulations which is a danger to the wider public.

iv. Was that belief reasonable?

v. Did he believe it tended to show that:

1. a person had failed, was failing or was likely to fail to comply with any legal obligation;
2. a miscarriage of justice had occurred, was occurring or was likely to occur;
3. the health or safety of any individual had been, was being or was likely to be endangered (lack of building control inspection); and/or
4. the environment had been, was being or was likely to be damaged (the project lasted much longer).

vi. Was that belief reasonable?

b. If the Claimant made a qualifying disclosure, he says it was a protected disclosure because it was made to the Claimant’s employer.

Dismissal (Employment Rights Act 1996 section 103A)

i. Was the protected disclosure the reason or principal reason for dismissal?

## Findings of fact

6. I have only made findings of fact relevant to the legal issues in this claim, I have not sought to adjudicate the many points of dispute in this case that are not relevant to the issues.

7. The Claimant was employed as a Senior Design Manager by the Respondent on 14 September 2020. I accept Mr Wang's evidence that the Claimant was employed because he had the right technical experience. The Claimant's employment was subject to a probation period as contained in his contract of employment. Clause 2.2 provided that the first three months of the Claimant's employment would be a probationary period and that could be extended.
8. The Staff Handbook included a section on "whistleblowing". The Claimant did not refer to this section during his employment at the Respondent. The section required that he raise a whistleblowing concern with his line manager unless the malpractice concerned the line manager in which case an appropriate senior individual should be notified.
9. Ms Wang gave evidence, that is accepted, that in November 2020 she was at a meeting with the owner of the Respondent's new construction partner Midgard, Mr Reddington, and Mr Kong (Head of Construction at the Respondent). The Claimant joined the meeting and was openly critical of Midgard's work in front of its owner, Mr Reddington. Mr Reddington was not happy with the Claimant. Ms Wang later apologised to Mr Reddington for the Claimant's behaviour. The Claimant agrees that he raised Midgard's quality of work, although he said that the meeting happened in October. The Claimant thought that Mr Guan was at the meeting, Mr Guan does not recall that he was but thought that he was told by Ms Wang. On balance, I find that Ms Wang told Mr Guan what had happened between the Claimant and Mr Reddington and Mr Guan was concerned about prejudicing the new relationship with Midgard. The Claimant was later sidelined from this project in order to protect relations between the Respondent and Midgard.
10. Every week an email would be sent by Zhuobin Feng detailing an "urgent payment list". That list contained details of invoices that had been raised on various different construction projects and the many thousands of pounds that were owed by the Respondent. Some of the invoices were outstanding more than a year. Both the Claimant and the Respondent's witnesses gave evidence, and I find as a fact, that there could be many reasons for non payment including that the Respondent had to be satisfied that the works had been carried out but also because it was common practice in the construction industry for payments to be delayed. The Claimant's view in evidence was that this was particularly bad at the Respondent, they routinely did not pay invoices or delayed paying them.
11. One example brought to the Tribunal's attention was in relation to outstanding invoices owed to Rolfe Judd Architecture. Rolfe Judd sent a letter of claim to the Respondent and a series of emails flowed between various individuals at the Respondent trying to find out why payment had not been signed off. Mr Yang replied to Mr Fieldwick: "Unfortunately I can't explain the history of Rolf Judd's payment, it may be a long story". He continued that the answer may lie with the project team and so the query was forwarded to the project team. The Claimant responded saying "...Because of all the things happened before I joined [the Respondent], I'm probably the least qualified person to your question...". The legal team clarified their request as "whether design has been properly completed". The Claimant forwarded the request to the relevant managers who

confirmed that the works had been completed. This was one example showing that existence on the email list of outstanding invoices did not mean that the amounts had been agreed and were payable

### ***First Alleged Disclosure***

12. On 30 September 2020 the Claimant sent Mr Yang two messages:

*"I think we need to have extra people (external consultants). Of course, I heard we own [sic] them fees. We need to discuss this with Mr Kong and Mr Guan. Because of PM/CA/EA must deliver the work for us, this is extremely important. This will be likely to determine the success and failure of the project (from technical point of view).*

*"I will call this John tomorrow, and see if he is on the right path".*

13. Mr Yang replied *"They need to separate their work attitude with the fee due, I will try my best to help them to solve the issue on the remaining fee due, they need to help us solve the issue".*

14. I find that the Claimant's message was that in his opinion they should discuss the outstanding fees of external consultants with Mr Kong and Mr Guan so that the consultant could deliver further work to the Respondent. Mr Yang agreed.

