EMPLOYMENT TRIBUNALS

Claimant		Respondent
Mr Antony Savva	**v**	**Leather Inside Out**

Heard at: London Central Employment Tribunal

On: 20th-21st June 2023 (in person)
22nd-23rd June 2023 (in Chambers)

Before: Employment Judge Gidney,
Mr Brian Furlong
Mr Paul Secher

Appearances
For the Claimant: Mr Savva (in person)
For the Respondents: Not attending

RESERVED JUDGMENT

The Judgment

1. The Judgment of the Tribunal is that the Claimant's claim of detrimental treatment for making protected interest disclosures is not well founded and is rejected.

Reasons

2. Background and History. By complaints dated 17th November 2020, 22nd March 2021 and 5th October 2021 the Claimant presented complaints of (i) automatic unfair dismissal pursuant to s103A of the **Employment Rights Act 1996** ('the **ERA**'), (ii)

detrimental treatment on the grounds of having made public interest disclosures under s47B of the **ERA**, and (iii) sex and race discrimination and harassment contrary to s13 and s26 of the **Equality Act 2010** ('**EqA**'). The complaints were presented against four Respondents in total, namely Leather Inside Out, a registered Charity, and three other individuals named Nicole Riedweg, Anat McKenzie and Victoria Johns. The Respondents denied all of the Claimant's claims. After a number of Case Management Orders the Claimant's claims were consolidated and a public preliminary hearing was listed to determine whether all or some of the Claimant's claims should be struck out on the grounds that they were presented out of time and/or that they had no reasonable prospect of success. In the alternative a Deposit Order was sought for any claims that remained, on the grounds that they had little reasonable prospect of success.

3. By a reserved Judgement sent to the parties on the 19th of April 2022 **[1]** [1] Employment Judge Beyzade made the following Orders:

3.1 The Claimant's claim of automatic unfair dismissal, pursuant to section 103A of the **ERA** was not well founded.

3.2 The Claimant's claims of sex and race discrimination and harassment were not well founded.

3.3 The Claimant's claims of detrimental treatment for having made protected interest disclosures were not well founded, with the exception of two complaints of detrimental treatment that would proceed to trial, namely:

3.3.1 that the First Respondent, Leather Inside Out, attempted to mislead the Claimant by falsely claiming he was not an employee within the meaning of s230 **ERA** (as set out in paragraph 5.5 within the Particulars of Claim dated the 22nd March 2021 **[126]**).

3.3.2 that the First Respondent, Leather Inside Out refused, by letters dated the 15th October 2020 **[1206]** and 10th September 2021 **[1218]** to provide the documents requested by the Claimant in two data Subject Access Requests, the first received on 16th September 2020 and the second date 8th August 2021 (as set out in paragraph 11.6 within the Particulars of Claim dated 5th October 2021 **[279]**).

[1] Numbers in bold square brackets refer to pages within the Claimant's Trial Bundle of Documents.

3.4 The two remaining claims of detrimental treatment (as set out above in paragraphs (3.3.1) and (3.3.2) above) were made the subject of a Deposit Order in the sum of £300.00 on the grounds that the claims have little reasonable prospect of success.

3.5 As the two remaining claims of detrimental treatment (as set out above in paragraphs (3.3.1) and (3.3.2) above) are brought against the First Respondent, Leather Inside Out, only, all claims against the 2nd to 4th Respondents (Nicole Riedweg, Anat McKenzie and Victoria Johns) were dismissed.

4. On the first day of the hearing the Claimant attended with two witnesses, Paul Vrahimis and Conner Walsh. Given the dismissal of the claims against second, third and fourth Respondents, we shall refer to the First Respondent, Leather Inside Out, simply as the Respondent. The Respondent did not attend the hearing. Enquiries established that an application had been made to the Charity Commission to wind up the activities of the Respondent and that it would not be attending to defend the Claimant's claims against it. As at the date of the hearing the Respondent had not been wound up.

5. By paragraph 4 the Claimant's Particulars of Claim **[122]** 12 potential public interest disclosures ('PIDs') were identified, at sub-paragraphs 4.1 to 4.12. The Particulars of Claim did not identify which 'gateway' provision of s43B(1) **ERA** was relied upon for each disclosure. At the start of the hearing the Claimant identified the legal basis for 8 of his 12 pleaded PIDs (sub-paragraph numbers 3, 5, 6, 8, 9, 10, 11 & 12). He confirmed that he no longer wished to rely on the 4 remaining PIDs (sub-paragraph numbers 1, 2, 4 or 7). Accordingly we proceeded to hear and determine the Claimant's 2 detriment claims based on the 8 remaining PIDs that he wished to put before us.

