EMPLOYMENT TRIBUNALS

Claimant: **Miss Elena Bibescu**

Respondent: **Clare Jenner Limited t/a Jenners**

Heard at: **West Midlands** **On: 12th 13th 14th 15thJuly 2022 24th 26th August 2022 Hybrid**

Before: **EJ Steward Mr C Greatorex Mr D Spencer**

Representation
Claimant: In person
Respondent: Mr England (Counsel)

JUDGMENT ON LIABILITY

a. The Claimants claim of automatic unfair dismissal pursuant to S.103A of the ERA 1996 is dismissed.
b. The Claimants claim of automatic unfair dismissal pursuant to S.100(1)(d)ERA 1996 is dismissed.

REASONS

1. **Introduction**

1. The Claimant makes the following complaints

   a. Automatic Unfair dismissal pursuant to S.103A of the ERA 1996
   b. Protected Interest Disclosure Detriment Pursuant to S.47B(1) ERA 1996
   c. Automatic Unfair dismissal pursuant to S.100(1)(d)(i) ERA 1996

   There was also an initial dispute when the Claimants employment ended. She began work on the 21.11.2018. The Claimant stated that she received notice of termination on the 12.6.20 which expired on the

10.7.20. As the Respondent paid her upto 8.7.2020 she claimed 2 days pay. This element of the claim was resolved prior to the commencement of the final hearing and the claim for Breach of contract/wrongful dismissal was not pursued.

The Hearing

2. Documents before the tribunal.

   a. The main bundle comprising 268 pages and ancillary bundle.
   b. Draft list of Claimants documents and supporting documents.
   c. Witness Bundle comprising 37 pages.
   d. Typed note of the interview on the 8th June 2020.
   e. Claimants' response to case management orders dated the 19.8.22.
   f. Respondent Counsels summary of the Law 'whether a protected disclosure was made' dated the 13th July 2022 which was referred to in closing submissions. Copies being provided to the tribunal and also to the Claimant.

   We had the opportunity to read and consider all the papers carefully in this matter in good time for the commencement of the hearing. The matter was heard over the 12th-15th July 2022. Due to Miss Jenners illness that week the matter was adjourned part heard until the 24th August and deliberations took place on the 26th August 2022.

3. Witnesses before the tribunal.

   The Claimant gave live oral evidence by way of video link from Australia. The 'Presidential Guidance for taking oral evidence by video or telephone from persons located abroad' dated the 27.4.22 was considered and appropriate enquiries were made of the 'taking of evidence unit' by HMCTS and no objection was made by the state in question, namely, Australia.

   Clare Jenner, Sandra Wilcox, Richard Grimes and Sandy Green all gave evidence on behalf of the Respondent all by way of video link. All the witnesses gave evidence in chief and were cross examined. The tribunal also asked questions of the witnesses.

4. It became clear on the first day of the evidence that the quality of the video link from Australia meant that it was very difficult for all the tribunal members to understand the Claimant when she spoke in English. Though her command of the English Language was good the tribunal felt the best evidence would be achieved if the Claimant had the help of a Romanian interpreter and enquiries were made by HMCTS. The Claimant had the benefit of a Romanian Interpreter for the whole of the final hearing. The interpreter was of a great help when the Claimant gave evidence, put her questions and when the Claimant made closing submissions.

5. The Claimant filed a response to case management orders dated the 19th August 2021 which was found at pages 2 and 3 of the application to amend bundle. The Claimant at 1.1 of that document raised 3 protected disclosures headed criminal offence/legal obligation/disguised employment. Consequently, the Claimant relies on S.43(f)ERA 1996. The Respondents solicitors replied in a letter to the tribunal on the 23.8.21 suggesting the Claimant was seeking to add further detail to the issues from the CMH. The Respondent specifically refer to a protected interest disclosure from the 4th June. The Respondents object to these new issues being added to the list of issues for determination.