### ***Second Alleged Disclosure***

15. The Claimant says that his second disclosure took place at a large meeting in October 2020 when he said the Respondent "owes the design consultants for the Queen's Square project (they said they have a planning department so you should not have overstepped your boundaries). In evidence to the Tribunal the Claimant again said he raised that the consultants should be paid for the previous design work. He also said that he tried to explain the pros and cons of the two design options from a planning point of view at which point Mr Guan intervened and said that the development team should explain the planning matters. The Claimant gave evidence that he "stopped straightaway and stuck to the non-planning matters throughout the rest of the meeting". He later repeated this in his appeal against dismissal letter. I find that Mr Guan's intervention was not about the Claimant having raised fees but was a request to let the planning team lead on planning matters. I also find that when he did raise the overdue fees, he did not say why that was a concern.

### ***Third Alleged Disclosure***

16. The Claimant claimed that on 26 November 2020 he texted his line manager in relation to the Queen's Square project and confirmed that the Respondent owed various design consultants for the project. That exchange read:

Mr Yang: *"Mr Guan wants the QS team start working. Based on the current direction, cost plan, they need to start design work."*

Claimant: *"Shall we inform all the design consultants to start?"*

Mr Yang: “Yes”  
“Do we need to pay the debts first?”

Claimant: “Yes. Firstly, it’s the current debts. Secondly we need to confirm the new design fees and programme.”

17. I find that the Claimant did not raise a concern, he engaged in work discussion about engaging design consultants and paying the fees they were owed.

***Fourth Alleged Disclosure***

18. The Claimant says that on 4 December 2020 at a meeting chaired by Human Resources about self-reflection the Claimant made it clear the money the Respondent owed to various companies was a major issue. I find as a fact that this did not happen as described by the Claimant. A contemporaneous document completed by the Claimant makes no mention of a specific disclosure by the Claimant even though he did raise other criticisms of the Respondent in the document. In response to “companies mistakes and weaknesses” he said “I feel we need more experienced staff who understand the ways of working in both the UK and China. We probably should use the external PM a little more effectively”. I find that the Claimant orally raised the outstanding debts in a general manner, but that there was no mention that he thought there was wrongdoing or that this was a concern of his.

19. In the self-reflection form the Claimant recognised his communication and team work could be improved on: “My own mistakes and weaknesses: the way I talk is a little too direct” and for future improvement he said “...when I do comment on matters involving other teams, I would do it in a more diplomatic way”.

***Fifth Alleged Disclosure***

20. The Claimant alleges that on 4 January 2021 he sent a text to Mr Yang about the Queen’s Square project saying he should chase Mr Guan if the Respondent wanted to re-launch the design as they still owed people money and they needed to start paying that. The Claimants message reads:

“also regarding to asking the relevant architects to start their work, it’s the best if we could pay for the invoices due first, it will be helpful if we can pay a part of it as well, I heard there is not many remaining invoices to pay for phase 1 now”.

21. Mr Yang replied “regarded the QS consultancy fee, you can speak about it, you know it better, Mr Guan has signed, if you just explain this to him again to make it more clear to him”.

22. In cross examination the Claimant did not deny that he had been encouraged to discuss the matter with Mr Guan. His view is that Mr Guan delayed payments. However, what he raises in the text messages is an opinion that it would be best if due invoices could be paid and he is encouraged to speak to Mr Guan about it.

### ***Sixth Alleged Disclosure***

23. The Claimant alleged that on 5 January 2021 at a meeting chaired by company chairman Mr Guan with Mr Yang and other colleagues the Claimant flagged the issue with the Queen Square project again to the chairman.

24. Whilst the meeting, the Claimant sent a text to Mr Fieldwick:

*"I'm in a meeting with Mr Guan. Mentioned the debt. He seems suggesting we should report to the HQ no for re-start instead of waiting any longer. I'm not sure who is responsible for that. I'll seek more clarification from Bo and Mr Kong,*

25. In cross examination the Claimant said that Mr Guan's suggestion of reporting to HQ was Mr Guan "kick[ing] the ball". Based on this text message above and the Claimant's oral description the Claimant "mentioned" the debt.