6. The Issues. The liability issues in the case were identified and agreed with the Claimant to be as follows:

Protected Interest Disclosures

6.1 Did the claimant make one or more qualifying disclosures as defined in section 43B(1) **ERA**? To maintain consistency with the Particulars of Claim we have referred to the remaining PIDs by the same sub paragraph numbers within paragraph 4 of the Particulars of Claim:

6.1.1 [3] Around September 2019 the Claimant disclosed to Paul Vrahimis that Leather Inside Out and its subsidiary companies S&K Camden Ltd ('S&K') and Leather Works London Ltd ('LWL') were not paying staff PAYE or National Insurance tax contributions.
S43B(1)(b) breach of the legal obligation to pay tax;

6.1.2 [5] On 28th of October 2019 the Claimant disclosed to Victoria Johns that the Creative Director, Louise Graham, behaving in an aggressive and intimidating manner, had unlawfully trapped Connor Walsh in a room and refused to let him leave
S43B(1)(a) criminal offence has been committed (false imprisonment under common law);

6.1.2 [6] Around October/November 2019 the Claimant disclosed to Paul Vrahimis that his (Paul's) shares in the LWL had been unlawfully transferred from his ownership to Leather Inside Out without his knowledge or approval.
S43B(1)(a) criminal offence has been committed (s1 Theft Act 1968);

6.1.2 [8] in November 2019 the Claimant disclosed to Paul Vrahimis that Victoria Johns was committing invoicing fraud to access funds illicitly and was manipulating staff members into committing criminal offences to potentially launder money via the charity.
S43B(1)(a) criminal offence has been committed (s2 Fraud Act 2006);

6.1.2 [9] in November 2019 the Claimant disclosed to Paul Vrahimis that Victoria Johns asked him to assist her with a suspicious transaction that involved importing £900,000.00 from Dubai under an agreement that authorised her to withdraw funds against the presentation of fake invoices.
S43B(1)(a) criminal offence has been committed (s327 Proceeds Crime Act 2002);

6.1.2 [10] On the 25th November 2019, the Claimant disclosed to Paul Vrahimis that Leather Inside Out's bank accounts were showing irregular and highly suspicious activity that appeared to be a money laundering scheme.
S43B(1)(a) criminal offence has been committed (s327 Proceeds Crime Act 2002);

6.1.2 [11] after the Claimant was dismissed in December 2019, he disclosed to Paul Vrahimis that company documents suggested that he (Paul) at

been present at a board meeting at which an agreement to transfer £820,000 to a company owned by another trustee was made, when in fact Paul Vrahimis was not at that board meeting.
S43B(1)(a) criminal offence has been committed (s2 Fraud Act 2006);

6.1.2 [12] after his dismissal in December 2019, the Claimant reported his concerns about Leather Inside Out to the Charity Commission and to Action Fraud (ref 191203358964).
S43B(1)(a) criminal offence has been committed (s2 Fraud Act 2006).

6.2 For each disclosure that the Claimant made:

6.2.1 Did the Claimant disclose information?
6.2.2 Did he believe the disclosure of information was made in the public interest?
6.2.3 Was that belief reasonable?
6.2.4 Did he believe it tended to show that (i) a criminal offence had been, was being or was likely to be committed, or (ii) a person had failed, was failing or was likely to fail to comply with any legal obligation?
6.2.4 Was that belief reasonable?

Detriments

6.3 Did the First Respondent do the following things:

6.3.1 attempt to mislead the Claimant by falsely claiming he was not an employee;
6.3.2 refuse to provide the documents requested by the Claimant in two data Subject Access Requests.

6.4 By doing so, did it subject the Claimant to detriment?
6.5 If so, was it done on the ground that he made a protected disclosure?

7. The Facts. We were provided with a 1,600 page bundle of documents by the Claimant in electronic format. Despite this hearing being listed in person, no hard copy was provided. We were able to access the bundle electronically, however the hearing was delayed until 2.30pm on the first day so that the Claimant could provide a hard copy of his bundle for use on the witness table. At 2.30pm we took the opportunity to discuss the PIDs relied on and the gateway provision within s43B(1)

ERA that the Claimant asserted applied to each PID. This process assisted in clarifying and narrowing the issues. We then adjourned at about 3.30pm to read all of the witness statements, all of the documents referred to in them and all of the remaining relevant documents in the bundle of documents provided by the Claimant. We restarted the hearing at 2pm on the 2nd day, 21st June 2023. The Claimant provided a witness statement running to 78 paragraphs. He confirmed that his statement was true by way of affirmation. The Claimant called two other witnesses: Paul Vrahimis provided two witness statements, one 8 paragraphs in length (PV1) and the other 31 paragraphs in length (PV2) which he confirmed were true under Oath upon the Holy Bible. Conner Walsh provided an 11 paragraph statement which he confirmed was true by affirmation. Both Mr Vrahimis and Mr Connor confirmed that the Claimant had helped them write their witness statements. In the absence of the Respondent, we asked each witness some questions to clarify certain issues in the case. We have focussed our findings of facts on the facts relevant to the issues we have to decide.

8. The Respondent is a registered charity seeking to provide skills and training, employment and education in the British leather craft industry and retail for those committed to custody by the courts of England and Wales, serving prisoners and ex-offenders on their release on licence. It has two subsidiary limited companies under its umbrella, S&K Camden Ltd ('S&K') and Leather Works London Ltd ('LWL'). Responsibility for the funding of the charity rests with its benefactor trustee Nicole Riedweg. The charity is not in receipt of any public funds or grants other than the financial support of Miss Riedweg and the funding she has arranged through Just Cash Flow PLC. The Respondent's CEO is Victoria Johns. Paul Vrahimis, one of the Claimant's witnesses, was a trustee of the Respondent until November 2019. Patrick Havlik was the Respondent's digital designer until his dismissal on 9th December 2019. Connor Walsh, the Claimant's second witness, was a former supervisor and employee of S&K, one of the Respondent's subsidiaries. Louise Graham was the Respondent's Creative Director. Anthony Vrahimis, Paul's brother, was also engaged to work by the Respondent.

