# EMPLOYMENT TRIBUNALS

| **Claimant** | | **Respondent** |
|---|---|---|
| **Ms Zeena Teji** | **v** | **William Blair international Ltd** |

**Heard at**: London Central (by video)

**On**: 18 April 2024

**Before:** Employment Judge P Klimov (sitting alone)

**Representation:**

**For the Claimant:** in person

**For the Respondent:** Mr T Wilkinson, of Counsel

**JUDGMENT** having been announced to the parties at the hearing on 18 April 2024 and written reasons having been requested by the respondent on 18 April 2024, in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

# REASONS

## Background and Issues

1. This was a preliminary hearing (in public) to determine the claimant's application for interim relief pursuant to section 128 Employment Rights Act 1996 ("**IR Application**").

2. On 20 February 2024, the claimant presented a claim for automatically unfair dismissal under section 103A of the Employment Rights Act 1996 ("**ERA**")[1]. In

[1] On 31 January 2024, the claimant presented her first claim (case No: 2201495/2024) for direct race discrimination, breach of Flexible Working Regulations and breach of The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002. It is not relevant for the determination of this IR application.

her Particulars of Claim she included an application for interim relief in the following terms:

> ***"Interim Relief***
> *1. I am claiming unfair dismissal by reason of whistleblowing, and I am applying for Interim Relief pursuant to section 128 of the Employment Rights Act 1996 (ERA). For the reasons set out in the Details of Claim, I submit that it is likely that the Tribunal will, in determining this complaint under section 103A ERA, find that the (principal) reason for dismissal was the protected disclosure. Accordingly, unless the Respondent confirms that they are willing to reinstate me, I am entitled to an order for the continuation of my contract of employment pursuant to section 129(9) ERA."*

3. On 4 April 2024, the Tribunal listed this hearing to consider the claimant's IR application.

4. The claimant represented herself at the hearing and Mr Wilkinson appeared for the respondent. I was referred to various documents in a 229-page bundle the parties submitted for the hearing. The claimant sent an additional email with a screenshot of the first page of her email of 9 February 2024. A full copy of that email was in the bundle at page 205. Mr Wilkinson submitted an opening skeleton.

## The Facts[2]

5. On 9 February 2024 at 11:11am (GMT), the claimant sent the following email to Amber Kennelly (Chief Human Resources Officer), Beth Satterfield (Chief Operating Officer) and Brent Gledhill (President and Chief Executive Officer) – the respondent's executives based in Chicago, USA ("**the PD Email**"):

> "***Subject: Race Discrimination / London Office / Legal Proceedings***
>
> *Dear All,*
>
> *Apologies for what might seem like a random email but I feel in your positions is it important to know what is/about to happen in the London Office.*
>
> *Without going into too much detail (though I would only be too happy to) I have faced Racial Discrimination by my Manager Tom Ross. I raised a Grievance and, in a bid, to protect him and the company I am now being summoned to Disciplinary which is directly related to my Grievance.*
>
> *Disciplinary action, might I add, is for undocumented absences and inappropriate use of Managers (Tom Ross's) calendar. Yes, a calendar I have access to as part of my job role. Both of which are baseless but of course as a 100% employee owned company, I can see Employment Law and at this point basic logic does not apply. This is a desperate bid to dismiss me.*
>
> *Meanwhile, Legal Proceedings have commenced, and I have been informed by the courts; paperwork is on its way to you.*
>
> *Just so you are aware of the seriousness of this case below are the Acts & Employment Legislation William Blair have breached:*
>
> *The Equality Act 2010*
> *Employment Relations (Flexible Working) Act 2023*
> *The Fixed-term Employees (Prevention of Less Favorable Treatment) Regulations 2002*
> *Pending: Unfair Dismissal*

[2] I limit my findings of fact to the matters that are necessary to determine the IR Application.

