EMPLOYMENT TRIBUNALS

Claimant	**AND**	**Respondents**
Nicholas Platt		Bidvest Noonan (UK) Limited

Heard at: In public by CVP

On: 28, 29, 30 April 2025

Before: Employment Judge Adkin
Members: Ms S Aslett
Dr J Holgate

Appearances
For the Claimant: Mr D Bunting, of Counsel
For the Respondent: Ms G Rezaie, of Counsel

REASONS

1. The Respondent requested written reasons for the judgment of the Tribunal delivered orally and confirmed in writing.

Summary of judgment

2. The Tribunal concluded as follows:

   2.1. Complaint of automatic unfair dismissal because of a protected disclosure pursuant to section 103A of the Employment Rights Act 1996 ("**ERA**") is well-founded. There will be no reduction for contributory fault pursuant to section 123(6).

   2.2. Complaint of detriment because of a protected disclosure pursuant to section 47B of ERA is well-founded.

3. As to remedy and the assessment of the compensatory award pursuant to section 123 of ERA the questions of "Polkey", "Devis v Atkins" and mitigation of loss are still to be determined.

Evidence

4. We had the benefit of an agreed bundle of 515 pages and a witness bundle of 33 pages with the Claimants witness statement and two witnesses for the Respondent, Mr Declan Doyle and Mr Fintan Connolly.

5. The Claimant's direct line manager Mr Jeff Flanagan CEO of Great Britain within the Respondent and Katie Sneath, Director of Business Partners GB, did not give evidence at this Tribunal hearing.

Findings of Fact

Employment history

6. The Claimant has had an employment history in the UK facilities management sector since 2006. He held Director positions at Rentokil Initial plc, SPIE, Impellam plc, Interserve plc and Salisbury Group where I was also a shareholder. His role at Salisbury Group was Managing Director Sales and Marketing. I was tasked with building a business from a start up to a National Facilities Management company, which lead to a successful business sale in 2022.

Commencement of employment with Respondent

7. On 1 August 2023 he commenced working as a Sales Director for the Respondent on a basic salary of £145,000 with potential to earn up to £300,000 depending on sales.

8. There was a contract of employment contained Clause 1.2 which is a clause dealing with a probationary period of six months:

> "1.2 The first 6 months of your employment shall be a probationary period. During this probationary period your performance and suitability for continued employment will be monitored. Your employment may be terminated during this period at any time on 1 week's prior notice and the Company reserves the right to pay you in lieu of this notice. The Company may, at its discretion, extend this period for up to a further 5 months. Your probationary period shall be deemed to be extended until such time as you receive notice of successful completion of your probation."

Induction

9. On 17 August 2023 the Claimant went to South Africa with his wife as part of an induction, his second line manager Mr Declan Doyle who is the Group's CEO based in Dublin was also present.

10. While the Claimant was in South Africa he met management of the Respondent's parent company, Mr Alan Fainman, CEO and Trevor Scruse the Finance Director of Bidvest Services International which is a division of Bidvest Plc ("plc", "parent") which is the ultimate parent company and is listed in the Johannesburg stock exchange.

11. The Claimant suggested in that conversation that he would be looking to do big deals. According to the evidence put forward by Mr Doyle he said that would be different to what the Respondent was used to with more onerous terms and conditions and with more risk, Mr Doyle says that Mr Fainman privately queried with him whether the Claimant was the right person for the job. We have no basis not to accept Mr Doyle's account of this conversation but we note that this was not something that was raised with the Claimant nor that it was documented in some way as a concern.

CRM system

12. On 18 September 2023 there was a town hall meeting at which the Claimant mentioned that the Respondent would be going to market to procure a new CRM system. Mr Doyle says that this was contrary to what he had been told which led to Mr Connolly following up the following day by email and in that email what Mr Connolly said was that he suggested that they revisit the question of CRM system in six months. Mr Connolly's oral evidence was that in business he would never say never but this was a polite way of telling the Claimant that this was not a priority.

13. The Respondent's had Agresso an ERP (Enterprise Resource Planning) system which had some CRM functionality to monitor sales prospects. While this may not have had the functionality of a dedicated sales CRM system it was the system that the UK and Ireland businesses used and the existing management team were used to it and plainly regarded it as sufficient for their needs. The Claimant thought it was inadequate.

External consultant cost

14. Also in September 2023 or around September 2023 the Claimant used an external consultant Claire Edwards who was already known to his manager and in support a £49 million public sector contract, the cost was in the region of £10,000. The Claimant says he took that decision due to the lack of resources in the sales team and it is right to say that there were a number of people who were leaving the sales team, up to eight people have either given notice or gave notice over the number of months that the Claimant was working there. He said he needed support for that bid and notified Mr Flanagan his manager who did not raise any difficulty until much later.

Board meeting

15. On 19 October 2023 there was a Board Meeting which the Claimant attended.

16. The Claimant said that it was remarkable because there was a discussion of failing to pay the work force in the region of half a million pounds in holiday pay, as an attempt to hit a profit target. He said this led to a Board Member becoming emotional in the meeting. The holiday pay was paid at a later point.