### ***Seventh Alleged Disclosure***

26. The Claimant alleged that he "spoke to his line manager Mr Yang daily and on many occasions he raised with him that the Respondent was not paying (or paying late) their contractors, building control and design consultants". Mr Yang gave evidence that he and the Claimant "discussed many things over his five months with the company, and this included him saying that this or that party needed paying, including contractors, consultants and building control". This accords with the contemporaneous evidence provided to the Tribunal, one example is that on 4 January 2021 the Claimant wrote about the hiring of a Queen's Square designer, he said: "please let the designer start to work and it would be best if the debts, even just some part, could be paid off. It seems that there is not much debt left of phase one".

27. When raised with Mr Yang, Mr Yang replied "regarding the QS consultancy fee, you can speak about it, you know it better, Mr Guan has signed, if you just explain this to him again to make it more clear to him".

28. I find that the Claimant is providing opinions about who should be paid and why. The main stated reason is to enable the Respondent to progress projects. The Claimant accepted in evidence that it is standard practice in the construction industry for companies to delay payments.

29. The Claimant does not allege that he said to anyone "you need to pay building control to make sure health and safety is not jeopardised", or similar words. His evidence to the Tribunal was that he could see the monies owing in the weekly emails and he was aware that building control did not provide a full service which concerned him. But at no point did he raise this as a concern with anyone orally or in writing about building control. In evidence he said his concerns were general "I would mention the debt and say we should pay it". The specific outstanding invoices were raised by him in order to ensure future work from the particular contractor.

### ***Dismissal***

30. An anonymous 360 degree review was carried out to gather evidence of the Claimant's performance for his probation review. The feedback was mixed. The Claimant was performing well in many parts of his role. However, there were also concerns. I accept Mr Wang's evidence that on 8 December 2020 he had a conversation with Shane Taylor who expressed the view that the Claimant was aggressive, unprofessional and left a poor impression. Neither Mr Yang nor the Claimant had high regard for Mr Taylor's view.
31. However, there was also the impression that had been made at the meeting about the Queen's Square project where the Claimant had to be stopped by the Chairman, Mr Guan, from leading on planning when the planning team should have been leading. There was also feedback from Mr Yang who recounted that same meeting. Peter Buckley also reported that the Claimant's technical background and experience was good but that the Claimant was not clear on the project's background and the Respondent's culture. In addition Mr Buckley reported that when he had first joined, the Claimant had showed "aggressiveness" in overstepping boundaries. Two employees said that the Claimant should learn more about the Respondent's procedures.
32. Mr Wang gave evidence, that is accepted, that had the Human Resources Department known about the incident with Mr Reddington, they would have dismissed him at the end of his probation on 9 December 2020. However, they did not and as a gesture of goodwill as the timing fell just before Christmas they decided to extend the Claimant's probation to 29 January 2021. A letter was drafted, setting out the concerns that had been raised:
- "1. Improve your communication style with colleagues; this was explained in more detail during your meeting*
- 2. Better adherence to the company's internal procedures and processes*
- 3. Increase cooperation with NES project teams; also explained in more detail during your meeting"*
33. The letter warned that failure to improve would be likely to result in dismissal.
34. As can be seen in a text message exchange and as recounted by Mr Wang in cross examination, the Claimant was angry about the letter and demanded it be re-written or he would not accept it. I accept Mr Wang's evidence that Charlotte Johnston re-wrote the letter in order to appease the Claimant. It was re-issued with the concerns re-written as:

*"the company would like you to adopt a flexible approach to deal with different project teams in order to better match with [the Respondent's] corporate culture and familiarise yourself with internal policies and procedures while providing support to Bo Yang, the Research & Development team and the wider team" .*



