



**The issues**

4. Protected disclosure
- (a) Did the claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996?
- (b) What did the claimant say or write? When? To whom? The claimant says she made disclosures on these occasions:
- (i) On 8 June 2020 the claimant told Mrs. Silcox the practice manager that Mr. Grimes was a disqualified director.
- (ii) 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;
- (iii) On 8 June 2020 the claimant told Mrs. Silcox, Mr. Grimes was monitoring her work which was meant to be Mrs Silcox responsibility.
- (c) Did she disclose the information?
- (d) Did she believe the disclosure of information was made in the public interest?
- (e) Was the belief reasonable?
- (f). 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
- (g) Was that belief reasonable?
5. Detriment (Employment Rights Act 1996 S.47B)
- Did the respondent do the following things:
- (a) Removed the right of the claimant to report unprofessional behaviour.
- (b) Mrs. Silcox refused to give the claimant work; work was removed from the claimant, and she was left with one client.
- (c) Subjected the claimant to disciplinary action.
- (d) Created a hostile work environment for the claimant and isolated her at work;
- (e) Mr. Grimes deliberately gave the claimant confusing instructions.
- (f) By doing so, did it subject the claimant to detriment?
- (g) If so, was it done on the ground that [s/he made a protected disclosure / other prohibited reason]? As per S.47B Employment Rights Act 1996.

**Findings of Fact**

6. The previous working background between the Claimant and the Respondent is important. The Claimant started work at Clare Jenner Limited on the 21.11.2018 as an accountant. 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 raising 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.
7. 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)
8. 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)
9. 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 gauge 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 Wedderspoon 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. 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. There is no doubt that the Claimant had a difficult relationship with Mr Grimes and perceived him as someone who was monitoring her work and looking for mistakes. It was a period where the Respondents were becoming increasingly concerned about the standard of the Claimants work.
10. 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 12<sup>th</sup> of February 2020. The Claimant described this incident on the 20<sup>th</sup> 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)
11. 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 in front 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 accounts. I do not believe that much turns on this incident only that it was an example of the Claimant making an error with the filing and that it marked a further deterioration in her

relationship with Mr Grimes as it was apparent she blamed him **'falsely accusing her'**

12. 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 Proofing 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 several 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 disappointed 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 review of RDSC01. Again, there are a host of concerns being raised 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 bookkeeping 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.
13. 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 may be dismissed due to not having 2 years continuous service.
14. 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 behavior of Mr. Grimes.
15. On the 26<sup>th</sup> 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.
16. The Claimant whilst on annual leave telephone Ms Silcox on the 4<sup>th</sup> June 2020 and requested a meeting between Ms Jenner and the Claimant on the 8<sup>th</sup> 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 4<sup>th</sup> of June and said she was going to raise a

grievance on the following day the 5<sup>th</sup> June. On the 5<sup>th</sup> of 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.

17. 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 8<sup>th</sup> of 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 anyone can see it.
18. Ms Silcox version of this event is different. She says the Claimant threw the information from companies' 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.
19. What is not disputed is that at 11.01am on the 8<sup>th</sup> 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 humiliated her Infront 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.
20. The email the Claimant sent to Ms Silcox on the 8<sup>th</sup> 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 '**conflict**'. 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 to assist the Claimant in her conflict with Mr. Grimes and portray him in an unfavorable 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. It's 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**)
21. There was no mention of whistleblowing in the phone call made to Ms Silcox by the Claimant on the 4<sup>th</sup> and 5<sup>th</sup> June and no mention of whistleblowing on the 8<sup>th</sup> of June. It's clear by the time the Claimant wrote to formally appeal the decision to dismiss her on the 18<sup>th</sup> June 2020 (Page 200-201) that she raises whistleblowing and protected disclosures in detail.
22. When cross examined about providing the companies house disclosure to Ms. Silcox on the 8<sup>th</sup> of 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.
23. The notes of the meeting that took place on the 8<sup>th</sup> of 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. However, I also accept that this was not a structured meeting by HR but more of an impromptu meeting at the request of the Claimant. What was noted though was that the Claimant was not intimidated by Mr. Grimes either verbally or

physically. 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. Jenner's part that she was dealing with protected disclosures.

