EMPLOYMENT TRIBUNALS

Claimant		Respondent
Mr. N. Hall	v	**Paragon Bank Plc**

Heard at: **Birmingham** **On:** **13 March 2024**

Before: **Employment Judge Wedderspoon**

Representation:

Claimant: **In Person**

Respondents: **Mr. Ashley Serr, Counsel**

JUDGMENT ON INTERIM RELIEF APPLICATION

1. The claimant's application for interim relief brought under section 128 of the Employment Rights Act 1996 is refused.

REASONS

1. By claim form dated 29 February 2024 the claimant brings complaints of public interest disclosure detriment and automatically unfair dismissal by reason of making a public interest disclosure. The claimant entered ACAS conciliation and received a conciliation certificate on 29 February 2024. The claimant was employed by the respondent as an internal auditor from 30 May 2022 until 22 February 2024.

2. The Tribunal was provided with a 264 page bundle. The claimant additionally provided a timeline and the Asset Management Final Audit Report. The respondent also relied upon witness statements submitted as written representations from Anne Barnett, Chief People Officer and Marius van Niekerk, General Counsel along with a written skeleton argument. The Tribunal did not hear oral evidence. It was confirmed with the parties that the hearing was public (see **Public Queensgate v Millett (2021) IRLR 637**).

3. The claimant brought an application for interim relief pursuant to section 128 of the Employment Rights Act 1996 on the basis that the sole or principal reason he was dismissed was because he had made a protected disclosure a claim falling within section 103A of the Employment Rights Act 1996.

4. The claimant was employed by the respondent from 30 May 2022 to 22 February 2024 as an internal auditor. Paragon banking group PLC is a specialist finance provider offering a range of savings and lending products in the UK through Paragon Bank PLC. It was founded in 1985; it is a FTSE 250 company listed on the London Stock Exchange.

The claimant's case

5. The claimant's case is that his role was based within the respondent's group internal audit function and involved auditing the internal control environment of different businesses areas across the bank. Audits were performed by a lead auditor who was responsible for all areas of the audit including planning; terms of reference; work record of findings; reporting an action and tracking through to closure. The lead auditor was supervised by an internal audit manager who was responsible for the first review of work performed, the head of internal audit and the internal audit director also provides support direction and review. The respondent bank was registered within the UK and regulated by the Financial Conduct Authority and the Prudential Regulatory Authority. The respondent and its employees are required to comply with the regulators standard principles and code of ethics. The FCA principles include integrity, skill, care and diligence management and control.
6. On 1 November 2022 the claimant started an audit as the lead auditor on Paragon's Asset Finance Division's asset management team. The team's key responsibility was to value the leased assets financed by Paragon for example, HGV's, LGV's and commercial vehicles. The claimant's audit identified a significant quantity of issues within the control environment which included several years of non-compliance with accounting standard IAS16 Property Plant and Equipment which states the residual value and useful life of an asset shall be reviewed at least at each financial year end and if expectations differ from previous estimates the changes shall be accounted for as a change in accounting estimate in accordance with IAS8 accounting policies, changes in accounting estimates and errors and to determine whether the item of property plant and equipment is impaired and entity applies IAS 36 Impairment of Assets. The audit also identified non-compliance with accounting standard IAS 36. The claimant's case is that the Head of Asset and Portfolio management confirmed directly to him that no attempts had been made by the asset management team to comply with either of the accounting standards since he had joined the business namely in 2022 and 2023 financial reporting dates. Several of the published financial statements in contrast to this by the bank and its subsidiaries, stated that the specific accounting standards had been complied with. The financial statements had been provided to Companies House and are publicly available. As a result of these discrepancies, the claimant considered in his professional opinion a significant risk that a material misstatement existed in the 2022 financial statements and if unresolved would exist in the 2023 statements and included these findings within the record of findings and shared them with the relevant stakeholders including the Financial Controller who reported directly to the Chief Financial Officer.
7. On 3 February 2023 the claimant alleged after several e-mail exchanges he received a video call with Keith Allen, Financial Controller and Peter Mitchell. Both individuals challenged the claimant's findings and Keith Allen the Financial Controller stated that the review with respect to IAS 16 was not specifically defined so it could be interpreted differently and subsequently argued that some form of review had actually occurred. The claimant's view was that it was reasonable to expect the annual review of the leased assets to be performed by the same individuals who reviewed the assets at lease