6. We needed to determine that issue on the balance of prejudice. These issues were not new claims. Factually they are not issues that depart in substance from the nature of the complaint. The fact that Ms Jenner knew about the disqualification and allegedly 'took a risk'is mentioned elsewhere in the bundle and is disputed. This was not a major amendment or significant amendment in my view. They are issues that have been available for consideration for sometime. I did not think allowing them to be more prejudical to the Respondent than not allowing them. Therefore on balance of justice I permitted these issues to be added for consideration.

7. I did not allow the claim to be amended to include S.44 as this issue had been determined by EJ Wedderspoon and the Claimant withdrew this at the CMH.

8. With regard to s.100 (d) this was dealt with by EJ Wedderspoon in her letter dated the 11.1.22 at paragraph 1. The Respondent wrote back on the 18.1.22 specifically taking issue with para 3 of the Judges letter of the 11.1.22 and inviting that point to be dealt with on the papers. It would appear nothing was raised with regard to para 1 and both the Claimant and the Respondent supported the action taken by the judge in para 1 of her letter . Though I was conscious of the evidence required with respect to that section I did not dismiss this element of the claim on application on the first day of the final hearing and ruled this could be determined via evidence.

The issues

9. Protected disclosure

(a) Did the claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996? The Tribunal will decide:

(b) What did the claimant say or write? When? To whom? The claimant says she made disclosures on these occasions:

(c) On 8 June 2020 the claimant told Mrs. Silcox the practice manager that Mr. Grimes was a disqualified director;

(d) On 8 June 2020 the claimant told Ms. Jenner that Mr. Grimes was a disqualified director and not a ACCA member and should not be a manager;

(e) On 8 June 2020 the claimant told Mrs. Silcox, Mr. Grimes was monitoring her work which was meant to be Mrs Silcox responsibility.

(f) Did she disclose the information?

(g) Did she believe the disclosure of information was made in the public interest?

(h) Was the belief reasonable?

(i). Did she believe it tended to show that

(i) a criminal offence had been, was being or was likely to be committed

(ii) a person had failed, was failing or was likely to fail to comply with any legal obligation

(iii) 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

(j) Was that belief reasonable?

10. Detriment (Employment Rights Act 1996 S.48)

Did the respondent do the following things:

(i) Removed the right of the claimant to report unprofessional behaviour;

(ii) Mrs. Silcox refused to give the claimant work; work was removed from the claimant and she was left with one client;

(iii) Subjected the claimant to disciplinary action;

(iv) Created a hostile work environment for the claimant and isolated her at work;

(v) Mr. Grimes deliberately gave the claimant confusing instructions.

By doing so, did it subject the claimant to detriment?

If so, was it done on the ground that [s/he made a protected disclosure / other prohibited reason]?

11. Remedy for Protected Disclosure Detriment

(i) What financial losses has the detrimental treatment caused the claimant?

(ii) Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?

(iii) If not, for what period of loss should the claimant be compensated?

(iv) What injury to feelings has the detrimental treatment caused the claimant and how much compensation should be awarded for that?

(v) Has the detrimental treatment caused the claimant personal injury and how much compensation should be awarded for that?

(vi) Is it just and equitable to award the claimant other compensation?

(vii) Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

(viii) Did the respondent or the claimant unreasonably fail to comply with it?

(ix) If so is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?

(x) Did the claimant cause or contribute to the detrimental treatment by their own actions and if so would it be just and equitable to reduce the claimants compensation?By what proportion?

(xi) Was the protected disclosure made in good faith?

(xii) If not,is it just and equitable to reduce the claimants compensation? By what proportion, up to 25%?

12. Was the Claimant ever placed in danger which she believed was serious and imminent pursuant to S.100(1)(d)of the ERA 1996.

Law

13. For the claimant's whistleblowing claim the relevant parts of sections 43A and 43B ERA state:

43A Meaning of "protected disclosure"

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.

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

…

…

14. We must bear in mind also that in order to be qualifying the worker making the disclosure must have a reasonable belief that it was made in the public interest.

