EMPLOYMENT TRIBUNALS

Claimant:	**Rachael Hall**
Respondents:	**Tarran & Co Financial Planning Limited**
Heard at:	**Newcastle Employment Tribunal**
On:	**11th, 12th and 13th December 2024**
Before:	**Employment Judge Sweeney** **Sheila Don** **Peter Chapman**

Appearances
For the Claimant, Mr Finlay, counsel
For the Respondent, Mr Ali, counsel

JUDGMENT having been given on **13 December 2024** and written reasons for the Judgment having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided.

WRITTEN REASONS

The Claims

1. In a Claim Form presented on **16 June 2023**, the Claimant ('C') brought the following claims:

    a. A claim that she had been subjected to a detriment, in contravention of section 47B ERA 1996 on the ground that she made a protected disclosure.

    b. A claim that she was automatically unfairly constructively dismissed in that the reason, or principal reason, for her alleged constructive dismissal was that she had made a protected disclosure (section 103A ERA 1996).

2. At the outset of the hearing the Tribunal discussed and identified the claims and the agreed joint list of issues. The issues on liability are set out in the Appendix to these Reasons.

Whistle-blowing detriment – section 47B ERA 1996

3. The relevant disclosures were said to be contained in an email dated **22 March 2023** to Christine Tarran [**page 264**]. Mr Finlay confirmed that the alleged qualifying disclosures were contained in the following bullet points in that email:

    a. Bullet point 6, the words '*not adhering to the working time directive, despite me confirming how many hours I have done this last fortnight*'.

    b. Bullet point 5, the words '*no pension contributions*'.

    c. Bullet point 4, the words '*not confirming if my tax and NI has been paid or responding to my requests for confirmation in many different emails*'.

4. It was the Claimant's case that by setting out these matters in that email she disclosed information which, in her reasonable belief, tended to show that the Respondent had failed, was failing or was likely to fail to comply with the following legal obligations:

    a. The legal obligation to adhere to the Working Time Directive.

    b. The legal obligation to pay the relevant pension contributions for its employees.

    c. The legal obligation to pay the relevant tax and National Insurance contributions for its employees.

5. The Claimant alleges that she was subjected to detriments on the ground that she made these disclosures, the alleged detriments being:

    a. She was ostracised and sidelined.

    b. Her income was reduced to nothing from March 2023.

6. She also alleges that when she was dismissed on **05 May 2023**, the reason or principal reason for her dismissal was that she had made the disclosures or alternatively, that the reason or principal reason for her dismissal was that she had alleged that the Respondent had infringed statutory rights of hers, namely:

    a. The right to be provided with written particulars of employment under section 1 ERA 1996.

    b. The right not to suffer unlawful deductions of wages under section 13 ERA 1996.

c. Her rights under the Working Time Regulations 1998.

7. The Respondent denied that the Claimant was subjected to detriments because she had made a protected disclosure or that she had been dismissed for either of the reasons alleged. It did not accept that the Claimant had made any disclosures. It contended that she did not believe she was raising the matters in the public interest – or if she did, that such belief was not reasonable. Nor, contended the Respondent, did the Claimant genuinely believe that the information tended to show the relevant failures, or if she did, that such a belief was unreasonable. In any event, the Respondent did not accept that the claimant was ostracised, or that her pay reduced to zero from March 2023 and that in any event, nothing that happened was on the grounds that she made a protected disclosure or asserted any rights.

Findings of fact

8. There is very little common ground between Rachael Hall and Christine Tarran. However, one of the few things on which there was agreement is that the Claimant was an employee of the Respondent from **12 July 2022** (see the ET3 and paragraph 29 of the Claimant's witness statement).

9. The company Gallagher & Tarran Limited (company number 8906539) changed its name to Seven Stages Ltd on **23 November 2021**. That is the name on the ET1 and ET3. Seven Stages Ltd changed its name again to Tarran & Co Financial Planning Limited on **08 August 2023**. Christine Tarran is the sole director and owner of the company, having previously jointly owned the company with Eamonn Gallagher up until his departure in **November 2021**.

10. The Claimant is an Independent Financial Adviser ('**IFA'**) with a particular specialism in NHS pensions. Before she became involved with the Respondent, she ran her own business through a company called Hall Medical and Private Wealth Limited. This company traded as 'Sandringham Medical'. She was not an employee of Sandringham Medical. She told us, with a sense of pride, that she had not been an employee for over ten years. Her company, Sandringham Medical, employed a number of staff.