35. In January Mr Wang met with Harry Zhai and Charlotte Johnson and decided that things had not improved and so their recommendation was that the Claimant should not pass his probation. Mr Guan agreed with that decision.
36. On 29 January 2020 a probation review meeting took place with the Claimant, Zhenhua Wang and Yang Bo. The Claimant was told that he did not pass his probation and that he was dismissed with one week's notice. The meeting note records that the reason given for the Claimant not passing his probation was:
- “mainly fitting into R&F culture and showed overstep boundaries.... He [had] reported some planning and development issues in QS restart meeting while Stephen and James present. And some other colleagues in 360 review stated they had issue with [the Claimant] on some of the project matters”.*
37. The Claimant appealed on 3 February 2021 with a 4 page letter of appeal. In essence he thought that the “overstepping boundaries” allegation should be viewed in the context that design and planning overlap and as soon as he was told he stopped talking. The Claimant wanted to be able to put his side of the story for the “conflict with colleagues”. He wanted to appeal as in his view the Respondent had not followed proper probation review. In the appeal letter the Claimant did not raise outstanding payments/non-payment of invoices or having raised concerns about late/non-payments of debts.
38. On 9 February 2021 the Claimant was provided with feedback from colleagues. The appeal was heard by Mr O'Driscoll and the hearing took place on 16 February 2021. The hearing lasted 50 minutes. The Claimant did not mention outstanding payments/non-payment of invoices or having raised concerns about late/ non-payments of debts.
39. A letter dated 19 February 2021 dismissed the Claimant's appeal.

## The Law

40. A protected disclosure is a qualifying disclosure made by a worker in accordance with any of sections 43C to 43H Employment Rights Act 1996 (“ERA”). A qualifying disclosure is defined by s.43B:

*(1) In this Part a “qualifying disclosure” means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—*

*(a) that a criminal offence has been committed, is being committed or is likely to be committed,*

*(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,*

*(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,*

*(d) that the health or safety of any individual has been, is being or is likely to be endangered,*

*(e) that the environment has been, is being or is likely to be damaged, or*

*(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.”*

41. In *Williams v Michelle Brown* AM, UKEAT/0044/19/OO at [9], HHJ Auerbach identified five issues, which a Tribunal is required to decide in relation to whether something amounts to a qualifying disclosure:

*‘It is worth restating, as the authorities have done many times, that this definition breaks down into a number of elements. First, there must be a disclosure of information. Secondly, the worker must believe that the disclosure is made in the public interest. Thirdly, if the worker does hold such a belief, it must be reasonably held. Fourthly, the worker must believe that the disclosure tends to show one or more of the matters listed in subparagraphs (a) to (f). Fifthly, if the worker does hold such a belief, it must be reasonably held.’*

42. *Kilraine v London Borough of Wandsworth* [2018] ICR 1850 CA dealt with what might constitute a disclosure of information for the purposes of s.43B ERA:

*[...]*

*35. In order for a statement or disclosure to be a qualifying disclosure according 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 subsection (1)...”*

*36. Whether an identified statement or disclosure in any particular case does meet that standard will be a matter for evaluative judgment by a Tribunal in the light of all the facts of the case.*

*[...]*

*41. It is true that whether a particular disclosure satisfies the test in section 43B(1) should be assessed in the light of the particular context in which it is made. If, to adapt the example given in in the Cavendish Munro case [at paragraph 24], the worker brings his manager down to a particular ward in a hospital, gestures to sharps left lying around and says "You are not complying with health and safety requirements", the statement would derive force from the context in which it was made and taken in combination with that context would constitute a qualifying disclosure. The oral statement then would plainly be made with reference to the factual matters being indicated by the worker at the time that it was made. If such a disclosure was to be relied upon for the purposes of a whistleblowing claim under the protected disclosures regime in Part IVA of the ERA, the meaning of the statement to be derived from its context should be explained in the claim form and in the evidence of the Claimant so that it is clear on what basis the worker alleges that he has a claim under that regime. The employer would then have a fair opportunity to dispute the context relied upon, or whether the oral statement could really be said to*

*incorporate by reference any part of the factual background in this manner.”*

43. The Court of Appeal considered the ‘public interest’ test in *Chesterton Global Ltd v Nurmohamed* [2018] ICR 731. There is lengthy discussion of that leading case in *Dobbie v Felton (t/a Feltons Solicitors)* - [2021] IRLR 679.

