EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000731/2025

Held in Glasgow on 1, 2, 3, 4 & 5 June 2026

Employment Judge M Kearns

Miss K O'Donnell	**Claimant** **In person**
Emblation Ltd	**Respondent** **Represented by:** **Ms F Gorry** **Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal was to dismiss the claims.

REASONS

1. The claimant was employed by the respondent from 6 March 2023 until 23 December 2024 as their HR and People Development Manager. On 21 March 2025, having complied with the early conciliation requirements, she presented an application to the Employment Tribunal in which she claimed: (i) automatically unfair dismissal for the reason or principal reason that she had made protected disclosures; and (ii) a contractual redundancy payment. The respondent resisted the claims.

Issues

2. The issues for determination are set out and addressed in the discussion section below.

Evidence

3. The parties lodged two joint bundles of documents and referred to them by page number. The claimant also lodged a further supplementary bundle. The claimant gave evidence on her own behalf and called one witness: Mairi MacFadyen, the respondent's former Chief Regulatory Officer. The respondent called the following witnesses: Alan McKenna, Chief Financial Officer; Gregor

Goodwin, former Chief Financial Officer; Ken Lewandowski, Non-executive Chairman; Ian Stevens, CEO; and Rory Pope, Director.

Findings in fact

4. The following material facts were admitted or found to be proved:

5. The respondent is a company based in Stirling engaged in the development and sale of microwave devices for oncology, dermatology and podiatry. The company was founded by two individuals: Gary Beale and Eamon McErlean in August 2008 to commercially develop their original microwave product. In around June 2009, Kenneth Lewandowski - a former local chair of Clydesdale Bank - joined the respondent as a director and non-executive chair and assisted the respondent in securing funding for product development. In or about May 2021, the respondent received significant funding from Apposite, a private equity firm. The firm became a major shareholder of the respondent and one of the firm's partners, Rory Pope became a director of the respondent. In early January 2024, Gregor Goodwin commenced employment with the respondent. He was brought on board as a director to assist with the raising of funds for the business from Virgin Money and other investors. In early May 2024, the respondent secured a further loan of £4 million from Virgin Money. This loan was subject to revenue and cash consumption covenants and the respondent was already at this time having to take steps to address its cash consumption going forward.

6. The claimant was employed by the respondent from 6 March 2023 as their HR Manager, reporting to Mr Beale, who was at that time Chief Executive Officer. As at Spring 2024, the company had around 65 employees – 50 in the UK and 15 abroad (principally in the USA). In April 2024, Mr Beale resigned as CEO. His contract contained a 12 month notice period. He told Mr Lewandowski of his resignation over a coffee and said his wife, Nicola Beale (Executive Assistant) would be leaving as well. Mr Lewandowski drafted a letter to Mr Beale in relation to his resignation and asked the claimant to put it on the respondent's headed notepaper. The claimant did so but she made some changes to the letter without first consulting Mr Lewandowski. Mr Lewandowski was annoyed about this and he instructed the claimant that she was to use his original draft without altering it.

7. Around the time Mr Beale handed in his notice, the respondent was preparing for its first ever round of redundancies. As HR Manager, the claimant had been guiding the redundancy selection process, overseen by Gary Beale. The process lasted for several months (from February to June 2024) and was referred to as "payroll analysis". All the roles in the business were assessed and scored by the senior management team under ten criteria. There had been a number of meetings. Five roles were to be identified for redundancy.

8. By email to the claimant and Mr Lewandowski dated 24 April 2024 (206) Mr Beale moved his wife to the at-risk of redundancy list, stating: "*..it is agreed that the Executive Assistant role be moved to the at-risk list."*

9. Until Mr Beale's resignation, Mr Lewandowski had been Non-executive Chair with very little day-to-day management of the respondent. However, after Mr Beale resigned and once the fundraising was concluded in May 2024, Apposite asked Mr Lewandowski to undertake the recruitment of a new CEO and to assume the role of Interim Executive Chair in the meantime. His appointment was duly confirmed by the Board.

10. A date of 6 June 2024 had been set for the individuals selected for redundancy to be advised that their roles were redundant. There was no prior warning or consultation. The selected individuals were simply given notice of redundancy on that date (J219).

11. Around this time, Mr Lewandowski was having intermittent problems with emailing certain people (the claimant included) on his company email. Accordingly, on Wednesday 5 June 2024 at 21:50, Mr Lewandowski sent the claimant an iMessage (J213) in the following terms: "*Tina, STRICTLY CONFIDENTIAL.. Sorry but I still can't email on my EMBLATION account. // I have emailed Gary and want you to know that I have for a very confidential compassionate reason asked for* [KM] *to be removed from the redundancy process. I will accept the responsibility for the cost reduction shortfall. Regards, Ken."*

12. The claimant responded on 5 June 2024 at 23:10: "*Hi Ken, Many thanks for your message, as you can appreciate this presents various implications.// Can we discuss first thing tomorrow, to allow me to make an informed decision and ensure that the company is not adversely impacted.// I'll schedule a meeting with yourself and Gary, what time would suit you best? Kind regards Kristina.*" <u>The claimant argues that this response constituted her first protected disclosure</u>.

13. At 19:38 on 5 June 2024, Mr Lewandowski had also emailed Gary Beale and Gregor Goodwin (CFO) asking for KM to be removed from the redundancy program for a compassionate reason. At 00:07 on Thursday 6 June 2024, Mr Beale replied with a number of reasons why the request could not be accommodated. This led Mr Lewandowski to retract his request in an email to Mr Beale (copied to Gregor Goodwin) at 07:37 on 6 June (J222) in which he stated: "*Gary, Do not postpone this exercise today. Go ahead and do what you and Kristina have planned.. and take* [KM] *out as you have decided to do.// Any information I have will not be released by me to anyone, least of all Kristina. I sent her a txt msg last night advising her of my request, so feel free to countermand that message.// This will save you from seeking her qualified feedback any further.// I would like to add that my personal opinion is that the simple redundancy of 4/5 people is totally over complicated and blown out of all proportion here, I hear and read your comments but can't agree with the sentiment at all, so good luck…."* The email correspondence was not copied to the claimant.