inception and who also the most qualified in the area of expertise, which is the Asset Management Team who had confirmed this had not occurred. In respect of the requirements of IAS 36 both individuals stated that no impairment review was required given that the respective leased assets were profit making. The claimant disputes this as IAS 36 only requires one such indication of impairment to exist to require a formal impairment review. Sarah Mayne Internal Audit Director was invited to the meeting and she agreed with the Financial Controller's assessment. The Financial Controller told the claimant he wanted the internal audit to be careful with the wording of the issues in the documentation to avoid being tripped up by statutory auditors. Sarah Mayne agreed. The claimant challenged this on the omission and obscuring of audit findings from the engagement report along with inappropriate comments made by the Chief Controller and the lack of willingness to further investigate the non-compliance with IAS 36. Sarah Mayne agreed that both issues could be included within the report but material amendments were made to the wording which the claimant believed concealed or minimised the true nature and extent of the severity of the findings. The claimant was dissatisfied with the outcome.

8. On 5 April 2023 the claimant restarted an audit of a subsidiary named the Business Mortgage Company which had been put on hold to accommodate a more urgent audit TBMC; which was an FCA registered mortgage brokerage firm specialising in buy to let mortgages. On 25 May 2023 the claimant concluded there had been a security breach to the TBMC IT operating system associated with a former employee's user profile. The individual had built and historically maintained that IT system. He left the employment of TBMC 26 months prior to the identified security breach. The claimant reported the breach to the data protection officer along with Paragon's cybersecurity team. The investigation concluded that the individual still had an active local application account. It was possible to access the back office system where sensitive customer data was held. The respondent's data protection officer Mel O'Donnell determined that there was no need to tell the Information Commissioner's Office because there was no evidence to indicate any data had been breached. The claimant believed this was misleading given that it was not possible to establish what activity had actually occurred. On 25 May 2023 Sarah Mayne invited the claimant and Scott Atwood, the Assigned Internal Audit Manager into a meeting and provided an update on the cyber securities investigation and conclusions. Sarah Mayne stated that the security breach finding should not be included within the record of findings given that the issue had been resolved. The claimant thought this was inconsistent with how findings from other audits had been treated. The claimant challenged the omission of the security breach finding. Sarah Mayne and Andrew Merrell finally conceded the issue could be included within the normal documentation but the wording was again materially amended to the extent that it was minimised or concealed the true nature and extent and severity of the finding. The claimant continued to challenge the wording of the issue over the next couple of weeks and stated that obscuring the true nature extent and severity was in contradiction to the IIA's Principles, Standards and Code of Ethics. He raised his concerns with his line manager Miss. Barnett during his bi-weekly 1 to 1s. On 22 June 2023 the claimant contacted Tom Coppins Principal Internal Auditor to explain the situation and he expressed surprise

to the claimant and in his view the issue should have been included within formal documentation. On 26 of June the claimant contacted ACCA Advisory team to seek advice on what action he should take to ensure he complied with their standards, principles and code of ethics. He was provided with relevant guidance from the ACCA code of ethics. On 28 of June he discussed his concerns and guidance he had received with two colleagues Syed Akbar and James Wright.