9. The Claimant has one previous antecedent of 'Class A drug supplying or offering to supply' and 'possession of offensive weapon without lawful authority or reasonable excuse'. The offensive weapon was a stun gun (which confirmed by the Police to be broken). The supply or offer of supply related to 3.3 tons of active pharmaceutical ingredients, including Benzocaine, Lidocaine and Paracetamol, Caffeine and Boric

Acid, which are used by drug suppliers to bulk out illicit drugs. The offences took place between February 2009 and May 2011 in the Enfield area of London **[1166]**. The Claimant was sentenced to nine years in custody for this offence in 2013. After the Claimant's release from custody under licence he was engaged by the Respondent on 3rd June 2019, until his engagement was terminated on 1st December 2019, some six months later.

10. On 1st September 2019 Vladimir Galichyan submitted an invoice to LWL rebuild a flat roof in the sum of £3,600.00 **[1035]**. On 15th October 2019 Victoria Johns emailed Patrik Havlik to say: '*I think the amount here is too low. Can you increase it to £18,500.00?*'

11. On 11th September 2019 Victoria Johns engaged the Claimant in a WhatsApp conversation regarding the mechanics of setting up a payment of £900,000.00 from an account in Dubai **[629]**.

12. On 18th September 2019 S&K raised an invoice in the sum of £386.88 to a company called Leonardt Ltd for the supply of 2000 buckles **[1030]**. We were shown an undated text exchange, between parties unknown, in which, with reference to the invoice, one party asked the other '*Can you take this one and raise in multiples to £3,368.33*' with the reply '*Yes, will do it*'.

13. In paragraph 3 of his 2nd statement **[1101]**, Paul Vrahimis said that on 23rd September 2019 he emailed Victoria Johns with his concerns. However that email was not on our bundle and in answer to a question from us, Mr Vrahimis confirmed that he did not have it. We were unable to draw any conclusions about its contents.

14. On 28th October 2019 there was an incident in which Louise Graham, the Respondent's commercial director, admonished Connor Walsh in a private meeting room. Mr Walsh described the incident in paragraph 6 of his statement **[1376]** stating, '*Louise blocked me from leaving a room, began to scream in my face, hurl accusations at me while questioning my capability of working for the company and refused to let me leave even after I made it clear I wanted to go. This went on for over 15 minutes after I said I wanted to leave*'. In answer to questions from the panel the Claimant described the incident in the following terms: '*Conner asked to leave and Louise blocked him. We could hear Louise, we couldn't hear Connor. I can't say if it was an indictable offence, but he was shouted at and it caused concern*'. Also in

answer to our questions the Claimant stated that there was a window, and that he could see into the room to see the confrontation. The Claimant asserts that he raised this in a meeting with Victoria Johns on 18th October 2019. We find that he did. We have seen a transcript of the relevant extract from that meeting. It records the Claimant giving Ms Johns the following account of the incident:

> '*She [Louise Graham] stood in front of the door and wouldn't let him [Connor Walsh] leave. Now The funny thing about that conversation is that we could all hear it from the other side of the room saying don't talk over me, don't talk over me. We couldn't hear Connor, but we could hear her saying that. And she refused to move out of the way when he asked, which is not just unfair and intimidating, but it's a criminal offence as you know for false imprisonment'.*

15. If we take the transcript as an accurate and contemporaneous note of the incident, and we are minded to, it cannot be fully reconciled with the account given by the Claimant in oral evidence to us. In evidence he said there was a window and he could see into the room. The transcript suggests he could simply hear it. The transcripts suggests that Connor could not be heard (ie no objections by him or requests to leave could be heard). He also conceded to us that what happened was unlikely to be indictable as false imprisonment.

16. In paragraph 4 of Mr Vrahimis' 2nd statement **[1101]** he said, '*my concerns were sent by text message and then by e-mail to the other trustees, Anat McKenzie and Nicole Riedweg on the 23rd and 25th of November 2019*'. In support of that proposition Mr Vrahimis referred to an email on 19th and 25th November 2019. No text was provided and Mr Vrahimis agreed he did not have the text. In the circumstances we are satisfied that the two communications that did occur were the emails that were produced on 19th and 25th November 2019.

17. On Tuesday 19th November 2019 Paul Vrahimis sent an email to Nicole Riedweg **[1241]**. In it Mr Vrahimis stated that he had tried to contact Ms Riedweg unsuccessfully over the previous two weeks to raise concerns about Victoria Johns. He complained that his shares in S&K had been transferred without his knowledge or consent to the Respondent, stating:

> '*I also realised that all of my shares in S&K have been transferred to Leather Inside Out, which makes the charity a 75% shareholder in the company again. I did not authorise this. I haven't sold my shares or agreed to. So how did this come to pass?*'

18. On Monday 25th November 2019 Paul Vrahimis sent a further email, this time to Anat McKenzie **[1242]**. In contained the following:

> '*I want to be clear that I have resigned from both the companies (S&K and LWL) in part because I'm aware the Victoria has not paid any of the taxes associated to PAYE or National Insurance, which is illegal and could result in a prison sentence or being banned from being a company director in the future. Victoria lied to me and said that she had paid this. However, I recently discovered the Victoria also failed to pay any of the PAYE / NI taxes for Leather Inside Out too which has been a cause of distress to all of our staff across the companies.*
>
> *I want to be clear that I did not and will not resign from my post as a trustee in the charity, at the very least because I want to retain some control over the companies that I'm a shareholder of and of which Leather Inside Out is the majority shareholder, which Victoria appears to direct. For the avoidance of doubt, I make a clear distinction between the charity and the companies.*
>
> *In any case, Victoria's confusion in this regard may explain (should I give her the benefit of growing doubt) but does not justify why she has transferred all of my shares to Leather Inside Out, which amounts to theft and quite possibly fraud, which is a serious criminal offence and would harm the reputation of the charity considerably*'.