14. At 07:57 on 6th June, Mr Lewandowski responded to the claimant's iMessage in the following terms: "*Kristina, I've just communicated with Gary, go ahead with your plans as arranged. I've just been given chapter and verse on the prospective serious impact on the company and so not wishing to be the cause of that pain I'm not standing in your way. I only want to add my opinion that this redundancy of 4/5 heads is being blown out of all proportion. Ken.*" The claimant responded "*Hi Ken, no problem, let's catch up to discuss, I would prefer that you were comfortable with the process. Are you coming into the office this morning? Many thanks Kristina*". Mr Lewandowski responded briefly to say he would be in at 9:00. The claimant replied: "*Perfect, I'll see you then."*

15. Mr McKenna first became aware of the claimant's iMessage to Mr Lewandowski (see paragraph 12 above) in June 2025 in the context of the Employment Tribunal process. Mr Stevens did not join the respondent as an employee until 2 December 2024. The role of CEO was offered to him in

August 2024. He did not see the claimant's text to Mr Lewandowski, nor was he aware of its contents until he received a copy of the documents in connection with these tribunal proceedings around the summer of 2025.

16. On 6 June 2024 the claimant attended the office and spoke to Mr Lewandowski around 9.30am. The claimant asked him about the nature of the confidential information he had received about KM and he said he was unwilling to share it. He said he had heard it from an old friend he had bumped into at the garage and that KM was not to be approached. The claimant stated that a scoring matrix had been used for the selection and that she considered his request could have had a potential serious impact on the business.

17. When Mr Beale arrived, the claimant went into his office and told him she had had a further conversation with Mr Lewandowski and related its terms. She commented that they were 'literally about to make people redundant and they had carried out a lengthy and fair process and considered the potential impact on the business'. Mr Goodwin joined them at this point and the claimant told Mr Beale and Mr Goodwin that no further information had been provided by Mr Lewandowski about the nature of the request. She said that Mr Lewandowski had said it was a confidential matter and she stated that none of them were any the wiser what that confidential matter was. It remained undisclosed. The claimant said that the employee in question held a customer assistant role and did not have a qualification required for one of the bespoke areas of the business. It was not a crucial position and another individual had longer service. The claimant said they had carried out a fair process and if they kept KM in the business, there were others who could challenge them for unfair selection. Mr Beale and Mr Goodwin agreed with the claimant and said she was doing the right thing discussing it with them but noted that it had already been sorted out. The claimant expressed concern to Mr Goodwin that Mr Lewandowski was impatient and wanted things done quickly by her. She said she thought this was not conducive to a positive working environment. Mr Lewandowski had made similar observations to him about the claimant. <u>The claimant argues that her statements at this meeting constituted a second protected disclosure.</u> During the currency of the claimant's employment, neither Mr Stevens, nor Mr McKenna nor Mr Lewandowski became aware of the claimant's meeting with Mr Beale and Mr Goodwin on 6 June 2024, nor were they aware of the content of the discussion.

18. Later that day, the five individuals selected were advised of their redundancy and given notice. Two had less than two years' service and did not receive a statutory redundancy payment. The other three had more than two years' service. Of these three, only one received an enhanced redundancy payment. She was Nicola Beale, wife of Gary Beale, the previous CEO.

19. On 6 June 2024, Mr Beale's resignation as CEO and Mr Lewandowski's interim appointment as Executive Chair were announced. Mr Lewandowski had asked Mr Beale several times to reconsider his resignation but he was not prepared to do so. The relationship between Mr Beale and Mr Lewandowski became increasingly rather strained.

20. Around this time, steps were being taken to recruit for two sales roles: a Group Sales Director and a Sales Manager for Ireland (J225). On 13 June 2024, Mr Lewandowski emailed the claimant (J226) requesting the shortlisted CVs. He considered that external recruitment was not required, as he believed the respondent's marketing manager had the necessary experience and skills to

undertake the role of Sales Director. He accordingly asked for the external recruitment process for that post to be stopped to allow for promotion of the marketing manager.

21. On 21 June 2024, the claimant emailed Gary Beale and Eamon McErlean to express concerns regarding Mr Lewandowski's request to stop the sales director recruitment process (J227-228). The claimant did not copy Mr Lewandowski into her email and he did not see it. Mr Lewandowski first became aware of the email when he saw it in the bundle of documents for this Tribunal hearing. The email was not seen by Mr Stevens or Mr McKenna either until after the claimant's employment had ended. Mr McKenna saw it for the first time in or around June 2025 when gathering documents to respond to a subject access request the claimant had made of the respondent. Mr Stevens saw it for the first time during the production of evidence for the claimant's tribunal claim.

22. <u>The claimant argues that the following italicised passages of her email of 21 June 2024 to Mr Beale and Mr McErlean constitute a third protected disclosure:</u>

"Hi Both, Further to recent discussions, I'm writing to express significant concerns regarding our current recruitment process for the Sales Director role, which has shown concerning signs of bias.// *I feel that it is imperative to bring this to your attention due to the internal and external risks it poses to the business, particularly during this critical turnaround point.*

By way of an overview, to date.

- *We have received 338 external applications; 14 candidates have been shortlisted (CVs attached for ease of reference).*
- *Internally, several qualified candidates from the commercial team have been bypassed. (SU, HK & AM)*
- *One individual has been targeted for the role (SI), who is several levels away from the required skill set.*

While it is essential to develop our internal talent, this should not come at the expense of other qualified candidates or, worse still, damage the individual's confidence as they have been promoted beyond their capabilities and as a consequence the company's overall progress is adversely affected.

Risks:

- **Employee Morale and Retention**: Perceived bias demoralises employees, reducing engagement and increases turnover, at a time where the focus is very much on the sales team, the impact could be detrimental to us hitting the necessary targets that have recently been implemented.
- **Diversity and Inclusion**: Biased recruitment undermines diversity, which is crucial for our innovation and growth.
- ***Legal and Compliance Issues****: Discriminatory practices like this raise the risk of internal and external legal claims for unfair practices. All of which would be recognised and supported, as we have no tangible evidence that proves that this role has been allocated fairly.*
- **Reputation and Brand Image**: Biased practices damage our brand, eroding trust from internal and external stakeholders.
- **Talent Acquisition**: A biased reputation deters top talent, limiting our competitive edge and overall performance.

Recommended Actions:

Diverse Hiring Panels: Ensure that our hiring panels are diverse, bringing multiple perspectives to the candidate evaluation process and ensuring that any internal employees have the opportunity to apply for this role.
Anonymous Applications: Consider blind recruitment practices by removing names and other identifying information from CVs allowing for an unbiased focus on skills and experience.

I appreciate that this is a challenge at the moment , addressing these concerns proactively is essential to fostering an inclusive workplace and mitigating associated risks….”

23. Over the summer of 2024, Mr Lewandowski and Gregor Goodwin (as acting CFO) contacted a specialist executive recruitment company to initiate a recruitment exercise for a new CEO to replace Gary Beale. The claimant was not involved in this process.

