EMPLOYMENT TRIBUNALS

Claimant: **Ms. L Urry**

Respondent: **Arun Estate Agencies Limited**

Heard at: **Southampton Employment Tribunal (Via VHS)**
On: **29th November 2023**

Before: **Employment Judge Lang**

Representation
Claimant: Ms L. Urry (In person)
Respondent: Mr Chegwidden (Counsel)

Written Reasons

Introduction

1. This is an application for interim relief which relates to two claims lodged by the Claimant, Ms. Liz Urry. The first was received 6th November 2023 which brings the Claimant's complaints including for unfair dismissal. The second was received on 12th November 2023 and seeks interim relief.

2. The matter came before me for an interim relief hearing on 29th November 2023. The Claimant appeared in person, the Respondent was represented by Counsel with Solicitor also in attendance. At that hearing oral reasons were given for the refusal of the interim relief application as well as the reasons for me giving permission for an application to amend. The Respondent on the 5th December 2023 made an application for written reasons in relation to the decision for interim relief by way of email that email appears to have been received twice by the Tribunal Office. It is as a result of that application that these written reasons are provided.

3. I was provided with a bundle of documents which ran to 175 pages. That was in excess of the directed 100 page limit however, I permitted the parties to rely on it. The bundle included both ET1s the first of which included an accompanying document which ran to 9 pages. The bundle also included the draft ET3 and grounds of resistance. I also had the benefit of written statements from the Claimant, and from Mr Piper and Mr Sotgiu from the Respondent. Counsel provided a skeleton argument.

4. Notwithstanding the limited notice of this hearing, which was necessitated by the nature of the application, the parties were able to prepare fully and I am grateful for the work which they all had undertaken.

5. The hearing took place remotely using the VHS platform. It commenced slightly later than listed at 10.25 due to some minor technical issues with individuals joining. Save for some additional minor technical difficulties the hearing proceeded without difficulty. The hearing was conducted on the basis of submissions from the parties. Each went through the alleged disclosures, giving details of them and addressing me as to their position on the legal test which applies.

The Issues

6. This is an application for interim relief as such the issue I must address is whether the Claimant's claims for dismissal arising from whistleblowing are likely to succeed. Likely in this sense means a pretty good chance of success, that is a higher bar than the normal standard of proof, the balance of probabilities which means that it is more likely than not.

7. In conjunction with the application for interim relief an issue arose as to whether, due to the timing of the application and because of section 111 (2) of the Employment Rights Act 1996, I had jurisdiction to hear the application.

The Law

8. When referring to the burden of proof, the relevant test is the balance of probabilities, that is to say what is more likely than not.

9. This is an application for interim relief, the test for a claim for interim relief is set out at section 128 of the Employment Rights Act 1996, as follows:

s.128.(1)An employee who presents a complaint to an employment tribunal that he has been unfairly dismissed and—

(a)that the reason (or if more than one the principal reason) for the dismissal is one of those specified in—

(i)section 100(1)(a) and (b), 101A(1)(d), 102(1), 103 or 103A, or

(ii)paragraph 161(2) of Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992, or

(b)that the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was the one specified in the opening words of section 104F(1) and the condition in paragraph (a) or (b) of that subsection was met,

may apply to the tribunal for interim relief.

(2)The tribunal shall not entertain an application for interim relief unless it is presented to the tribunal before the end of the period of seven days immediately following the effective date of termination (whether before, on or after that date).

(3)The tribunal shall determine the application for interim relief as soon as practicable after receiving the application.

(4)The tribunal shall give to the employer not later than seven days before the date of the hearing a copy of the application together with notice of the date, time and place of the hearing.

(5)The tribunal shall not exercise any power it has of postponing the hearing of an application for interim relief except where it is satisfied that special circumstances exist which justify it in doing so.

10. Section 129 of the Employment Rights Act 1996 sets out the procedure to be followed.

11. Mr Justice Underhill (President as he was), in **Ministry of Justice v Sarfraz UKEAT/0578/10** set out:

Thus in order to make an order under sections 128 to 129 the Judge had to have decided that it was likely that the Tribunal at the final hearing would find five things: (1) that the Claimant had made a disclosure to his employer; (2) that he believed that that disclosure tended to show one or more of the things itemised at (a) to (f) under section 43B (1); (3) that that belief was reasonable; (4) that the disclosure was made in good faith; and (5) that the disclosure was the principal reason for his dismissal.