19. By this email of 25th November 2019 we found that Paul Vrahimis had escalated two of the PIDs that had been brought to his attention by the Claimant, PID [3], relating to the non-payment of PAYE and NI contributions and PID [6] that Victoria Johns had transferred Mr Vrahimis' shares in LWL to the Respondent without his knowledge or consent. We will return to this later. In a letter drafted by Carter Ruck, the Respondent's solicitors, dated 20th December 2019 **[1132]** it was confirmed that Mr Vrahimis' shares in LWL had indeed been transferred into the ownership of the Respondent on 22nd October 2019. The letter went on to assert that Respondent reinstated the shares to Mr Vrahimis following notice that he had not intended to revoke his shares.

20. On the issue of whether Paul Vrahimis escalated or passed on any other PIDs that the Claimant and told him, we noted paragraph 14 of his 2nd statement **[1103]** which stated:

> *'I became increasingly concerned as it showed that the other trustees were not interested in safeguarding the charity from the fraud and criminality of Victoria Johns, but rather they were tipping her off to the fact of my concerns about her. For this reason, I did not mention all the details of our concerns at that point.'*

21. We asked Mr Vrahimis to expand on that statement by telling us exactly what concerns he did escalate, and what he kept back. In oral evidence he confirmed to us that the only PIDs that he escalated were the ones that related to the non-payment of PAYE and NI contributions (PID [3]) and the transfer of his shares from LWL to the Respondent (PID [6]). This was consistent with the emails that he has produced (referred to above). Accordingly we found as a fact that Paul Vrahimis only escalated those two PIDs and that he kept the others close to his chest.

22. On 30th November 2019 the Respondent dismissed the Claimant with immediate effect on the grounds of a complete breakdown in trust and confidence **[297]**. The letter stated, '*I felt that your personality is unmanageable and divisive, substantially and consistently disrupting the charity, personnel and businesses and impacting on your behaviour and conduct towards colleagues who have, without exception, formally, informally and frequently complained about your unreliability and poor concentration, inability to work reliably and independently, and some have cited your volatility as a serious cause for concern*'.

23. On 2nd December 2019 Anthony Vrahimis sent an email to the Respondent's finance provider Just Cash Flow Ltd. Carter-Ruck, the Respondent's lawyers, in a letter dated 20th December 2019 described it as raising allegations of financial mismanagement, whilst making exceptionally serious allegations of suspected money laundering. Carter-Ruck described the email as making blind assumptions about the way in which Leather Insides Out's revolving credit facility worked and accused it of reaching false conclusions **[1135]**. Carter-Ruck also opined that an external digital investigator had concluded that the Claimant was the author of the said email. Unfortunately the Anthony Vrahimis email was not provided to us. We do not know what the specific allegations of financial mismanagement were, or what the specific allegations of money laundering were. It is possible that it referred to matters now relied upon by the Claimant in his PIDs, however we were unable to conclude that in the absence of the email of 2nd December 2019.

24. The Carter-Ruck letter also referred to the Respondent having been notified of a complaint made against it to the Charity Commission. We find, on the balance of probabilities, that this is the same complaint as the complaint forming PID [12]. This would suggest that the Respondent, knew of that report (and thus PID[12]) by 20th December 2019. However, and well shall turn to this in more detail later, the Claimant has not produced a copy of his complaint to the Charity Commission, so we cannot

say what specific allegations it made and cannot make any findings of fact as to its contents.

25. The Respondent reported the Claimant to the Probation Service, believing he had breached the terms of his licence, in part in the belief that he had either stolen its computer or had been involved with those that had. In paragraph 40 of his witness statement the Claimant says:

> '*I became aware of the revocation of my licence on the 17th January 2020, and I subsequently spent 79 days in the community gathering evidence to prove my Innocence. I was returned to custody on the 18th of March 2020, where I was expected to serve the remainder of my term, approximately two and a half years because of the gravity of the allegations Victoria made against me. I appealed the decision and submitted my evidence to the Ministry of Justice Parole Board. Upon a review of the evidence I was released immediately on 18th May 2020'*.

26. The reference to spending 79 days in the community is a reference to the Claimant being 'on the run' from the Probation Service who were seeking to return the Claimant into custody.

27. In January 2020 the Respondent discovered that its computers had been stolen **[184]**. The Respondent engaged the Police, suspecting the Claimant or one of his colleagues may have been behind the theft. In this suspicion they were correct, although the Claimant has a different perspective, somewhat euphemistically stating at paragraph 26 of his witness statement '*I also discovered documents on a hard drive that was used by the Respondents and 'confiscated' by a former trustee and director*' (our emphasis added). In answering our questions on this he stated, '*Anthony Vrahimis Paul's brother, removed the hard drive. He wanted to understand more about what they were doing. I took it. I was given the hard drive. He's a director and he felt entitled to take it. I didn't ask him to.*' The Police elected not to pursue the matter on the grounds that they considered it to be a civil matter.