9. On 10 July 2023 the claimant submitted a written whistleblowing grievance. The grievance was investigated and not upheld. On 11 September 2023 the claimant was placed on garden leave. Following the publication of the whistleblowing investigation, the parties entered into negotiations for the termination of the claimant's employment. There was no agreement. On 5 January 2024 the claimant was invited to attend a disciplinary hearing on 12 January 2024. He was provided with a document that suggested that the claimant should be dismissed for an irretrievable breakdown in trust and confidence. The claimant's case is that there were no disciplinary issues with him until he blew the whistle and the suggestion in the summer of 2023 that he was difficult to manage had not been raised with him. In fact, he had only received positive feedback. The claimant met with Marius Van Niekerk who was unaware of the claimant's whistleblowing. He sought to view the detail of the claimant's disclosures. On 22 February 2024 he was dismissed and he contends it was because he blew the whistle.
10. The claimant submits he made qualifying disclosures concerning a breach of or a concealment of breaches of legal obligations. The legal obligations he relies upon are obligations under the FCA including integrity. He submitted that the terms are not subject to interpretation. He made three public interest disclosures and he reasonably believed that there were such breaches and made them in the public interest; taking into account that the bank is a public body and should be upholding the standards of the regulator, he was reasonable to reach these conclusions. He contends that he was dismissed because he made public interest disclosures; some of his suggestions were actually recommended to be adopted in the final audit report. When agreement could not be reached about termination of his employment, the respondent dismissed him for an irretrievable breakdown in trust and confidence which he asserted was directly related to the fact he was a whistle blower. His case is because he whistle blew and would not promise he would not raise concerns in the future, he was dismissed. There were no issues with his performance or conduct before this date; he passed his probation and had received positive feedback as to his performance.

<u>The respondent's case</u>

11. The respondent submitted that the claimant cannot show to the required standard that he made qualifying disclosures. He was dismissed for some other substantial reason namely an irretrievable breach of trust and confidence.
12. The respondent's case is that the claimant was part qualified, having been working towards his chartered accountancy ACCA qualification whilst employed by Price Waterhouse Cooper ("PwC2). He left PwC having failed a resit examination. He took a further ACCA examination whilst employed by the respondent which he failed (page 112). The claimant was responsible for completing an internal audit reviews as lead auditor as assigned by and

under the supervision of his management team. As an internal auditor he was the most junior member of the audit team other than an IT internal audit apprentice describing himself as “the bottom of the rung” page 160. This was only the second audit the claimant had carried out. Miss. Mayne internal audit director, Mr. Merrell Head of internal audit and Miss Barnes, the claimant’s line manager were all fully qualified Chartered Accountants with decades of experience; for example Mr Merrell has 30 years of experience in internal audit (see page 116). The role of the auditors is to draft the report to go to the audit manager for review. They then check the issues contained in the report and agree with those documented on the file. The audit manager would also check styling consistency so that there are similar looking products and assess the material of any issues to see if the gradings are appropriate. Mr Merrell would then receive this for review and then it would go to Miss. Mayne; this would then go out to the business area.

13. When the field work had been completed by the auditor, the manager reviews the file and will raise review points for clarification or to document the rationale. A record of findings is used for initial discussion with business managers and it tends to change due to ongoing discussions; the manager will then review and Mr Merrell if he is not the manager for that audit often reviews and makes changes such as track changes e.g. it can be things like the risk is not clear or we need to add more clarity of information. Miss. Mayne meets with the auditor, the manager and Mr Merrell to discuss the report and ask questions about the audit including areas of positive assurance and will also have to explain the issues. There are about 50 audits a year so there are a number of reports which are considered. The team may not necessarily agree on all points but as Miss. Mayne is held accountable for all the reports including to the Board so she has the final say.
14. During the internal audit process the claimant raised issues about the application of appropriate accounting standards IAS16 and IAS 36. The practical application of the standards to the respondent’s business is described as very technical but it is clear it involves a significant element of judgement (see pages 87 to 88); it is not the simple application of hard and fast rules lending itself to a binary answer. The issue is examined by senior members of the team. Miss. Mayne was satisfied standards had been appropriately applied; she took the decision that a point relating to IAS16 relating to residual values could be included in a report but there was no need to include the point relating to carrying value of lease assets (see page 79). The respondent disputes what the claimant was saying could amount to a disclosure; in the course of the audit there are a number of discussions and personal views differ. Further in the Final Internal Audit report document at page 2 of 18 it was stated the SME asset finance portfolio comprises of two types of leases from an accounting perspective finance leases FL hire purchase finance lease sale and leaseback etc which are recorded on the lessees bank sheet and operating leases OL which are recorded on the balance sheet of the less or paragon all references to finance and operating leases have been made on this basis in this report consequently OL are subject to specific accounting standards IAS 16 and 36 but are excluded from IFRS 9 and IRB requirements whereas FLS are not subject to the same accounting .standards but are in scope of both IFRS 9 and IRB therefore the way in which each asset is managed varies and is dependent

on the lease type. The respondent relied upon the footnotes included in the report which are at the bottom of the page; it makes specific reference to IAS16 Property Plant and Equipment and IAS 36 impairment of assets. The respondents submitted there could be no credible or reasonable suggestion that the respondent was seeking to conceal anything in the report; the application of the standards was far more accurate coming from Miss. Mayne who was better qualified and more experienced than the claimant; who had conducted 50 reports per year and signed them off for which she was legally responsible.

15. During a 1:1 on 17 January 2023 (page 36) with the claimant, Miss. Barnes reminded the claimant of the need for collaboration with colleagues during the audit process. The claimant was unprepared to accept Miss. Mayne's decision in respect of the SME lending asset management and IAS16 to IAS36 and on 20 February 2023 page 38 in his 1:1 with Miss. Barnes he stated that he was not comfortable about things being omitted which he thought should be included in the report; he was seeking to take direction from an advisory source rather than his own audit director. In fact this report by mid December had been signed off by the external auditor KPMG and the Board; others had considered the report and had no concerns. The respondent submitted this is relevant to whether the claimant could have any reasonable belief in a suggestion that there was a breach of a legal obligation.
16. The claimant raised further issues in respect of the IT system and stated an ex- employee had allegedly had access to the system. It was concluded by the Head of Cyber Security that it was impossible to know what the leaver had done or whether there was any data breach.
17. The claimant became accusatory, mistrustful and belligerent. In a 1:1 on 23 May 2023 (page 43) the claimant described the respondent's monitoring tool as "Big Brother" alleging it evidenced the respondent's distrust of the workforce. At a 1:1 20 June 2023 (page 47) the claimant challenged the assessment of him as delivering moderate performance and having moderate potential. The claimant stated he should be at a higher grade and felt that this assessment indicated he was not valued and did not fit into the respondent's organisation.
18. On 28 of June 2023 (page 110) Miss. Mayne spoke to HR about her concerns that the claimant was becoming unmanageable which predates any alleged written disclosure. At a return to work meeting on 5 of July 2023 with Miss Barnes the claimant refused to accept that Miss Mayne should have the final say on the content of an audit report and continued to challenge senior colleagues as unethical and unprofessional. He stated that there was a breach of the ACCA ethics. The claimant disagreed the minutes of the return to work meeting and edited a version at page 52. After 17 July 2023 (page 110) the claimant became more argumentative. Issues with the claimant were escalating and Miss. Mayne spoke to Anne Barnett about the claimant's behaviour which she thought was escalating to insubordination. It was agreed that this could be dealt with in the discipline and grievance and that following Miss Maynes return from annual leave on 17 of July she should initiate the process with the claimant.
19. On 10 July 2023 the claimant submitted a whistle blowing disclosure to the respondents whistle blowing champion. As a result the disciplinary process was put on hold and the chief risk officer Ben Whiggly undertook an

investigation. The respondent also instructed external auditors KPMG in September 2023 to act as external advisors.