I Note that there is no longer a requirement for good faith due to the wording of the statute.

12. The claimant bears the burden that she is likely to succeed at the final hearing as set out in **Bombardier Aerospace (t/a Short Brothers Plc) v McConnell [2007] NICA 27**.

13. The term 'likely' means that the claimant must she that she has "a pretty good chance" of success.

14. In order to consider whether or not the claimant is *likely* to succeed at final hearing, I must consider the underlying claim. Section 43A of the Employment Rights Act 1996 sets out the definition of a protected disclosure as:

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.

15. Section 43B Employment Rights Act 1996 goes on to set out the definition of a qualifying disclosure

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

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

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

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

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

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

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

(2)For the purposes of subsection (1), it is immaterial whether the relevant failure occurred, occurs or would occur in the United Kingdom or elsewhere, and whether the law applying to it is that of the United Kingdom or of any other country or territory.

(3)A disclosure of information is not a qualifying disclosure if the person making the disclosure commits an offence by making it.

(4)A disclosure of information in respect of which a claim to legal professional privilege (or, in Scotland, to confidentiality as between client and professional legal adviser) could be maintained in legal proceedings is not a qualifying disclosure if it is made by a person to whom the information had been disclosed in the course of obtaining legal advice.

(5)In this Part " the relevant failure ", in relation to a qualifying disclosure, means the matter falling within paragraphs (a) to (f) of subsection (1).

16. There is a requirement for there to be a disclosure of information. In the case of **Kilraine v London Borough of Wadsworth [2018] ICR 1850** Sales LJ, noted that allegations and information were mutually exclusive. In considering whether the information threshold has been met the test is whether the disclosure has "sufficient factual content and specificity such as is capable of tending to show" one of the factors set out at section 43B subsection 1. I remind myself that as outlined in **Norbrook Laboratories (GB) Ltd v Shaw [2014] IRC 540 (EAT)** earlier communications can be read in conjunction with later ones.

17. As per **Dodd v UK Direct Solutions Limited [2022] EAT 44,** when considering whether the Claimant believed that there was a relevant failure, and whether that belief was genuine, the time of assessing reasonableness and the belief is at the time at which the disclosure was made, not what the Claimant came to believe later on.

18. As the Claimant within this claim has made the disclosures to her employer I do not have to consider whether or not they were substantially true.

19. When considering the relevant principles and which are said to be shown, I remind myself that as within **Babula v Waltham Forest College [2007] ICR 1026**, it is sufficient for the claimant to believe that the there was a criminal offence which had been, or was likely to be committed, even if such an offence does not exist.

20. Breach of a legal obligation, can include breach of an employment contract **Parkins v Sodexo [2002] IRLR 109.**

21. The next stage involves considering whether or not there was a reasonable belief that the disclosure was within the public interest. Internal matters can mean that they fall within the public interest. When I am evaluating internal matters I should consider all the circumstances in summary that includes the numbers of those involved or likely to be effected, the nature and extent of the interests affected, the nature of the wrongdoing and the identity of the wrongdoer, as set out in the case of **Chesterton Global Limited v Nurmohamed [2018] ICR 731**.

22. If a qualifying disclosure is made to the Claimant's employer than pursuant to section 43C(1) (a) of the Employment Rights Act then it is a protected disclosure.

23. Section 103A of the Employment Rights Act 1996 sets out that the reason for dismissal will be automatically unfair if the reason, or principal reason, was due to the employee having made a protected disclosure. When there is more than one disclosure the test to apply is whether or not the principle reason was the protected disclosures taken as a whole **El-Megrisi v Azad University (IR) Oxford EAT 0448/08**.

24. The Court of Appeal set out a three stage approach to deciding claims under section 103A in the case of **Kuzel v Roche Products Limited [2008] ICR 799.**

25. Section 105(6A) provides that selection of an employee for redundancy will be automatically unfair if the reason (or principal reason) for the redundancy is that they made a protected disclosure. However, this would not fall within section 128(1) of the Employment Rights Act 1996 for the making of an interim relief order.