28. One of the documents that the Claimant found on the Respondent's *confiscated* hard drive appeared to be draft Board Minutes (they were unsigned and had spaces left blank for the insertion of dates) of a meeting to be held on a date in October 2018. The business of the meeting was to consider whether to execute a Joint Venture Termination Agreement between Nicole Riedweg and LWL and to instruct Just Cash Flow Ltd to transfer to Ms Riedweg a £820,000.00 termination fee **[1097]**. On the balance of probabilities we find that Anthony Vrahimis took the Respondent's hard

drives without the Respondent's knowledge and consent and gave them to the Claimant for the purpose of advancing his various litigations and claims against the Respondent. Whilst the Police may have elected not to pursue the matter on account of Anthony Vrahimis being a director, it is clear to us that Anthony Vrahimis was not acting in the Respondent's interests when he did so, and in fact knew well that the Claimant would use it or attempt to use it against the Respondent.

29. Upon the Claimant's release he arranged for his Solicitors to submit a Data Subject Access Request ('SAR'). They did so in September 2020, although the request itself is undated **[1201]**. By letter dated 15th October 2020 solicitors instructed by the Respondent responded to the SAR by refusing it **[1206]**. They noted that the SAR had been received by them on 14th September 2020 being the day after the Police had seized computer equipment belonging to the Respondent. The response identified two grounds for refusing the SAR, as follows:

> '*Given the continuing criminal investigations, we instructed that Leather Inside Out is not at this stage prepared or indeed able to disclose any of the data or information requested in your letter. We refer to the Data Protection Act 2018 Sch 2, Part 1, Paragraph 2, and the exemption relating to the prevention or detection of crime and the apprehension or prosecution of offenders.*
>
> *In addition, Leather Inside Out considers your client's request to be manifestly unfounded and excessive, pursuant to the Data Protection Act, Part 3, s53. Your letter seeks data and information relating to an extremely wide range of records. In view of all of the circumstances described above we are instructed that our client regards your client's request as manifestly unfounded excessive and malicious in intent, and a further attempt to harass the charity with no real purpose other than two cause disruption and additional economic detriment to the charity'*.

30. On 8th August 2021 the Claimant made his second Data Subject Access Request in similar terms **[1215]**. The Respondent's solicitors refused the second request in a reply dated 10th September 2021 **[1218]** on the same grounds as it refused the 1st SAR. By the time of that request, the Respondent had received the Particulars of Claim dated 22nd March 2021 and thus had knowledge of all of the PIDs relied on by the Claimant, in so far as they were detailed in that Claim Form.

31. We find that both refusals as set out above were acts of detriment suffered by the Claimant.

32. Finally, on 11th January 2021 the Respondent filed its Grounds of Resistance to the Claimant's claim. In paragraphs 28 and 29 it raised as an issue the Claimant's employment status, stating **[85]**:

> '*The Respondents assert that the Claimant was not an employee, as the nature of his engagement was on a casual ad hoc basis with no mutuality of obligation and as such will seek strike out of the Claimant's pleaded case in the event that the Tribunal do not otherwise strike out the ET1 on time jurisdiction'*.

33. In the Grounds of Resistance to one of the Claimant's later Claim Forms the Respondent repeated the point **[177]** stating '*It is not accepted that the Claimant was an employee as he was engaged as a casual worker and on an ad hoc basis*'.

34. Accordingly we find that this defence regarding the Claimant's employment status was taken and that it amounted a detriment to the Claimant. As it was raised in a defence to the Claim Form that set out the Claimant's 12 PIDs we find, that by the date of the Claim Form the Respondent was aware of the PIDs that the Claimant intended to rely on.

35. Before turning to our conclusions, we have set out the law that we have to follow in this case, as follows:

Public Interest Disclosures

36. Whistleblowers are protected from suffering any detriment or dismissal from their employer as a consequence of making a public interest disclosure of alleged wrongdoing. The Act defines a public interest disclosure in the following way: Section 43B of the **ERA** states:

> ***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:*
> *(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,*
> ***43C Disclosure to employer or other responsible person***
> *(1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure in good faith:*
> *(a) to his employer.*

37. A protected disclosure may be made during the employment, but also after its termination (**Onyango v Berkley Solicitors** [2013] IRLR 338 EAT).

38. In **Babula v Waltham Forest College** [2007] 346 the Court of Appeal held that '*An Employment Tribunal hearing a claim for automatic unfair dismissal has to make three key findings. The first is whether or not the employee believes that the information he is disclosing meets the criteria set out in one or more of the subsections in ERA 1996, section 43B(1)(a)-(f). The second is to decide objectively whether or not that belief is reasonable. The third is to decide whether or not the disclosure is made in good faith*'.The 'reasonable belief' statutory test is a *subjective* one. The **ERA** states that there must be a reasonable belief *of the worker making the disclosure (**Korashi v Abertawe Bro Morgannwg University Local Health Board** [2012] IRLR 4, EAT)*. In **Korashi** the Court of Appeal stated '*as to any of the alleged failures, the burden of 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 in each of the circumstances relied on; (b) 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.*' The Court continued, '*Belief seems to us to be entirely centred upon a subjective consideration of what was in the mind of the discloser. That again seems to be a fairly low threshold.*'

39. In **Simpson v Cantor Fitzgerald Europe** [2021] IRLR 238 an individual presented whistle blowing claims based on the assertion that he had made protected disclosures in respect of traders engaging an illegal practise is known as 'front running'. The Tribunal rejected the allegation that there was any causal link between these matters and the treatment of the Claimant. It did so on the basis that the communications contained ambiguity and the Claimant had not reported his concerns to Compliance. The Court of Appeal, Bean LJ stated '*obviously it was open to the Tribunal to find that his failure to make any explicit report to Compliance indicated that he did not genuinely, unconscious, conscientiously believe that there had been any such breaches*'.