24. On 13 September 2024 (J230), the respondent announced the appointment of Ian Stevens as its new CEO from 1 December 2024 and Alan McKenna as its new CFO with effect from 1 October 2024. There were also some other changes. For example, Peter Smith the Chief Operations Officer became Chief Commercial Officer and Jonathan Williamson went from Chief Commercial Officer to Chief Marketing Officer. The claimant was not involved in these changes. Over the summer, Mr Goodwin and Mr McKenna were becoming concerned that the respondent was spending far too much on clinical trials and executive pay in the USA. They worried that the company's cost base was disproportionate to its size.

25. On 17 September 2024, Mr Lewandowski emailed the claimant (J232) requesting the breakdowns for the June redundancies and a copy of the letters given to each of the five individuals made redundant. Later that day, he called the claimant into his office and asked her why the respondent was still paying Nicola Beale, when she had left the company. The claimant replied that it was because her redundancy payment had been more than the others because of her length of service. She told Mr Lewandowski that the respondent was paying Mrs Beale notice pay monthly for cash flow reasons. As she was leaving his office, Mr Lewandowski commented to the claimant that she '*was following the rules of Gary Beale, not the rules of the company*'. Later, in the kitchen, the claimant told Mr Lewandowski that the respondent was contractually obliged to pay Mrs Beale and reiterated that it was for cash flow reasons and not the rules of Gary Beale. Mr Lewandowski's relationship with Mr Beale remained somewhat strained. The following Tuesday, the claimant was informed that Mr Lewandowski had reviewed the CVs for the 14 shortlisted candidates but had decided to appoint the marketing manager, Shelley Inglis, an internal candidate to the role of Sales Director.

26. On or around 26 September 2024, Alan McKenna became aware that the respondent was facing a £2 million shortfall in revenue from Medtronic unit sales in FY25 which would place significant pressure on available liquidity from November onwards. It was suddenly apparent that the additional funding the respondent had obtained from Virgin Money in May 2024 was insufficient due to this unexpected fall in its trading performance. Mr McKenna immediately commenced preparation of a recovery plan for discussion with the board (J235

to 248). Based on his projections the business was expected to breach Virgin Money's cash consumption covenants from September 2024 onwards (J242), meaning that Virgin could demand repayment of their £4 million loan in circumstances where the respondent could not repay it. This placed the respondent in existential danger and an urgent Board Meeting was called for 27 September 2024.

27. On 8 October 2024, Rory Pope, Ken Lewandowski and Alan McKenna met to try to identify solutions for a recovery plan (252). They then met with Ian Stevens on the same day to bring him up to speed with the reality of the situation facing the business as a courtesy to let him know the situation and check that he still wanted to join. They explained to Mr Stevens that Medtronic had changed their purchase order, resulting in a significant reduction in income for the year and that that, together with general underperformance in US sales, had had a dire effect on cash flow. They told him the respondent was likely to breach its cash flow covenants with Virgin Money, who had recently lent the company money. It was agreed that Mr Lewandowski and Mr McKenna would develop a recovery plan and that Mr Stevens would become involved in that. By 15 October 2024, the possibility of a staffing restructure to save money was one of a number of measures under consideration (J260).

28. Mr Lewandowski, Mr Goodwin, Mr McKenna, Mr Stevens and Mr Pope met again on 17 October 2024 and 31 October 2024 to discuss the recovery plan and revised cash flow forecast and to consider options to reduce 'cash burn' in the short term. They considered it essential to demonstrate to Apposite and Virgin Money that they had a credible team, who were taking steps to address the cash problem and growth strategy. They met with Virgin Money at lunchtime on 31 October 2024 and then held a Board Meeting in the afternoon.

29. Around the beginning of November 2024, Mr Lewandowski introduced Mr Stevens to the staff ahead of a meeting that took place in the office. The claimant was not introduced to him but he introduced himself to her after the meeting.

30. A further board meeting took place on 25 November 2024. Trading in November had been behind expectations and this had accelerated the need to cut costs. The forecasts and recovery plan (J255, 259, 260 and 264) indicated that the cost base was unsustainable for the level of trading and set out cost cutting options to save the business. So far as relevant for present purposes, these included reducing headcount and implementing salary reductions. The claimant was not involved in these discussions. The claimant's role was not under discussion at this point. However, at the board meeting on 31 October 2024, Mr Stevens had commented that he was surprised that a company the respondent's size had an HR function.

31. Mr Stevens commenced employment as CEO on 2 December 2024. At the same time, Mr Lewandowski stepped back to the non-executive chair role. Mr Stevens and Mr McKenna had been the principal architects of the recovery plan up to this point but the actual decisions had been left for Mr Stevens who would have to live with them as CEO.

32. The claimant was not involved in Mr Stevens' 'on-boarding'. His contract documents were instead passed to Darren Johnston in the Finance Team to scan into the system.

33. Mr Stevens was well prepared for the CEO role by the time he took the helm. He was aware that unless he took urgent steps to reduce costs, the business was at imminent risk of receivership. His view was that there was a lot of expenditure in areas where there was no immediate revenue return. He decided to make immediate reductions in employment costs. Thereafter, he would prepare an initial plan to return to growth. On his first day Mr Stevens asked the claimant to send him details of all staffing costs and contracts (J313). Having reviewed them and decided what to do, he contacted Mr Pope (as controlling investor) and Mr Lewandowski (chair of the board) the next morning (3 December 2024) as a matter of courtesy, to let them know he would be making four roles redundant imminently. Mr Stevens was not instructed, influenced or pressured by anyone else to make the claimant's or anyone else's role redundant. Later the same day, he sent an email to Mr Pope and Mr Lewandowski (copied to Mr McKenna) (J324), confirming his initial views and proposals. The email indicated that he was preparing a costed plan. However, it stated: "*In the meantime the following immediate actions are planned:*

- *Cease direct sales activities and spend in all markets outside of UK/ US, including the payment of consultants in these markets;*
- *Suspend regulatory submission work and spend in all markets outside of UK/ US, except for that needed to progress matters in Canada and Australia;*
- *Reduce the management team size and cost by making the following redundancies:*"

34. Four roles were then proposed for redundancy, three Chief Officer roles and the claimant's HR Manager role. Rationales were given for each proposed redundancy. The rationale for the two sales Chief Officer roles was "*That the size of the UK sales team is too large and expensive in relation to the revenue currently being earned.*" The redundancy of the Chief Regulatory Officer role was said to be: "*appropriate given the reduced need for regulatory filings and progress monitoring in Europe.*" The rationale given for the redundancy of the claimant's role was as follows: "*Kristina's redundancy is an acknowledgement that a Company of Emblation's size does not need an HR department.*" The email ended: "*Thanks for discussing this subject with me earlier today and for the support you expressed for what is planned, even though it is an unwelcome set of actions for the business to have to take. We will initiate the actions needed on Thursday 5 December and let these employees know of the intention to make them redundant, at which point, I expect they will leave the business whilst the process is ongoing.*" At some point prior to 3 December 2024, Mr Stevens had engaged Just Employment Law to advise the respondent on the proposed redundancies. They advised him to conduct consultation meetings with those affected with Mr McKenna attending as notetaker.