*Victimization & Harassment - All of which have been documented.*

*As I am a Fixed Term Contract Employee my contract ends end of June 2024. Unless I am unfairly dismissed sooner.*

*The reason why I am getting in touch/making you aware of this is to make you aware HR department in London are acting unlawfully and rather recklessly and, their actions may put William Blair in a difficult position. I am unable to have logical and professional conversations with anyone in the London office and it's the first time I am witnessing individuals acting emotionally rather professionally. To witness this from HR is concerning and if you're not concerned, you should be.*

*Important information: Employment Tribunal cases/decisions are made Public. Once I am no longer under WB contract I am also able to talk about my experience in the press as well bringing attention to this matter of open Racism in the workplace and retaliation against those who speak up about it. This may cause reputational damage which I am not sure would not be a great look for the company.*

*In the meantime my Union and Lawyers are very much involved in this case and upon receiving my legal claim you will be able to the strength of it. And of course the 'Disciplinary Action/Retaliation' will also be a part of this claim. Infact, I will ensure there is a huge emphasis on this part of the claim.*

*Furthermore I have requested a Subject Access Request (SAR) which allows me visibility on what is happening/being said about me behind the scene. I have suspicions (based on the professionalism/ unethical behavior so far) that WB may conceal/destroy information about me and my case that may be damaging to the WB brand. To do this is a criminal offence and I will also be taking this up from a legal standpoint. As I have the privilege of being a Union member, I am in touch with the relevant authorities about my concerns about this already.*

*I have hope that the Chicago Office has more professional attitude/better attitude towards ethnic minorities speaking up against*
*Racism.*

*If someone wants to talk to me 'offline' or on a 'without prejudice' to discuss this, I would be happy to.*

*NB: I am not working today as my infant is sick so I will cc my personal email should anyone (though unlikely) wishes to get in touch.*

*Kind regards*

*Zeena Teji | Investment Management (London)"*

6. The claimant relies on this PD Email as containing a protected disclosure. She alleges that the respondent dismissed her for the reason of her making a protected disclose in the PD email.

7. On 9 February 2023 at 7:49am (GMT), Sunitha Moodley, Head of HR in the UK, based in London, sent a WhatsApp message to Amie Harvey, an HR Manager:

*"Hi Amie, you can go ahead and send notice to ZT. Please send to both email addresses. Thanks"*

8. On 9 February 2023 at 10:07am (GMT), a document entitled "*Zeena Teji 9 February 2024*" was created in MS Word application. It was then modified on the same date at 2:18pm (GMT).

9. On 9 February 2024 at 7:38pm (GMT), Amie Harvey emailed the claimant as follows:

*"Hi Zeena,*

*We have received confirmation that Leila is returning early from maternity leave. As a result, I am writing to give you notice of the termination of your fixed term employment contract with William Blair as an Executive Assistant.*

*As per your contract dated 9 June 2023, your notice period is 1 week, making your last working day 16 February 2024.*

*Please find attached a letter confirming these arrangements.*

Amie"

10. A letter confirming the early termination of the claimant's fixed-term contract was attached to the email.

11. On 9 February 2024 at 10:57 (GMT) Amber Kennelly responded to the claimant's PD Email:

*"Good day, Zeena.*
*Thank you for sharing your thoughts and perspectives with us. Further, I am sorry to hear your infant is sick. As a mom myself, I know that can be challenging!*
*While I have not had the chance to meet you during your time with William Blair and you have laid out some detail in the message below, if you wanted to have a conversation, please let me know and we can find a time to do so.*
*Thank you,*
*Amber"*

## The Law

### *Interim Relief*

12. Section 128(1) ERA states:

*"128.— Interim relief pending determination of complaint.*

*(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 […] or 103A, or*
*[…],*
*may apply to the tribunal for interim relief."*

13. S.129 ERA provides that if:

"*on hearing an employee's application for interim relief,* ***it appears to the tribunal that it is likely*** *that on determining the complaint to which the application relates the tribunal will find—*
*(a) that the reason (or if more than one the principal reason) for the dismissal is one of those specified in—*
*(i) […] or 103A, or*

[…]