15. The leading authority on these matters is Chesterton Global Ltd v Nurmohamed [2018] ICR 731. Underhill LJ's judgment includes the following:

82.1 while the worker must have a genuine (and reasonable) belief that the disclosure is in the public interest, that does not have to be his or her predominant motive in making it – Underhill LJ doubted whether it need be any part of the worker's motivation,

82.2 a disclosure which was made in the reasonable belief that it was in the public interest might nevertheless be made in bad faith,

82.3 the statutory criterion of what is "in the public interest" does not lend itself to absolute rules but the essential distinction is between disclosures which serve the private or personal interest of the worker making the disclosure and those that serve a wider interest.

16. A particularly lucid distillation of the key principles arising from Chesterton was recently given by the EAT in Dobbie v Paula Felton t/a Feltons Solicitors UKEAT/130/20/00 (the summaries above are taken from that judgment). The explanation in Dobbie also included the following:

"a disclosure could be made in the public interest although the public will never know that the disclosure was made. Most disclosures are made initially to the employer, as the statute encourages. Hopefully, they will be acted on. So, for example, were a nurse to disclose a failure in the proper administration of drugs to a patient, and that disclosure is immediately acted on, with the consequence that he does not feel the

need to take the matter any further, that would not prevent the disclosure from having been made in the public interest – the proper care of patients is a matter of obvious public interest (4) a disclosure could be made in the public interest even if it is about a specific incident without any likelihood of repetition. If the nurse in the example above disclosed a one off error in administration of a drug to a specific patient, the fact that the mistake was unlikely to recur would not necessarily stop the disclosure being made in the public interest because proper patient care will generally be a matter of public interest"

17. In Dobbie it was therefore regarded as uncontroversial that proper patient care should be regarded as a matter of public interest. We regard it as similarly uncontroversial that the proper care of the people the respondent looks after is a matter of public interest. The respondent looks after vulnerable people with significant disabilities and it is plain to us that their proper care is a matter of public interest.

18. However, we bear in mind that the fact that a disclosure is about a subject that could be in the public interest does not necessarily lead to the conclusion that the worker believed that she or he was making the disclosure in the public interest: Parsons v Airplus International Ltd UKEAT/0111/17/JOJ. This reinforces the point that in this case it is the claimant's belief when making the disclosure that must be determined.

19. The relevant part of section 47B ERA states:

> *47B Protected disclosures*
> *(1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.*

20. Accordingly, a worker is protected from being subject to a detriment done on the grounds that he has made a protected disclosure. The leading authority on what is meant by the term "done on the ground that" is Fecitt and others v NHS Manchester (Public Concern at Work intervening) [2012] ICR 372. In that case the Court of Appeal stated that: "*liability arises if the protected disclosure is a material factor in the employer's decision to subject the claimant to a detrimental act."*

21. In Williams v Michelle Brown AM,UKEAT/0044/19/OOat[9],HHJAuerbach 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 sub-paragraphs (a) to (f). Fifthly, if the worker does hold such a belief, it must be reasonably held.'

22. As for what might constitute a disclosure of information for the purposes of s.43B ERA, in *Kilraine v London Borough of Wandsworth* [2018] ICR 1850 CA, Sales LJ provided the following guidance:

'30. the concept of "information" as used in section 43B(1) is capable of covering statements which might also be characterised as allegations. Langstaff J made the same point in the Judgment below at [30], set out above, and I would respectfully endorse what he says there. Section 43B(1) should not be glossed to introduce into it a rigid dichotomy between "information" on the one hand and "allegations" on the other [...]

31. On the other hand, although sometimes a statement which can be characterised as an allegation will also constitute "information" and amount to a qualifying disclosure within section 43B(1), not every statement involving an allegation will do so. Whether a particular allegation amounts to a qualifying disclosure under section 43B(1) will depend on whether it falls within the language used in that provision.

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.'