11. In **2021**, Ms Hall and Ms Tarran entered into discussions regarding a merger of the Claimant's business, Sandringham Medical and Ms Tarran's business, then known as Gallagher & Tarran Ltd.

12. In **November 2021**, those employees employed by Sandringham Medical transferred to what had by then become Seven Stages Ltd. Those staff included Kelly Smith and Charlotte Ritchie. As she was not an employee, the Claimant's 'employment' did not transfer. Indeed, it was never envisaged by her or by Ms Tarran that she was to become an employee of Seven Stages Ltd. Neither Ms Hall nor Ms Tarran regarded her as an employee. Nor did Kelly Smith (Operations Manager and Paraplanner. The intention was that Ms Hall and Ms Tarran were to be owners and directors in this new joint venture.

Given what we have read and heard, we find that the two business-women rushed into this business relationship before establishing the terms on which they were going to work and benefit together. They proceeded in anticipation that all would be worked out over time. Serious negotiations happened only after they started on their joint venture. That was a mistake that resulted in disagreement and ultimately in the venture and relationship later ending badly. No doubt at considerable cost, accountants and solicitors were instructed and valuations of their respective businesses were obtained. Solicitors were instructed to draw up a revised shareholders' agreement and revised articles of association. Discussions continued throughout and right up to **February 2023** and the Claimant sought input from her brother apparently, a corporate tax specialist. However, she and Ms Tarran could not reach agreement.

13. Given the nature of the Respondent's business, it is required to have a Compliance Officer. This role was fulfilled by Ms Tarran. It is also required to have a Money Laundering Reporting Officer ('**MLRO'**) or in the language of the FCA, a person approved under section 59 Financial Services and Markets Act 2000, to perform what is called the 'Controlled Function'. That role had up until **November 2021** been undertaken by Mr Gallagher. With his departure, there was a need to plug that gap. It was eventually plugged by the Claimant. In these respective roles, the 'buck stops' with Ms Tarran on any compliance failures and with Ms Hall on any money laundering failures. At the beginning of the new financial year in **April 2022**, it was agreed between them that Ms Hall would assume the **MLRO** responsibility. In anticipation of her being approved she was set up on the payroll in **April** and paid £800 a month from **May 2022**. She had to do some training in the meantime. She obtained her certificates of completion on **28 June 2022 [page 151- 152**] and was formally approved by the FCA on **12 July 2022.**

14. The amount of pay was deliberately set below £10,000. This was to ensure that it remained below the tax and national insurance threshold and the workplace-pension auto enrolment threshold, which the Claimant understood. The claimant received other money which she and Ms Tarran both understood to be advance dividend payments. That is because neither of them regarded themselves as employees but as owners of this new joint venture. We do not accept that the payment of £800 was directors' remuneration as the Claimant contended. It was a tax efficient payment in return for the Claimant agreeing to take on the **MLRO** responsibility and the amount of the payment was set at such a level that she and Ms Tarran (who received the same for the compliance role) would not have to pay tax or national insurance. They were taking advantage of their positions as directors and 'owners'. Although strictly the claimant was not an owner - no shares had transferred – nevertheless that is how they saw themselves and it is how they behaved towards each other and others. It was in keeping with what they had anticipated all along. Both individuals are clearly driven by making money and by receiving their income in the most tax efficient way they can. It is unsurprising, therefore, that they would take advantage of their positions – we say this with no criticism - and thus the level was set as it was because they were seeking to pay as little tax as they could and the bulk of their income was to be taken as dividends. It was only later that the realisation dawned on them that HMRC might not see things the same way. It is

not just money that is important to the Claimant but it is also clear to us that status is extremely important to her. We were struck by how dismissive and contemptuous she was of the notion that she might be regarded by anyone as an 'employee'. From what we can see there is a serious question mark as to whether the Claimant was an employee of the Respondent in any capacity (we could not for instance see where the power of control over the Claimant lay). However, the Respondent had conceded that the Claimant was an employee – in respect of her **MLRO** role at least – and the Claimant herself contended that she was an 'employee' (although ironically, she never saw herself as such) from **12 July 2022**.

15. On the first day of this hearing the Claimant sought to correct paragraph 3 of her further and better particulars to suggest that the £800 was not a payment in respect of the MLRO role but was a payment of directors' remuneration. As indicated above, we reject this. We accepted Mr Ali's submission and found that the Claimant's evidence on this was not credible. This error was not an oversight on her part as she wished us to believe. If that one passage had been an oversight it would mean that the table that she prepared on **page 56** was also an oversight. The middle column of that table bore the heading '***MLRO payment'***. We are satisfied and so find that the Claimant knew all along that the payment was in respect of the **MLRO** role. In a relationship where there was very little agreement, that was the one thing that had been agreed: that she would take on **MLRO** and that a below tax / pension payment would be put through payroll so that this could be presented to HMRC as employment income in respect of that role.