*the tribunal shall* [subject to prior procedural steps set out in sub-paragraphs 2-9] *make an order for the continuation of the employee's contract of employment*." (***emphasis added***)

14. When considering whether it is "likely" that on determining the complaint on its merits the tribunal will find that the claimant was dismissed for a proscribed reason (for "whistleblowing" in this case) "*The Tribunal should ask itself whether*

*the applicant has established that he has a "pretty good" chance of succeeding in the final application to the Tribunal.*" - see, *Taplin v C Shippam Ltd* 1978 ICR 1068, EAT at [23]. This "*does not mean simply "more likely than not" - that is at least 51 per cent - but connotes a significantly higher degree of likelihood"* – see, *Ministry of Justice v Mr Sarfraz* UKEAT/0278/10/ZT at [16].

15. In *Al Qasimi v Robinson* EAT 0283/17 HHJ Eady QC (as she then was) said at [11]:

"*11. Where, as here, interim relief is sought in a whistleblowing case under section 103A ERA , the Claimant must show that it is likely that the ET will find (1) that she made her disclosure to the employer, (2) that she believed that disclosure tended to show one or more of the things itemised in section 43B(1)(a)-(f) , (3) that her belief was reasonable, (4) that the disclosure was made in good faith, and (5) that the disclosure was the principal cause of the dismissal (see Ministry of Justice v Sarfraz above).*"

16. She went on to explain at [59] and [60]:

*"59. I start by reminding myself of the exercise that the ET had to undertake on this application. By its nature, the application had to be determined expeditiously and on a summary basis. The ET had to do the best it could with such material as the parties had been able to deploy at short notice and to make as good an assessment as it felt able. The ET3 was only served during the course of the hearing and it is apparent that points emerged at a late stage and had to be dealt with as and when they did. The Employment Judge also had to be careful to avoid making findings that might tie the hands of the ET ultimately charged with the final determination of the merits of the points raised. His task was thus very much an impressionistic one: to form a view as to how the matter looked, as to whether the Claimant had a pretty good chance and was likely to make out her case, and to explain the conclusion reached on that basis; not in an over-formulistic way but giving the essential gist of his reasoning, sufficient to let the parties know why the application had succeeded or failed given the issues raised and the test that had to be applied.*

*60. The nature of interim relief also informs the approach the EAT has to take. An ET is charged with this summary assessment, precisely because it is best qualified to carry out this role; an Employment Judge will have the experience of having heard many similar cases at Full Hearing and will thus be able to bring that experience to bear in determining what is likely to be the outcome of the case thus presented on a summary basis. […]."*

## *Protected Disclosure*

17. Section 43A of the ERA states:

*"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*."

18. Section 43B of the ERA states:

*(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,*

*…*

*(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*.

*[…]*

(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).

19. In *Blackbay Ventures Ltd v Gahir* [2014] ICR 747, EAT**,** HHJ Serota QC at [98] gave employment tribunals the following guidance:

> *"98. It may be helpful if we suggest the approach that should be taken by employment tribunals considering claims by employees for victimisation for having made protected disclosures.*
> *1. Each disclosure should be identified by reference to date and content.*
> *2. The alleged failure or likely failure to comply with a legal obligation, or matter giving rise to the health and safety of an individual having been or likely to be endangered or as the case may be should be identified.*
> *3. The basis on which the disclosure is said to be protected and qualifying should be addressed.*
> *4. Each failure or likely failure should be separately identified.*
> 5. *Save in obvious cases, if a breach of a legal obligation is asserted, the source of the obligation should be identified and capable of verification by reference for example to statute or regulation. It is not sufficient as here for the employment tribunal to simply lump together a number of complaints, some of which may be culpable, but others of which may simply have been references to a check list of legal requirements or do not amount to disclosure of information tending to show breaches of legal obligations. Unless the employment tribunal undertakes this exercise it is impossible to know which failures or likely failures were regarded as culpable and which attracted the act or omission said to be the detriment suffered. If the tribunal adopts a rolled up approach it may not be possible to identify the date when the act or deliberate failure to act occurred as logically that date could not be earlier than the latest of act or deliberate failure to act relied on and it will not be possible for the appeal tribunal to understand whether, how or why the detriment suffered was as a result of any particular disclosure; it is of course proper for an employment tribunal to have regard to the cumulative effect of a number of complaints providing always they have been identified as protected disclosures.*
> *6. The tribunal should then determine whether or not the Claimant had the reasonable belief referred to in section 43B(1) and … whether it was made in the public interest.*
> *7. Where it is alleged that the Claimant has suffered a detriment short of dismissal it is necessary to identify the detriment in question and where relevant the date of the act or deliberate failure to act relied on by the Claimant. This is particularly important in the case of deliberate failures to act because unless the date of a deliberate failure to act can be ascertained by direct evidence the failure of the respondent to act is deemed to take place when the period expired within which he might reasonably have been expected to do the failed act."*