24. 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 commit 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 issues referred to at paragraph 4(b)(i)(ii)(iii) from the 5<sup>th</sup> of June up to and including the meeting on the 8<sup>th</sup> June. She had already raised the issue of disqualification in her email on the same day. However, it is more likely than not these issues were 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 realised 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. The information referred to at 4(b)(i)(ii)(iii) was disclosed but not because it was in the public interest. It was disclosed to assist the Claimant in the ongoing developing conflict she perceived she was experiencing with Mr. Grimes.
25. It is a very important fact that the Claimant was not dismissed on the 8<sup>th</sup> of June 2020. It's clear that the Respondents wanted to find a way 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 10<sup>th</sup> of June 2020 involving Mr. Grimes Ms Silcox and the Claimant.
26. The Respondents decided on the 11<sup>th</sup> of June 2020 to terminate the Claimant's employment by way of letter. This letter from Ms. Jenner set out the agreed performance targets. The letter goes on to say that the Claimant admitted she could not work with a member of the team aka Mr. Grimes. It is of 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."**
27. The tribunal finds that the meeting on the 8<sup>th</sup> of June 2020 was in effect a platform for both the Claimant 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 companies' 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 disagreed with Mr. Grimes again. The reason the Claimant was dismissed was due to her performance and inability to work with Mr. Grimes.
28. 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 8<sup>th</sup> of June 2020 and thereafter to her dismissal on the 11<sup>th</sup> June 2020 were any references made to protected disclosures, whistleblowing or automatically unfair dismissal.

29. The factual matrix is extremely important in this matter. Did the Claimant, on reasonable belief, make disclosures in the public interest pursuant to S.43B of the Employment Rights Act 1996? Did those disclosures tend to show that paragraph 4(f)(i)(ii)(iii) above was made out? In our opinion the information that the Claimant disclosed was done so to bolster her position against Mr. Grimes. It was not information that was disclosed in the public interest pursuant to S.43B of the Employment Rights Act 1996.
30. The Claimant was not subjected to any detriment pursuant to S.47B of the Employment Rights Act 1996. The Claimant freely reported what she perceived to be the unprofessional behavior of Mr. Grimes. It is correct that the number of clients the Claimant could work with was restricted but was only done so to allow her to concentrate on her work and improve the same. This was done to help the Claimant. Any disciplinary action the Claimant was subjected to was justified on the facts. There were a growing number of errors in the work of the Claimant as set out in these reasons and where there was a dispute on the performance of the Claimant in her role the evidence of the Respondents was preferred. The Claimant was not subjected to a hostile environment. The Respondents tried to assist the Claimant, but this was perceived by the Claimant as a threat and eventually a conflict with Mr. Grimes who began to have more of a supervisory role with the Claimant. The actions that the Respondents took against the Claimant were proportionate given the problems they were experiencing with the standard of the Claimants work. The actions the Respondents took were not because the Claimant had made protected disclosures.

### **The Law**

31. 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*

*...*

*...*

32. 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.

33. 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.

34. 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”*

35. 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.
36. 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.
37. 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.*

38. 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.”*
39. 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.’*

40. 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.’

41. 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.*

42. 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.

**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.'*

43. The Claimant made a disclosure of information when she provided to Ms Silcox the information from companies' 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.
44. The information was widely available to the public. The information provided was to query what status Mr. Grimes had within the business and whether Mr. Grimes should be working at the business in any event. I 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 8<sup>th</sup> of June and thereafter until her dismissal on the 11<sup>th</sup> of June. As I 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 my view the information provided by the Claimant was not made in the public interest but made in the context of a private workplace dispute.

45. I 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.
46. 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 principal reason) for the dismissal.**

47. 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.*

48. 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 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 companies' 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.
49. S.47B of the Employment Rights Act 1996 (1) states 'a worker has the right not to be subject 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. The Claimant relies on 5(a)-(f) above. As stated previously I do not find that the Claimant suffered any detriment. The Claimant was able to report what she perceived to be unprofessional behavior. The number of clients that she had and the number of files she could work on was restricted. This was not because she had made protected disclosures but because her performance at work was not at the desired standard. The Respondents were trying to assist her by allowing her to work on a smaller number of files with guidance and supervision. The Respondents did not create a hostile environment even though there were clearly flashpoints between various members of staff including the Claimant. This was because the Respondents had concerns about the Claimants performance and the Claimant clearly did not accept those concerns and perceived an issue with Mr. Grimes who did not give the Claimant confusing instructions. I therefore do not find that the Claimant was subjected to any detriments and was not subjected to any detriments because of making a protected disclosure pursuant to S.47B of the Employment Rights Act 1996.

50. 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.
51. 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 8<sup>th</sup> of June 2020 that the Claimant said that Richard Grimes was not intimidating either verbally or physically.
52. The Claimants claims do not succeed and are dismissed.

Employment Judge Steward

Date 28.08.2023