40. Qualifying disclosures must involve a disclosure of information, ie must convey facts, rather than merely raise an allegation. There must be the disclosure of *information*. In **Williams v Michelle Brown AM** [2019] UKEAT/0044/19 the EAT stated *'If the*

Tribunal properly concludes that the factual content of the claim disclosure cannot reasonably be construed as tending to show a criminal offence [or other relevant breach of section 43B(1)] then that conclusion will by itself be fatal to the proposition that there was a qualifying disclosure relying on section 43B(1). That will be so regardless of what the Claimant subjectively believed, and regardless of whether or the other elements are shown'.

41. The distinction between information and comment or assertion was illustrated by Slade LJ in **Cavendish** as follows:

> '*the ordinary meaning of giving "information" is conveying facts. In the course of the hearing before us, a hypothetical was advanced regarding communicating information about the state of a hospital. Communicating "information" would be "The wards have not been cleaned for the past two weeks. Yesterday, sharps were left lying around." Contrasted with that would be a statement that "You are not complying with Health and Safety requirements". In our view this would be an allegation not information.*'

42. The question is whether there is sufficient by way of information to satisfy section 43B. This will be very much a matter of fact for the Tribunal. The more the statement consists of unsupported allegation, the less likely it will be to qualify, but this is as a question of fact, not because of a rigid information/allegation divide (**Kilraine v London Borough of Wandsworth** [2018] ICR 1850). For a statement to be a qualifying disclosure, there must be sufficient factual content and specificity to show that one of the listed matters in section 43B(1) is engaged. '*If the worker subjectively believes that the information he discloses does tend to show one of the listed matters and the statement or disclosure that he makes has a sufficient factual content and specificity such that it is capable of tending to show that matter listed, it is likely that his belief will be a reasonable belief*'.

43. It is then necessary to determine that the worker has a *reasonable belief* that the disclosure *is in the public interest* and *tends to show* one of the six statutory categories of 'failure'. The definition of a qualifying disclosure is '*disclosure of information which, in the reasonable belief of the worker, is made in the public interest*'. Disputes that are essentially personal contractual disputes are unlikely to qualify (**Millbank Financial Services Ltd v Crawford** [2014] IRLR 18, EAT). It is not sufficient that the Claimant has simply made *allegations* about the wrongdoer especially where the claimed whistleblowing occurs within the Claimant's own

employment, as part of a dispute with his or her employer (**Cavendish Munro Professional Risks Management v Geduld** [2010] IRLR 38).

44. There must be an actual or likely breach of a legal obligation. Under paragraph (1)(b) there must be an actual or likely breach of the relevant obligation by the employer (**Norbrook Laboratories (GB) Ltd v Shaw** [2014] ICR 540, EAT). The word 'legal' must be given its natural meaning. The fact that the individual making the disclosure thought that the employer's actions were morally wrong, professionally wrong or contrary to its own internal rules may not be sufficient (**Eiger Securities LLP v Korshunova** [2017] IRLR 115, EAT). The source of the obligation should be identified and capable of certification by reference for example to statute or regulation. 'Likely' means probable or more probable than not. It is not sufficient that the Claimant reasonably believed that the relevant disclosure of information tended to show that a person 'could' fail to comply with a legal obligation, or that there was a possibility or risk of non-compliance (**Kraus v Penna Plc** [2004] IRLR 260).

45. In **Norbrook** Slade J said '*… an earlier communication can be read together with a later one as embedded in it, rendering the later communication of protected disclosure, even if taken on their own, they would not fall within section 43B(1). Accordingly, two communications can, taken together, amount to a protected disclosure. Whether they do is a question of fact*'.

46. An employee wanting to rely on the whistleblowing protection before a tribunal bears the burden of proof on establishing the relevant failure (**Blackbay Ventures Ltd v Gahir** [2014] IRLR 416, EAT). 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; and (b) 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.

47. In the event that a qualifying protected disclosure was not made in good faith, at the remedy stage 'the tribunal may, if it considers it just and equitable in all the circumstances to do so, reduce any award it makes to the worker by no more than 25%'.

Detriments

48. It is for the Claimant to show that he was subjected to a detriment by an act or a deliberate failure to act by his employer or co-worker. The claim would only be made out if the Claimant was subjected to the detriment on the ground that he had made the protected disclosure. The relevant test is whether the protected disclosure materially influenced, in the sense of being more than a trivial influence, the treatment of the Claimant (**Fecit & Others v NHS Manchester** [2011] IRLR 111). Section 48(2) of the Act states that the onus is on the employer to show the ground on which the act or deliberate failure to act is done. The 'on the ground that' test focuses on the relevant decision-makers mental processes. The test is not satisfied merely because there was some relationship between the protected disclosure and the detriment complained of, or because the detriment would not have been imposed but for the disclosure (**London Borough of Harrow v Knight** [2003] IRLR 140).