35. Mr Stevens wrote to the claimant on 5 December 2024 to advise her that her role was at risk of redundancy (J326). He explained that going forward there would be less need for time to be spent on recruitment, onboarding and ongoing HR support and that the claimant's duties would be absorbed by Mr Stevens and Mr McKenna working with individual line managers. The letter invited the claimant to a first consultation meeting on 10 December 2024.

36. The claimant attended her colleague Mairi McFadyen's first consultation meeting as Ms McFadyen's companion on 10 December 2024. Ms McFadyen

held the role of Chief Regulatory Officer. She departed the room at the end of her own meeting. The claimant then attended her own first consultation meeting immediately thereafter. The claimant waived her right to be accompanied. Both meetings were chaired by Mr Stevens, accompanied by Mr McKenna, who took notes. The claimant made covert recordings of both meetings and transcribed them (J332-338) and (J339-350). <u>At Ms McFadyen's meeting, the claimant made the following contributions which she argues constitute her fifth protected disclosure (J341)</u>: "*KO: Are you aware of the buy-back scenario, Ian?...*." The context of this was that employees of the respondent in the USA had been offering prospective customers a guarantee that if they were not seeing a return on their investment in the product within 24 months, the respondent would buy it back. The claimant believed that this was a form of impermissible inducement. When they had been made aware of this by Ms McFadyen in June 2024, Mr Lewandowski and Mr McKenna had immediately halted the practice.

> (J346 – 7) *"….KO: can I ask has an assessment of the overall cost of losing Mairi from the business and her level of expertise and the way that she has previously turned things around incredibly quickly in record timing with things that are unheard of, submissions that have been turned around in 60 days and you know as a colleague and a friend, Mairi stands out from any other individual within the business for me simply because she's the insurance that protects us and safeguards not only in house, but you know the patients and clients that are being treated you have OEM products out there that the reality is if something were to go wrong there and things hadn't been effectively managed in house, then the liability and comes directly to you guys and previously, Mairi has protected this company. Impeccably and there's been zero issues and things have been turned around really efficiently. Yes, we have got an a QMS system that there are areas of development or improvement. That's the same in any organisation, but the risk to the business from a personal perspective is far greater to lose Mairi than you know then go through you know then go through this process and the risk to you guys as well. and the patients out there it's it's have been highlighted fairly recently to both yourself, Alan and to Ken when he was in position as executive chair the seriousness and the significance of not changing and adhering to the rules that the Canadians had clearly broke. They were their committed. They're not committed. …….*
>
> *KO: I'm speaking from a professional perspective too. But if things aren't turned around and actioned with her insight to that with that level of expertise, then it could completely."*

37. At her own first consultation meeting, the claimant suggested that as an alternative to redundancy, she could be placed into a hybrid role where she would do both HR and commercial activities. Mr Stevens considered this but decided that as the Chief Commercial Officer and Chief Marketing Officer roles were also being made redundant and an alternative cost effective arrangement had been made for HR advice, this suggestion by the claimant would not be adopted. The only alternative roles available were engineering roles for new contracts the respondent had won but these roles were not suitable for the claimant. The claimant suggested to Mr Stevens that she and the others at risk had been selected because of their affiliation with Mr Beale. However, this was incorrect as Mr Stevens had no awareness of any affiliations, having just started with the business.

38. After the consultation meetings, the claimant emailed Mr McKenna and Mr Stevens a list of concerns (J351- 353). She relies upon the following extracts from this email as her sixth disclosure (J352):

“*Dear Both, I am writing to formally express my concerns regarding the management of the current redundancy process.// Firstly, the approach in selecting individuals for redundancy, as well as the challenges and treatment they have faced over the past 6 months, has raised serious questions in relation to fairness and transparency. Over the past 6 months, I personally have faced bullying, harassment, removal of core responsibilities and pressure to act against HR best practices, as well as witnessing senior promotions occurring without due process. In addition, there is a wide perception that those involved may have been targeted due to their affiliation with the previous CEO and current president of the company.*

Additionally, the apparent failure to follow best practice during the last 6 months may carry direct legal implications for the organisation by the employees that have been selected.

….

Lastly, I am particularly alarmed by reports regarding an employee who recently departed the organisation. It has been alleged that the Global Financial Controller informed this individual that the new CEO intended to make sweeping changes, specifically targeting certain employees for dismissal in a manner described as “hilarious”. If accurate, such comments reflect a troubling lack of professionalism and respect. Notably, previous reports of misconduct involving this individual appear to have been disregarded.

These issues require immediate attention to ensure the redundancy process is conducted with fairness, transparency and in alignment with legal requirements....”

39. On 11 December 2024, Mr McKenna sent the claimant a copy of the consultation minutes for her comments. On 16 December 2024, Mr McKenna sent the claimant a response to the concerns she had raised regarding her role. A second consultation meeting took place on 17 December 2024 (J358-359). A copy of the minutes was sent to the claimant on 23 December 2024. An outcome letter confirming her dismissal by reason of redundancy was sent to her the same day (J366). The claimant’s employment terminated on 23 December 2024. She was paid £14,438 in lieu of her three months’ notice period. She received a statutory redundancy payment of £2,100 despite not having two years’ service at the effective date of termination. She was also given the use of her company car until the end of March 2025. On 7 January 2025, the claimant appealed her dismissal. There is no reference to having been dismissed for making protected disclosures in her letter of appeal.