20. On 21 August 2023 page 66 the claimant complained he was not at the right grade or rate of pay. He felt he had been mis-sold the role and he felt he was cheap labour. On 6 September 2023 the claimant described being demotivated (page 71); saw lots of red flags in the business. The claimant was placed on paid garden leave on 11 of September while the whistle blowing investigation continued to which the claimant agreed as a welfare step.
21. The investigation into the whistle blowing resulted in report dated 12 of October 2023 and the claims raised were found unproven (page 90). There were no failures on the part of the audit team.
22. On 8 November 2023 Ms. Barnett met with the claimant to give feedback on the investigation report. Assurances were sought as to whether the claimant would follow guidance from managers in the future which the claimant refused to provide.
23. Between 10 November 2023 and January 2024 there was a series of without prejudice conversations and e-mail exchanges to explore whether a settlement agreement could be resolved. By 4 January the dialogue ended.
24. Following a review of the claimants employment history including his 1:1s with management, Anne Barnett, Chief People Officer prepared a report concluding that the claimant was unlikely to accept reasonable advice and guidance from his more experienced and fully qualified management team that there was an irretrievable breakdown of trust between them. She recommended the hearing officer considers whether the claimant should be dismissed under some other substantial reason because his continued employment would have a detrimental impact on the internal audit management team and colleagues within the division (page 99).
25. Marius van Niekerk General Counsel was appointed to chair a hearing. He investigated and undertook investigations. By letter dated 22 of February 2023 the claimant was dismissed for some other substantial reason (see pages 178 to 184). He stated that the CPO was justified in her belief that there has been a serious breakdown in a relationship. There was a breakdown of trust in part attributable to the claimant's past actions and behaviour towards his internal audit management team including your line manager, the Head of Internal Audit and the Internal Audit Director about which a proposed course of action had been agreed in early July 2023 which was put on hold following your protected disclosure on 10 July 2023. He further concluded it is also in large part attributable to the claimant's subsequent unwillingness and or inability to reflect critically on his own behaviour; should the claimant return to work he believed that the concerns raised about the claimant's likely future actions and behaviours are well placed and reasoned. He concluded he was firmly of the view that the claimant's continued employment would have a detrimental impact on the internal audit management team and your colleagues within the division.
26. The respondent submitted that there were no qualifying disclosures; the claimant was complaining about a breach of ethics. Perusal of the relevant material see pages 221; 224-229 indicates that the principles are broad concepts which should be applied proportionally (page 229). Morals are not sufficient to establish a breach of a legal obligation. He could not have had any reasonable belief that there was a breach of a legal obligation. In

respect of public interest it was submitted that this was largely an internal matter. The respondent relied upon a lack of causation and submitted in respect of the case of Kong the fact that there is a disclosure does not mean that it was the sole or principal cause of the dismissal. It may be part of the background but does not mean the claimant was dismissed for this reason.

The Law

27. Section 129(1) provides that an application for interim relief should be granted if it appears to the Tribunal that it is likely that on determining the complaint to which the application relates the Tribunal will find that the reason or the principal reason for the dismissal is one of the statutory automatically unfair reasons.

28. "Likely" has been defined as the claimant must show that his case has a pretty good chance of success which means something better than likelihood on the balance of probability; see the cases of **Taplin v C. Shippam Limited (1978) ICR 1068, as approved and followed in London City Airport Limited v Chacko (2013) IRLR 610 at paragraph 10 and His Highness Sheikh Bin Sadr al Qasimi v Robinson (UKEAT/0283/17).**

29. The Tribunal must be satisfied that the claimant is likely to succeed on each necessary aspect of his claim applying the high threshold before relief can be granted that means that the Tribunal must be satisfied that the claimant is likely to show he made a protected disclosure within the statutory definition and that it is likely it was the sole or principal reason for dismissal. In the case of **Chacko** the EAT gave guidance on the approach to be taken at paragraph 23 namely