49. The Court of Appeal decision in **Jesudason v Alder Hay Childrens NHS Foundation Trust** [2020] IRLR 374 stated '*It is now well established that the concept of a detriment is very broad and must be judged from the viewpoint of the worker. There was a detriment if a reasonable employee might consider the relevant treatment to constitute a detriment*'.

50. The decision to dismiss can itself be a detriment imposed by the dismissing officer. If established as a detriment the employer will be vicariously liable for that. In **Timis v Osipov** [2019] IRLR 52 the court said: 'It is open to an employee to bring a claim under section 47B(1A) against an individual co-worker for subjecting him or her to the detriment of dismissal, ie for being a party to the decision to dismiss and to bring a claim of vicarious liability for that act against the employer under section 47B(1B). … All that section 47B(2) excludes is a claim against the employer in respect of its own active dismissal.

Our Conclusions

51. We shall deal first with the 8 PIDs relied on by the Claimant. For each we have had to determine whether the PIDs qualify for the protection afforded by the **Employment Rights Act 1996**, as defined by s43B of the Act.

52. **PID [3]**. Around September 2019 the Claimant disclosed to Paul Vrahimis that Leather Inside Out and its subsidiary companies S&K Camden Ltd ('S&K') and Leather Works London Ltd ('LWL') were not paying staff PAYE or National Insurance tax contributions. This was said to qualify for protection under S43B(1)(b) breach of the legal obligation to pay tax. We find that this disclosure does not qualify for the protection offered by the Act. The reason for this is that the Claimant accepted that the staff were paid gross, on the basis that the staff would be responsible for their own tax. We are supported in this by the fact that the Respondent sought to argue that the staff were not its employees, but self-employed contractors instead. The Claimant understood this and accepted in evidence that the staff had been paid gross. There was no illegality in this business set up and no breach of a legal obligation. This PID fails.

53. **PID[5]**. On 28th of October 2019 the Claimant disclosed to Victoria Johns that the Creative Director, Louise Graham, behaving in an aggressive and intimidating manner, had unlawfully trapped Connor Walsh in a room and refused to let him leave. This was said to qualify for protection under S43B(1)(a) criminal offence has been committed (false imprisonment under common law). The evidence reveals that Conner Walsh was never trapped in the room. He accepted that it would be a stretch to say he had been falsely imprisoned. There was conflicting evidence as to whether the Claimant could hear the dressing down given by Louise Graham to Connor Walsh or could see it as well. On balance we think it is more likely that the door was solid and the Claimant's account given at the time, to hearing her shouting, is more likely than the oral evidence given to us that he could *see* and hear it. We conclude that there was no reasonable belief, and indeed no real belief, that a criminal offence was being committed. Conner Walsh accepted as much to us in evidence. In the circumstances, this PID fails.

54. **PID[6]**. Around October/November 2019 the Claimant disclosed to Paul Vrahimis that his (Paul's) shares in the LWL had been unlawfully transferred from his ownership to Leather Inside Out without his knowledge or approval. This was said to qualify for protection under S43B(1)(a) criminal offence has been committed (s1 Theft Act 1968). The evidence for this was contained in Paul Vrahimis' witness statement **[PH30]** and the email was in our bundle **[1242]**. We do not know whether the transfer of shares amounted to theft, but we concluded on the evidence before us that the transfer occurred, that the Claimant disclosed information about that and that it was a reasonable belief held by him that the information he had disclosed tended to show a

criminal offence had been committed. Such a disclosure is in the public interest. Accordingly we find that this disclosure qualifies for the protection afforded by the **Employment Rights Act 1996**.

55. **PID[8]**. in November 2019 the Claimant disclosed to Paul Vrahimis that Victoria Johns was committing invoicing fraud to access funds illicitly and was manipulating staff members into committing criminal offences to potentially launder money via the charity. This was said to qualify for protection under S43B(1)(a) criminal offence has been committed pursuant to s2 Fraud Act 2006. As we have referred to in our analysis of the facts, we have seen emails which appear to indicate that employees had been asked to inflate invoices **[1030 & 1035]**. In the absence of any evidence from the Respondent, we do not know if there was an innocent explanation for the requests. However, we have concluded on the evidence before us that requests to amend invoices were made, that the Claimant disclosed information about that and that it was a reasonable belief held by him that the information he had disclosed tended to show a criminal offence had been committed. Such a disclosure is in the public interest. Accordingly we find that this disclosure also qualifies for the protection afforded by the **ERA**.

56. **PID[9]**. in November 2019 the Claimant disclosed to Paul Vrahimis that Victoria Johns asked him to assist her with a suspicious transaction that involved importing £900,000.00 from Dubai under an agreement that authorised her to withdraw funds against the presentation of fake invoices. This was said to qualify for protection under S43B(1)(a) criminal offence has been committed (s327 Proceeds Crime Act 2002). The request for assistance with the transaction was in the bundle of documents **[1050-1054]**. It was also covered in Paul Vrahimis' second statement (paragraph 8). Similar to PID8, in the absence of any evidence from the Respondent, we do not know if there was an innocent explanation for the requests. However, we have concluded on the evidence before us that requests to assist in the Dubai transaction were made, that the Claimant disclosed information about that and that it was a reasonable belief held by him that the information he had disclosed tended to show a criminal offence had been committed. Such a disclosure is in the public interest. Accordingly we find that this disclosure also qualifies for the protection afforded by the **ERA**.

