Case Number: 2202339/2020

EMPLOYMENT TRIBUNALS

BETWEEN

Claimant	**and**	**Respondents**
Mr R Sangiuliano		**(1) JCI Capital Ltd** **(2) Mr D Pinci** **(3) Mr D Clasadonte** **(4) Mr M Bernardeschi** **(5) Mr G Torzi**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

SITTING AT: London Central **ON: 3-14 February 2025**

BEFORE: Employment Judge A M Snelson **MEMBERS: Ms S Campbell**
Mr J Carroll

On hearing Mr N Brockley, counsel, on behalf of the Claimant and Mr N de Silva KC, leading counsel, on behalf of the Second, Third and Fourth Respondents;

And the First and Fifth Respondents having taken no part in the hearing (their claims having been determined at an earlier hearing);

The Tribunal unanimously determines that:

(1) The Claimant's complaints against the Second, Third and Fourth Respondents of detrimental treatment under the Employment Rights Act 1996, ss 47B and 48(1A) are not well-founded and are accordingly dismissed.

(2) The Claimant is ordered to pay the entirety of the costs of the Second, Third and Fourth Respondents save for those arising out of their application for the claim to be struck out (which application was refused at a public preliminary hearing on 12-13 June 2024), such costs to be subject to detailed assessment on the standard basis up to and including 24 November 2023 and on the indemnity basis from 25 November 2023 onwards.

(3) For the purposes of the detailed assessment referred to in para (2) above, the following agreed directions shall have effect:

  (i) The parties shall endeavour to reach agreement on the sum payable pursuant to para (2) above and, no later than 14 March 2025, notify the Tribunal whether they have done so. In the event that they fail to

reach agreement by that date, the directions under sub-paras (ii) to (v) below shall apply.

(ii) No later than 11 April 2025 the Second, Third and Fourth Respondents shall serve on the Claimant's representative and file with the Tribunal its bill of costs and supporting documents.

(iii) No later than 9 May 2025, the Claimant shall serve on the Second, Third and Fourth Respondents' representative his points of dispute.

(iv) No later than 23 May 2025 the Second, Third and Fourth Respondents shall serve on the Claimant's representative and file with the Tribunal their replies to the Claimant's points of dispute.

(v) A detailed assessment hearing shall be held at Victory House, London WC2B 6EX before an Employment Judge authorised to conduct detailed assessments on the first available date after 20 June 2025, with two sitting days allocated.

REASONS

Introduction

1 JCI Capital Ltd ('JCI Capital'), the First Respondent, was at all relevant times a company trading in the field of financial services, authorised by the Financial Conduct Authority ('FCA') in the UK and CONSOB (Commissione Nazionale per la Società e la Borsa) in Italy to provide investment services. Among other activities it managed three, and after November 2019 four, investment funds and served five wealth management clients. In April 2021 it lost its authority to carry out regulated activities and, in June 2023, it was compulsorily struck off the register of companies.

2 Mr Daniele Pinci, the Second Respondent, was at all relevant times a statutory director of JCI Capital and its CEO. In July 2020 he ceased to be a director and relinquished all operational involvement in the company.

3 Mr Domenico Clasadonte, the Third Respondent, was employed by JCI Capital between August 2018 and March 2020 as Director - Compliance Oversight and Money Laundering Reporting Officer. He was not a statutory director.

4 Mr Marco Bernardeschi, the Fourth Respondent, was from mid-2018 the fund manager of an investment fund known as the Toro Fund, operating through his own company. From late 2018 he was involved in discussions with leading figures in JCI Capital with a view to the latter becoming the investment manager of the Toro Fund and him joining the organisation, not merely as the manager of that fund but as the company's Head of Asset Management. By early November 2019 these plans had advanced considerably. JCI Capital had become the investment manager of the Toro Fund and Mr Bernardeschi was playing an active part in planning the company's future - so much so that one issue debated before us was whether, despite the fact that no contract of employment had been executed, he had by the time of the material events become an employee of JCI Capital or alternatively was acting as its agent.

5 Mr Gianluigi Torzi, the Fifth Respondent, joined JCI Capital in January 2019 and swiftly built up a controlling shareholding in the company. His involvement with it seems to have ended in 2020 or 2021.

6 The Claimant, Mr Riccardo Sangiuliano, was continuously employed by JCI Capital from 2 May 2019 until 18 January 2020, initially in Milan, working under an Italian contract, and, from 2 September 2019, in London under a UK contract. His job title in London was Portfolio Manager. The employment ended with dismissal on notice on the stated ground of redundancy.

7 For convenience we will refer to the Claimant and the Second to Fifth Respondents individually by name.

8 By a claim form presented on 17 April 2020 Mr Sangiuliano brought complaints against the five Respondents under the 'whistle-blowing' provisions, alleging automatically unfair dismissal and detrimental treatment, together with certain money claims.