"*in my judgement the correct starting point for this appeal is to fully appreciate the task which faces an employment judge on an application for interim relief. The application falls to be considered on a summary basis. The employment judge must do the best he can with such material as the parties are able to deploy by way of documents and argument in support of their respective cases. The employment judge is then required to make as good an assessment as he is promptly able of whether the claimant is likely to succeed in a claim for unfair dismissal based on one of the relevant grounds. The relevant statutory test is not whether the claimant is ultimately likely to succeed in his or her complaint to the employment tribunal but whether it appears to the tribunal in this case the employment judge but it is likely. To put it in my own words what this requires is an expeditious summary assessment by the first instance employment judge as to how the matter looks to him on the material that he has. The statutory regime thus places emphasis on how the matter appears in the swift reconvened summary hearing at first instance which must of necessity involve a far less detailed scrutiny of the respective cases of each of the parties and their evidence then will be ultimately undertaken at the full hearing of the claim.*"

30. HHJ Eady has stated that “The summary assessment of the material before it to determine this question as broad brush approach and very much an impressionistic one.”

31. The Employment Rights Act 1996 provides
    43 B disclosures qualifying for protection
    (1) in this part a qualifying disclosure means any disclosure of information which in the reasonable belief of the worker making the disclosure is made in the public interest and tends to show one or more of the following:-
    (a) that a criminal offence has been committed is being committed or is likely to be committed;
    (b) that a person has failed or is failing or is likely to fail to comply with any legal obligation to which he subject
    (d that the health or safety of any individual has been or is being or is likely to be endangered
    (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.

Conclusions

32. On hearing of this application, the Employment Judge has not made findings of fact but relies on the material provided by each party, highlighting their strongest points. The Tribunal heard no oral evidence.

33. The Tribunal has considered in this case whether there is a pretty good chance that at the final hearing whether (1) that the claimant had made a disclosure to his employer; (2) whether the claimant believed that the disclosure tended to show one or more of the things set out at (a)-(f) under section 43B (1); (3) that he believed that the disclosure was made in the public interest; (4)those beliefs were reasonable and (5) the disclosure(s) was/were the principal reasons for his dismissal.

The disclosures

34. There is a dispute as to whether the claimant made qualifying disclosures on any of the three dates he relies upon. The claimant relies upon three main disclosures. First the claimant relies upon 3 February 2023 when he had conversations with Sarah Mayne and Helen Barnett and alleged there was non-compliance with accounting standards IAS 16 and 36 and the potential for material misstatement in the accounts along with the lack of willingness to investigate these further or obtain sufficient and appropriate audit evidence. The claimant says that this was a breach of FCA and IIA standards principles and code of ethics through attempts to admit and obscure adverse audit findings and KA’s inappropriate comments and how they indicated a breach of the FCA's principles the directors find useful duties under the Companies Act 2006. The respondent denies this and also says that any discussion about the audit is in the nature of a collaborative approach taken to audits. Taking into account, that the content of the conversation is disputed by the respondent and that during the preparation of an audit being prepared of collaborative discussion of the team, the

Tribunal finds that it cannot be said that there is a pretty good chance of establishing at a final hearing that the claimant was making a disclosure.

35. Secondly, the claimant also relies upon on 25 May 2023 and over the next month he had discussions with and AM where he alleged he stated his concerns regarding the breach of FCA and IA standards principles and code of ethics through attempts to admit and obscure adverse audit findings along with a lack of willingness to investigate the issue and any further and to allow any recommendations which would address the deficiencies in the control environment. The claimant's version of the discussions are disputed by the respondent. On the basis that the content of the discussions is disputed by the respondent, the Tribunal has not heard any live evidence, the Tribunal does not find that there is a pretty good chance of establishing that the claimant made a disclosure on this date.
36. Thirdly the claimant further relies upon on his 10 July 2023 (page 54 to 64) written document sent to the Chair of Whistleblowing committee which the claimant contends he escalated the previous oral disclosures. The respondent can not dispute this document was provided by the claimant to the Committee. The document is very lengthy, and the Tribunal sets out a summary here. The claimant raises a concern in respect of the SME lending asset management audit that no attempts had been made to review the residual value and useful life of assets at least each financial year end, in breach of IAS 16. He also raised a concern that IAS36 requires an entity to assess at the end of each reporting period whether there is any indication that an asset may be impaired. He stated that the way the respondent was calculating the value was in breach of IAS 36 because the respondent calculated the asset by depreciating the asset cost using the reducing balance method; PPE assets were depreciated on a straight line basis in order to match the associated cash flows. The claimant stated that the carrying amount will inherently exceed the fair value less costs to sell and as such is an indication that the assets may be impaired which necessitates the value in use to be calculated. Further in respect of TBMC the buy to let mortgage brockerage firm, he identified two individuals who still had active user accounts to the TBMC back office system; one individual had super access and had logged into the system post his termination of employment with the respondent and had changed his password and the respondent nor TBMC were aware of the new password. He alleged that in theory it was possible to access the back office system without being connected to the Paragon server through an active directory account and as the account was hard coded into the system and has necessary permissions it could be used to make changes to the IT infrastructure. The claimant stated that there were a number of control failures (preventative and detective controls) and an opportunity to commit a data breach. The claimant stated he had raised all these concerns but his concerns were dismissed. He set out the ACCA Ethical Code of Conduct including that a professional accountant should not be associated with reports that contain materially false information; statements of information furnished recklessly; prepared with bias or omits or obscures information required to be included where such omission or obscurity would be misleading. He also contended that there had been material breaches of the Chartered Institute of Internal Auditors (CIIA) International Professional Practices Framework and the Code of Ethics and

consequently breaches of the respondent's Internal Audit Charter setting out the relevant rules of conduct.

37. The Tribunal determined that the claimant had a pretty good chance of establishing at the final hearing that he had made disclosures in his written complaint dated 10 July 2023 that the respondent had failed to comply with a legal obligation namely a breach of data protection laws (a legal obligation) which it is subject to and/or it has been likely to be deliberately concealed. In the case of Eiger Securities LLP v Korshunova (2016) UKEAT/0149/16 the source of the legal obligation should be identified; here the claimant identified in his written document he believes there were breaches of the rules of conduct of the CIIA's code of Ethics Implementation Code and Ethical Code of Conduct and stated he was "concerned with this unethical and unprofessional behaviour". He has identified the source of the legal obligation. The claimant has a pretty good chance of establishing that there was breach of legal obligation.

Whether the claimant believes that the disclosures tended to show a relevant failure

38. The claimant's case is that he disclosed that there was a breach of a legal obligation by the respondent to comply with accounting standards IAS16 Property Plant and Equipment and IAS 36 impairment of assets; breach of a legal obligation by the respondent to comply with the FCA's standards principles and code of ethics; breach of a legal obligation by the respondent to comply with IIA's standards principles and code of ethics; a breach of legal obligation by the respondent to comply with the FCA duties of a director under the Companies Act 2006 and the deliberate concealment of information relating to a breach of a legal obligation by the respondent to comply with accounting standards IAS 16 property plant and equipment and IAS 36 impairment of assets. The respondent contends there was no breach of any legal obligation.
39. A belief for these purposes may be mistaken but nevertheless genuinely held. In the case of **Darnton v University of Surrey (2003) IRLR 133** as approved by the Court of Appeal in **Babula v Waltham Forest College (2007) EWCA Civ 174** whilst the worker must have a reasonable belief that the information he is disclosing tends to show one or more of the matters in section 43 B (1)(a) to (f) there is no requirement upon the worker to demonstrate that the belief is factually correct the belief may still be reasonable even though it turns out to be wrong. The worker must subjectively believe that the information tends to show the relevant failure and the Tribunal is entitled to take into account of the knowledge and the expertise of the worker; see **Korashi v Abertawe Bro Morganwwg University Local Health Board 2012 IRLR 4** (paragaph 62) since the test is their reasonable belief must be subject what a person in their position would reasonably believe to be wrong-doing. In **Babula** the Court of Appeal held that it was sufficient that the worker reasonably believes that the matters disclosed amount to a legal obligation.
40. The Tribunal concludes having taken into account the junior experience of the claimant conducting audits he has a pretty good chance of establishing at the final hearing that his disclosure in his written grievance dated 10 July 2023 tended to show a breach of a legal obligation.

Whether the claimant believed the disclosure was made in the public interest

41. In the case of **Chesterton Global Limited and another v Nurmohamed (2017) EWCA Civ 979** Lord Justice Underhill stated that whether a disclosure is in the public interest depends on the character of the interest served by it rather than simply on the numbers of people sharing that interest. Disclosures which are in the interest of the person making the disclosure will not be in the public interest if there is nothing more than the person's own interest. Disclosures where other workers are affected may be in the public interest but numbers are not likely to be sufficient in itself and some other factor should be present.
42. The respondent is a UK registered bank and is classified as a public interest entity. It is in the public interest that the respondent meets its legal obligations. A failure to do so may seriously damage the integrity of the business and significantly damage the trading of the business which could impact on its shareholders and public confidence in the banking industry. The Tribunal concluded that the claimant had a pretty good chance of establishing the issue of public interest at the final hearing.

Whether the beliefs were reasonable

43. Section 43B (1) involves applying an objective standard to the personal circumstances of the discloser and those with professional insider knowledge will be held to a different standard than lay persons in respect of what is reasonable for them to believe. The case of **Korashi** held at reasonableness under section 43B (1) involves applying an objective standard to the personal circumstances of the disclosure and that those with professional or insider knowledge will be held to be different standard than lay persons in respect of what is reasonable for them to believe. whether the beliefs were reasonable. The claimant was an insider but inexperienced and less qualified that other members of the audit team who had a wealth of knowledge and experience. His case is that he contacted his regulator who informed him there was a breach. The Tribunal determined that the claimant had a pretty good chance of establishing at the final hearing that he reasonably believed that there was a breach of a legal obligation and that his disclosure was made in the public interest.

Whether the protected disclosures was the sole/principal reason for dismissal

44. The Tribunal found that this issue was a difficult one for the claimant's application. The claimant says there were no issues raised by the respondent about his conduct until his protected disclosure. The respondent determined to dismiss the claimant on 22 of February 2024. The reason given for the claimant's dismissal in the hearing outcome letter was that there had been an irretrievable breakdown of trust. The respondent's case is that the claimant was unlikely to accept reasonable advice and guidance from the more experienced and fully qualified internal audit management team. Furthermore, the respondent had concerns about the claimant's behaviour and attitude on 28 June 2023 prior to him making the public

interest disclosure on 10 July 2023. In the case of **Kong v Gulf International Bank UK Limited (2022) EWCA Civ 941** it was held in an appropriate case an employer can take action against a worker who makes a protected disclosure in what is regarded as an unreasonable or unacceptable manner or who acts in an unacceptable way in relation to a protected disclosure and in such cases it is legitimate for Tribunals to find that although the reason for dismissal is related to the disclosure it is not in fact because of the disclosure itself.

45. By reason of the fact that the respondent had concerns about the claimant's conduct and attitude prior to the public interest disclosure and that it had concerns that the claimant would not accept guidance in the future (potentially related to the disclosure but not because of the disclosure), the Tribunal is not satisfied that the claimant has a pretty good chance of establishing that the dismissal was for the sole or principal reason of making a public interest disclosure.
46. In the circumstances the application for interim relief fails.
47. This decision does not mean that the claimant will not succeed at final hearing. The threshold to granting an interim relief application is a high one and the Tribunal is not satisfied that the claimant has met this threshold.

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Employment Judge Wedderspoon

13 March 2024

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