### ***Automatically unfair dismissal***

44. S.103A ERA provides:

*“An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.”*

45. Where, as here, the Claimant does not have two years of continuous employment, the burden of proving that the reason or principal reason for the dismissal in a claim for automatic unfair dismissal is upon the Claimant (see *Ross v Eddie Stobart* UKEAT/0068/13).
46. This case does not turn on the burden of proof. As set out below, I have been able to make a positive finding of fact about the reason for the dismissal.

### **Conclusions**

47. The job of a Tribunal is not to decide whether the wrongdoing actually took place. As frustrating as this is for the Claimant, I make no findings on whether the Respondent did or did not pay its debts late or at all. Further, I make no findings in relation to whether the Respondent’s operations were covered at all times by building control inspections as a result of failure to pay invoices.
48. My initial task is to decide whether the Claimant made qualifying disclosures under the provisions of the ERA. Firstly, was there a “disclosure of information”?
49. The First Alleged Disclosure was that “at the end of 30 September 2020 he raised with Mr Yang his manager by text message that he had heard the Respondent owed money and said we must pay”. This is not an accurate description of the message he sent. The Claimant’s message was that in his opinion they should discuss the outstanding fees of external consultants with Mr Kong and Mr Guan so that the consultants would deliver work to the Respondent. Mr Yang agreed with him. This was an opinion of the Claimant’s and the context is that the Claimant, and Mr Yang, were concerned about ensuring the success of the project. The Claimant was not saying, for example, that the Respondent has a legal obligation to pay and they are in breach of that obligation. The message did not have sufficient factual content and specificity such as is capable of tending to show one of the matters listed in s. 43B (1). My conclusion is that it was not the provision of “information”.
50. The Second Alleged disclosure was that “early in October 2020 in a large meeting including Mr Guan the Claimant said the Respondent owes the design

consultants for the Queen's Square project (they said they have a planning department so you should not have overstepped your boundaries)". This is not what happened. The Claimant did raise the unpaid fees as part of the meeting but was cut off by Mr Guan when he started to talk about planning instead of letting the planning team lead on it. The Claimant understood this at the time and gave evidence to the Tribunal that he "stopped talking straightaway and stuck to the non-planning matters throughout the rest of the meeting". It was this that was characterised as "overstepping boundaries" and formed part of the reason for the Claimant not passing his probationary period and being dismissed. Raising non-payment of fees in the context of a meeting does not have sufficient factual content and specificity such as is capable of tending to show any wrongdoing as listed in s. 43B(1). My conclusion is that it was not the provision of "information".

51. The Third Alleged disclosure was that "on 26 November 2020 the Claimant texted his line manager in relation to the Queen's Square project and confirmed that the Respondent owed various design consultants for the project. I found that the Claimant did not raise a concern, he engaged in work discussion about engaging design consultants and paying the fees they were owed. This does not have sufficient factual content and specificity such as is capable of tending to show any wrongdoing as listed in s. 43B(1). My conclusion is that it was not the provision of "information".

52. The Fourth Alleged Disclosure was that on 4 December 2020 at a meeting chaired by Human Resources about self-reflection the Claimant made it clear the money the Respondent owed to various companies was a major issue. I have found as a fact that this did not happen as described by the Claimant. A contemporaneous document completed by the Claimant makes no mention of non/late payment of fees even though he did raise other criticisms of the Respondent in the document. I found that the Claimant orally raised the outstanding debts in a general manner, but that there was no mention that he thought there was wrongdoing or that this was a concern of his. This does not have sufficient factual content and specificity such as is capable of tending to show any wrongdoing as listed in s. 43B(1). My conclusion is that it was not the provision of "information".

53. In the Fifth Alleged Disclosure, the Claimant alleges that on 4 January 2021 he sent a text to Mr Yang about the Queen's Square project saying he should chase Mr Guan if the Respondent wanted to re-launch the design as they still owed people money and they needed to start paying that. However, what he raises in the text messages is an opinion that it would be best if due invoices could be paid and he is encouraged to speak to Mr Guan about it. This does not have sufficient factual content and specificity such as is capable of tending to show any wrongdoing as listed in s. 43B(1). My conclusion is that it was not the provision of "information".