40. The claimant had drafted a redundancy policy (J124) at some point during her employment as HR Manager. However, this had not been reviewed by the respondent’s remuneration committee or approved by the respondent’s board. The policy did not show an active date on its document change history (J125). The policy provided at clause 4.1 that in accordance with UK statutory requirements, employees with at least two years’ continuous employment are

entitled to statutory redundancy pay. Clause 4.2 of the draft policy stated: "*Company Enhancement. Part of our commitment to supporting employees, we offer an enhanced redundancy package. In addition to statutory redundancy pay, employees will receive their full salary should their weekly amount exceed the weekly statutory entitlement....*" Clause 1.5 of the policy provided that it was non-contractual. Mr Stevens investigated the matter and discovered that the policy had not been adopted by the board. He found that when the respondent had made redundancies in June 2024, the policy had been applied to Mrs Beale but not to the other two employees with more than two years' service. Mr Stevens considered the approach in the draft policy erroneous and he withdrew the statement that the claimant was entitled to enhanced redundancy pay. He asked Mr McKenna to issue a letter to the claimant explaining that the draft policy had not been officially approved and to send her a revised outcome letter, which he did on 8 January 2025 (373). The respondent nevertheless paid the claimant a statutory redundancy payment of £2,100, despite her not having completed two years' qualifying service.

41. On 10 January 2025, Mr McKenna acknowledged the claimant's appeal and confirmed arrangements for an appeal hearing. The claimant advised she did not want Mr Lewandowski to hear her appeal and that her preference was for the process to be in writing. It was agreed that her appeal would be considered by Mr Pope, director and partner of Apposite (392). On 17 March 2025, having reviewed a draft outcome letter prepared by the respondent's employment lawyer and having considered the points raised by the claimant in her appeal, Mr Pope issued an appeal outcome letter to the claimant (414). The appeal was not upheld.

Observations on the Evidence

42. There was a conflict in the evidence between the claimant and Mr Lewandowski regarding whether they had met in the office on the morning of 6 June 2024 and in particular whether Mr Lewandowski had 'asked her to do him this one favour'. Mr Lewandowski did not remember the meeting. Ms Gorry asked the claimant in cross: "*You hadn't referred to this meeting with KL until today. Why not?*" C: "*Because there was so much information*." On balance, I concluded that the claimant may have had a conversation with Mr Lewandowski that morning. I thought it likely she would have spoken to him about the text exchange the previous evening. I accepted that she had asked him about the nature of the confidential information he had received about KM and that he had said he was unwilling to share it. He confirmed in cross examination that he had heard about it from an old friend he had bumped into at the garage. The claimant had already testified he had told her this. I thought it likely that (as the claimant had not seen Mr Beale's email to Mr Lewandowski), she probably had justified to Mr Lewandowski her advice to Mr Beale. This is the sort of thing the claimant would remember but Mr Lewandowski might not. However, for what it's worth, I did not accept that Mr Lewandowski had asked the claimant to 'do him this one favour' because this was inconsistent with his text to the claimant and in particular his email to Mr Beale.

43. The claimant had covertly recorded her own and Ms McFadyen's consultation meetings. The respondent nevertheless consented to the transcripts and recordings of these being before the Tribunal. The recording of the claimant's own consultation meeting was played during the hearing but contained nothing

untoward. The claimant was asked in cross examination whether she had made Mr Stevens and Mr McKenna aware that she was recording the meetings and whether she had sought their consent. She replied that they were aware from her email signature strip, which states (311): "*All forms of communication both written and verbal may be recorded for training purposes.*" When it was put to her that she was not recording for training, she said it was for her own training/development purposes, which I considered a little disingenuous.

Applicable Law

Automatically Unfair Dismissal for Making a Public Interest Disclosure

44. Section 103A ERA provides, so far as relevant as follows:

*"**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."

45. With regard to protected disclosures, the following provisions apply. Section 43A states:

*"**43A Meaning of "protected disclosure"***

In this Act a "protected disclosure" means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H."

46. Section 43B provides, so far as relevant:

*"**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, or is likely to be deliberately concealed.

…………………………….

(5) In this Part "the relevant failure", in relation to a qualifying disclosure, means the matter falling within paragraphs (a) to (f) of subsection (1)."

47. Section 43C states:

*"**43C Disclosure to employer or other responsible person***

(1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure in good faith –

(a) to his employer, or
(b) ……”

Discussion and Decision

Automatically Unfair Dismissal for Making a Public Interest Disclosure

48. Per Harvey on Industrial Relations and Employment Law Division CIII: *“In order for a whistleblowing disclosure to be considered as a protected disclosure three requirements need to be satisfied (ERA 1996 s 43A). First of all there needs to be a 'disclosure' within the meaning of the Act. Secondly, that disclosure must be a 'qualifying disclosure', and thirdly it must be made by the worker in a manner that accords with the scheme set out at ERA 1996 ss 43C–43H.”*

49. As is apparent from the legislation set out above, in order for a disclosure to be a qualifying disclosure it must satisfy a number of tests. I have applied these to the facts in relation to each alleged disclosure below. The tests to be applied to each alleged disclosure are as follows: (Williams v Michelle Brown Am UKEAT/0044/19 (2019 October 2019, unreported)): *“First, there must be a disclosure of information. Secondly, the worker must believe that the disclosure is made in the public interest. Thirdly, if the worker does hold such a belief, it must be reasonably held. Fourthly, the worker must believe that the disclosure tends to show one or more of the matters listed in subparagraphs (a) to (f). Fifthly, if the worker does hold such a belief, it must be reasonably held.”* The final issue to be considered in relation to whether a qualifying disclosure is protected is whether it was made in the correct manner.

(i) In respect of each purported disclosure, did the claimant disclose information?

50. A qualifying disclosure must convey information, in the form of facts even if those facts are already known to the employer (Section 43L). Mere allegations are not sufficient. In ***Cavendish Munro Professional Risk Management Ltd v Geduld*** 2010 ICR 325 the EAT illustrated the distinction between information and mere allegation with the following example: “*The wards have not been cleaned for the past two weeks. Yesterday sharps were left lying* around” would amount to the communication of information. By contrast “*You are not complying with health and safety requirements”* would be an allegation but not (without more) the conveying of information. In ***Kilraine v London Borough of Wandsworth*** [2018] EWCA (Civ) 1436 the Court of Appeal said that ‘to be a qualifying disclosure, a statement has to have sufficient factual content and specificity to tend to show one of the matters listed in section 43B ERA. As Ms Gorry submitted, the Court went on to stress that the word ‘information’ in S.43B(1) has to be read with the qualifying phrase ‘tends to show’ — i.e. the worker must reasonably believe that the information ‘tends to show’ that one of the relevant failures has occurred, is occurring or is likely to occur. Accordingly, for a statement or disclosure to be a qualifying disclosure, it must have sufficient factual content to be capable of tending to show one of the matters listed in S.43B(1)(a)–(f). The Court said that whether an identified statement meets that standard is a matter for “evaluative judgment” by the Tribunal in light of all the facts of the case, assessing the disclosure in context. The question is whether sufficient information is disclosed.

(ii) If the claimant did disclose information, did she believe that the disclosure was made in the public interest?

Public interest

51. In relation to the public interest test, helpful guidance was given by Underhill LJ in Chesterton Global Limited v Nurmohamed [2017] IRLR 837. At paragraph 27 he said this: *"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."* He went on to observe 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 and that there may be more than one reasonable view of the matter. Finally, he stated: *"I do not think there is much value in trying to provide any general gloss on the phrase "in the public interest". Parliament has chosen not to define it, and the intention must have been to leave it to employment tribunals to apply it as a matter of educated impression."*

52. At paragraph 35 Underhill LJ said this: *"It is in my view clear that the question whether a disclosure is in the public interest depends on the character of the interest served by it rather than simply on the numbers of people sharing that interest."*

53. At paragraph 37 Underhill LJ listed some potentially helpful factors (from submissions recorded at paragraph 34) that would normally be relevant as follows:

> *"(a) the numbers in the group whose interests the disclosure served…;*
> *(b) the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed – a disclosure of wrongdoing directly affecting a very important interest is more likely to be in the public interest than a disclosure of trivial wrongdoing affecting the same number of people, and all the more so if the effect is marginal or indirect;*
> *(c) the nature of the wrongdoing disclosed – disclosure of deliberate wrongdoing is more likely to be in the public interest than the disclosure of inadvertent wrongdoing affecting the same number of people;*
> *(d) the identity of the alleged wrongdoer – ….. "the larger or more prominent the wrongdoer (in terms of the size of its relevant community, i.e. staff, suppliers and clients), the more obviously should a disclosure about its activities engage the public interest" – though he goes on to say that this should not be taken too far."*

(iii) Was her belief reasonable?

Reasonable belief

54. A qualifying disclosure must, in the reasonable belief of the worker making it be made in the public interest and tend to show one or more of a number of the states of affairs listed in Section 43B(1) (a) to (f). In Kilraine the Court of Appeal said this (at paragraph 35 – 6):

> *"35 Grammatically, the word 'information' has to be read with the qualifying phrase, 'which tends to show [etc]' (as, for example, in the present case, information which tends to show that a person has failed or is likely to fail to comply with any legal obligation to which he is subject). In order for a statement or disclosure to be a qualifying disclosure according to this language, it has to have sufficient factual content and specificity such as is capable of tending to show one of the matters*

listed in sub-s (1). The statements in <u>*Cavendish Munro*</u> *did not meet that standard.*

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

55. Thus, whilst this is a subjective test in the sense that section 43B says *"in the reasonable belief of the worker making the disclosure"* it has an objective element to it. The belief must be *"reasonable"* which suggests there must be some proper basis or degree of substantiation for it. The test in <u>Kilraine</u> was summarised thus by Choudhury P in <u>Dray Simpson v Cantor Fitzgerald Europe UKEAT 0016/18</u>: *"69. The Tribunal is thus bound to consider the content of the disclosure to see if it meets the threshold level of sufficiency in terms of factual content and specificity before it could conclude that the belief was a reasonable one. That is another way of stating that the belief must be based on reasonable grounds. As already stated above, it is not enough merely for the employee to rely upon an assertion of his subjective belief that the information tends to show a breach."* (Although that case was subsequently considered by the Court of Appeal, the judgment of the EAT was upheld.)

(iv) Did the claimant believe that the disclosures tended to show one or more of the relevant matters listed in section 43B(1)(a) to (f)?

(v) Was her belief reasonable?

56. In ***Babula v Waltham Forest College [2007] ICR 1026***, the Court of Appeal considered the reasonable belief provisions of s.43B of the 1996 Act. Wall LJ held: *"41. Darnton's case [2003] ICR 615 seems to me clear authority for the proposition that whilst an employee claiming the protection of section 43B(1) of ERA 1996 must have a reasonable belief that the information he is disclosing tends to show one or more of the matters listed in section 43B(1)(a) to (f) , there is no requirement upon him to demonstrate that his belief is factually correct; or, to put the matter slightly differently, his belief may still be reasonable even though it turns out to be wrong. Furthermore, whether or not the employee's belief was reasonably held is a matter for the Tribunal to determine."*

57. I have applied the above tests to the facts found in the paragraphs below. The claimant made the following statements which she argues are protected disclosures:

(a) On 5 June 2024, the claimant texted the respondent's Executive Chairman Ken Lewandowski in the terms set out in the findings in fact above (paragraph 12).

58. I concluded that this did not meet the test for the communication of information which the claimant reasonably believed tended to show a relevant failure for the purposes of section 43B. The context was that Mr Lewandowski had requested that a particular individual be removed from the redundancy at-risk list for compassionate reasons. The operative part of the claimant's response was: "*as you can appreciate this presents various implications.// Can we discuss first thing tomorrow, to allow me to make an informed decision and ensure that the company is not adversely impacted".* In my view, this does not have sufficient factual content and specificity to amount to the disclosure of information at all, let alone a disclosure reasonably believed as tending to show a relevant failure. The claimant is simply replying to a message, not conveying facts. I also accept Ms Gorry's submission that it was not reasonable for the claimant to believe this was a disclosure in the public interest as her answer in cross examination to the question: '*which part of the disclosure can be said to be in the public interest*?' appeared to acknowledge: "*I'm not sure how to answer that"*. This was not a qualifying disclosure and cannot therefore be a protected disclosure.

(b) On 6 June 2024, the claimant told the then CFO, Mr Goodwin: (i) '*that no further information had been provided by Mr Lewandowski about the nature of the request; that Mr Lewandowski had said it was a confidential matter; that none of them were any the wiser what that confidential matter was. It remained undisclosed; that the employee in question held a customer assistant role and did not have a qualification required for one of the bespoke areas of the business; that it was not a crucial position and another individual had longer service; that they had carried out a fair process and if they kept KM in the business, there were others who could challenge them for unfair selection.' …* and: (ii) '*that Mr Lewandowski was impatient and wanted things done quickly by her*'; and *'that she thought this was not conducive to a positive working environment*.'

59. Arguably, (i), but not (ii) constituted the communication of reasonably specific information. However, it was not - in the circumstances - information that the claimant could reasonably believe tended to show that a person had failed, was failing or was likely to fail to comply with a legal obligation. As Ms Gorry submitted, the claimant knew at the time she met Mr Beale and Mr Goodwin that the matter had been resolved. Mr Lewandowski had emailed Mr Beale and Mr Goodwin and iMessaged the claimant telling them to go ahead as planned. Nor, in these circumstances was it reasonable for the claimant to believe she was raising a matter of public interest. This pertained to a short-lived and temporary issue relating to an internal small scale redundancy exercise.

60. With regard to (ii), this does not, in my view, have sufficient factual content or specificity to amount to the disclosure of information. Nor could the claimant reasonably believe it tended to show a relevant failure or was made in the public interest. It is simply her telling Mr Goodwin what she thought of her new boss.

(c) In an email sent on 21 June 2024 to Mr Beale and CTO Eamon McErlean, the claimant made the following statements upon which she relies as her third disclosure: "…*I feel that it is imperative to bring this to your attention due to the internal and external risks it poses to the business, particularly during this critical turnaround point.*

By way of an overview, to date.

- *We have received **338** external applications; **14** candidates have been shortlisted (CVs attached for ease of reference).*
- *Internally, several qualified candidates from the commercial team have been bypassed. (**SU, HK & AM**)*
- *One individual has been targeted for the role **(SI)**, who is several levels away from the required skill set.*

While it is essential to develop our internal talent, this should not come at the expense of other qualified candidates or, worse still, damage the individual's confidence as they have been promoted beyond their capabilities and as a consequence the company's overall progress is adversely affected………….

Risks:

- *….*
- *…..*
- ***Legal and Compliance Issues**: Discriminatory practices like this raise the risk of internal and external legal claims for unfair practices. All of which would be recognised and supported, as we have no tangible evidence that proves that this role has been allocated fairly………"*

61. The claimant's argument here was that she was concerned about the respondent's legal obligations. She submitted: "*We had shortlisted 14 candidates. All were rejected by Ken Lewandowski. Also several individuals internally were not approached. The job description exceeded Shelley Inglis's skill set. The respondent was looking for an individual with a large network to increase sales and step up to a chief commercial role within the business. Re public interest, we had advertised the role and these individuals had taken time to apply for it. The skill set was completely different to that of the individual then employed into the role. I didn't change the job description but when it changed, internal individuals did not get the opportunity to apply for it*."

62. Ms Gorry submitted that the criticisms set out in this email as quoted above were over general and lacked specification and accordingly did not amount to the disclosure of sufficiently detailed information. I considered whether the email had sufficient factual specificity to be such that the claimant could reasonably believe it tended to show that a person had failed, is failing or is likely to fail to comply with a legal obligation to which they are subject. The legal obligation in question was said to be the Equality Act 2010. I concluded that on balance it lacked the necessary specificity to be capable of tending to show the relevant failure. I agreed with Ms Gorry that it was not objectively reasonable for the claimant to have believed the information she disclosed tended to show one of the relevant failures even if she subjectively believed what she was saying. Ms Gorry also submitted and I accepted that it was not reasonable for the claimant to believe that the concerns she was raising in the email were a matter of public interest. No interviews had been set for the candidates who had been shortlisted. It was also not suggested that any of the 'bypassed' internal individuals had applied for the job. Thus, on balance, the italicised statements in the claimant's 21 June 2024 email (227), taken as a whole did not – in my view – constitute a qualifying disclosure as defined by section 43B ERA.

(d) On 12 September 2024, the claimant made statement(s) in an email to Mr Lewandowski.

63. The claimant confirmed that she was no longer seeking to rely on this.

(e) On 10 December 2024, when attending a colleague (Mairi MacFadyen's) redundancy consultation meeting as a companion, the claimant made the following statements to Ian Stevens, the respondent's new CEO: (In her issues at the Preliminary Hearing, the claimant described these as: 'questioning the redundancy process and highlighting bullying and harassment by Mr Lewandowski and off-labelling'.) "*Are you aware of the buy-back scenario, Ian?...*." She then made the statements set out in paragraph 37.

64. Addressing first the claimant's question to Mr Stevens about the buy-back scenario, as the transcript shows and Ms Gorry submits, it was Ms McFadyen who led the discussion and the claimant's contributions were limited. The question to Mr Stevens about buy-back was insufficiently detailed and specific to amount to the disclosure of information, even when considered in context. As Ms Gorry submits, nothing within the transcript suggests the claimant said anything specific about off-label promotions. I agree with Ms Gorry that although the claimant makes a vague reference to "*the seriousness and the significance of not changing and adhering to the rules that the Canadians had clearly broken*", she does not state what specifically, the respondent was said to have done that amounted, in the claimant's view, to an attempt to abuse FDA regulations nor does she make reference to the FDA regulations at all. Further down she also says "*the level of risk to the patient was all highlighted*" but again the comment is rambling and vague. In my view, it is insufficiently specific to amount to information she could reasonably believe tended to show 'that a person had failed, is failing or is likely to fail to comply with any legal obligation to which he is subject'.

65. I also accepted Ms Gorry's submission in relation to the claimant's own consultation meeting. The claimant accepted that she had not provided sufficient information regarding the bullying and harassment allegations during the meeting. She said she had "alluded" to them but that is not sufficient to amount to a protected disclosure. Furthermore, those issues related to alleged bullying of herself and therefore there was no public interest element. The other issues raised relate to her own role and the decision to make her role redundant. I did not conclude that this constituted the disclosure of sufficient information to meet the test under section 43B(1) ERA. Nor were the other aspects of the test met. This did not amount to a qualifying disclosure.

(f) On 10 December 2024, by forwarding an email to Ian Stevens and Alan McKenna containing the statements set out at paragraph 39 above.

66. I also agreed with Ms Gorry that the passages of the email relied upon by the claimant as protected disclosures appear to relate largely to her own employment and her selection for redundancy. The reference to "*the challenges and treatment"* the individuals selected for redundancy *"have faced over the past 6 months",* appeared to be a reference to how the claimant viewed her own treatment. She went on: *Over the past 6 months, I personally have faced bullying, harassment, removal of core responsibilities and pressure to act against HR best practices, as well as witnessing senior promotions occurring without due process. In addition, there is a wide*

perception that those involved may have been targeted due to their affiliation with the previous CEO and current president of the company." It appeared to me that it was not reasonable for the claimant to believe she was raising these concerns in the public interest. I therefore do not consider that these amount to qualifying disclosures.

(vi) The manner of the disclosure

67. In this case, all disclosures were made to the employer and nothing turns on the manner in which they were made. The disclosures in question were not qualifying disclosures for the reasons given above.

(vii) Whether the reason or principal reason for the claimant's dismissal was that she made a protected disclosure?

68. I will address this issue in case I am wrong about any of the disclosures set out above. The reason for the claimant's dismissal was the perilous financial position of the respondent in December 2024, the need to make immediate cost savings in order to avoid the respondent going into receivership and Mr Stevens' view that a business the size of the respondent did not need an HR Manager. He had expressed that view to the board in October. There was no evidence that Mr Stevens had been in any way influenced by Mr Lewandowski in his selection of the claimant. I accepted his evidence that his call to Mr Pope and Mr Lewandoski on the morning of 3 December 2024 was by way of a courtesy call to give them a heads up that he would be making immediate redundancies. Three other senior employees were selected by him at the same time.

69. The claimant pointed out that the redundancy of her own role had not featured in the recovery plan documentation prepared for the board in September and October 2024 (260) and (295). The "staffing restructure" of various teams had been alluded to there but there was no mention of the claimant's role until the email of 3 December 2024. It seemed to me that this was consistent with the respondent's position that it was Mr Stevens who considered that a company of the respondent's size did not require an HR Manager and that the HR function should be outsourced.

70. As Ms Gorry submits, the redundancy process did not start until December 2024, months after the first three alleged protected disclosures were made in June. Mr Stevens and Mr McKenna were not aware of the disclosures relied upon at the point the redundancy process was initiated. The disclosures could not therefore have been a factor in the decision to start redundancy proceedings.

71. With regard to the fifth and sixth disclosures, Mr Stevens did not commence employment until 2 December 2024 and the alleged protected disclosures made on 10 December 2024, occurred after he had already placed the claimant at risk of redundancy. I agree with Ms Gorry that it is not credible to suggest that Mr Stevens proceeded to dismiss the claimant because of her limited comments during Ms McFadyen's redundancy consultation meeting and/or the issues she raised in her email of 10 December 2024 which focused predominantly upon her own role. On the contrary, Mr McKenna's and Mr Stevens' concerns about the financial performance of the business are well documented and had been ongoing since October 2024. This was the clear reason for the redundancy consultation being started and the reason why the

claimant was ultimately dismissed. Once the redundancy proceedings had commenced, and the decision had been taken to put her role at risk, it is difficult to see how there could be any causative link between the decision to make her role redundant and any disclosures she says she made during that process as Ms Gorry submits.

72. The claimant criticised the respondent for not taking alternative steps such as dismissing two executives in the USA she considered had committed misconduct in respect of the buyback scheme, instead of making her redundant thereby saving the company in excess of $500,000. However, when this was put to the respondent's witnesses, they were clear that this would have been a very risky course of action owing to the extremely generous contractual terms the two employees enjoyed, which meant they were protected from dismissal and the concern that whether their actions would be viewed as misconduct in the circumstances was a matter of judgment.

73. I accepted Ms Gorry's submission that none of the situations where it might be appropriate to attribute the motivation and knowledge of a manipulator to the employer applies in this case. Based on the findings in fact, Mr Lewandowski played no part in deciding to put the claimant's role at risk of redundancy, nor in the redundancy consultation process. In any event, he was only aware of the first alleged disclosure and unaware of all the others. There is no reason to suspect that the respondent had some ulterior motive that would require the tribunal to look behind Mr Stevens' decision to dismiss.

74. The claimant's position was that her relationship with Mr Lewandowski was never the same after the iMessage exchange on 5 June 2024 when he asked her to remove KM from the redundancy process. She argued that Mr Lewandowski had not referred HR work to her following that exchange. I considered this carefully. However, on the evidence before me, Mr Lewandowski's frustration with the claimant and his reluctance to refer HR work to her pre-dated any of the purported disclosures. Prior to Mr Beale's resignation, Mr Lewandowski had not had an executive role in the company and had not interacted much with the claimant. After Mr Beale's resignation in April 2024, he (Mr Lewandowski) now occasionally worked with the claimant, who fairly acknowledged that she had worked closely with and was loyal to Mr Beale. Mr Lewandowski was unhappy that when in or around April 2024, he had given the claimant an important letter to be put on headed paper in relation to the resignation of Mr Beale, she had changed the terms of it without consulting him. Furthermore, Mr Lewandowski did not approve of the way the claimant had handled the February to June redundancy round as he explained to her in his iMessage: "*I only want to add my opinion that this redundancy of 4/5 heads is being blown out of all proportion.*" And as he stated by email to Mr Beale: "*I would like to add that my personal opinion is that the simple redundancy of 4/5 people is totally over complicated and blown out of all proportion here...*" On 24 April 2024 Mr Beale had swapped out another employee and placed his wife into the 'at risk of redundancy list' (206). He had then given her an enhanced redundancy payment when no one else got one and the relevant policy drafted by the claimant had not been adopted by the board. The claimant had put this arrangement into effect. (In fairness to the claimant, she may not have had much choice about this.) On balance, it appeared to me likely that the reason why Mr Lewandowski was somewhat reluctant to pass HR work to the claimant was that he saw her as too closely affiliated to Mr Beale as she correctly understood. Indeed, on her evidence,

he complained to her that in relation to Mrs Beale's redundancy payment, she '*was following the rules of Gary Beale, not the rules of the company*'. I concluded that Mr Lewandowski's reluctance to give the claimant work had nothing to do with any of the purported disclosures (most of which Mr Lewandowski was unaware of). He was not present during the claimant's conversation with Mr Goodwin on 6 June 2024. He did not see the claimant's email of 21 June to Mr Beale and Mr McErlean. It was not copied to him. He was not involved in the December redundancy consultation, having stepped back to his non-executive role by then.

75. For all the reasons given above, I concluded that the claimant did not make protected disclosures. Even if I am wrong about that, the claimant was not dismissed for the reason or principal reason that she made one or more protected disclosures. Her dismissal was because of the financial position of the respondent in December 2024, the need to make immediate cost savings and Mr Stevens' view that the role of HR Manager was no longer required. The claim for automatically unfair dismissal contrary to section 103A ERA therefore does not succeed and is dismissed.

Breach of Contract Claim

76. The claimant also claims she is entitled to an enhanced redundancy payment under a policy she drafted (124-128). I accepted the respondent's evidence that this policy not had not been approved by the remuneration committee and adopted by the board. Indeed, the document change history on the policy (J125) suggested the policy was not active. In any event the policy was non-contractual and the wording of the relevant clause appears to suggest two years' service would be required, which the claimant did not have at the effective date of termination of employment. The claimant has not shown she was contractually entitled to an enhanced redundancy payment. Accordingly, this claim does not succeed. The claimant received a sum equivalent to a statutory redundancy payment in any event despite not having two years' service on termination.

Date sent to parties **17 June 2026**