16. The parties have been bogged down in these proceedings as to whether the Claimant was an employee as an **MLRO** or whether she was an employee in a wider capacity. However, it was a needless dispute in these proceedings as it was accepted by all that she was an employee from **12 July 2022**. It was needless in the sense that it did not affect the issues on the making of disclosures, detriment and the reason for dismissal.

17. Therefore, from **May 2022**, the Claimant was paid £800 a month. She was also receiving other payments – as advance dividends or expected dividends as it was expected that she was to become an owner.

18. Discussions continued regarding the execution of a shareholders' agreement. Before she could become a statutory director on Companies House, the Claimant had to be registered or approved by the **FCA** as a 'director'. On **01 December 2022**, the Claimant emailed Mr Mularkey of Swinburn Maddison solicitors regarding progressing the shareholder agreement. She confirmed among other things that she was now an **FCA** director [**page 168 – 170**]. The Claimant had engaged and was taking advice from her own accountant (Stuart) throughout this time and Ms Tarran had engaged and was taking advice from her accountant (Phil). Mr Mularkey referred to the *'key trigger point'* for the shareholder's agreement as being the transfer or grant of shares to Rachael. He asked if she had received advice from Stuart. The Claimant told Mr Mularkey that she was still waiting on a valuation of her business. She was aware by then that Ms Tarran was expecting her to buy equity in the business. She was looking at the prospect of

taking out a loan to do so but said that a loan looked to be outside their (meaning her and her husband's) affordability. She said that her default position was that she and Ms Tarran retain their existing clients and that new clients will be shared 50/50. That email demonstrates and reflects our overall impression and finding that the parties rushed into this venture without little advance planning and preparation. It was clear that going into 2023, much had yet to be done and agreed.

19. On **13 January 2023**, the Claimant emailed Mr Mularkey and Ms Tarran to say that it is not in her interests to be anything less than a 50% shareholder and that she could not afford a £200k business loan – which we infer was the amount that she was being asked to contribute at that stage. This resulted in her proposing Alphabet shares [**page 172**].

20. The Claimant and Ms Tarran continued to exchange correspondence and thoughts regarding a way forward, for example on **10 February 2023** [**page 185-186**].

21. On **14 February 2023**, the Claimant emailed Ms Tarran and others regarding the '*Shareholders Agreement and Seven Medical move*' [**page 191 – 195**].

22. On **20 February 2023**, Ms Hall and Ms Tarran met on a zoom call. There is a transcript of this meeting on **page 394 - 420**. The Claimant had begun covertly to record discussions. It is clear from this lengthy meeting that the parties were no further forward in reaching consensus on the future and terms of their relations. The advisers were telling them that a shareholders' agreement needed to be in place before the end of the financial year if there was any prospect of HMRC 'treating' the advance payments the Claimant had received as dividends. Further, the Claimant's brother, Ralf –a corporate tax specialist – advised that the shareholding agreement had to be in the terms they had agreed at the beginning, namely a 50/50 shareholding. As set out above, the Claimant had already stated that she would accept nothing less. However, neither side could agree on the terms of the shareholders agreement and what had been agreed at the very beginning was very hazy. Certainly, Ms Tarran expected the Claimant to buy into the business in return for a 50/50 shareholding split. The Claimant refused. She believed that because her business was valued at £400,000 and that she has what she considers to be a national reputation in NHS pensions, that this was more than sufficient consideration for a 50/50 shareholding.

23. The failure to reach agreement on the shareholders' agreement meant that the financial advisers would have to face the inevitable question of how the payments previously made would have to be treated for tax purposes. The Claimant was concerned that she would be landed with a personal tax bill because as far as she was concerned (leaving aside what she considered to be a small sum of £800 going through payroll) she was a self-employed business-woman. Discussions inevitably turned to how this tax and income situation was to be resolved and whether the business would be paying her personal tax. Many of the problems were the consequence of this ill-thought out business venture.