54. In the Sixth Alleged Disclosure the Claimant alleged that on 5 January 2021 at a meeting chaired by company chairman Mr Guan with Mr Yang and other colleagues the Claimant flagged the issue with the Queen Square project again to the chairman. I have found that the Claimant "mentioned" the debt. This does not have sufficient factual content and specificity such as is capable of tending to

show any wrongdoing as listed in s. 43B(1). My conclusion is that it was not the provision of "information".

55. The Claimant alleges that he "spoke to his line manager Mr Yang daily and on many occasions he raised with him that the Respondent was not paying (or paying late) their contractors, building control and design consultants". This is, effectively, a catch all allegation. When I am considering this I consider this allegation in conjunction with the proceeding six allegations to determine whether cumulatively the Claimant's raising of concerns could amount to protected disclosures. In evidence the Claimant said that he was careful not to put his concerns in writing but that he would constantly "nudge" Mr Yang about outstanding payments. Nudging is not the giving of "information", especially where an allegation is raised, for example, "these fees have not been paid", but there is no accompanying context or concern raised of why it is believed to be wrongdoing. The Claimant gave evidence that he would focus on the importance to the Respondent of getting a project moved on as he thought they would be more likely to pay the outstanding invoices. Caselaw talks about the importance of context for example saying "You are not complying with health and safety requirements", with an accompanying gesture showing syringes lying around. The Claimant did not say, for example, "I am concerned the Respondent is breaching its legal requirements by not paying this invoice when it falls due". He said things like:

"Of course, I heard we own [sic] them fees. We need to discuss this with Mr Kong and Mr Guan. Because of PM/CA/EA must deliver the work for us, this is extremely important. This will be likely to determine the success and failure of the project".

56. The Claimant does not allege that he said to anyone "you need to pay building control to make sure health and safety is not jeopardised, or similar words. His evidence to the Tribunal was that he could see the monies owing in the weekly emails and he was aware that Building Control did not provide a full service which concerned him from a health and safety perspective. But at no point did he tell anyone orally or in writing that he had health and safety concerns because building control had not been paid. In evidence he said his concerns were general "I would mention the debt and say we should pay it".

57. The Claimant did not know whether fees were properly owing. For example, he says "we need to discuss" or "...Because of all the things happened before I joined [the Respondent], I'm probably the least qualified person to your question...". There were occasions where the works had to be signed off by the relevant team so that the Respondent could be satisfied that the monies were due under the invoice. Even if I am wrong about whether the seven allegations individually or cumulatively amount to "information", I conclude that the Claimant did not have a reasonable belief that tended to show there was a breach of the obligations, that:

1. a person had failed, was failing or was likely to fail to comply with any legal obligation;
2. a miscarriage of justice had occurred, was occurring or was likely to occur;

3. the health or safety of any individual had been, was being or was likely to be endangered and/or
4. the environment had been, was being or was likely to be damaged.

58. The Claimant says his allegations were in the public interest as it is important the public know about companies who do not pay their bills and that projects may not have full building control inspection which is a risk to health and safety. The example he gave of the Respondent not paying building control which resulted in them providing only a skeleton service until the invoice was settled, would, in my view, be in the public interest as anyone who owned a building/home would want to know if there were any question marks about whether the building was compliant or safe. That belief is reasonably held. In my view, however, a company paying its invoices late would not be a disclosure made in the public interest as it is a matter between two corporate entities. Given my conclusions that the Claimant did not disclose “information”, however, this makes no difference to my conclusion that the Claimant did not make a qualifying disclosures as defined in section 43B of the Employment Rights Act 1996.

### **Dismissal**

59. The Claimant was dismissed at the end of an extended probation period because the Respondent did not think he was a good fit for the company. They thought his technical skills were good but his communication style was not culturally compatible with the company. The Claimant submitted that at no point was he told this. I reject this. On balance I find that the Claimant did know that the Respondent did not like his communication style. Not only was it set out in the letters extending his probation, but in his self-reflection form from 4 December 2020 he said “My own mistakes and weaknesses: the way I talk is a little too direct” and for future improvement he said “...when I do comment on matters involving other teams, I would do it in a more diplomatic way”.
60. The Claimant has not shown that the reason, or principle reason, for his dismissal was that he made protected disclosures. His claim therefore fails and is dismissed.

EJ L Burge

30 September 2022