20. In *Williams v Brown* UKEAT/0044/19/OO, EAT**,** HHJ Auerbach explained at [9] that,

> *"9. It is worth restating, as the authorities have done many times, that this definition breaks down into a number of elements. First, there must be a disclosure of information. Secondly, the worker must believe that the disclosure is made in the public interest. Thirdly, if the worker does hold such a belief, it must be reasonably held. Fourthly, the worker must believe that the disclosure tends to show one or more of the matters listed in sub-paragraphs (a) to (f). Fifthly, if the worker does hold such a belief, it must be reasonably held."*

*Disclosure of information*

21. In *Kilraine v London Borough of Wandsworth* [2018] IRLR 846, CA**,** the Court of Appeal held at [31]

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

22. Also in **Kilraine,** the Court of Appeal held at [35]-[36],

> *"35 The question in each case in relation to section 43B(1) (as it stood prior to amendment in 2013) is*

*whether a particular statement or disclosure is a "disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the [matters set out in paragraphs (a) to (f)]". Grammatically, the word "information" has to be read with the qualifying phrase, "which tends to show [etc]" (as, for example, in the present case, information which tends to show "that a person has failed or is likely to fail to comply with any legal obligation to which he is subject"). **In order for a statement or disclosure to be a qualifying disclosure according to this language, it has to have a sufficient factual content and specificity such as is capable of tending to show one of the matters listed in subsection (1)**. The statements in the solicitors' letter in the Cavendish Munro case did not meet that standard.*

*36 Whether an identified statement or disclosure in any particular case does meet that standard will be a matter for evaluative judgment by a tribunal in the light of all the facts of the case. It is a question which is likely to be closely aligned with the other requirement set out in section 43B(1), namely that the worker making the disclosure should have the reasonable belief that the information he discloses does tend to show one of the listed matters. **As explained by Underhill LJ in Chesterton Global Ltd v Nurmohamed [2018] ICR 731, para 8, this has both a subjective and an objective element. If the worker subjectively believes that the information he discloses does tend to show one of the listed matters and the statement or disclosure he makes has a sufficient factual content and specificity such that it is capable of tending to show that listed matter, it is likely that his belief will be a reasonable belief**." (**emphasis added**)*

*Reasonable belief that the information tended to show one of the listed matters*

23. In *Chesterton Global Ltd v Nurmohamed* [2017] IRLR 837**,** the Court of Appeal held at [8],

*"The definition has both a subjective and an objective element: see in particular paras 81—82 of the judgment of Wall LJ. The subjective element is that the worker must believe that the information disclosed tends to show one of the six matters listed in subsection (1). The objective element is that that belief must be reasonable."*

24. In *Simpson v Cantor Fitzgerald Europe* [2020] ICR 236, EAT**,** Choudhury J in the Employment Appeal Tribunal said at [69],

*"The Tribunal is thus bound to consider the content of the disclosure to see if it meets the threshold level of sufficiency in terms of factual content and specificity before it could conclude that the belief was a reasonable one. That is another way of stating that the belief must be based on reasonable grounds. As already stated above, it is not enough merely for the employee to rely upon an assertion of his subjective belief that the information tends to show a breach."*