23. Section 103A ERA states:

103A Protected disclosure
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.

24. Pursuant to S.100(1)(d) ERA 1996 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 principle reason) for the dismissal is that (d) in circumstances of danger which the employee reasonably believed to be serious and imminent and which he could not reasonably have been expected to avert he left (or proposed to leave) or (while the danger persisted) refused to return to his place of work or any dangerous part of his place of work.

Findings of Fact

25. The Claimant started work at Clare Jenner Limited on the 21.11.2018 as an accountant. It would appear that she previously worked for Ms Jenner at Knipe Whiting Heath & Associates Ltd. The Respondents claim that there was a marked drop in the standard of the Claimants work from October 2019. I note (at page **67)** in the bundle there is an email from Ms Jenner to the Claimant dated the 14.8.19 raisng some concerns regarding her work. It was not disputed that Richard Grimes started to work for Clare Jenner Limited as a subcontractor in April 2019.

26. The relationship between the Claimant and Mr Grimes was initially described as good by the Respondent but **'not good during 2019'** by the Claimant as **'he criticised me few times in front of my colleagues'** (Claimants statement Page 3)

27. It is clear from the statements that Ms Jenner was concerned about the Claimants work by February 2020. Ms Jenner discussed the standard of the Claimants work with Ms Silcox and Mr Grimes in February 2020. Ms Jenner asked Mr Grimes to peer review the Claimants work "**due to the performance and the number of mistakes with her work, it was taking too much of my time'** (Witness statement of Ms Jenner Page 15 para 8)

28. This is corroborated in the statement of Mr Grimes (Page 29 para 8) However it is interesting to note that Mr Grimes spoke to the Claimant along with Sandra Green to discuss the Claimants '**qualifications and training background'** This was done to guage a better understanding of what to expect from the Claimant and to assist with the supervisory review process. There was a discussion about the level of the Claimants qualifications and the reference 'part qualified' was raised (according to the Respondents by the Claimant herself) (and was referred to by EJ Widerspoon in the CMO of the 30.7.21). it appeared that the Claimant had failed certain exams and refused any help from Mr Grimes to assist her with this. The Claimant refers to this incident

(page 3 para 4) as a phone call from Ms Silcox asking her to go to Ms Silcox office. Whilst there and in the presence of Mr Grimes the Claimant was told that Mr Grimes and Ms Jenner would now review her work and that Mr Grimes would now support her. I think it is more likely than not that Ms Jenner had asked Mr Grimes to review the Claimants files. This was done to alleviate the need for Ms Jenner to do so and was also a way of providing more support to the Claimant. Mr Grimes had more time to do this. It is clear that a conversation unfolded about the Claimants qualifications. It is likely that the Claimant took this as a personal attack on her ability by Mr Grimes who she already had some issues with. It is noteworthy that shortly after this meeting the Claimants relationship with Mr Grimes deteriorated markedly as did the standard of her work.

29. A significant incident occurred in February 2020. The Respondents claim that a set of accounts that were placed on the Claimants desk in February were found to be missing on the 12th February 2020. The Claimant described this incident on the 20th February as **'Mr Grimes falsely accused me that I lost the accounts of M&S Contractors which he said he gave me in an envelope…..they were placed on my desk and they were later found (July 2020 after my dismissal) in my work cupboard"** (Page 3 witness statements para 5)

30. The Claimant also said that at 3pm on that day Ms Silcox Mr Grimes and Ms Taylor came in to check her desk and work cupboard. This is disputed by the Respondents. In the Respondents statements they do not attach great significance to this incident. When questioned on this incident by Mr England the Claimant was unclear whether they did undertake a thorough check. When it was put to her that they (Mr Grimes and Ms Silcox) did not go through her cupboard the Claimant said she **'could not remember checking..Grimes was infront of me in the office and I could not see'** and then when pressed on this she said '**they checked everywhere around me"** I found the Claimants oral evidence inconsistent with her written evidence on this point. It was later established that the documents were found after she left the employment. The documents apparently found in a file called MWS rather than M&S. The Claimant worked on both of these accounts. I do not believe that much turns on this incident and factually it has not been established what exactly occurred only that it was an example of a further deterioration in her relationship with Mr Grimes as it was apparent she blamed him '**falsely accusing her"**