Jurisdiction

26. Section 111 (2) of the Employment Rights Act 1996 sets out the following: *Subject to the following provisions of this section, an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal—*

> *(a)before the end of the period of three months beginning with the effective date of termination, or*
>
> *(b)within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.*

27. Counsel reminds me that the jurisprudence is clear that I have no jurisdiction to entertain a claim presented prior to the effective date of termination, save for the exception of subsection 3 which provides the follows:

(3) Where a dismissal is with notice, an employment tribunal shall consider a complaint under this section if it is presented after the notice is given but before the effective date of termination.

28. I have been referred to the decision of Underhill J, in **Wishmorecross School v Balado UKEAT/0199/11/CEA**, which supports Counsel's proposition.

Amendment

29. An application to amend is a case management decision and accordingly the overriding objective as set out at Rule 2 of the Employment Tribunals Constitution and Rules of Procedure Regulations 2013 Schedule 1 applies.

30. I have remind myself of Guidance Note 1 to the Presidential Guidance – General Case Management.

31. The principles as set out within **Selkent Bus Co Ltd v Moore [1996] ICR 836** apply. In particular it is stated by Mummery J (President) Whenever the discretion to grant an amendment is invoked, the tribunal should take into account all the circumstances and should balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it.

32. I have also considered the decision of HHJ Tayler in **Vaughan v Modality Partnership [2021] IRLR 97**, where the approach to applications to amend was again set out. These factors include the question of time limits and how an amendment allowing a claim out of time was not decisive but a factor to take account of. He also sets out the evaluation that must be had in respect of prejudice and I note in particular at paragraph 21 it was recorded "*it will often be appropriate to consent to an amendment that causes no real prejudice"*

33. For the avoidance of doubt counsel within his written and oral submissions referred me to numerous authorities and I have considered them.

Application and Analysis

34. For the purpose of this application I do not need to make findings of fact, and to be plain nothing in these reasons nor my judgment should be taken as a finding of fact. I remind myself that at this stage the evidential picture is incomplete and as such I need to take a broad brush of the evidence I have been provided with. I recognise that the evidence is likely to change as the proceedings continue and the matters will fall to the tribunal at final hearing to determine the claims as they are, unless the parties are able to resolve matters beforehand.

35. For the avoidance of any doubt my analysis and conclusions on the interim relief and consideration of the protected disclosures as part of that application are based on what the Claimant is likely to show at a final hearing based on the current evidence. If there is any ambiguity my reasons should not be interpreted as being a final determination of those matters I am simply evaluating on what the claimant is likely to show.

Jurisdiction

36. The Respondent has raised the issue of Jurisdiction as in issue. I accept the point made by the Respondent that by way of s111(2) of the Employment Rights Act 1996 that a claim must be presented after the dismissal has taken place. I have been taken to the case law on this point which reaffirms the position. In this present case it is accepted by everyone that the original ET1 was presented

before the dismissal had taken place; it was presented on 6th November 2023. All accept the dismissal occurred on 10th November 2023. The second ET1 was presented on 12th November 2023. I also accept that the second ET1 refers back to the original ET1, with the Claimant in box 8.2 of the ET1 setting out "*case number 600255/2023 is the full claim, this is a second ET1 to claim Interim Relie*f." However, the Claimant at box 8.2 of the second ET1 ticks the boxes for the claims which she is brining including a claim for unfair dismissal.

37. In my judgment the words which the claimant uses within box 8.2 of the second claim form clearly is referring back to the facts set out within the first claim on which she is relying. She also has ticked that she is bringing a claim for unfair dismissal in the second box. It is accepted that the second ET1 post-dates the Claimant's date of termination. I am therefore satisfied that the claim that is brought for interim relief is properly before me and I consider it is clear to the Tribunal and ought to be clear to the Respondent the facts on which she is relying.

38. However, for the avoidance of any confusion if I were not correct on that principle, I consider that it is within the interests of justice to amend the second claim form to incorporate the facts which the claimant has outlined in the first ET1 into the second. When I asked the claimant about this she confirmed she wished to do so. If I were not to do so, and follow the Respondent's suggestion that the Claimant effectively has to start again that would mean that she is debarred from making an application for interim relied because she would be beyond the 7 day time limit which the statute requires she brings the claim in.