9 In circumstances which we will explain, the matter ultimately came before us on 3 February 2025 in the form of a final hearing held face-to-face with 10 sitting days allocated, to determine the Claimant's complaints of detrimental treatment on 'whistle-blowing' grounds against Mr Pinci, Mr Clasadonte and Mr Bernardeschi only (the claims against JCI Capital and Mr Torzi having already been determined by judgments in default of response and not set aside). The Claimant was represented by Mr Nigel Brockley, counsel, and the three Respondents just mentioned[1], by Mr Niran de Silva KC. We are grateful to both for their assistance.

10 On day one, before we adjourned to read the statements and key documents, three preliminary issues were raised. The first was Mr Brockley's application for the reasons given for deposit orders made against Mr Sangiuliano on 21 November 2023 to be 'sealed' and not read by the Tribunal before its decision on the claims was delivered. We refused the application for reasons given orally. In summary, we pointed out that there was nothing in the Tribunal's procedural rules directing the suppression of reasons for deposit orders and there was no practice to that effect in the London Central region. Moreover, EJ Keogh's reasons for her decision on the deposit order applications formed part of her judgment on the parallel strike-out application and constituted an essential element of the case management background which the Tribunal needed to understand in order to do justice to the case. But we did assure Mr Brockley that we would arrive at our own conclusions on the evidence and would attach limited weight to EJ Keogh's analysis given that it was necessarily based not on evidence but on a preliminary assessment on the documents alone. The second matter was Mr de Silva's application to add certain documents to the bundle. To this Mr Brockley sensibly pressed no objection and we granted the application accordingly. Thirdly, Mr de Silva asked for permission to adduce the expert evidence of Mr Naghdi, a computer forensics specialist. Again, there was no objection from Mr Brockley and, for brief reasons given, we granted permission.

[1] All references hereafter to the Respondents are, save where otherwise stated, to the three Respondents represented by Mr de Silva KC.

11 Having heard evidence and submissions on liability, we took time for private deliberations and, on the morning of day 10 of the allocation, delivered an oral decision dismissing the complaints on the ground that there had been no protected disclosure and the claims accordingly fell at the first hurdle. We then heard a costs application on behalf of the Respondents which we granted in the terms of our judgment above, para (2).

12 These reasons are given in written form pursuant to an oral request made on behalf of the Claimant at the hearing.

The Procedural History

13 The dispute has a long and unusual case management history, from which what follows extracts only what is needed to explain our decision.

(1) Consistent with the letter before claim, the claim form alleged that Mr Sangiuliano had made a protected disclosure ('PD') to Mr Pinci, Mr Clasadonte and Mr Torzi at about 3 p.m. on 21 November 2019 to the effect that he had learned that Mr Pinci had that day sent an instruction to Mr Federico Ponzio, a junior analyst, to invest in the Toro Fund on behalf of Mr Sangiuliano's clients; that the fund was a 'high risk' product and not compatible with the clients' investment profiles and that accordingly the instruction had been against the law, JCI Capital's regulatory obligations and its obligations to its clients.
(2) No response form was presented within the prescribed period.
(3) On 28 October 2021 EJ Walker refused an application on behalf of JCI Capital and Mr Torzi for permission to serve response forms out of time. She also listed an (uncontested) liability hearing for 9 December 2021.
(4) On 16 November 2021 Mr Ponzio sent to Mr Sangiuliano a copy of the email of 21 November 2019 from Mr Pinci to him, timed at 16:11, on which Mr Sangiuliano had relied as containing the instruction which formed the basis for his alleged PD ('the 16:11 email').
(5) On 24 November 2021 Mr Sangiuliano produced a witness statement in his own name for the purposes of the forthcoming liability hearing. In this document, he gave an account of the alleged protected disclosure which differed significantly from that in the claim form. In particular, he stated that, in a meeting at around 3 p.m. on 21 November 2019, Mr Pinci, Mr Clasadonte and Mr Torzi had made clear to him that there was an 'expectation' that he would purchase assets in the Toro Fund for his clients and that he replied that doing so would be illegal for a number of reasons, in particular the client's mandate, 'trustee instructions', risk management valuations and FCA rules about the size of the relevant funds. In the same witness statement, Mr Sangiuliano referred to the 16:11 email, seemingly implying that it was sent as a result of the stance he had taken at the meeting. As we will explain, Mr Sangiuliano's account of events was to change a long time later, when it was brought home to him that the timing on the email referred to Italian time, which was one hour ahead of UK time.
(6) At an uncontested hearing on 9 and 14 December 2021 EJ Elliott held that, in default of any response, Mr Sangiuliano's claims succeeded save for one

in respect of an airline ticket priced at a little over £100. She listed a remedies hearing.