31. What is clear is that the Respondents continued to have concerns about the standard of the Claimants work for example

- **(i)** Email from Ms Jenner to Ms Silcox 14.4.20 **"She tends to just ignore instructions that she doesn't like"(Page 124)**
- **(ii)** Email from Ms Jenner to the Claimant 22.4.20. This has 19 points to be implemented on a file called Righton Solutions. **(Page 134)**
- **(iii)** Email from Ms Jenner to the Claimant on 22.4.20. This had 18 points to be implemented on a file called The Restoration and Damp Proofingn Co. Ms Jenner makes it clear that the Claimant must not start any new jobs until these issues had been finalised.**(Page 136)**

(iv) Email from Ms Jenner to the Claimant on the 22.4.20. This had 20 points to be implemented on a file called RTW. **(Page 137)**

(v) Email from Ms Jenner to the Claimant on 27.4.22. This was regarding invoicing issues. There are a number of concerns that Ms Jenner raises but off note is the following from the email. **"per my email of Friday last week NEVER use a fee to another client to template a fee for a different client. We all learned this last year. I am dissapointed you are still doing this."** And later in the email **"please take these points onboard. If you do not understand please ask me for an explanation"**

(vi) Email from Ms Jenner to the Claimant on 30.4.22 which appears to have been a reviewof RDSC01. Again there are a host of concerns being rasied by the Respondents and the necessity to check the Claimants work. (**Page 144)**

(vii) Email from Ms Jenner to Ms Silcox on the 7.5.20. This reads **"During my work on the VAT return for the QE 31 March 2020 I found multiple issues with the past bookeeping work by EOB…..they were so seriously bad as to fall below the standard I would expect from someone with her experience….overall the job has been done very poorly with no apparent understanding of how it works quarter on quarter. The result is a dreadful mess of paperwork and computer entries littered with errors……..i just hope I have enough credit of goodwill with the client to pull us through and keep the job. The amount of emails ive needed to send is far too high"**

(viii) Email from Ms Jenner to Ms Silcox on the 22.5.20. This raises further concerns and suggests training. There is clearly no pending desire to end the relationship but there are clearly ongoing concerns about the Claimants ability.

32. The Claimant was placed on furlough from 4.5-25.5. During the period of April and May the Claimant in her statement states that she was working from home and it was difficult and stressful. She goes on to say that Mr Grimes submitted a paper list of queries which after the Claimant had rectified Ms Jenner then checked. The Claimant went on to say that she felt this double checking was intimidatory and contributed to her suspecting she maybe dismissed due to not having 2 years continuous service.

33. The Claimant in her statement makes the point that she was struggling working from home yet Mr Grimes could work from the office. The Claimant was also raising issues about the unprofessional behaviour of Mr Grimes.

34. On the 26th May 2020 when the Claimant returned from furlough she received a verbal warning from Ms Silcox in the presence of Mr Grimes who she describes as 'Accountancy Practice Manager'. As the Claimants work was not the required standard. This would seem to make logical sense given the content of the emails referred to in paragraph 31 of this judgment.

35. The Claimant whilst on annual leave telephone Ms Silcox on the 4th June 2020 and requested a meeting between Ms Jenner and the Claimant on the 8th June 2020 to discuss why she was being treated unfairly. The Claimant says she asked whether Mr Grimes was an employee or a contractor. The claimant says she was told by Ms Silcox that he was a contractor. Ms Silcox version is different. She says that the Claimant called her on the 4th June and said she was going to raise a grievance on the following day the 5th June. On the 5th June the Claimant called Ms Silcox and said she would receive her grievance that day and alluded to issues surrounding Mr Grimes including checking her work. The formal grievance was not raised.

36. The Claimant then states she wanted to clarify Mr Grimes subcontractor status so she then contacted companies house. The Claimant then discovered that he was a disqualified director and was a current director of Aberdare Accountancy Services Ltd and not an ACCA member. The Claimant states that she went into Ms Silcox office at 09.05 on the 8th June 2020 and asked her to confirm that Mr Grimes in the office and the one referred to at companies house were the same? The Claimant says she was shouted at by Ms Silcox and asked why she had done this? The Claimant says that the information is public and and anyone can see it.

37. Ms Silcox version of this event is different. She says the Claimant threw the information from company's house onto her desk at around 10.15am and did not raise any issues about disqualification or lack of ACCA status. I will return to this incident and its significance later in the judgment.

38. What is not disputed is that at 11.01am on the 8th June 2020 the Claimant sent to Ms Silcox an email(**Page 164)** entitled 'treated unfairly at work' in this email she states that she has been treated unfairly in the **'conflict'** between me as employee and subcontractor Richard Grimes. She recounts the incident over the missing file in February. She goes on further to say that Mr Grimes had shouted at her many times and and humiliated her in front of her colleagues. Its only at the very end of the email that the Claimant asks what actions will be taken by the company relating to the situation especially as he is a subcontractor, and he is a disqualified director. The Claimant then asks for a meeting.

39. The email the Claimant sent to Ms Silcox on the 8th June 2020 does appear to be an email that has been sent due to the Claimants preoccupation she has with Mr Grimes. The Claimant clearly singled out Mr Grimes as the person who was causing her difficulty at work. She describes the situation as a '**conflcit'**. The information regarding disqualified director status is only raised at the very end of the email in passing. It appears that this information was provided in an effort to assist the Claimant in her conflict with Mr Grimes and portray him in an unfavourable light. It was done in the hope that Mr Grimes would be disciplined or to move the spotlight off the Claimant and onto Mr Grimes. Its likely the Claimant was hoping it was information that might see Mr Grimes depart. The information that the Claimant provided from companies house was already common knowledge to Ms Jenner and she sets out her understanding at para 9 and 10 of her statement (**Page 15)**

40. There was no mention of whistleblowing in the phone call made to Ms Silcox by the Claimant on the 4th and 5th June and no mention of whistleblowing on the 8th June. Its clear by the the time the Claimant wrote to formally appeal the decision to dismiss her on the 18th June 2020 (Page 200-201) that she raises whistleblowing and protected disclosures in detail.

41. When cross examined about providing the companies house disclosure to Ms Silcox on the 8th June the Claimant could not recall whether she had used the phrase disqualified director. The Claimant later under questioning went onto say she provided the information not to punish Mr Grimes but she wanted clarity over his employee/sub-contractor status as she seemed to think this had legal ramifications. She also wanted to know 'how the conflict will end or finish as he was a disqualified director…….and what authority he had to review her work". Mr England put the following question to the Claimant "Do you agree that your focus was on the personal conflict you perceived between you and Grimes'. Her answer was 'yes'. Its seems that the Claimant wanted to have an understanding on the working status of Mr Grimes in the belief that his true status may have a legal impact on Mr Grimes ability to supervise and check her work. However, there is no doubt that the information she provided from companies house was also information that the Claimant thought would help her in her personal conflict against Mr Grimes.

42. The notes of the meeting that took place on the 8th June are at pages 166 and 167 in the bundle. A typed version was provided before the final hearing took place. The notes are sparse given the length of the meeting and I accept not everything was recorded It is recorded that the Claimant though was that the Claimant was not intimidated by Mr Grimes either verbally or physically. We believe the Claimant was not intimidated by Mr Grimes. Also that she had not been to CLJ or SAS about intimidation. Ms Jenner in her statement said that the only thing that the Claimant raised was the fact that Mr Grimes was still a director of his wife's company. She left the meeting to check this. This was qualified by Mr Grimes and when giving evidence about this Ms Jenner essentially said 'great' when this was pointed out. The emphasis being on the fact the Claimant had pointed out something that needed rectifying and Ms Jenner was pleased about that. There did not seem to be any concern on Ms Jenners part that she was dealing with protected disclosures.