39. The Respondent in any event does not oppose an amendment to the second claim form to include the facts as set out in the first and agrees that is a method in which the claim would be properly before the Tribunal, however, submits that the application for interim relief should be considered first, and the amendment second. The Respondent argues that to allow an amendment first and then deal with the application would cause prejudice. I do not agree.

40. It is clear to me that the Respondent knows what the Claimant's case is. It has fully, and properly, prepared its case in a detailed manner on the basis of the allegations as were set out within the first ET1. They have served witness statements in support that deal with the issue. There is in my judgment no prejudice to the Respondent of permitting the amendment at this stage before considering the application for interim relief. The Claimant on the other hand would suffer significant prejudice, because a Tribunal would not be able to hear her claim for interim relief. The net effect would be that any Claimant who were to find themselves in the same position as this Claimant would have no remedy at the interim relief stage and could not bring such a claim. In my judgment that cannot be right, and nor do I consider it would in accordance with the overriding objective. It is a fundamental principle that justice must be seen to be done. If I were to agree with the Respondent's position, the Claimant would, in circumstances where she has outlined the details of her claim, brought her claim for interim relief in the required time scales and the Respondent has had an opportunity to respond to it, be prevented from being heard on what effectively is a technicality and in my judgement justice would not be seen to be done. The

second claim form in any event notes she is brining the claim for unfair dismissal within that claim.

41. Whilst I can understand why this argument has been put forward by the Respondent, the Claimant is a litigant in person, and although I acknowledge that there are no two sets of rules for represented and unrepresented parties that is a relevant factor. It is also relevant that there would be no opposition from the Respondent to an amendment to the second claim form to include the matters outlined in the first (including the dismissal) but they argue that it should take place after the application for interim relief is considered (and dismissed as I would not have jurisdiction). That would clearly lead the Claimant to suffer prejudice. In allowing the amendment I have considered the Selkent Factors, however, given that it is agreed subject to the timing of the application, I do not intend to set them out in any great detail.

42. I have considered the overriding objective in full however, I consider the following elements are particularly relevant for this application. *To ensure that the tribunal provides that the parties are on an equal footing*. The difference between the parties really amounts to legal representation. The Respondent knows the Claimant's case because it has been set out, they are on an equal footing even if I grant the application. It is also relevant that I avoid unnecessary formality and flexibility. This case in my judgment falls squarely within that bracket. I consider the steps taken by the Claimant to bring her claim in time as being particularly relevant. It is also relevant that I know from the documents what her claim is, and the Respondent too has that knowledge. To require the claimant to effectively start again will cause more expense to the Claimant in respect of time, the Respondent in respect of responding to a further claim but also to the public due to further Tribunal resources having to be used, in an already stretched system, to issue a claim when the details of it, in my judgement, are known.

43. Time limits do not come into my decision making for the purpose of the interim relief because of the date of the dismissal.

44. Whilst in summary the Respondent indicated that if my decision on interim relief was one of dismissing the application then the decision on amendment was less important, I should make clear that I considered the amendment application first before considering the application for interim relief.

Interim Relief

45. I will turn each of the protected disclosures in due course and the elements that need to be shown. However, when I am considering the Claimant's application for interim relief the Claimant needs to show me that she has a pretty good chance of success at final hearing in establishing those disclosures, if I were to find that she a pretty good chance at final hearing of establishing those disclosures are protected disclosures, were the cause of her dismissal. In other words; was the reason or principal reason why the Claimant was dismissed because of any protected disclosure which she had made? The burden at this stage is for the Claimant to show that causal link. I considered this stage last in my decision but I consider it helpful to set it out first in my decision because that is the final step that if everything else was met would need to be satisfied.