*Tends to show that a person has failed, is failing or is likely to fail to comply with any legal obligation*

25. In *Fincham v HM Prison Service* UKEAT/0991/01**,** the Employment Appeal Tribunal said at [33],

*"there must in our view be some disclosure which actually identifies, albeit not in strict legal language, the breach of legal obligation on which the employers(sic) is relying."*

26. In *Eiger Securities LLP v Korshunova* 2017 ICR 561, EAT, Slade J held at [46]**,**

*"The identification of the obligation does not have to be detailed or precise but it must be more than a belief that certain actions are wrong. Actions may be considered wrong because they are immoral, undesirable or in breach of guidance without being in breach of a legal obligation."*

*Reasonable belief that the disclosure was in the public interest*

27. In *Chesterton Global Ltd v Nurmohamed* [2017] IRLR 837, the Court of

Appeal provided guidance on the public interest test at [27]-[31]:

*"27 First, and at the risk of stating the obvious, the words added by the 2013 Act fit into the structure of section 43B as expounded in Babula's case [2007] ICR 1026 (see para 8 above).* ***The tribunal thus has to ask (a) whether the worker believed, at the time that he was making it, that the disclosure was in the public interest and (b) whether, if so, that belief was reasonable****.*

*28 Second, and hardly moving much further from the obvious, element (b) in that exercise requires the tribunal to recognise, as in the case of any other reasonableness review, that there may be more than one reasonable view as to whether a particular disclosure was in the public interest; and that is perhaps particularly so given that that question is of its nature so broad-textured. The parties in their oral submissions referred both to the "range of reasonable responses" approach applied in considering whether a dismissal is unfair under Part X of the 1996 Act and to the "Wednesbury approach" (Associated Provincial Picture Houses Ltd v Wednesbury Corpn [1948] 1 KB 223) employed in (some) public law cases. Of course we are in essentially the same territory, but I do not believe that resort to tests formulated in different contexts is helpful.* ***All that matters is that the tribunal should be careful not to substitute its own view of whether the disclosure was in the public interest for that of the worker. That does not mean that it is illegitimate for the tribunal to form its own view on that question, as part of its thinking - that is indeed often difficult to avoid - but only that that view is not as such determinative****.*

*29* ***Third, the necessary belief is simply that the disclosure is in the public interest. The particular reasons why the worker believes that to be so are not of the essence. That means that a disclosure does not cease to qualify simply because the worker seeks, as not uncommonly happens, to justify it after the event by reference to specific matters which the tribunal finds were not in his head at the time he made it****.*** ***Of course, if he cannot give credible reasons for why he thought at the time that the disclosure was in the public interest, that may cast doubt on whether he really thought so at all; but the significance is evidential not substantive. Likewise, in principle a tribunal might find that the particular reasons why the worker believed the disclosure to be in the public interest did not reasonably justify his belief, but nevertheless find it to have been reasonable for different reasons which he had not articulated to himself at the time: all that matters is that his (subjective) belief was (objectively) reasonable****.*

*30 Fourth, while the worker must have a genuine (and reasonable) belief that the disclosure is in the public interest, that does not have to be his or her predominant motive in making it: otherwise, as pointed out at para 17 above, the new sections 49(6A) and 103(6A) would have no role.* ***I am inclined to think that the belief does not in fact have to form any part of the worker's motivation - the phrase "in the belief" is not the same as "motivated by the belief"; but it is hard to see that the point will arise in practice, since where a worker believes that a disclosure is in the public interest it would be odd if that did not form at least some part of their motivation in making it****.*