43. The Claimant says she raised in the meeting the fact Mr Grimes was disqualified. That he cannot take part in the management of the company and that he met clients who could be misled about his status. According to legislation breaching the rules of disqualification is a criminal offence. The Claimant also says she mentioned Mr Grimes lack of ACCA status. The Claimant has never provided any information that deals with whether a disqualified director can committ a criminal offence in the way she says or what the legal obligations and status is over ACCA membership? I think on balance it is likely that the Claimant raised the issue off Mr Grimes disqualification as a director during the meeting. She had already riased it in her email on the same day. However, it is more likely than not it was raised in the sense of a grievance against Mr Grimes. It was not raised as a protected

disclosure and the Respondents appeared not to have realized the potential significance of the information provided. I do not accept during the meeting they thought or anticipated a whistleblowing claim was developing. Their focus was on the performance of the Claimant.

44. It is a very important fact that the Claimant was not dismissed on the 8th June 2020. Its clear that the Respondents wanted to find away to work with the Claimant. It is also important to note that the Claimant could still speak to clients. The Claimant was given two client files to work on and instructions about the way forward. She was not to work on any other files. However, the evidence of the Respondents was that she continued to work on another client file. The Claimant confirmed this in her evidence even though she qualified this by saying she thought she could answer queries on other files by email. The Claimant also clearly made further mistakes, and this is evidenced in the bundle at pages 232 and 233. There was a further disputed meeting and disagreement on the 10th June 2020 involving Mr Grimes Ms Silcox and the Claimant.

45. The Respondents decided on the 11th June 2020 to terminate the Claimants employment by way of letter. This letter from Ms Jenner set out the agreed performance targets. The letter goes onto say that the Claimant admitted she could not work with a member of the team aka Mr Grimes. It is off note that in this letter the Respondent states **"the only solution you propose is for another higher qualified team member to have their contract terminated"**

46. The tribunal finds that the meeting on the 8th June 2020 was in effect a platform for both the Cliamant and the Respondent to air grievances but to draw a line and move on. The Claimant wanted the meeting to air her grievances, but these were centered on Mr Grimes and the problems she was perceiving she was having with him. The information she provided from company's house and tried to discuss in the meeting was again focused on Mr Grimes. Whether he had the authority to discipline her? Whether he should even be working at the practice? It was done to undermine his position and strengthen the position of the Claimant. The Claimant was not dismissed. The Respondents tried to plan away forward which clearly alleviated the stress she was under by providing her with two clients and guidance. However within days she had failed to follow the guidance, worked on the wrong files, made mistakes that had to be rectified by others and argued and diasgreed with Mr Grimes again. The reason the Claimant was dismissed was due to her performance and inability to work with Mr Grimes.

47. It was only during the appeal process that the Claimant made specific reference to whistleblowing and protected disclosures. At no time during the events leading up to the 8th June 2020 and thereafter to her dismissal on the 11th June 2020 were any references made to protected disclosures, whistleblowing or automatically unfair dismissal.

Conclusions

Did the Claimant make protected disclosures as set out in EJ Wedderspoons Case Management Order para 4.1-4.2 dated the 31.7.21

I reiterate the guidance in the matter of Williams v Michelle Brown (aforementioned at para 29 above)

'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 sub-paragraphs (a) to (f). Fifthly, if the worker does hold such a belief, it must be reasonably held.'

48. It is clear that the Claimant made a disclosure of information when she provided to Ms Silcox the information from company's house regarding Mr Grimes. However, was it a disclosure made in the public interest? In my view that disclosure was not made in the public interest but in the interests of the Claimant.