Quarterly business review (October 2023)

17. There was also a quarterly business review in October 2023 although the Claimant did not attend that meeting due to pre booked annual leave.

Sales conference

18. On 25 October 2023 there was a two day sales conference in Northern Ireland something in the region of 35 people attended that meeting.

19. The Respondent says that the Claimant failed to make any meaningful contribution at that meeting. The Claimant strongly disputes this and highlights the fact that he was one of three people on a panel answering questions from Mr Connolly including "what does attractive new business look like".

20. There is no contemporaneous evidence at all that the Claimant's performance at this sales conference was considered to be inadequate which we would have expected.

21. At that time in a governance report produced by Mr John King there was discussion of sales conversion rates nearly halving with business lost in 2023 leading to a conversion rate of 21.8% which is the lowest that it had been for five years.

22. The conversion rate is the proportion of bids for new business which are successful.

Expense claim

23. In November and December 2023 Mr Flanagan raised concerns about the Claimant's expense claims. He said in particular on 4 December,

> "Nick please tone down your expenses or I will have to reject them, lunch with David Claydon at £170 is not acceptable that is the last time I will sign off an internal expense at this level."

24. Points were raised about the fee for the consultant Claire Edwards and a computer screen.

25. On 11 December 2023 Mr Flanagan wrote an email following on from the Claire Edwards expense, it said

> "please can you ensure that no third party bid support is engaged on any bid unless it is cleared by me, unfortunately I have just found out on [name of prospect bid] we incurred external cost and at no stage was visibility created for me. Given the challenges we have and the timing of new sale wins I found this spend uncomfortable ask of me",

26. That was sent to the Claimant and some other members of the team. The Claimant says that in fact Mr Flanagan did know that external consultant was being used, nevertheless it does seem that there was some friction on that point between the two of them.

Performance concerns

27. The Claimant's case is that Mr Flanagan could be quite controlling and was quite vocal about things like expenses but nevertheless did not raise performance questions which he would have been expected to do if there was a performance

matter. Concerns seemed to relate to another lunch which was a team lunch which the Claimant says was for relationship and moral building within the unhappy sales team.

28. Mr Doyle accepted although he would not characterise Mr Flanagan as blunt he could be blunt on occasions, there is no contemporaneous documentary evidence that Mr Flanagan was raising with the Claimant that there was a concern about his performance.

Sales forecast

29. The Claimant says that there was a concern in December 2023 about profit such that the business completely shut down purchases for the month such as materials and uniforms, which is clear from an email from Jeff Flanagan.

30. On 20 December 2023 in an email the Claimant identified Rajiv Gupta in Finance, copying Jeff Flanagan three sectors in which there were bids with a 50% chance of winning within the next six months which had a cumulative total of £62.4 million.

31. The Claimant says he was pressurised to put forward that information. The Respondent denies this and says that the Claimant was able to identify those opportunities with ease and there was nothing untoward about this.

Senior Leadership team

32. On 10 January 2024 there was a two day Senior Leadership event in Dublin with a discussion and Mr Doyle says that the Claimant did not contribute to the discussion about growth which concerned him.

33. There is no other evidence that they concern about performance was raised with the Claimant and we have got no basis to accept the Claimant evidence that it was not raised with him.

34. There was an exchange of correspondence in preparation for the quarterly business review in January 2024 and that was the meeting at which the alleged protected disclosure was made.

Claimant's concerns about £1 prospects

35. On 11 January 2024 in another email from the Claimant to Rajiv Gupta again copying Mr Flanagan he wrote this:

> "This month's QBR I will show wins values taken from Agresso. Kate [she is the administrator of the system based in Dublin] recently ran the attached report.
>
> Agresso does not capture forward opportunities correctly if at all, for example T Retail [a prospect] has a value of £1. I now understand the reason for putting a £1 value against an opportunity. If the opportunity does not come to market then our conversion rate is not really impacted as the opportunity will be shown as a loss with a value £1.

> I have sourced manually from our team opportunities over £2m for 2024. This does not mean that the contract will start in 2024 but that the process will start in 2024, but the process will start in 2024. Attached are the opportunities identified for 2024.
>
> I need this line of sight for proactive pre tender work.
>
> The solution is to quarantine identified opportunities where a process is not yet started in Agresso. This won't be solved before this months QBR. I will spend time with Kate Molphy prior to setting targets for the next financial year with the objective of having identified opportunities populated in Agresso and in the event that the opportunity is not pursued then when closed down the record will have no impact on conversion rates.

36. Moving on to 12 January 2024 an email sent at 06:54 in the morning the Claimant wrote to the Sales Manager saying this:

> "Before I commit to writing please confirm that 2023-2024 to date performance percentages against annual targets are correct
>
> Please don't reply check Agresso as I don't trust the system and I am happy to explain when we are together next week".

37. Also on the same date Mr Flanagan replied to the Claimant and Mr Gupta,

> "we need clarity on pipeline and opportunities irrespective of failings that may exist within Agresso, please do not say this cannot be done because of Agresso as it will go down very badly, this periods QVR sales report needs to be comprehensive, clear and answer with clarity and confidence what we are likely to win in H2 and beyond, we need to convince Declan [i.e. Mr Doyle] that sales is in good shape".

38. The Claimants perspective is that Mr Flanagan was asking him to lie to Mr Doyle. His view was that the sales department was in a mess in particular because half the team were in the process of leaving. The Respondent suggested that this is mischaracterisation characterising what was happening and that Mr Flanagan was positively and appropriately advising the Claimant as his line manager to take control of the sales function give a good account of himself and stop blaming the IT systems this was not going to make him popular.

Sales report

39. On 14 January 2024 the Claimant prepared an eight page sales report. In that report he highlighted that half of the sales team of 16 people had either left or handed in their notice. On slide page 202 it says, "restructure complete by the end of January 2024".

40. The following day 15 January Katryn Cusick, Mr Flanagan's PA confirmed to the Claimant that he only needed to provide a one slide report and gave him a standard

format. This was evidently confusing for the Claimant as the feedback from the previous QPR was that they did what details such as re-tenders and year-to-date performance as well as pipeline details.

41. It is clear from the summary slide which produced by the Claimant that day using the standard format [210] that future revenue was being forecasted using the formula total sales pipeline for 2024 multiplied by the conversion rate of 21.8% to give forecasted sales wins for the UK business. Rounding the figures to the nearest millions the pipeline of £175m gave forecasted wins of £38m. It follows that (i) the pipeline and (ii) the conversion rate were the crucial data generating that forecast.

Mr Doyle's meetings with MDs then Mr Flanagan

42. On 18 January 2024, Mr Doyle attended the UK. He is normally based in Dublin.

43. He attended "skip level" meetings with a selection of Mr Flanagan's reports. These people are his second line reports.

44. The background was his concern that Mr Flanagan was not performing as CEO and he wanted to sound out four MDs of the Respondent's different business areas about the impact it would have if Mr Flanagan was removed. He says was told that Mr Flanagan was not working well with the team and he says that they were told they would not be able to keep delivering with Nick, that is the Claimant in charge of sales.

45. Mr Doyle says it would not be the norm to keep notes of such conversations which were informal. The Tribunal is very surprised to find that Mr Doyle did not take any notes at all of this series of meetings, even if we accept his evidence that he would predominately record action points rather than lengthy contemporaneous notes. Having five different meetings on the one day we think it would have been likely to generate one or two notes either by Mr Doyle or those in these meetings even if these were very summary bullet points. We have not received any such documents.

46. Also on 18 January 2024 Mr Doyle says that he met Mr Flanagan and that Mr Flanagan had already decided his intention to fail the Claimant's probation and terminate his employment. Mr Doyle says that he supported that. We do not have contemporaneous evidence of that discussion nor that that decision was reached and we will come back to that later.

Claimant assumes control of the sales team

47. On 21 January 2024 the Claimant took control of the sales team (a date supported by the content of his eight page PowerPoint presentation and an email sent to the new team on that day, which was a Sunday). There had been a change in the structure of the sales team from one in which Sales Managers reported to Managing Directors which there were four within the UK business to a different structure where they reported directly to the Claimant as Sales Director.

48. Mr Doyle did not dispute that the 21 January 2024 was the date on which this formally took effect. His perspective was that the transition was in progress from October 2023 onwards and it was wrong to suggest that this was day one for the Claimant. His perspective was that the Sales Managers knew that they were going to be transitioning over to working for the Claimant.

49. As previously noted this period coincided with a number of resignations from the sales team, essentially half the sale team of sixteen were leaving or proposing to leave although there were four new joiners proposed.

HR teams chat

50. On 22 January 2024 there was a message chat in what we think is Microsoft Teams or a similar package between Jeff Flanagan and Katie Sneath who is in HR and at 16:01 he wrote “Hi Katie can you please give me a call re sales when you get a free moment”.

51. It looks from the subsequent exchanges as if that did not happen on 22 January. Most likely we find it was left on the basis that they would talk the following day the 23 January. The Employment Tribunal has not heard evidence from either of the people involved nor have we seen any documentary evidence of what was discussed at that stage. What can we say, it seems that HR advice was needed regarding the sales team. We cannot say with certainty that the conversation took place and what “sales” was a reference to given that there are a number of people who were leaving the team at the time. We note that several days later in the same teams exchange Mr Flanagan wrote to Katie Sneath using the Claimant’s name specifically which she had not done on 22 January.

QBR 24 January 2024 – protected disclosure

52. On 24 January 2024 the quarterly business review meeting took place. This was a day long meeting. Present at that meeting there were 14 Senior Managers which included the Claimant, Declan Doyle, Jeff Flanagan, Rajiv Gupta, Fintan Connolly, the four Business Unit Managing Directors, Katie Sneath and others.

53. At the beginning of the meeting Mr Doyle said that any lack of new business was 65% of the reason why the Respondent was not hitting profit numbers.

54. Both the Claimant and Mr Doyle substantially agree what then happened in an exchange between them during the morning. Mr Doyle questioned the Claimant regarding the information contained on the single PowerPoint slide which Mr Flanagan had prepared. In relation to the sales pipeline figures he asked the Claimant if he “stood by the numbers”. The Claimant replied “no”.

55. It is common ground that Mr Doyle was aghast at this answer, although the reasons for this reaction differ between the parties.

56. The Claimant pointed out that values on the pipeline were incorrect as a number of opportunities had a value of £1 which could not be possible. He explained that the pipeline report was wrong and gave Primark as an example of having a value of £1 instead of the correct number which is £17,000,000.

57. Mr Doyle stated that he was not happy and that he sends these numbers to Bidvest South Africa (Parent Company).

58. The Claimant went on that he needed 3-4 weeks to sort out the numbers and once completed he would report back to Mr Doyle.

59. This was an all-day meeting which had other matters on the agenda.

60. The Claimant says that Mr Flanagan was silent but annoyed, which we accept is what happened. The Claimant infers that Mr Flanagan was annoyed by his honesty.

Claimant's belief

61. The Claimant says that the reason for saying "no" was that he knew he had to be honest due to his fiduciary obligations.

62. He thought the approach regarding pipeline figures was fraudulent and he needed to clean up the data in Agresso so as to comply with his fiduciary duty as a Director. We find that this was something in his mind in the run up to the meeting on 24 January, as detailed in paragraphs 46 to 53 of his witness statement. His particular concern was that Mr Flanagan was providing a sales forecast for the second half of 2024 using an inaccurate sales conversion rate of 33% which was "fantasy".

63. The Tribunal accepted the Claimant's evidence as to his beliefs. There is contemporaneous evidence that he was preoccupied with the pipeline figures in the run up to the meeting on 24 January.

Further HR teams chat

64. Later on that day there was a further teams chat at 18:36 between Katie Sneath and Mr Flanagan she said this,

> "hi Jeff when is good for you tomorrow to catch up about the probation issue and also the grievance, conscious you're in QBR so want to ensure we touch base"

65. That tends to suggest that she mistaken still thought the QBR meeting was still going on. He replied two minutes later to say that 2pm would be good.

Claimant's email follow-up

66. Also after the meeting on 24 January 2024 at 7:10 in the evening the Claimant sent a follow up email to Mr Connolly:

> "With the help of Kate Molphy all GB opportunities, re-tenders where a salesperson is leading the bid (note not the full re-tender list), wins and losses are contained in the attached report, ran yesterday. You will see in the open and losses tab a number of opportunities with a value of £1 (highlighted in yellow). This is the main reason why I could not confirm to Declan today that the pipeline numbers were correct.

> The re-structure was completed last weekend. Over the next couple of weeks I have face to face meetings with the 4 sales directors to run through the pipeline, test each prospect, plan pre-tender engagement and drop opportunities that have no traction/leaver had the relationship.
>
> At these sessions I will allocate the correct value instead of a nominal £1 to the relevant opportunity. Stuart is v conservative on his pipeline so I expect once we have his knowledge embedded into GB sales report his pipeline value will rise. David and Adrian have a number of values at £1m so their pipelines should increase. Only H £7m out of the £26.5m public sector is in the report. Again the pipeline will rise once John Entwistle's public sector prospects are included.
>
> Once cleansed with correct value and dead opportunities removed I expect the pipeline to look healthier than the current position.
>
> Kate has agreed to spend some time with me. I want to fully understand the current working practises, how conversion rates are calculated (value or number) as well as historic conversion rates by service, salesperson and sector. I need this data for next year's target discussions.
>
> I will set up a Teams meeting for you and me to make sure I am not missing anything.

67. The Tribunal has seen the documents with parts highlighted in yellow that beginning at page 278 there are 54 prospective contracts totalling just over £100 million pounds in value of which six prospective contracts are highlighted in yellow and have a value of £1 attached to them. The rest do have a value higher than a £1 attached to them, all either six or seven figure sums.

Diary entry

68. On the following day, 25 January 2024 at 2:34pm Kathryn Cusick who was Mr Flanagan's PA put the quarterly meeting in the Claimant's electronic calendar to take place on 20 February 2024. The Claimant says that that suggests that the Respondent (or at least Mr Flanagan in the UK) believed that he was due to stay within the business at that stage. We will come on to the consequence of that in due course.

Teams chat Mr Doyle/Ms Sneath

69. There is also on 25 January 2024 a teams chat which is wrongly titled we think in the index, it's a page 366. The index suggests its an exchange with Mr Flanagan. We find it is more likely from the context in particular the references to "J" or Jeff as a third person and also the Irish telephone number that's given as a contact that that it is in fact a teams exchange between Mr Doyle and Katie Sneath. Ms Sneath confirmed that she was due to speak to "him", which we take to be Jeff Flanagan about "N" [the Claimant] 2pm and she asked him for high level bullets and what could be said on the situation.

Script for termination

70. On 26 January 2024 at 21:17 Katie Sneath wrote to Mr Flanagan with a script to deal with the probation meeting with the Claimant and that script contains various prompts for a discussion:

> "• Thanks for attending the meeting, we are coming towards the end of your probationary period and I would like to have a formal discussion about your performance.
>
> • Ask Nick to reflect on his initial 6 months at Bidvest Noonan, his performance and his impact
>
> • I have serious concerns about your delivery in recent months.
>
> Concerns:
>
> o Nicks ability to understand the detail in the pipeline and articulate this into a plan to achieve targets for 24 and beyond.
>
> o Nicks ability to identify the resource needs for the Growth team – just completed a restructure but there is a clear need for additional skills/resources to minimise the distraction of rebids and smaller tenders to enable conversion of larger bids.
>
> o Nicks ability to provide insightful data and responses at QBR
>
> o Anything else?
>
> • We have previously spoken about my concerns relating to your performance and I have provided support and coaching on how to address those concerns
>
> Examples:
>
> o Prior to the January QBR we met and discussed what was required at the QBR meeting INSERT DETAIL
>
> o Any other instances?
>
> • We also spoke on Thursday 25th Jan and within that conversation I asked you to reflect on the
>
> QBR. INSERT NICKS RESPONSE when he reflected on QBR and any concerns you had . The QBR was particularly difficult when the sales pipeline and new business activity was presented. This is a cause for concern as the sales pipeline for new business activity was not well understood nor was it articulated clearly – leaving ambiguity and a lack of trust and confidence from the Exc Co in our ability to meet the sales targets.
>
> Examples
>
> o Lack of insight into the data and the numbers

o No clear direction on future call to action – we are not short on opportunity, but the Value on bids too low – the conversion on larger bids is too low. Smaller bids are a distraction

o We have the pipeline in one place – but lack of knowledge and in depth understanding of the detail behind this – causes lack of trust and confidence in the ability to convert this into wins

Client "T" opportunity removed from pipeline

71. On 28-29 January 2024 there was an email exchange between the Claimant and Mr Connolly.

72. The Claimant wrote that there would be a material change to the transport sector pipeline as client T's prospective contract of £75 million had been removed.

73. In response Mr Connolly says this can I suggest we retrospectively amend the value of client T's contract to £1 this minimises the impact on CRM, happy to talk next week and then that was picked up in a response by Mr Platt.

74. We accept the Claimant's explanation that the purpose for doing this was to avoid a high value contract skewing the sales conversion data.

Termination tip off

75. On the following day which is 28 January 2024 the Claimant says and we have no reason to disbelieve him that he was tipped off by a colleague that a decision had already been taken regarding his dismissal and that people in the Dublin office had already been told on Friday 26 January.

Termination meeting

76. On 31 January which was the last day of the Claimant's probation he attended the meeting with Jeff Flanagan at 16:00 which appears not to have lasted very long given that the Claimant says that his employment was terminated at 16:15.

77. It seems Mr Flanagan used the version of the script which he was provided with by Ms Sneath. The Claimant says Mr Flanagan could not address the prior performance concerns previously raised and suggested by the script because this had never happened. We have no alternative version of what transpired in this conversation and accept what the Claimant says about that i.e. there was no reference to previous performance concerns raised.

Termination

78. A letter of termination which had been prewritten was signed by Mr Flanagan and that was provided to the Claimant.

79. The Claimants last date of termination was 29 February 2024 as provided for by that letter.

Post-termination employment

80. The Claimant subsequently obtained employment with Churchill who are a competitor of the Claimant but he was dismissed in December 2024 for what was described as minimal client activity.

Policies

81. Although the Respondent has a whistleblowing policy we have not been provided with a copy of this. It is common ground that a whistleblowing policy was not expressly invoked by the Claimant.

82. We have not seen standard policies such as disciplinary, probation policy, expenses policy.

83. What we have been provided with is a document entitled **Bid Government Guidelines Revision 1** dated January 2024. The Claimant highlighted within that document a section at page 179 of the agreed bundle under the heading Storage of Information:

> CRM – All opportunities both new business and retention are recorded in Agresso CRM as this information generates and contributes to all board packs and internal dashboards on growth the updating and accuracy of this data is important. As with any pipeline tool, our CRM records all the stages of a particular opportunity (see below).

84. Further down in that document it explained various stages of the pipeline, of which there are 12 distinction stages from 0 – 11.

85. Pipeline stage “0”, which is “Vertical mapping key targets” is described as potential clients were no work has been completed to qualify the opportunities; pipeline stage one market targets – opportunities that have been identified (coming to market in more than 12 months); pipeline stage 2 targets – opportunities identified (within 12 months); pipeline stage 3 – PQQ/WIP – PQQ issued by the client that are in the process of completing… All the way through to 9 “Award” (i.e. formal notification of outcome outcome), 10 legal – contracts with solicitors; 11 mobilisation.

The Law

Protected disclosure detriment (“whistleblowing”)

86. The Employment Rights Act 1996 contains the following provisions:

> 43B Disclosures qualifying for protection.
>
> (1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following-

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

47B Protected disclosures.

A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.

48.— Complaints to employment tribunals

(1A) A worker may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of section 47B.

On a complaint under subsection … (1A) … it is for the employer to show the ground on which any act, or deliberate failure to act, was done.

(3) An employment tribunal shall not consider a complaint under this section unless it is presented—

(a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

103A Protected disclosure.

An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.

87. The burden of proving each of the elements of a protected disclosure is on a claimant (**Western Union Payment Services UK Ltd v Anastasiou**, 13 February 2014 per HHJ Eady QC at [44]).

88. Guidance given by the Court of Appeal in the case of **Croydon Health Services NHS Trust v Beatt** [2017] ICR 1240 per Underhill LJ is as follows at paragraph 94:

> "… it is all too easy for an employer to allow its view of a whistleblower as a difficult colleague or an awkward personality (as whistleblowers sometimes are) to cloud its judgment about whether the disclosures in question do in fact have a reasonable basis or are made (under the old law) in good faith or (under the new law) in the public interest. Those questions will ultimately be judged by a tribunal, and if the employer proceeds to dismiss it takes the risk that the tribunal will take a different view about them. I appreciate that this state of affairs might be thought to place a heavy burden on employers; but Parliament has quite deliberately, and for understandable policy reasons, conferred a high level of protection on whistleblowers. …"

Tends to show

89. "Tends to show" imposes a relatively light burden on a Claimant (**Babula v Waltham Forest College** [2007] ICR 1026 per Wall LJ at para 79; **Arjomand-Sissan v East Sussex Healthcare NHS Trust** UKEAT/0122/17/BA per Soole J para 26).

Disclosure

90. In **Kilraine v London Borough of Wandsworth** [2018] ICR 1850 the Court of Appeal held that a sharp distinction between "allegations" and "disclosures" which appeared to have been identified in earlier authorities was a false dichotomy, given than an allegation might also contain information tending to show, in the reasonable belief of the maker, a relevant failure. At [35], Sales LJ said:

> "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)."
>
> [emphasis added]

Burden of proof causation

91. There is an initial burden of proof on a claimant to show (in effect) a *prima facie* case that he has been subject to a detriment on the grounds that he made a protected disclosure. If so, the burden passes to a respondent to prove that any alleged protected disclosure played no part whatever in the claimant's alleged treatment, but rather what was the reason for that alleged treatment. Simply because the respondent fails to prove the reason does not act as a default mechanism so that the claimant succeeds. The tribunal is concerned with the reason for the treatment and not a quasi-reversal of proof and deemed finding of discrimination i.e. there is no mandatory adverse inference mechanism (**Dahou v Serco Ltd** [2017] IRLR 81, CA).

Public interest

92. The Court of Appeal in **Chesterton Global Ltd & Anor v Nurmohamed & Anor** [2017] EWCA Civ 979 confirmed that public interest does not need to relate to the population at large, but might relate to a subset, in that case a category of managers whose bonus calculation was negatively affected. It seems that it cannot relate solely to the interest of the person making the disclosure. The following guidance was given on that case as to reasonable belief in the public interest, per Underhill LJ:

> "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 (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" 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**."
>
> [**emphasis** added]

Causation

93. The causation test for *detriment* is whether the alleged protected disclosure played more than a trivial part in the Claimant's treatment (**Fecitt v NHS Manchester (Public Concern at Work intervening)** [2012] ICR 372, CA).

Conclusions

94. We started as was suggested by the Respondent's Counsel with the protected disclosures.

[3.1] did the Claimant make one or more qualifying disclosures as defined in section 43(b) of the Employment Rights Act 1996?

[3.1.1.1] on 24 January 2024 the Claimant advised in a meeting attended by the Board of Directors including Jeff Flanagan the CEO that pipeline work was being incorrectly valued.

95. It was clarified on the first day of this hearing that the remainder of the wording of this particular allegation in the list of issues as originally drafted "which resulted in a distortion to the stocks and shares in the Respondent Company and the incorrect setting of internal targets" were not things that were said but things that the Claimant thought at the time.

[3.1.2] did the Claimant disclose information

96. We find that the Claimant did disclose information, the information was that some sales opportunities on the system Agresso and the sales pipeline had inaccurately been given a value of £1, for example a sales prospect contract which was actually worth £17,000,000.

[3.1.3] did the Claimant believe that the disclosure of information was made in the public interest –

97. The Tribunal has considered the case of **Chesterton** and the threshold test for public interest.

98. The Claimant understood that these figures were being sent to South Africa which is where the ultimate parent company Plc was based. He was concerned about confirming the accuracy of figures which would he believed be used for sales forecasting. We accept he had in mind that this information was being sent to Bidvest Plc which is a listed public company.

99. We note also the Bid Governance Guidelines version 1 which emphasised the importance of the accuracy of data captured on CRM given that this was used for board packs and internal "dashboards" for growth. We find that the Claimant had a genuine concern that sales conversion rates were being deliberately manipulated by setting the value of certain contracts to £1. In the Claimant's belief this was data that would be provided to South Africa and would be likely to directly affect the management of the plc's view of future sales.

100. So, we find that the Claimant did think it was in the public interest to raise that.

[3.1.4] was that belief reasonable –

101. We find that it was reasonable for the Claimant to believe that the public interest was engaged by inaccurate data relating to future sales which would be passed up the management chain in a context of a listed company.

[3.1.5] did the Claimant believe it tended to show that a breach of legal obligation

102. The actual formulation of the failure was subject of discussion on the first day of the hearing. Claimant's Counsel clarified it as:

> "the requirement of the Respondent as a subsidiary to accurately report its financial position and/or the group as a Plc accurately report its financial position."

103. The first thing for us to say is that we are not deciding whether there actually was a breach of legal obligation nor whether there was likely to be a breach of legal obligation.

104. It is possible that a claimant can believe something and be wrong about it.

105. We are assessing whether the Claimant reasonably believed that the information he disclosed tended to show that there was or was likely to be a failure to comply with legal obligation.

106. It does not appear to be in dispute that the Plc the parent company was under a legal obligation to accurately report its financial position, nor that a subsidiary would be under a legal obligation to accurately report its financial position.

107. As to the Claimant's belief that the information disclosed tended to show a breach or likelihood of a breach there is a relatively light burden on a Claimant following **Babula**.

108. We note that the Respondent's Bid Government Guidelines, which had been updated in January 2024 emphasised the updating and accuracy of the data being important.

109. We find that the Claimant was concerned about inaccurate data being provided in relation to the sales pipeline and conversion rates. He had prior experience in senior sales and senior management roles. He believed that data about pipelines and conversion rates would be used to inform forecasts for future revenues. Indeed the one page template slide he had been provided with to use for the meeting used the pipeline data and the conversation rate to produce a figure for forecasted wins. He believed that this data was likely to be used by the ultimate parent in South Africa as part of its public announcement of future earnings.

110. In short we did find that the Claimant did believe that his disclosure about the £1 contracts and unreliable sales data did tend to show that there was likely to be a breach of legal obligation as result of inaccurate data being provided. The potential breach represented by the plc inaccurately reporting its position was a consequence of the subsidiary inaccurately reporting its position. We accept the Claimant's evidence at paragraph 60 that he believed that this would have an impact on the stock market value.

[3.1.6] was that belief reasonable?

111. The Respondent's witnesses sought to downplay the importance of sales forecasts in respect of the South African parent company forecasting revenue in future. Mr Doyle's evidence was that he only provided information about pipeline from a transparency point of view. His evidence was to the effect that his direct line manager Alan Fainman had more of a focus on whether new business had been won. The Respondent's case is that conversion rates were only a metric for assessing sales performance and do not inform estimates for future revenue. We have not seen the data sent to South Africa nor have we received documentary evidence of how that data is used. It would be surprising if a significant dip in the sales pipeline would have been treated by the parent company as completely irrelevant to future revenue forecasts. While we note the submission that there is a distinction between pipelines and forecasts, the slide at page 210 shows that a pipeline figure and conversion rate were being used directly to calculate a forecast.

112. Ultimately, however the focus on how the Respondent actually uses this data is not the point we must focus on.

113. Focusing on the statutory test, was the Claimant *reasonable* to believe that this is how the information would be used?

114. We bear in mind that a belief can be wrong yet reasonable.

115. The Claimant was experienced in business, sales and the facilities management sector. It was a fact that sale conversion rates had significantly dropping which

had been identified in the John King governance report in September 2023 and the Claimant had reasons to believe that the Respondent was struggling to meet profit targets. We find that he was reasonable to believe that the disclosure that sales target were being set at £1 to keep sales conversation rates higher and that this higher conversion rate would have an effect on artificially inflating sales forecasts for the Respondent and its plc parent (which would have the responsibility to report accurately). This is for the reasons given above.

116. In conclusion we find that it was reasonable of the Claimant to believe that the information he disclosed tended to show that there would be a likely breach of legal obligation for the Respondent subsidiary to report accurately and the Respondent's parent company plc to accurately report its financial position.

Conclusion on protected disclosure

117. It follows that there was in our finding a qualifying protected disclosure.

AUTOMATIC UNFAIR DISMISSAL (s. 103A)

[1.1] was the reason of principal reason for dismissal that the Claimant had made a protected disclosure if so the Claimant will be regarded as unfairly dismissed.

118. We are not satisfied that a decision was taken by Jeff Flanagan and approved by Mr Doyle on 18 January 2024 that the Claimant's probation would be brought to an end for the following reasons.

119. There is no documentary evidence of substantial performance concerns having been raised before this meeting.

120. Mr Doyle's evidence is that there were five meetings on 18 January 2024 at which the Claimant's future was discussed. There were apparently four discussions with MDs of different divisions and a conversation with Mr Flanagan. Mr Doyle says that in the context of a discussion about Mr Flanagan's proposed departure the MDs said that the Claimant was not leading the sales team well. He says that Mr Flanagan said that he had decided that the Claimant was not going to pass his probation.

121. There is no contemporaneous documentation of any of this, such as emails or meeting notes. Accepting Mr Doyle's evidence that he would generally only record action points, we do not even see this.

122. On the balance of probabilities we think it unlikely that there has been full disclosure of relevant contemporary documentation during this period. We are doubtful that Mr Doyle spent the entire day meeting people and not a single note was taken either by him or the others present at various meetings.

123. There is not clear documentary evidence after the 18 January 2024 but before the QBR meeting on 24 January 2024 that decision to cease the Claimant's probation and cease his employment was already in train. The first time that "probation" appears in the contemporary documentation at around this time is the Teams

exchange between Kate Sneath and Jeff Flanagan on early evening of the day on which the protected disclosure was made.

124. We note that the Claimant attended QBR, which would contain commercially sensitive matters.

125. Turning to the meeting on 24 January our inference is that it was the content of the meeting itself on 24 January 2024 which led to a decision that the Claimant would not pass his probation. This meeting we find was a turning point in the Claimant's career with the Respondent.

126. The script prepared by HR we find essentially refers to the content of the meeting on 24 January. There is no documented history of problems. We accept the Claimant's evidence that Mr Flanagan did not to refer to a history performance problems having been raised with him.

127. It is common ground that Mr Doyle was aghast by what the Claimant was saying to him. We accept that there was an element of frustration that there seems to have been slow progress on confidence with the data and that there would be a three to four week delay. As to the suggestion that the Claimant was not on top of the data however the eight page version of the slide which he prepared (not the one page version that he was asked to submit) showed that the Claimant had carried out a detailed analysis of recent non bids, bids and the like that is page 200-208.

128. The Claimant had only formally taken over management responsibility of the sales team three days earlier on the completion of the restructure. That leads us to doubt that his performance in the management of that team could have been the principal reason for his dismissal.

129. The core element of the Claimant's message was that the pipeline data was unreliable and it had the effect of making the conversion rates unreliable. This was an unwelcome admission from Mr Flanagan's perspective. It was also unwelcome to Mr Connolly whose approach it was to reduce the size of contracts to £1 as evidenced by one of the emails.

130. We find that the Claimant was rocking the boat, he was challenging the way that this data was being dealt with, including data that would be passed back to the parent company and this was unwelcome.

131. These are the reasons for our conclusion that the principal reason for his dismissal was the protected disclosure made.

DETRIMENT BECAUSE OF A PROTECTED DISCLOSURE (section 47)

[4.1] did the Respondent do the following:

[4.1.1] determine that the Claimant has failed his probation and

[4.1.1] on 31 January 2024 advised the Claimant that he had failed his probation

132. The Claimant's counsel rightly conceded that there is not a great distinction to be drawn between these two alleged detriments.

133. It is not in dispute that the Respondent did determine that the Claimant had failed his probation and did advise him of this on 31 January 2024.

[4.2] by doing so did it subject the Claimant to a detriment,

134. We find that these were detriments.

135. We find that the failure of probation is not the same thing as a dismissal under section 103A given that it is possible to fail probation and yet be given an extension. The probation and dismissal are conceptually distinct.

[4.3] if so was it done on the ground that the Claimant made a protected disclosure,

136. Following **Fecitt**, the test of causation is whether the protected disclosure was more than trivially a cause of the detriment. This represents a lower hurdle for causation than for the automatic unfair dismissal complaint

137. Given our finding in respect of the dismissal that the protected disclosure was the principal reason for dismissal it is not perhaps that surprising that we find that it was a substantial cause of the detriment. Similar reasoning applies. In short we find that the Claimant's disclosure on 24 January 2024 was more than trivially the cause of the decision that the Claimant would fail his probation and being advised of that on 31 January 2024. It is evident that the Claimant's protected disclosure on 24 January marked a turning point.

Remedy

Contribution [**5.7**] did the Claimant cause or contribute to the detrimental treatment by their own actions and if so would it be just and equitable to reduce the Claimants compensation by what proportion?

138. We have considered the submissions put forward by the parties but we have not found that the Claimant was guilty of blameworthy conduct. We found that he raised a protected disclosure in good faith and was dismissed for it and accordingly we find that there will be no reduction. We did not find that matters such as expenses were any effective cause of the dismissal, nor that the Claimant's conduct was blameworthy.

139. In relation to other matters that go to remedy and assessment of a compensatory award, it was agreed at the outset of this hearing that matters relating to **Polkey v A.E. Dayton Services Ltd [1988] AC 334** (i.e. a reduction to be made to reflect

the possibility of a fair dismissal in any event) and the **Devis v Atkins [1977] IRLR 314, HL** point (i.e. that there were reasons why the Claimant might otherwise be dismissed) should be dealt with at a remedy hearing if necessary. Accordingly we have followed that approach.

140. Matters such as mitigation of loss would obviously also form part of that assessment.

141. We are hopeful that each party in this matter keep their minds open to the possibility of settlement, which would remove the cost, delay and uncertainty associated with a further hearing and determination by the panel.

Employment Judge Adkin

2 June 2025

Sent to the parties on:

4 June 2025

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For the Tribunal:

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