*31 Finally by way of preliminary, although this appeal gives rise to a particular question which I address below,* ***I do not think there is much value in trying to provide any general gloss on the phrase "in the public interest". Parliament has chosen not to define it, and the intention must have been to leave it to employment tribunals to apply it as a matter of educated impression.*** *Although Mr Reade in his skeleton argument referred to authority on the Reynolds defence (Reynolds v Times Newspapers Ltd [2001] 2 AC 127) in defamation and to the Charity Commission's guidance on the meaning of the term "public benefits" in the Charities Act 2011, the contexts there are completely different. The relevant context here is the legislative history explained at paras 10—13 above.* ***That clearly establishes that the essential distinction is between disclosures which serve the private or personal interest of the worker making the disclosure and those that serve a wider interest. This seems to have been essentially the approach taken by the tribunal at para 147 of its reasons." (emphasis added)***

## Analysis and Conclusions

28. At the start of the hearing, I asked the claimant whether she had had a chance to read through and consider Mr Wilkinson's skeleton, which outlined the factual history, the relevant legal principles (which I said I was in agreement with) and the respondent's position why it says the IR Application must be dismissed. In particular, at paragraph 16 of the skeleton Mr Wilkinson submitted that:

*"16. None of the requisite elements of a section 103A claim are admitted, but for the purposes of this application the Respondent concentrates on three aspects: whether there was a disclosure of information;*

*public interest; and causation. It is submitted that the Claimant is unlikely to succeed on establishing any of these aspects, still less have a 'significantly higher degree of likelihood'*

29. Mr Wilkinson's skeleton then went on to explain why the claimant was unlikely to succeed on these three aspects, and in particular on causation, that is because the contemporaneous documents showed that the decision to dismiss the claimant had been taken before she sent her PD Email.

30. The claimant said that she had read the skeleton. I then asked her to tell me why, in the light of those evidence and submissions, I should still find that there was a significant degree of likelihood of her succeeding at the trial on these aspects.

31. The claimant said that the timestamp on the WhatsApp message from Sunitha Moodley to Amie Harvey had been "*manipulated*" by the respondent, and that the document showing that the document entitled "*Zeena Teji letter 9 February 2024*" had been created before she sent the PD Email was not a proof that that document was actually the letter of termination, she had received later on that day.

32. The claimant also argued that there was no reason to dismiss her, because the person she had been covering for had not returned from maternity leave and was not due to come back for at least another week, and the urgency with which she was dismissed just a few hours after sending her PD Email meant that "*something strange was going on*".

33. I find that the claimant does not have "a pretty good chance" to succeed on her s.103A claim. In fact, I find she has a pretty poor chance.

34. I reject the claimant's submission that the respondent has fabricated the evidence for this hearing by "*manipulating*" the timestamp on the WhatsApp message or by presenting a document showing the document properties of the termination letter, when in fact these were document properties of some other document. I find this argument was no more than a desperate attempt by the claimant to escape the inevitable conclusion that her "whistleblowing" claim has very serious problems on causation.

35. The respondent is represented in these proceedings by a firm of solicitors and counsel. The allegation that they have fabricated the evidence (or knowingly allowed their client to do so), thus not only breaching their professional duties, but also potentially committing a criminal offence of perverting the course of justice, is baseless and by reason of its hollowness - preposterous. Other than dropping out of the blue this very serious allegation, the claimant presented no evidence whatsoever to substantiate it.

36. In short, it does not appear to me that it is "*likely*[3]" that on determining the claimant's s.103A claim the tribunal will find that the claimant was dismissed for

[3] Here and later in the Judgment I use the term "likely" within the meaning of s.129 ERA, as clarified by the case law referred to in the Law section above.

the reason of making a protected disclosure in her PD Email, because it is not "*likely*" that the tribunal will find that the claimant sent the PD Email before the decision to dismiss her had been taken by the respondent. This conclusion is sufficient for me to dismiss the claimant's IR Application.

37. However, for the sake of completeness, I also find that the claimant does not have "a pretty good chance" to show that the PD Email contains a protected disclosure. I say that for the following reasons.

38. In my judgment, on a fair reading of the PD Email, it is not "*likely*" that the tribunal will find that it contains "*sufficient factual content and specificity such as is capable of tending to show….*" (see paragraph 22 above) the relevant failure.

39. The PD Email contains allegations of race discrimination and of HR department in London "*acting unlawfully and rather recklessly*". It also contains the claimant's "*suspicions*" of a concealment. However, in my view, the PD Email lacks any factual content to convey information about the alleged non-compliance with a legal obligation or about a deliberate concealment of such non-compliance.

40. All allegations in the PD Email are generic and lack specificity for the intended readers (or for an average reasonably informed reader) to understand what it is the claimant says the respondent did or did not do in breach of a legal obligation or to deliberately conceal the breach. The claimant herself says in the PD Email that she wrote it "*[w]ithout going into too much detail …*".

41. Accordingly, in my judgment, it is not "*likely*" that the tribunal will find that the PD Email discloses "*information which […] tends to show*" (see paragraph 18 above) the relevant failure.

42. From this conclusion, it logically follows that the claimant is not "*likely*" to be able to show that in her reasonable belief the information "*tends to show*" the relevant failure. That is because, although the PD Email contains references to various laws, it does not contain sufficient factual information about what was done, or said, or not done by the respondent, which, in the claimant's reasonable belief, "*tends to show*" that the respondent "*has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject*" arising from those laws or "*has been, is being or is likely to be deliberately*" concealing the same.

43. Finally, I find that it is not "*likely*" that the claimant will be able to show that at the time of sending the PD Email she believed that she was disclosing information in the public interest and that belief was reasonable.

44. Despite what can be read as an implied accusation of "racism" in the respondent's London office, in my view, it is not "*likely*" that on a fair reading of the PD Email, the tribunal will find that in sending it the claimant had a wider interest in mind than purely her personal interest, namely to find a satisfactory

resolution of her situation at work. In other words, it is not "*likely*" that the tribunal will find that it was written and sent by the claimant other than to serve her personal and private interest, and no more than that.

45. Reading the PD Email from top to bottom, and especially how the claimant ends it, the inescapable impression is that the whole purpose of the claimant's sending the PD Email was to get the respondent to engage in "*offline*" and "*without prejudice*" discussions with her, to resolve her personal issues at work, or to put it bluntly - to pay her off to go quietly.

46. Hence, the references to employment tribunal claims being heard in public, the possibility of her talking to the press, the involvement of her union and lawyers, her first claim and "*the strength of it*", the claimant's bringing a further whistleblowing complaint if the respondent initiates a disciplinary action against her, with "*huge emphasis*" on it, her submitting a subject access request, and being "*in touch with the relevant authorities*".

47. In other words, to induce the respondent to engage in "without prejudice" discussions, the claimant threatens the respondent's top executives with damaging revelations and consequences, if the respondent decides not to engage with her, but without providing any real factual substance to her allegations.

48. Therefore, even if it will be found by the tribunal that the PD Email did contain information which tends to show the relevant failure, I find, it is not "*likely*" that the tribunal will find that at the time of making her disclosure, the claimant reasonably believed that she was disclosing such information in the public interest.

49. I do bear in mind that I evaluate the content of the PD Email and make my conclusions on the likelihood of the claimant being able to show that it contains a protected disclosure without examining all possible relevant evidence, and in particular, without hearing the claimant's oral evidence. As noted above (see paragraph 16), my task is "*very much an impressionistic*". It is possible, if this claim goes ahead, the tribunal hearing it on the merits might, having examined all the relevant evidence, take a different view and come to opposite conclusions. However, for the purposes of the IR Application, I find that the claimant's case on all these elements does not come anywhere close to the "a pretty good chance" threshold.

50. For all these reasons, the IR Application fails and is dismissed.

51. At the hearing, the claimant told me that she was going to go ahead with this claim regardless of the outcome of the IR Application. It is, of course, her right to do so, however, in my view, she would do good to herself by consulting a solicitor or another employment law specialist before deciding on her next step.

**Employment Judge Klimov**

20 April 2024

Sent to the parties on:

8 May 2024

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For the Tribunals Office

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**Recording and Transcription**

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, and accompanying Guidance, which can be found here:

https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/