(7) By a reserved judgment following uncontested remedies hearings on 11 April 2022 and 8 July 2022, EJ Elliott gave judgment against all five Respondents for £255,103.28. In her reasons she did not remark on the discrepancy between the pleaded case and the witness statement of 24 November 2021.

(8) On 23 June 2023 EJ Elliott set aside the judgments against Mr Pinci, Mr Clasadonte and Mr Barnardeschi and extended time for them to present response forms. The judgments against JCI Capital and Mr Torzi were unaffected.

(9) On 21 November 2023 EJ Keogh heard applications on behalf of Mr Pinci, Mr Clasadonte and Mr Bernardeschi for the claims against them to be struck out as having no reasonable prospect of success or, in the alternative, to be made the subject of deposit orders as having little reasonable prospect of success. Having heard the matter fully argued, she refused to make a striking-out order, although she did remark that Mr Sangiuliano had managed to do only 'just enough' to fend off the application on the critical question of whether there had been a protected disclosure. She went on to make separate deposit orders of £1,000 in respect of the allegations (a) that Mr Sangiuliano had made a protected disclosure on 21 November 2019 and (b) that Mr Bernardeschi had been an employee, worker or agent of JCI Capital in such a way as to be legally responsible for any relevant detriment. In addition, the judge made a further deposit order of £500 in respect of the allegation that the redundancy notice dated 21 November 2019 (on the metadata of which the Respondents relied as evidencing a decision to dismiss Mr Sangiuliano taken before the alleged protected disclosure) had been given because of a protected disclosure.

(10) On 19 January 2024 Mr Sangiuliano applied to make various amendments to his claim form. In particular, he sought permission to replace the pleaded case (grounds of claim, para 18) as to the particular disclosure relied upon with the account given in the statement of 24 November 2021.

(11) On 19 April 2024 Mr Sangiuliano filed a further witness statement to address the proposed amendments. This included new information about the alleged PD, including the claim that at least one of the Respondents had talked about 'wanting to squeeze clients to make money through the loss-making [Toro] fund'. Mr Sangiuliano also stated, for the first time, that the meeting had commenced at 'around 3.11 p.m.'

(12) Mr Pinci then responded to the amendment application in his statement of 22 April 2024, pointing out that the 16:11 email had been sent at 16:11 hrs, Italian time, 15:11 UK time. He set out compelling grounds for why that must be so. Before us there was no attempt by or on behalf of Mr Sangiuliano to argue otherwise.

(13) This drew a swift response from Mr Sangiuliano in the form of a further witness statement, dated 24 April 2024, asserting that the meeting on 21 November 2019 had started at or around 3 p.m. and adding 'for the avoidance of doubt' the brand new information (nearly four-and-a-half years after the material events) that it had been a short meeting, lasting no more than about 10 minutes.

(14) The amendment application came before EJ Tinnion on 8 May 2024. For reasons explained in writing, he granted permission for some amendments but not others. In particular, he allowed amendments concerning the *circumstances* in which the alleged PD had been made (grounds of claim, para 15) but explicitly refused permission to amend the *substance* of the pleading in which the alleged disclosure itself is set out (grounds of claim, para 18).

The Legal Framework

14 By the Employment Rights Act 1996 ('the 1996 Act'), s43B, it is stipulated (so far as relevant) that:

> **(1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is 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 …**

15 Qualifying disclosures are protected if made in accordance with ss43C to 43H (see s43A). By s43C, it is provided that:

> **(1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure –**
>
> **(a) to his employer …**

16 The requirement for a disclosure of 'information' was considered by Slade J sitting in the EAT in *Cavendish Munro Professional Risk Management Ltd v Geduld* [2010] ICR 325. She equated 'information' with 'facts', observing that mere 'allegations' did not fall within the statutory protection. This analysis was qualified in *Kilraine v London Borough of Wandsworth* [2018] ICR 1850 CA, in which it was pointed out that the legislation posited no rigid dichotomy between facts and allegations and that 'information' may comprise both: a disclosure which makes an allegation will be protected provided that it has sufficient factual content and specificity.

17 By the 1996 Act, s47B(1) and (1A) a worker has the right not to suffer a detriment done by his/her employer or another worker of the employer in the course of employment or by an agent of the employer with the employer's authority, 'on the ground that' he/she has made a PD.

18 By the 1996 Act, s48(1A) the Tribunal has jurisdiction to consider a complaint under s47B.

19 A claim may be pursued against a co-worker for a 'whistle-blowing' detriment in the form of a dismissal (*Timis v Osipov* [2019] ICR 655 CA).

The Claims and Issues

20 The parties were agreed that the issue as to whether any disclosure qualified for protection under the 1996 Act turned on the following questions:

(1) Did Mr Sangiuliano disclose information to the Respondents, or any of them, on 21 November 2019?
(2) If so, did Mr Sangiuliano reasonably believe that the information disclosed tended to show that a person had failed, was failing or was likely to fail to comply with a legal obligation to which he/she/it was subject?
(3) If so, did Mr Sangiuliano reasonably believe that his disclosures were made in the public interest?

21 So much for the detailed reasoning which the legislation demands. But the real dispute before us can be summarised in much cruder terms. The stark factual conflict at the heart of this case is over whether Mr Sangiuliano ever made a relevant disclosure of anything. His case as put before us which, as we have noted, had undergone a number of adjustments since the proceedings were launched in 2020, was that, in a meeting with Mr Pinci, Mr Clasadonte and Mr Torzi at about 5 p.m. on 21 November 2021, he had made a PD in the form of a complaint about what he characterised as an instruction by Mr Pinci to Mr Ponzi in the 16:11 email to purchase assets in the Toro Fund on behalf of JCI Capital's clients, contending that such an investment would be contrary to their interests and contrary to law. This was the only PD relied upon. But he prayed in aid a further conversation said to have taken place at about 3 p.m. the same day in which, it was alleged, Mr Pinci, Mr Clasadonte and Mr Torzi told him of a plan to 'squeeze' clients by making investments on their behalf in the Toro Fund. Here, no PD was claimed but Mr Sangiuliano relied on the alleged conversation as evidencing a corrupt strategy behind the 16:11 email sent (on his case) within a minute or two of the meeting ending.

22 Mr Pinci and Mr Clasadonte told us that there had been no meeting or conversation at or around 3 p.m. or 5 p.m. on 21 November 2019. Nor had there been conversations of the kind alleged by Mr Sangiuliano at any other time on that date (or any other date). On their account, there *had* been a meeting with the Claimant much earlier on 21 November 2019 (probably before midday), but it had been directed to an entirely different subject, namely Mr Sangiuliano's departure from the company. They said that this meeting had been exceedingly brief. Very simply, they had attempted to present him with a letter dismissing him for redundancy and he had refused to accept it.

23 Mr Sangiuliano relied on three alleged detriments which, he claimed, had been applied to him because he had made a PD. These were recorded in the agreed list of issues substantially as follows:

(1) Being given notice of redundancy on 22 November 2019;
(2) Being invited to a disciplinary meeting on 26 November 2019;
(3) Being denied a share of profits for the periods May to August 2019 and September 2019 to January 2020.

We set out the pleaded detriments for completeness only. Given our finding on the central question of whether Mr Sangiuliano made a protected disclosure, the task of making findings on the alleged detriments and the reasons for them does not arise.

Oral Evidence and Documents

24 We heard oral evidence from Mr Sangiuliano and his supporting witness, Mr Federico Ponzi, who was employed by JCI Capital as a junior Portfolio Analyst between April and December 2019. On behalf of the Respondents, we heard from Mr Pinci, Mr Clasadonte and Mr Bernardeschi, as well as Mr Joseph Naghdi, a specialist in computer forensics who, with the permission of the Tribunal, was called as an expert witness.

25 In addition to the evidence of witnesses we read the documents to which we were referred in the bundle of over 2,000 pages.

26 We also had the benefit of a chronology and cast list and the comprehensive opening skeleton and written closing submissions of Mr de Silva.[2]

Some Contextual Facts

27 We set out here brief findings on certain background and circumstantial matters. But we reserve to our analysis and conclusions below our explicit primary and secondary findings on the core dispute over the alleged meetings at about 3 p.m. and 5 p.m. on 21 November 2019.

The 16:11 email and related matters

28 JCI Capital provided services to three principal clients. The assets of each client were held by its depositary bank. With one client, the company had a purely advisory agreement. With the other two, it had powers to give executory instructions to the depositary bank. However, in all three cases, it was the duty of the depositary bank to determine whether any action (in the form of advice or an instruction) was consistent with the investment terms agreed between JCI Capital and the client.

29 The 16:11 email was written in Italian. It was timed at 16:11 hrs but, as already noted, that was Italian time, the sender and recipient both being in Italy when it was sent. In his message (the translation of which was agreed), Mr Pinci wrote:

> **'We will do some subscriptions for the Toro fund in the managed accounts of [names of institutions supplied] … start to write to the depositary banks … in order to open the accounts …'**

30 Although he told us that he found the email unusual, Mr Ponzio wrote at once to the depositary banks of the relevant clients. Two of them responded very

[2] In introducing the parties and reciting uncontroversial, contextual facts, we have gratefully borrowed from Mr de Silva's excellent documents.

promptly pointing out that an investment in the Toro fund would be outside agreed investment guidelines because it had assets under management ('AUM') with a value below €100 million. The third wrote requesting the opening balance of the Toro fund. It seems that no investment in the Toro fund resulted from Mr Pinci's email.

31 Mr Pinci told us in his oral evidence that he had simply overlooked the minimum AUM stipulation when writing the 16:11 email. We accept that evidence.[3]

32 Mr Sangiuliano described the Toro fund as 'high risk'. In fact, it was explicitly designated in its key information document as 'medium risk', with a risk rating of 4 in the 1-7 scale.

The Claimant's position and prospects on 21 November 2019

33 Several contemporary documents generated in October 2019 and thereafter attest to Mr Torzi, Mr Bernardeschi and others doubting the value of retaining Mr Sangiuliano as an employee of JCI Capital. He had been brought to London in the hope that he would bring fresh clients to the company. None had materialised. Moreover, the planned recruitment of Mr Bernardeschi made the case for retaining him all the harder to sustain. A board minute of 15 October 2019 noted that, in view of his anticipated arrival, the company was contemplating redundancies of (among others) portfolio management posts. As we have said, Mr Sangiuliano held the position of Portfolio Manager. On 17 November 2019 Mr Bernardeschi wrote to Mr Torzi setting out his thoughts following a review of JCI Capital's business. His message included:

> **I confirm that Sangiuliano's role is redundant and costly in economic terms … it is a waste to burden the company with an annual cost of €150,000 for a resource managing 4 accounts that already existed when he came …**

Later the same day, Mr Torzi sent an email to Mr Clasadonte:

> **… if you agree, I suggest you dismiss Sangiuliano … tomorrow morning**

34 In the event, a meeting took place between Mr Torzi, Mr Clasadonte and Mr Sangiuliano on 19 November 2019. We accept Mr Clasadonte's evidence about what was said. Mr Torzi stated that he intended to dismiss Mr Sangiuliano, who replied to the effect that he wished to leave anyway and intended to go by the end of the year. The essence of the exchange was captured in an email sent to Mr Sangiuliano the same day referring to the meeting and asking for confirmation of '… your decision to leave JCI as of 31/12/2019', although this may have elevated a statement of intent into a categorical decision. Mr Sangiuliano did not respond to the message, much less challenge its content.

[3] As we explain below, Mr Sangiuliano's contrary case, that Mr Pinci was hoping to smuggle inappropriate transactions past three depositary banks is not, to our minds, plausible. (It may be superfluous to add that it was no part of Mr Sangiuliano's case to argue that the 16:11 email proposed, or was ever seen by him as proposing, a breach of a legal obligation owing to the AUM investment guideline.)

35 On 21 November 2019 at 10:44 a.m. Mr Clasadonte sent a chasing email to Mr Sangiuliano, referring to the message of two days before. Again, Mr Sangiuliano did not reply.

36 A letter to Mr Sangiuliano giving notice of dismissal to expire on 18 January 2020 on the stated ground of redundancy was prepared in the name of Mr Clasadonte. According to its metdata, it was printed on the morning of 21 November 2019.

37 Mr Pinci booked return flights to and from London for 21 November. His evidence was that the purpose of the visit (agreed in advance with Mr Torzi and Mr Clasadonte) was to meet Mr Sangiuliano and dismiss him. Mr Pinci also gave unchallenged evidence that a one-day visit to London was, for him, wholly exceptional. He regularly visited the London office but his normal practice was to spend a week at a time there.

38 On 22 November 2019 Mr Clasadonte gave the letter of dismissal to Mr Sangiuliano and confirmed the dismissal by an email of the same date.

Events after 21 November 2019

39 On 21 or 22 November 2019 Mr Pinci learned from an employee of a company which provided introducer services to JCI Capital that Mr Sangiuliano had contacted him, reporting that he had been dismissed and passing disparaging comments about JCI Capital. Following discussion between Mr Pinci and Mr Clasadonte an allegation of breach of confidence was raised against Mr Sangiuliano and after some delay a disciplinary hearing was arranged for 16 January 2020. In the event, the disciplinary process was not completed, no doubt because Mr Sangiuliano's notice period was to expire only two days later.

Analysis and Conclusions

The pleading point

40 We start our analysis with this question: What is the case before us? Our uncertainty arises from the repeated changes which Mr Sangiuliano's case has undergone. We have already traced the case management history. The last chapter of relevance was the decision of Employment Judge Tinnion to grant permission to amend the grounds of claim, para 15 but refuse permission to amend para 18. The effect was that Mr Sangiuliano was left with his original pleaded case that, at a meeting with Mr Pinci, Mr Clasadonte and Mr Torzi on 21 November 2019 he had referred to the email from Mr Pinci to Mr Ponzio of the same date, complaining that it contained an unlawful instruction. This was the alleged disclosure made, on his case as presented to us, at the 5 p.m. meeting. It was not said that any PD was made at the 3 p.m. meeting and reliance was placed on that encounter only for evidential support. We have concluded that the case so put was consistent with the 'pleadings'. The central alleged disclosure of an instruction by Mr Pinci to Mr Torzi which was not in keeping with the clients' low risk profiles, contrary to the regulatory regime and against the law, stood. Changes of detail (in particular the timing of the relevant meeting and the new assertion that

the relevant meeting was the second of two held between the same people on the same afternoon) did not, in our view, take the complaint advanced outside the scope of the pleaded case. Accordingly, we do not accept Mr de Silva's submission, which he did not press with great vigour, that Mr Sangiuliano necessarily loses on a pleading ground alone. Accordingly, the dispute turns on our findings on the evidence.

Credibility

41 We have found this a most troubling case. It is not one in which differences in accounts can be put down to ambiguous communications, misunderstandings, exaggeration or anything of the kind. One side or the other is knowingly and deliberately putting forward a completely false story - making up a case. It is overwhelmingly clear to us that that party is Mr Sangiuliano. The key considerations for us have been the following: first, the extent to which the evidence given was consistent (or inconsistent) with contemporary documents; second, the internal consistency of the case advanced; and third, the inherent plausibility of the case advanced. We focus on the threshold issue of whether Mr Sangiuliano made a disclosure at all. In preferring the Respondents' case on that question we have had regard to seven main factors, which we will consider in turn.

42 The first is the absence of any contemporary allegation of a PD or of consequential detriment. On Mr Sangiuliano's case he was shocked by what he learned on 21 November 2019 at the 3 p.m. meeting about the expectation for him to purchase assets in the Toro Fund, action which, on his case, he believed would be contrary to law. He also claimed to be shocked, for the same reasons, by the 16:11 email from Mr Pinci to Mr Ponzi, which (on the final iteration of his case) he learned about after the meeting at around 3 p.m. and formed the basis of his principled objection at the alleged second meeting at about 5 p.m. But no written complaint was made then or in numerous communications thereafter. The first time the alleged PD appears in the documents is in the letter before claim over four months after the events on which the claim purports to rely.

43 The second factor is an extension of the first. Not only is there a striking absence of any contemporary *complaint*, there is also a complete absence of any contemporary *reference* or *allusion* (by Mr Sangiuliano or anyone else) to any disclosure of information on 21 November 2019 or even to *anything* of significance having been said at a meeting on that day. In this connection we think it particularly telling that in WhatsApp messages to Mr Ponzi within hours of the alleged PD he wrote in outraged terms about his access to Bloomberg (real-time) messaging being cut off, but there is not even a passing reference to the much more serious matter of a 'whistle-blowing' event.

44 Third, we attach considerable significance to the repeated alterations in Mr Sangiuliano's case. We will limit ourselves to three of the most spectacular examples. The first took place on 24 November 2021 (two years after the material events) when, in his witness statement prepared for the liability hearing, he said for the first time that the instruction from Mr Pinci had been to him and not to Mr Ponzi. This dramatic change of direction was accompanied by the unveiling of a brand-new revelation about a second meeting on 21 November 2019, at 5 p.m. The second major change of direction occurred on 19 April 2024, almost four and a half

years after the material events, when Mr Sangiuliano first claimed that the earlier meeting on 21 November 2019 had started at 3.11 p.m. precisely and introduced the new allegation of a plan to 'squeeze' clients. The third notable adjustment came five days later, when Mr Sangiuliano sought to move the start of the meeting back to 3.00 p.m. and limit its duration to no more than ten minutes. This was transparently a desperate attempt to keep his case coherent in light of the damaging revelation that the 16:11 email had been time-recorded by reference to Italian time. We have mentioned three changes of case. There were many others, but it would not be proportionate to list them all here.

45 Fourth, we have had regard to implausible or overtly false claims and explanations advanced by Mr Sangiuliano or the absence of explanations for matters which required explanation. There are many examples, of which we will take only a small selection. First, he sought to explain away the differences between his claim as now advanced and the letter before claim (and original particulars) on the basis that he had he did not read or examine those documents before approving them. We do not believe that evidence, which he prays in support of his unattractive mission to blame his former lawyers for the dramatically inconsistent narrative put forward on his behalf. Second we think it significant that Mr Sangiuliano did not respond to Mr Clasadonte's emails of 19 and 21 November referring to his alleged agreement to leave by the end of the year. When eventually prevailed upon to answer questions about this reticence, he claimed that he had been too busy with his workplace responsibilities to attend to emails asking him about his future within the organisation. We reject that evidence as palpably absurd. Third, we reject his equally absurd theory of a dishonest plan to slip investments into the Toro Fund past the depository banks, presumably meaning that Mr Pinci and his colleagues harboured the hope that the depository banks would not take the elementary precaution of checking on the fund's AUM status before countenancing the proposed investment. We can only regard that evidence (from someone with long experience in the financial services industry) as manifestly insincere. Fourth, we were presented with the wild allegation (or perhaps suggestion) that the redundancy letter of 21 November 2019 had been manufactured in order to misrepresent the date of its creation. There was simply no evidential foundation to support that exceedingly serious charge (or suggestion). (The fact that Mr Naghdi accepted that (although the metadata evidence had not been suspect) one could not rule out the theoretical possibility that the settings of the computer used to generate the letter *might* have been adjusted to override the 'default' automatic time recording mechanism was, to state the obvious, no warrant for the accusation (or suggestion) that anyone had in fact resorted to criminal conduct of that kind.)

46 Fifth we were presented with demonstrably false and misleading evidence by Mr Sangiuliano concerning the Toro Fund. He was prepared to say that it was loss-making at a time when it was not loss-making. He called it 'high risk' but that was belied by straightforward documents in front of us (to which we have already referred) which showed that the fund was graded at 4 in the 1 to 7 risk scale. He told us that funds with assets under management below €100 million would be considered high risk but there was no possible basis for that assertion. Finally his evidence that Credit Suisse, which he referred to as 'JCI's bankers', prevented a proposed investment because it was high risk' was transparently false on two

grounds: (a) Credit Suisse were not JCI's Capital's bankers, they were the depository bank of one of its clients; and (b) it is simply false to say that the investment was blocked on account of it being high risk: it was blocked because the guidelines prescribed a minimum AUM figure of €100 million and the Toro Fund fell about 50% short of that.

47 Sixth, Mr Sangiuliano's case was not assisted by his decision to enlist the support of Mr Ponzi as a witness. Since he did not, and could not, give evidence directly on the central issue of whether any PD was made, the election to call him seems surprising. At all events, he presented as an entirely unreliable witness and cut a particularly hapless figure when answering questions about a passage in his witness statement concerning a supposed telephone conversation between him and a woman called Britel Radouane. The person he was attempting to refer to is in fact a man called Radouane Britel. We were driven to conclude that this part of his evidence was simply made up.

48 Seventh, in contrast with Mr Sangiuliano's, the Respondent's case did not change and was supported in numerous instances by contemporary documents, as well as being internally consistent, rational, plausible and in keeping with common sense and practical reality.

49 Eighth and last (and very much least) we have had regard to the manner and demeanour of the witnesses. We emphasise that this is in the scheme of things a very minor consideration but, for what it is worth, we found the Respondent's witnesses measured and careful. Mr Sangiuliano, on the other hand, was evasive and showed himself willing to resort to brand-new evidence when he found himself cornered under cross-examination. We find that Mr Ponzi was a witness of similar quality. His reluctance to answer awkward questions was as evident as Mr Sangiuliano's but his technique was slightly different. Whereas Mr Sangiuliano would answer (or purport to answer) a question not asked, Mr Ponzi (who gave evidence through an interpreter) would respond to a one-sentence question with a three-minute ramble which ended up not being recognizable as an answer to anything.

The core factual issue - conclusion

50 For all the reasons given, we reject Mr Sangiuliano's case on the events of 21 November 2019 and accept that of the Respondents. The alleged meetings at about 3 and 5 p.m. did not happen. They were made up by Mr Sangiuliano for the purposes of laying a foundation for his claims. There was no PD. The only relevant meeting on 21 November 2019 was the short encounter, probably before midday, when the Respondents attempted unsuccessfully to deliver the letter of dismissal to Mr Sangiuliano. That letter was printed when its metadata said it was printed.

51 We think it important to say that the seriousness of our findings is not lost on us. We have reached our disturbing conclusions with extreme reluctance. But at the end of our conscientious analysis we are left with no rational alternative.

Result on liability

52 There having been no PD, Mr Sangiuliano's case falls at the first hurdle and

his claims must be dismissed.

Costs

The law

53 The power to make costs awards is contained in rule 74 of the Employment Tribunals Rules of Procedure 2024 ('the 2024 Rules'), the material parts of which are the following:

> **(2) The Tribunal must consider whether to make a costs … order, where it considers that –**
>
> **(a) a party … has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted; or**
> **(b) any claim or response had no reasonable prospect of success …**

As the authorities explain, the rule poses two questions: first, whether the Tribunal has power to make an order; second, if so, whether the discretion should be exercised.

54 Once an Employment Tribunal is satisfied that the relevant test(s) under rule 74 has or have been satisfied, the Tribunal's discretion to make a costs award against a party is wide and unfettered: see *Barnsley Metropolitan Borough Council v Yerrakalva* [2012] IRLR 78 CA.

55 The 2024 Rules, r82 provides, relevantly, as follows:

> **In deciding whether to make a costs … order, and if so in what amount, the Tribunal may have regard to the paying party's … ability to pay.**

56 We are mindful of the fact that orders for costs in this jurisdiction are, and always have been, exceptional. Employment Tribunals exist to provide informal, accessible justice for all in employment disputes. We recognise that, if Tribunals resorted to making costs orders with undue liberality, the effect might well be to put aggrieved persons, particularly those of modest means, in fear of invoking the important statutory protections which the law affords them. It would be contrary to the purpose of the Tribunals if parties to disputes declined to exercise their right to bring (or contest) proceedings as a result of unfair economic pressure. On the other hand, we also bear in mind that, when our rules of procedure were revised in 2001, the Tribunal was for the first time not merely permitted, but obliged, to consider making a costs order where any of the prescribed conditions (vexatiousness, abusiveness etc) was fulfilled, and a new and wider criterion of unreasonableness was added. It seems to us that these innovations, preserved in subsequent revisions of the rules, indicate a policy on the part of the legislature to encourage Tribunals to exercise their costs powers where unmeritorious cases are pursued or where the manner in which litigation is conducted is improper or unreasonable.

57 Costs may be assessed on the standard or indemnity bases. In *Howman v The Queen Elizabeth Hospital King's Lynn* UKEAT/0509/12/JOJ the EAT (Keith J

and members) held that in the Employment Tribunal ('ET') costs should be assessed on the indemnity rather than standard basis only where the conduct of the paying party has 'taken the situation away from even that very limited number of cases in the [ET] where it is appropriate to make orders for costs' (para 10). See also *Dowding v The Character Group Plc* [2024] EAT 134 (HHJ Auerbach sitting alone).

The application

58 The burden of the costs application was that the Claimant had dishonestly and cynically pursued a series of complaints based on evidence which he knew to be false and that in so doing he had brought claims which had no reasonable prospect of success and/or had acted unreasonably in bringing them and/or in his conduct of them. Mr de Silva also relied on the deposit order as lending additional support to the application and invited us to direct assessment on the indemnity basis from the date of that order.

59 Mr Brockley began by submitting that fairness required us to deliver a written judgment before addressing any costs application. In any event, he resisted the application, while realistically accepting that he could not go behind our findings of fact or their implications.

Conclusions

60 In our view, it was fair and proportionate to deal at once with the costs application. It was not complex. Nor was the case on liability. Nor was the reasoning on which our oral judgment rested, which had been clearly explained.

61 Turning to the substance of the costs application, we considered that Mr Sangiuliano's conduct in bringing his claims had been not merely unreasonable but disgraceful. On our findings, the case was constructed on events which never happened. They were invented. It was, in our view, hard to imagine a more obvious case of unreasonable conduct in the bringing of litigation. So much for the 2024 Rules, r74(2)(a).

62 We preferred to leave r74(2)(b) to one side. A cynical manipulator might make up claims so skilfully that the Tribunal might struggle to say, after the event, that they had had no reasonable prospect of success. The fact that they had ultimately failed would not by itself warrant that assessment. We were reluctant to wrestle with the question whether, on an objective analysis, the claims, which the Claimant knew to be bogus, were doomed to fail.

63 In view of our finding on r74(2)(a), we also preferred to leave the subsidiary argument based on the deposit order (relying on r40(7)(a)), although obviously well-founded, to one side.

64 Our reasoning under r74(2)(a) determines the first question identified in para 22 above. The Tribunal has jurisdiction to make a costs order.

65 Should we exercise the jurisdiction and, if so, how? Subject to the question of means, we were quite satisfied that the Claimant's conduct merited a costs order and that it would be unjust to the Respondents to decline to make one. We might ask, if this was not a proper case for the exercise of the discretion, what case would be?

66 Should we take account of Mr Sangiuliano's means? We mooted the point but Mr de Silva said that his understanding was that no reliance was placed on means. Mr Brockley did not demur and put forward no argument based on his client's means.

67 In what sum should costs be awarded? We took the view that the justice of the case could only be met by an order for Mr Sangiuliano to pay the entirety of the Respondents' costs apart from those incurred in their unsuccessful strike-out application (in respect of which EJ Emery had made an order the other way). The litigation was a dishonest project from the outset. The Respondents should never have been faced with it. They are not to be criticised for incurring considerable expense in resisting it.

68 On what basis should costs be assessed? In our view, there was much to be said in favour of directing assessment on the indemnity basis throughout. This was indeed one of those entirely exceptional cases in which, in accordance with the guidance in the *Howman* and *Dowding* cases, such a direction is appropriate. It is not merely a case of a party knowingly giving false evidence. It was a case of a party manufacturing out of thin air facts on which to build a legal claim for very substantial compensation. Fortunately, such cases seldom come before us. When they do occur, it is our duty to be clear about the conduct which we have found and to meet it with appropriate measures, including costs measures. All of this said, we noted that Mr de Silva put his costs application moderately, seeking assessment on the indemnity basis only from the date of the deposit orders. In the circumstances, we were content to grant the application as asked.

Overall Outcome

69 For the reasons stated, the claims were dismissed and the Respondents' costs application succeeded as explained in our reasons above.

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EMPLOYMENT JUDGE SNELSON

Date: 5 March 2025

Reasons entered in the Register and copies sent to the parties on 6 March 2025

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