57. **PID[10]**. On the 25th November 2019, the Claimant disclosed to Paul Vrahimis that Leather Inside Out's bank accounts were showing irregular and highly suspicious

activity that appeared to be a money laundering scheme. This was said to qualify for protection under S43B(1)(a) criminal offence has been committed (s327 Proceeds Crime Act 2002). We do not feel that this PID disclosed any information. The Claimant shared his opinion on banking activity he thought was irregular and highly suspicious. It is a clear example of an opinion, not information, and as such this PID fails.

58. **PID[11]**. after the Claimant was dismissed in December 2019, he disclosed to Paul Vrahimis that company documents suggested that he (Paul) had been present at a board meetings at which an agreement to transfer £820,000 to a company owned by another trustee was made, when in fact Paul Vrahimis was not at that board meeting. This was said to qualify for protection under S43B(1)(a) criminal offence has been committed (s2 Fraud Act 2006). This was not a disclosure made by the Claimant. It was Mr Vrahimis that who observed that he might not have been present. We consider that there is no reasonable belief on the Claimant's part that this tended to show that a criminal offence had been committed. This PID fails.

59. **PID[12]**. after his dismissal in December 2019, the Claimant reported his concerns about Leather Inside Out to the Charity Commission and to Action Fraud (ref 191203358964). This was said to qualify for protection under S43B(1)(a) criminal offence has been committed (s2 Fraud Act 2006). The difficulty with this asserted PID is that the Claimant did not produce a copy of the concerns that he says he reported to the Charity Commission and to Action Fraud. There is evidence that reports were made, however we were not provided with any evidence of what concerns were raised, and what those concerns tended to show. The Claimant has the burden of proof of establishing that he made disclosures and that they qualified. He has not provided any evidence upon which we could determine this, and accordingly, this PID fails.

60. We now approach the question of detriments on the basis that the Claimant made 3 disclosures that qualified for the protection offered by s47B of the ERA, namely PIDs 6, 8 and 9, as set out above. Of those 3 disclosures, we found as a fact that Paul Vrahimis only escalated one of them, PID6, to the 1st Respondent. He did this as it was in his own personal financial interests to escalate it, but also in the public interest. As such we have considered whether the detriments occurred, and if so whether the reason for them was PID6.

The Detriments.

61. **Det1**. That the First Respondent, Leather Inside Out, attempted to mislead the Claimant by falsely claiming he was not an employee within the meaning of s230 **ERA** (as set out in paragraph 5.5 within the Particulars of Claim dated the 22nd March 2021 **[126]**). The First Respondent did assert that the Claimant was not an employee in its defence to the Claimant's claims. However, as we have already found as a fact, the Claimant accepted that he was paid his earning gross, without any PAYE deduction for tax or national insurance. This is very compelling evidence that the Respondent considered the Claimant to be engaged as a contractor in business in his own right, providing a service to the Respondent. It fits entirely with the Respondent asserting, in its defence, that the Claimant was not engaged as an employee or worker. We find as a fact that the Respondent took the 'contractor' point in its grounds of resistance because that was what it genuinely understood the Claimant to be. We reject that the point was taken because of any of the Claimant's qualifying PIDs. We note at page **[1134]** the personal tax bill of Anthony Vrahimis. This is consistent with the Respondent's belief as to the employment status of the Claimant and his colleagues. This act of detriment was a legitimate line of defence for the Respondent's lawyers to take, based on the information they had. We find that the reason for taking the point was not in any way connected to the qualifying disclosures. Accordingly this act of detriment fails.

61. **Det2**. that the First Respondent, Leather Inside Out refused, by letters dated the 15th October 2020 **[1206]** and 10th September 2021 **[1218]** to provide the documents requested by the Claimant in two data Subject Access Requests, the first received on 16th September 2020 and the second date 8th August 2021 (as set out in paragraph 11.6 within the Particulars of Claim dated 5th October 2021 **[279]**). We find as fact that the First Respondent did refuse to provide the documents requested by the Claimant in two data Subject Access Requests on 15th October 2020 **[1206]** and on 10th September 2021 **[1218]**. The fact of this detriment is established. The issue now turns to the reason why. Was it because of the three qualifying disclosures?

62. The reasons why the First Respondent refused to comply with the data requests were stated on the SAR refusals themselves. They were the prevention / detection of crime and the apprehension or prosecution of offenders, and/or that the requests were manifestly unfounded and excessive and or malicious and intended to harass with no legitimate purpose other than to disrupt the First Respondent, all of which

were allowable reasons to refuse a subject access request, pursuant to the Data Protection rules. The factual basis for taking defence to the SAR was that the Claimant and his colleagues were accused of stealing the Respondent's hard drives. They were taken and then used by the Claimant in formulating his SAR. He accepted that fact in his evidence before us. On the balance of probabilities we find that the reasons for refusing to comply with the SAR were the reasons given by the First Respondent at the point of refusal. We therefore reject the Claimant's claim that the reason for the refusal was PID6, or indeed any of his qualifying disclosures.

63. Accordingly the Claimant's claims fail and are dismissed.

4th August 2023

Employment Judge Gidney

Sent to the parties on:
06/10/2023
For the Tribunal: