

Neutral Citation Number: [2026] EAT 30

Case No: EA-2022-001112-TH

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 24 February 2026

Before:

THE HON. LORD FAIRLEY, PRESIDENT:

Between:

Miss Elena Bibescu

Appellant

- and -

Clare Jenner Limited t/a Jenner's

Respondent

The **Appellant**, in person, by video link
No appearance by the **Respondent**

Hearing date: 10 February 2026

JUDGMENT

SUMMARY

*Whistleblowing; reasonable belief in public interest and section 43B factors
Unfair dismissal; reason for dismissal*

The claimant was employed by the respondent from 21 November 2018 until her dismissal on 11 June 2020. She brought complaints of automatically unfair dismissal in terms of section 103A of the **Employment Rights Act, 1996** (“**ERA**”) (whistleblowing), section 47B **ERA** (detriment on the ground of whistleblowing), and automatically unfair dismissal contrary to section 100(1)(d) **ERA** (health and safety).

In the whistleblowing complaints, the Tribunal concluded that although the claimant had disclosed information to her employer, (a) she had not done so in the public interest; and (b) none of the section 43B **ERA** factors had been proved. It further concluded that the reason for the claimant’s dismissal was her performance rather than the making of a protected disclosure. The claimant appealed against those conclusions.

Held:

- (1) The Tribunal’s conclusion about the reason for dismissal was a finding of fact. Correctly, the Tribunal recognised that, in applying section 103A **ERA**, its task was to identify the “principal” reason for the dismissal. It did so and reached a conclusion that was rational and that was plainly open to it on the evidence. It had not erred in law in dismissing the complaint under section 103A **ERA**.
- (2) In relation to the complaint under section 47B **ERA**, the Tribunal’s reasons showed that it had erred in law. It had failed to make the necessary findings as to the claimant’s state of mind, and had erroneously substituted its own view on the question of reasonable belief.

The complaint under section 47B was remitted to a differently constituted Tribunal.

Observed:

Tribunal judgments should dispose of all of the complaints advanced and reasons should record the conclusions of all members of the panel.

THE HON. LORD FAIRLEY, PRESIDENT:

Introduction

1. This is an appeal from a reserved liability Judgment of a Tribunal at West Midlands (Employment Judge Steward, Mr Greatorex and Mr Spencer). I will refer to the parties, as they were described below, as the claimant and the respondent.

2. The respondent is an accountancy practice. The claimant was employed by the respondent as an accountant from 21 November 2018 until her dismissal on 11 June 2020. She did not have sufficient qualifying service to bring a complaint of unfair dismissal in terms of section 94 of the **Employment Rights Act, 1996** (“ERA”). Instead, she brought complaints of automatically unfair dismissal in terms of section 103A **ERA** (whistleblowing), section 47B **ERA** (detriment on the ground of whistleblowing), and automatically unfair dismissal contrary to section 100(1)(d) **ERA** (health and safety).

3. The Tribunal heard evidence over 5 days on 12 to 15 July and 24 August 2022, with a further day of deliberations on 26 August 2022. In a reserved Judgment dated 21 September 2022, it dismissed the complaints under sections 103A and 100(1)(d). The Judgment did not determine the complaint under section 47B although, as will be seen, it considered that complaint within its reasons.

4. This appeal relates only to the whistleblowing complaints under sections 103A and 47B **ERA**.

Procedural history of the appeal

5. The appeal process in the Employment Appeal Tribunal has been protracted. At the point when the grounds of appeal were prepared, the claimant was unrepresented. The proposed grounds were unclear and were sifted to a preliminary hearing for the purpose of considering whether any of them disclosed an arguable point of law. That hearing was due to take place in May 2023, but was adjourned on two occasions at the claimant's request. The claimant eventually received assistance from ELAAS who helped her to amend her proposed grounds.

Those amended grounds were ultimately sifted to a full hearing by Order dated 28 January 2025, and the hearing was fixed for 10 February 2026.

6. On 9 February 2026, the claimant submitted an application to participate in the full hearing remotely from Australia. On the same date, she also requested the services of a court interpreter. Both of those applications were granted at short notice and accommodated. The respondent intimated in an email sent on 9 February 2026 that it did not intend to attend or be represented at the hearing of the appeal.

Relevant findings of fact

7. Throughout the claimant's employment, the respondent's principal was Ms Clare Jenner. On 14 August 2019, Ms Jenner sent the claimant an email raising concerns about the quality of her work (ET § 25). Those concerns continued into early 2020. They led to Ms Jenner discussing the quality of the claimant's work with others in the business, including a sub-contractor called Richard Grimes. Ms Jenner asked Mr Grimes to "peer review" the claimant's work due to the number of mistakes that Ms Jenner had found that the claimant had made (ET § 27). The claimant had also failed certain professional exams. The claimant was unhappy about her work being reviewed by Mr Grimes.

8. Further concerns over the quality of the claimant's work were documented in emails sent by Ms Jenner on various dates in April and May 2020. The Tribunal set out a summary of those emails at ET § 31. Some of them were from Ms Jenner to the claimant. Others were from Ms Jenner to another employee of the business, Sandra Silcox. The emails highlighted issues with the claimant's work on particular client files and also more general concerns about her attitude, including a suggestion that she tended "to just ignore instructions that she doesn't like" (email dated 14 April 2020 from Ms Jenner to Ms Silcox referred to at ET § 31(i)).

9. The claimant worked from home for a period during April and May 2020 as a result of the Covid-19 pandemic. On her return to the office on 26 May 2020 she was given a verbal warning by Ms Jenner that her work was not to the required standard (ET § 34). The Tribunal found this warning to be consistent with the various critical comments about the claimant's work contained in the April and May emails.

10. The claimant continued to be unhappy about her work being reviewed by Mr Grimes. She requested a meeting with Ms Jenner. The meeting took place on 8 June 2020. In advance of that meeting, the claimant made investigations about Mr Grimes with Companies House and discovered that, whilst he was disqualified from being a company director, he still appeared as a director of a company associated with his wife. The claimant also established that Mr Grimes was not a member of the Association of Chartered Certified Accountants (“ACCA”). The claimant raised these matters with Ms Jenner at the meeting on 8 June 2020 and in an email sent to Ms Silcox on the same date (ET § 36 to 39 and 43).

11. Following the meeting on 8 June 2020, the claimant was given two client files to work on and was given instructions “about the way forward” (ET § 44). She continued to make mistakes and there was further friction between the claimant on the one hand and Ms Silcox and Mr Grimes on the other (ET § 44 and 46).

12. On 11 June 2020, a decision was taken to terminate the claimant’s employment. Whilst the Tribunal does not directly record who took that decision, it appears to have been Ms Jenner as the author of the dismissal letter (ET § 45). The dismissal letter referred to the claimant’s performance and her inability to work with Mr Grimes.

The list of issues

13. The Tribunal had before it a lengthy list of issues produced during pre-hearing case management. Only two of those are relevant to this appeal. The first is the issue of whether the claimant made protected disclosures about Mr Grimes to Ms Silcox and Ms Jenner on 8 June 2020. Specifically, the claimant relied upon having told Ms Jenner on 8 June 2020 that Mr Grimes was disqualified from holding office as a director and that he was not a member of the ACCA. She also relied upon having told Ms Silcox about the director disqualification issue in her email of 8 June 2020. The second issue that the Tribunal had to determine was the reason for the claimant’s dismissal on 11 June 2020.

Relevant law

14. Section 43B defines a “protected disclosure”:

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—

- (a) that a criminal offence has been committed, is being committed or is likely to be committed,
- (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
- (c) that a miscarriage of justice has occurred, is occurring or is likely to occur,
- (d) that the health or safety of any individual has been, is being or is likely to be endangered,
- (e) that the environment has been, is being or is likely to be damaged, or
- (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

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

15. In **Chesterton Global Limited (trading as Chestertons) and another v. Nurmohamed** [2018] ICR 731, the Court of Appeal endorsed the approach of Supperstone J in the EAT that the questions to be asked in applying section 43B(1) were (a) did the worker believe, at the time when the disclosure was made, that it was made in the public interest?; and (b) if so, was that belief reasonable? (para [27]). A Tribunal must be careful not to substitute its view of reasonableness for that of the worker (para. [28]). The expression “in the... belief” is not answered by examining motive. The belief of the worker that disclosure was in the public interest need not be the predominant motive for making it, and may form no part of the motive at all (para. [30]).

16. What is important, therefore, for the first part of the section 43B(1) test is the claimant’s subjective belief: **Parsons v Airplus International Limited** UKEAT/0111/17/JOJ. As was noted in **Korashi v. Abertawe Bro Morgannwg University Local Health Board** [2012] IRLR 4, what is a “reasonable belief” involves an objective standard but viewed in the context of the personal circumstances of the discloser.

17. Section 47B states *inter alia* :

47B Protected disclosures.

(1) 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.

18. Section 103A states:

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.

19. Section 103A requires the Tribunal to consider “the reason” for the dismissal. By contrast, the broader causation test under section 47B is whether the protected disclosure materially influenced (in the sense of being more than a trivial influence) the employer’s treatment of the whistle-blower (**Fecitt and others v. NHS Manchester** [2012] ICR 372, at [45]).

The Tribunal’s reasons

Did the claimant make protected disclosures?

20. The Tribunal considered whether the information given by the claimant to Ms Jenner and Ms Silcox on 8 June 2020 qualified for protection in terms of section 43B ERA. It gave its reasons for its conclusions on that issue between ET § 48 and 50:

48. It is clear that the Claimant made a disclosure of information when she provided to Ms Silcox the information from company’s (*sic*) house regarding Mr Grimes. However, was it a disclosure made in the public interest? In my (*sic*) view that disclosure was not made in the public interest but in the interests of the Claimant.

49. The information was widely available to the public. The information provided was to query what status Mr Grimes had within the business and whether Mr Grimes should be working at the business in any event. We also find that the information was presented to provide negative information against Mr Grimes the person she clearly had issues with on the run up to the meeting on the 8th June and thereafter until her dismissal on the 11th June. We find that the disclosure was not made in the public interest then I also find (*sic*) that the Claimant did not have a reasonably held belief that it was. I remind myself (*sic*) of the guidance in *Dobbie v. Paula Felton t/a Feltons Solicitors* [2021] IRLR 679 where the principles in *Chesterton* were summarised

‘(7) The essential distinction is between disclosures which serve the private or personal interest of the worker making the disclosure and those that serve a wider interest.

(8) the broad statutory intention of introducing the public interest requirement was that workers making disclosures in the context of private workplace disputes should not attract the enhanced statutory protection accorded to whistleblowers.’

In our view the information provided by the Claimant was not made in the public interest but made in the context of a private workplace dispute.

50. We also do not find that the information satisfied the criteria in s 43B(1)(a) to (f) and in particular (a) (b) and (f) as asserted by the Claimant. I (*sic*) do not find that a criminal offence had been committed, was being committed or was likely to be committed. There was no evidence at all in the bundle that clearly set out the law of possible penalties or implications for employing a disqualified director or somebody without ACCA status etc? Likewise that the Respondents had failed is failing or is likely to fail with any legal obligation. The issue raised over Mr Grimes still being a director of his wife's company was immediately rectified when it was pointed out. There was no evidence that the status of Mr Grimes had been deliberately concealed as the information was open to public access at companies house in any event."

21. At ET § 51, and having quoted from **Korashi**, the Tribunal stated:

"The Claimant has failed to provide any information that on the balance of probability any of (a) (b) (f) of s. 43B have been established."

22. As noted above, the Tribunal did not dispose of the section 47B complaint in its Judgment. It is clear, however, from ET § 48 to 51 that, had it done so, it would have dismissed it.

What was the reason for dismissal?

23. On the issue of the reason for the claimant's dismissal, the Tribunal concluded (ET § 53) that this was the claimant's "performance and her inability to work with Mr Grimes". It noted (ET § 53):

"There was ample evidence throughout April and May 2020 of the mistakes the Claimant was making and the time it was taking Ms Jenner and others to rectify these mistakes. There were also the ongoing issues that the Claimant had with Mr Grimes that led to disputes and arguments. This resulted in the Claimant providing information designed to undermine the role of Mr Grimes...and readdress (*sic*) the balance in the ongoing conflict that the Claimant perceived she was having with Mr Grimes. The Respondents did not dismiss the Claimant because she had made a protected disclosure"

The Grounds of Appeal

24. There are 8 grounds of appeal. In summary, grounds 1 to 6 examine the Tribunal's conclusions on the issue of whether the claimant had made disclosures which qualified for protection under section 43B. Grounds 7 and 8 challenge the Tribunal's conclusions on the reason for the claimant's dismissal.

Appellant's submissions

25. The claimant represented herself at the appeal hearing on 10 February 2026 and made submissions through a court interpreter. Unfortunately, her oral submissions frequently departed significantly both from the grounds which had been permitted to proceed and from her skeleton argument. She sought, in particular, to place reliance upon a number of matters that were of no relevance to the issues in the appeal. These included references to the respondent's whistleblowing policy, data protection law, the **Equality Act 2010**, and an allegation that the respondent had failed in its duty to provide her with a safe working environment.

26. Whilst, therefore, I took account of all that was said by the claimant, I ultimately derived more assistance from the amended grounds of appeal and from the skeleton arguments lodged for each of the parties.

27. On the question of whether the disclosures made by the claimant to Ms Silcox and Ms Jenner on 8 June 2020 were "protected", the grounds of appeal identify several respects in which the Tribunal is said to have erred in law. Specifically, the appellant submits that the Tribunal took into account irrelevant factors that (a) she did not use the word "whistleblowing" in her interactions with Ms Silcox and Ms Jenner on 8 June 2020; and (b) the respondent did not appear to realise at that time that she was providing information that qualified for protection (ground 1). She also argues that the Tribunal erred in its approach to the question of whether she had a genuine belief, reasonably held, (a) that the disclosure was made in the public interest (ground 2) and (b) tended to show one of the matters set out on section 43B (grounds 3 to 6).

28. On the issue of the reason for dismissal, the claimant submits that the Tribunal's conclusion was perverse and failed to have regard to the different test of causation between section 103A and 47B ERA (grounds 7 and 8).

Respondent's submissions

29. Although the respondent did not ultimately attend the appeal hearing, it lodged a skeleton argument of which I took account. In summary, the respondent's position is that the

Tribunal made no error of law. The Tribunal gave correct self-directions and reached conclusions that were open to it on the evidence both on the issue of whether the claimant made disclosures that were protected and on the reason for her dismissal.

Analysis and decision

Preliminary observations

30. There is long-standing practice that written reasons given by an Employment Tribunal made up of a legal member and two non-legal members will be drafted by the legal member. It is crucial, however, that those reasons should record the conclusions of the panel. Any dissenting view should also be committed to writing by the legal member and recorded as such. In several places within the reasons produced in this case, they record only the conclusions of the legal member. To the informed and fair-minded observer, that is likely to create the impression, rightly or wrongly, that the views of the non-legal members of the panel may have been ignored. This was not a point that was taken in this appeal and nothing ultimately turns upon it. It is, however, unsatisfactory that reasons have been produced that might give such an impression.

31. It is also unfortunate that an important part of the claimant's case – the complaint under section 47B ERA – was not dealt with in the operative part of the Tribunal's Judgment.

The reason for dismissal

32. The Tribunal made a clear and unequivocal finding of fact that the principal reason for the claimant's dismissal was a combination of her performance and her relationship with Mr Grimes. That finding was plainly open to it on the evidence, and there was ample material to support it. In the absence of any contrary suggestion, I infer that the principal source of evidence as to the reason for the dismissal was Ms Jenner who wrote the dismissal letter. Her evidence was also circumstantially supported and confirmed by the various documents and emails about performance issues. The majority of these pre-dated the making of anything relied upon as a protected disclosure and clearly demonstrated that there had been quality issues with the claimant's work over the whole period from late 2019 through to the date of her dismissal in June 2020.

33. It is also quite clear that the Tribunal recognised that, in applying section 103A ERA, its task was to identify the “principal” reason for the dismissal. As I have already noted, it did so and reached a conclusion that was rational and based upon the evidence. I therefore reject grounds 7 and 8 and the invitation to set aside paragraph 1 of the Tribunal’s Judgment in which it dismissed the part of the claim made under section 103A ERA.

Protected disclosures – section 43B

34. The issue of whether or not the claimant made protected disclosures remains live in relation to the section 47B ERA complaint. In that regard, I agree with the appellant that, having correctly summarised the law, the Tribunal ultimately lost sight of the key questions that it needed to determine.

35. On the question of the public interest element of the section 43B(1) test, the Tribunal required to make factual findings about whether, whatever may have been her motives, the claimant genuinely considered that that her disclosures were in the public interest (**Chesterton**). The focus at this first limb of the test should have been entirely upon the claimant’s state of mind (**Parsons**). If, at the time of making the disclosures, the claimant genuinely believed them to be in the public interest, the next question for the Tribunal would have been whether such a belief was reasonable for someone in the particular position of the claimant (**Korashi**).

36. On the first limb of the test, however, it is unclear what the Tribunal concluded about the claimant’s state of mind. Its reasons appear to focus exclusively upon the issue of her motive. Even if the Tribunal considered that the claimant’s sole motive was to discredit Mr Grimes, it was still incumbent upon it to make a clear finding as to whether or not she genuinely believed that the disclosures she made were, in any event, in the public interest. If, on the other hand, the Tribunal thought that the claimant never even considered the public interest, it needed to say so in terms. Unfortunately, it did not do either of those things.

37. On the second issue, the way in which the Tribunal expressed itself at ET § 49 suggests that it substituted its own view of reasonableness for an assessment of reasonableness from the perspective of the claimant. In light of **Korashi**, that was an error of law.

38. I therefore agree with this element of ground of appeal 2.

39. On the question of whether the claimant reasonably believed that the information tended to suggest any of the matters referred to at section 43B(1)(a) to (f), I also agree with the appellant that a very similar error of law is apparent in the Tribunal's reasons at ET § 50. Nothing in that paragraph suggests that the Tribunal considered the claimant's state of mind at the material time. It made no finding at all about what she believed. Instead, ET § 50 appears to record only the Judge's opinion as to whether any of the things referred to in the section had actually been proved to have happened. That was, again, a material error of law.

40. In summary, therefore, I agree with the appellant that both elements of the Tribunal's conclusions under section 43B **ERA** were vitiated by material errors of law. As a result of those errors, the Tribunal did not go on to make any factual findings about whether the claimant had suffered the claimed detriments or, if so, whether such detriments were "on the ground of" one or more protected disclosures.

Disposal

41. An unusual feature of this appeal is that the Tribunal did not dispose of the section 47B **ERA** complaint in the operative part of its Judgment. As a result, no part of that Judgment requires to be set aside on account of the errors that it made in its reasons. It follows that the section 47B complaint has never been properly determined, and must be remitted.

42. Over three years have passed since the hearing which led to this Judgment. The particular errors that this Tribunal made, and the views expressed by it are also likely to have coloured its view of the evidence. At the very least, the appearance of fairness could be compromised by a remit to the same Tribunal. I have, therefore, come to the view that a remit to a different Tribunal is the only appropriate course.

43. I will therefore remit all elements of the claimant's pleaded section 47B **ERA** complaint to a differently constituted Tribunal.