46. I am not satisfied, on the current evidence, that the Claimant has discharged that burden insofar as it relates to causation. I have evidence from Mr. Sotgiu in the form of a witness statement. He is the managing director of the Respondent. His involvement with the Claimant was, on the evidence before me, limited to some emails in May 2023 which concerned a query about an organisation that the Respondent was concerned was approaching the employees with inducements. He had asked the Claimant some questions about this. It is fair for me to say that the Claimant takes issue about being asked about the alleged conduct, however, he tells me within his witness statements that other branch managers were also asked. There is no evidence at present to counter that. There was a further e-mail on the 8th of June of 2023 from Mr Sotgiu raising similar questions of the Claimant. For the avoidance of doubt I make clear at this stage, on the current evidence I have been provided with, there does not appear to be any allegation of any wrongdoing by the Claimant. However, that was the limit of Mr. Sotgiu's involvement with the Claimant.

47. Mr. Sotgiu goes on within his statement to tell me about the impact of the pandemic on the business and the impact of what has been described as the subsequent financial crisis. The current evidence is, that as a result of these two events, there was a restructure and that included other brands of the business not just those of Pitts on the Isle of Wight, which is the subsidiary that Claimant worked for. I am told that 6 offices were closed and some were made to be 'satellite offices' in East London. This was to cut costs and took place in September 2023. I am also told about the cost cutting of the Wards' brand which was operating in Kent.

48. The Claimant has raised with me an issue on the timing of these closures, and whether or not there were in fact other satellite offices. However, in my judgment on the evidence that I have at this stage, and of course that evidence is yet to be tested later down the line, that there is no evidence which run contrary to that as outlined by Mr. Sotgiu.

49. I am told there was a meeting on the 28th of September 2023 with Mr. Piper about the need to review the Pitts brand on the Isle of Wight. There is no evidence at this stage to say that his statement on the trading position for most offices on the Isle of Wight, in that they were in a loss making at position, is incorrect. He tells me that there is a need to address and limit cost exposure. Again, at this stage, there is no evidence against that.

50. I am told a decision was made that the Ventnor branch and the Cowes branch would be impacted. The Claimant worked at the Ventnor branch. Mr. Sotgiu tells me that he and other senior stakeholders, I am not told who those stakeholders were, but they made the decision that the Ventnor branch would be impacted. I am told that it was the weakest performing office on the Island. That was discussed further with HR, namely Joe Potter on the 23rd of October 2023. Briefing papers were then provided on the 1st of November 2023 and given to Mr. Piper and the consultation period subsequently started. As a result of that process, the Claimant's employment was terminated as on 10th November 2023.

At this stage it appears to me that the evidence of who was the decision maker was Mr Sotgiu.

51. The Claimant has raised, and I have considered the position on what is said to be the promotion of Rebecca Connor. I was concerned about reading that, however, I am told by counsel in submissions, following me asking questions about it, and I accept that he will have set out his instructions accurately, that Ms. Connor is in a less senior role than the Claimant. From that information, and again I remind the parties that this is on the current evidence available, this is not a case where the Claimant's position was taken over by Ms Connor. I was also told that Ms. Connor was a "*cheaper*" employee.

52. I have considered the time period, of what was said to be the last act, although throughout this hearing it is, no longer said to be an act of making a protected disclosure on the 24th of October 2023 and the 1st of November 2023 when the consultation period began. However, again on the basis of the evidence presented to me at this stage, the Respondent's chronology was that the decision of undertaking a consultation process to reduce costs commenced on 23rd October 2023. I must consider the wider picture, of the additional alleged disclosures however, there is nothing at this stage which leads me to conclude that the Claimant is likely to show that they when taken cumulatively or individually resulted in her dismissal. I am not satisfied there is currently any evidence for me to conclude it likely at final hearing the claimant can show the disclosures taken as a whole were the result in her dismissal.

53. Mr Sotgiu's statement sets out that the Claimant's role was not the only one which was affected on the Isle of Wight. I have also been told about Joseph Wright, manager of the Cowes Brach, was similarly affected. I am told within the written evidence I have, and this does not appear to be disputed, that both the Claimant and Mr Wright were told that they could apply for the Manager's position of the Ryde Branch. That role was described as being "ring fenced" for the Claimant and Mr Wright, however in reality both the Claimant and Mr Wright were given the opportunity to apply for the job if they wished to do so. If both had applied there would have been an interview process to determine the successful candidate. If either did not want the role then the other (if they wanted it) would be appointed. That is what subsequently happened as the Claimant elected not to apply for the job and Mr Wright was subsequently appointed.

54. The Claimant told me she chose not to apply because the relationship had broken down between her and the Respondent as the Respondent was not willing to meet her requests that were set out in her e-mail of the 3rd of November. I note from her perspective that those proposals were meant to be conciliatory and an attempt to try and move matters forward.

55. When I consider the current evidence that I have, I am not satisfied that the claimant has a pretty good chance of demonstrating at a final hearing she will show that the protected disclosures, if they amount to that, led to her dismissal. I am not satisfied on the evidence at present that the Claimant is likely to show at the final hearing that the redundancy was a sham and that the protected

disclosures were the real reason for dismissal. That is for the reasons I have set out above but in summary:

a. Mr Sotgiu appears was the decision maker and had little involvement with the Claimant prior to her dismissal.
b. The evidence, at present, points to a genuine redundancy situation, with others affected.
c. The Claimant was afforded the position to apply for an alternate role however, did not take that opportunity because of what she considered valid reasons.

56. I note that the Claimant has raised other complaints in respect of her treatment by the Respondent. That is not a matter I need to consider as part of this decision. However, she gives the example of the 24th of October and she outlined to me in her submission that the events on that day are an example of bullying and harassment that she alleges she suffered. It appeared to me, and she subsequently agreed that, that because she expressly makes reference to Section 27 of the Equality Act 2010 that allegation may be categorized as an allegation of victimization, and not one as a result of having made a protected disclosure. I also observe that at the end of her submissions the Claimant outlined the actions that were subsequently taken against her, is a course of events, although they are my words not hers, for the discrimination against her on the basis of her spiritual beliefs and that commenced from as far back as November 2022. The relevance of me noting these factors is that on her own account the Claimant appears to be indicating the reason for dismissal may well have been for other reasons rather than a protected disclosure. Again though, that position will need to be explored at a future hearing.

57. Therefore, when I weigh in all those factors, I am not satisfied on the current evidence that the Claimant has shown me that at a final hearing she has a pretty good chance of establishing the causation element, that is the link between the alleged protected disclosures and the dismissal.

Does the Claimant have a good chance of showing that the disclosures were protected disclosures?

58. Despite my conclusion on causation, I firstly needed to consider each of the alleged disclosures in turn and consider whether or not the Claimant is likely to show at a final hearing that they are protected disclosures. As part of hearing this application I went through each of the allegations raised with the Claimant and heard what she had to say on the constituent elements of it. The allegations have narrowed as part of this process throughout this hearing.

18th March 2023 by way of an email sent to Jo Potter in respect of allegations of bullying and harassment.

59. The first allegation relates to an e-mail sent on the 18th of March 2023. I have been taken to that e-mail, at pages 50 - 54 of the bundle which I have read. In that e-mail, the Claimant is setting out her account in response to allegations which were raised about her alleged poor behaviour. The behaviour which the

Claimant is alleged to have done is denied and it refers back to an interaction from 30th November 2021. She is referring to comments allegedly made by an employee of the Respondent to her. Specifically, she alleges in the document that someone said to her that she [the Claimant] has had *a spiritual awakening and it is ensuring that it doesn't impact negatively on your work perform*ance. The Claimant then raises a question asking if that would have been said to somebody who identified as belonging to a named religion. She states that she has been treated unfavorably and that her team have been treated unfavorably. The Claimant tells me that was information. That information was shared with her employer's HR department, and she considered that it was in the public interest as it related to people not being discriminated against because of their beliefs, and she felt that it showed that the respondent has failed to follow a legal obligation.

60. At this stage, I am not satisfied that the Claimant is likely to show that that was a disclosure of information. I accept the Respondent's submission that it is referring back to comments that were previously made and then asking a question about them. I am not satisfied that the Claimant is likely to show that she believed at the time that the information fell into any of the subsections of section 43B, or that it was reasonable for her to believe the same. I would accept that the Claimant is likely to show that it is in the public interest for the reasons that she said, namely, to prevent discrimination, even though it relates to internal policies. Overall, I am not satisfied, on the current evidence, that the claimant is likely to show this was a qualifying disclosure.

5th and 10th July 2023 to Neil Piper, allegations about gross misconduct and breach of the duty of fidelity in respect of Andrew Pearmain, in respect of allegations he was running a letting business in competition to the Respondent.

61. The second allegation is really two allegations which to emails from the 5th and the 10th of July 2023. That relates to the conduct of an individual known as Andrew Pearmain and allegations of gross misconduct as a result of an alleged breach of fidelity due to him being involved in lettings activities outside of his employment.

62. Having looked at this correspondence, I am satisfied that the Claimant is likely to show at a final hearing that she has disclosed information in relation to this allegation. The information is specific to what he is alleged to be doing and contains details. I am also satisfied that she is likely to show that, as she told me, she believed what Mr. Pearmain was alleged to have done was in breach of a legal obligation in respect of his duty for duty of fidelity and likely to be gross misconduct and I am satisfied that she is likely to show that her belief in this was reasonable, because she believed the wrongdoing had happened and that the way in which she raised it at the time. I am also satisfied that if she remained quiet that she was fearful that she may well be caught up and affected by it.

63. However, I agree with the Respondent that I cannot satisfied that it is likely she will show at final hearing that the disclosure was in the public interest. Whilst the allegation may originally have come to the Claimant from a member of the public which she points out to me, in my judgement, on the current information, it relates to the employer employee relationship and not wider. I am unclear as to what

wider impact it would have on individuals, or how many individuals. I am therefore not satisfied that the Claimant is likely to show at a final hearing that she that it was in the public interest or that it was reasonable for her to believe that. The allegation was made to her employer

64. However, even if I were wrong on the position of it being in the public interest, I am satisfied that there is no evidence to link this element to the reason for her dismissal. Both parties appear to agree that Mr Pearmain, had been spoken to as part of his conduct and the position up on his conduct, and it appears, and I put it no higher than that, that he resigned before any action was taken against him. I make plain, however, that I am not making any findings in respect of Mr Pearmain's alleged conduct. It is not my role.

On the 5th July in a meeting followed up in an email of 6th July 2023 allegations concerning allegations of sexual harassment/ misconduct from Stephen Hunt.

65. The third allegation relates to the grievance of the 5th of July and then by way of e-mail on the 6th of July 2023. These are allegations raised about the behaviour of a Mr. Hunt in particular allegations of sexual harassment and poor behaviour. This stems from a grievance made against the Claimant which she states was made maliciously against her. I am not in a position today to decide whether or not that grievance was made maliciously, but what I can say, and what appears to be accepted, is that many of those allegations made against her were not upheld. One allegation was upheld and that related to vaping in the office. But in respect of that, I am told, and again it appears accepted, that there was an admission in relation to it. Returning to the allegation which I am considering at this stage, I have looked at the e-mail in particularly page 108 of the bundle. I have also looked at the minutes, although I have not been taking to a specific point in them. Having considered that I am not satisfied that the Claimant is likely to show, on the evidence available at this stage, that at a final hearing that there was a disclosure of information. The Claimant has amplified within her submissions today various risks which she alleges Mr Pearmain posed, and I can see on face value that if they are correct that it may well be in the public interest, because of the alleged risk to female staff and clients. The public interest test is a question I must consider slightly later on. However, I am not satisfied that at this moment that the claimant is likely to show that that those reasons were put forward at the time of the allegation, and therefore I am not satisfied that the Claimant can show she believed at the time the information falls under one of the categories set out in section 43B (2) or that any such belief was reasonable. When asked about it, the Claimant has latterly raised the possibility of a criminal offence. I also note that it is simply put as a possibility, not that she believed there was one being committed and that was only said in submissions. I have dealt with the likelihood of showing it was in the public interest above. I accept that it was made to her employer, but again I am not satisfied for the reasons I have set out, that even if this were a qualifying and therefore a protected disclosure that she has shown that at a final hearing it is likely that this disclosure, even if it was one resulted in her dismissal.

12th and 18th July 2023 to Neil Piper and Elanor Wright about Julia Pearmain retaining personal data under the desk in a manner that she alleges was contrary to GDPR and the taking home of a book containing personal data.