49. The information was widely available to the public. The information provided was to query what status Mr Grimes had within the business and whether the Mr Grimes should be working at the business in any event. We also find that the information was presented to provide negative information against Mr Grimes the person she clearly had issues with on the run up to the meeting on the 8th June and thereafter until her dismissal on the 11th June. We find that the disclosure was not made in the public interest then I also find that the Claimant did not have a reasonably held belief that it was. I remind myself of the guidance in Dobbie v Paula Felton t/a Feltons Solicitors (2021) IRLR 679 where the principles in Chesterton were summarised

"(7) the essential distinction is between disclosures which serve the private or personal interest of the worker making the disclosure and those that serve a wider interest

(8) the broad statutory intention of introducing the public interest requirement was that "workers making disclosures in the context of private workplace disputes should not attract the enhanced statutory protection accorded to whistleblowers

In our view the information provided by the Claimant was not made in the public interest but made in the context of a private workplace dispute.

50. We also do not find that the information satisfied the criteria in S.43B(1)(a) to (f) and in particular (a) (b) and (f) as asserted by the Claimant. I do not find that a criminal offence had been committed, was being committed or was likely to be committed. There was no evidence at all in the bundle that clearly set out the law or possible penalties or implications for employing a disqualified director or

somebody without ACCA status etc? Likewise that the Respondents had failed is failing or is likely to fail with any legal obligation. The issue raised over Mr Grimes still being a director of his wife's company was immediately rectified when it was pointed out. There was no evidence that the status of Mr Grimes had been deliberately concealed as the information was open to public access at companies house in any event.

51. The EAT in Korashi v Abertawe Bro Morgannwg University Local Health Board [2012] IRLR 4 re-affirmed earlier dicta that:

> "As to any of the alleged failures, the burden of the proof is upon the Claimant to establish upon the balance of probabilities any of the following:
>
> (a) there was in fact and as a matter of law, a legal obligation (or other relevant obligation) on the employer (or other relevant person) in each of the circumstances relied on.
>
> (c) the information disclosed tends to show 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
>
> The Claimant has failed to provide any information that on the balance of probability any of (a) (b) (f) of S.43B have been established.

In any event if the Claimant made a protected disclosure was this the reason (or if more than one, the principle reason) for the dismissal

52. Section 103A ERA states:

103A Protected disclosure

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.

53. The Tribunal has found that the Claimant did not make a protected disclosure however even if it had the tribunal does not find this was the principal reason for the dismissal. The Tribunal finds that the reason the Claimant was dismissed was her performance and also her inability to work with Mr Grimes. There was ample evidence throughout April and May 2020 of the mistakes the Claimant was making and the time it was taking Ms Jenner and others to rectify these mistakes. There were also the ongoing issues that the Claimant had with Mr Grimes that led to disputes and arguments. This resulted in the Claimant providing information designed to undermine the role of Mr Grimes (from company's house) and readdress the balance in the ongoing conflict that the Claimant perceived she was having with Mr Grimes. The Respondents did not dismiss the Claimant because she had made a protected disclosure.

54. I therefore do not find that the Claimant was subjected to any detriments pursuant to S.48 of the Employment Rights Act 1996.

55. The Claimant also brings a claim pursuant to S.100(1)(d) in circumstances of danger which the employee reasonably believed to be serious and imminent and which he could not reasonably have been expected to avert, he left (or proposed to leave) or (while the danger persisted) refused to return to his place of work or any dangerous part of his place of work

56. I do not find that the working environment was one that presented a danger to the Claimant. I do not believe that the Claimant reasonably believed there was a danger which was serious and imminent. The Claimant did not leave the employ or refuse to return. It was clear in the meeting on the 8th June 2020 that the Claimant said that Richard Grimes was not intimidating either verbally or physically.

57. We therefore find that all the Claimants claims fail.

[Insert judgment as instructed by Employment Judge

E J Steward_____
Electronically signed
Employment Judge **Steward**

Date 2.9.22_____