66. The next allegation relates to alleged breaches of the GDPR, and are in respect of alleged conduct of Julia Pearmain. These allegations relate to emails from the 12th, 18th and 19th of July. I have reviewed the documents which I have been taken to and it relate to the allegations. In effect there are two issues. The first is the way in which client data was held, which was mainly physical. The second related to the risks of taking a book, which may contain client data, home. In my judgement on the evidence at this stage, is unclear and I am not satisfied that that the Claimant has satisfied the test that she is likely to show that information was disclosed at the meeting that I have been taken to. Within the minutes, it was done so to Julia, who was more junior to her. I have also looked at the other emails and I cannot from see what the disclosure of information would be. I am not therefore satisfied, on the information available at this stage, that it is likely that the Claimant will show that there has been a disclosure of information which would amount to a qualifying disclosure.

67. The concern is the Claimant believed there was a breach of a legal obligation namely concerning the GDPR which I am satisfied on the current evidence that the Claimant is likely to show at a final hearing and I am satisfied that she is likely to show that was reasonably held. It may well be that she is also likely to show that such disclosure was in the public interest, given the impact of client data. However, as I have stated I am not satisfied that she is likely to show that the first stage of a disclosure of information is met, nor the causation element.

On the 8th August 2023 (in an email trail which started on 31st July 2023) to Mr Welch in respect of the payment of commission on re-mortgages.

68. On the 5th of July, there was also reference in respect of commission that was paid, or due to be paid in respect of re-mortgages that was raised with Mr. Welch. I have again gone through the evidence provided. I am not satisfied that the claimant is likely to show that there is a disclosure of information. I note that a query was raised on the part of the Claimant, as to the level of commission that should be paid but in my judgment, on the current evidence I cannot say it is any higher than that. She was simply questioning what the position was and whether or not at the previous position on being paid commission had been correct, or the current question was correct. She is not making any allegation of wrongdoing, she is just asking a question. I am therefore not satisfied that she is likely to show this was information that was disclosed.

69. However, even if I am wrong on that, I am not satisfied that the Claimant is likely to show at a final hearing that she believed that there was a breach of any legal obligation which she told me was her belief. Nor am I satisfied that she is likely to show that she believed that at the time it was raised. That is because it was a question about entitlement not an allegation of wrongdoing.

70. I also do not consider that the Claimant is likely to show that any such disclosure was in the public interest, there is no information as to how many individuals

would be affected, or what the nature of the wrongdoing is. As, such I am therefore not satisfied, on the current evidence, that the Claimant is likely to show that there was a qualifying and therefore a protected disclosure.

The remaining allegations: 2nd August 2023 and 24th October 2023

71. I turn briefly to the e-mail of the 2nd of August 2023, which is made reference to within the documents. The Claimant has accepted in her submissions that that is not a protected disclosure and therefore I do not need not deal with that any further.

72. Finally, in respect of the allegation in relation to the 24th of October, it is accepted again by the Claimant that is not a protected disclosure, but appears, at this stage to either be a claim for victimization and or harassment, again in those circumstances I do not need to address that allegation further.

Concluding remarks

73. In respect of the Respondent's position that not all of those matters which I have dealt with are in the claim form, it has been clear to me that there have been sufficient details for me to be able to consider, and the Respondent to respond to the application. The Respondent has responded to the allegations fully and appropriately, and I must say again I am grateful to counsel for the great care in which he took in presenting the case.

74. The Claimant at the end of her submissions stated that she felt that the position outlined by the Respondent was *skewed* and that in some way that they were suggesting that she was *the problem*. The wider allegations fall to be determined at a later date, however, for what it is worth, I did not interpret any of the submissions of the Respondent to suggest or infer that she was a *problem*. There are clearly difficulties that have been raised by both parties, the relevance of which will need to be decided on another occasion. However, I did not interpret counsel's submissions to in any way indicate expressly or implicitly that the Claimant was a *problem* and I hope that observation provides her with some reassurance.

Employment Judge Lang
Date: 21 December 2023

Judgment sent to the Parties: 16 January 2024

FOR THE TRIBUNAL OFFICE

1. Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings. You can access the Direction and the accompanying Guidance here:

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