24. We do not accept that Ms Tarran told the Claimant back in **November 202**2 that the company was holding back her pay for tax purposes as she maintains in paragraph 30 of her witness statement. Had that been the case, we would have expected to have seen some reference to this in the emails from then or in the correspondence with Mr Mularkey at the very least. The Claimant is a strong personality. She is not lacking in confidence. Far from it. She is assertive. It is also clear from the content of her emails and from the transcripts of the covert recordings that she made that she pulls no punches when it comes to her dealings with Ms Tarran. The transcripts and her own email correspondence demonstrate quite clearly that she was rude to and dismissive of Ms Tarran. We were surprised to hear the Claimant, in her oral evidence, describe Ms Tarran as a narcissist, for example. We considered Ms Tarran to be a much more credible, measured and reliable witness than the Claimant. We reject Mr Finlay's submission that Ms Tarran was a careful but evasive witness. She was careful – in the sense that she was measured - but she was not evasive. Counsel have pitted their respective clients' credibility against each other in these proceedings. To the extent that it is necessary for us to have to prefer one person's evidence over the other, we have no hesitation in preferring that of Ms Tarran. As above, we did not consider her to be evasive, whereas we did consider the Claimant to be evasive, unclear and unreliable in her evidence.

25. On Monday **06 March 2023**, the Claimant emailed Ms Tarran to say that so far, she had only been paid £800 this month and asked '*can you please pay me?*' [**page 210**]. Relationships were pretty bad by now – if they had ever been good in the first place.

26. Shortly after the **20 February** meeting, in order to make some progress, Ms Tarran asked Ms Hall to sign what she called a directors' contract. We have never seen this. It was not emailed to the Claimant but Ms Tarran showed it to her on her laptop. However, Ms Hall refused to sign anything until such time as they had an agreed Shareholder's Agreement in place.

27. There was then a series of email exchanges on **13 March 2023**. Firstly, at 09.29am, Ms Tarran emailed Stuart Hall, her accountant and Phil Harnby, Ms Tarran's accountant and the Claimant. She asked if they could get together as soon as possible '*to discuss the tax position as it stands and income payments*' [**page 226-227**]. She gave her own dates of availability. The Claimant replied at 10.31am to say that Thursday (**16 March**) was best for her [**page 226**].

28. Also that morning, at 11.14am Kelly Smith emailed Ms Hall [**page 215**]. She attached a job description for the role of Money Laundering Officer which she asked the Claimant to read and sign. Ms Smith did so because the new financial year was approaching and she was performing her annual checks and returns for the FCA. The Claimant replied very shortly after this by forwarding Ms Smith's email to Ms Tarran saying that she was not taking on this responsibility if she was not going to be paid properly and that '*so far this month its less than our admin staff and our financial advisers*'. Ms Tarran replied '*me too Rachael*',, that they needed to '*sort this as soon as possible*' and that if Ms Hall did

not want the role, she (Ms Tarran) will take it over. The Claimant replied '*fine with me, if you're not going to pay me properly for it'* [**page 214**]. Ms Tarran emailed back to say that she was '*not getting paid well either'*, that she was '*skint too and can't survive like this*'. She said she wanted all of this discussing as soon as possible [**page 217**]. The Claimant replied [**page 217**]. She said that Ms Tarran had taken '*zero action to actually implement any form of positive change*' and that until Ms Tarran provided her with accounts to support her view that the company was losing money, they would have to agree to disagree. She added that she expected to be paid properly for the work she does and the contributions she makes, which she did not regard as being unreasonable [**page 217**]. It is unclear what she meant by '*paid properly'*. There were real issues regarding the profitability of the business and costs were running high. These things were affecting the payments that Ms Tarran and Ms Hall were taking from the business.

29. Ms Tarran responded at 12.29pm to say that she did not feel that it was '*good for email going backwards and forwards like this*', adding: '*both of us are very unhappy and both of us need money*' [**page 216**]. Again, the Claimant's email pulled no punches. She said that she could not help Ms Tarran if she did not want to be helped, that she believed Ms Tarran feared change and that she had '*far too much to do this week than talk about all the problems you believe there is and I don't agree with. Do whatever you want and take your money however you see fit but pay me properly. That is all'* [**page 216**]'.

30. About 1 ½ hours after that email, at 1.58pm, Mr Harnby replied to the earlier email from Ms Tarran asking to meet to discuss the tax position (paragraph 27 above). He said he could do some dates the following week [**page 225-226**]. At this stage, it seems that all were still prepared to meet to discuss a way forward.

31. The following day (**14 March**) despite having suggested only the day before that Thursday **16 March 2023** was a convenient day to meet, the Clamant responded to Mr Harnby, Ms Tarran and Mr Hall at 15.03pm to say '*there is nothing to discuss. We agreed actions on the 20th February – can you please confirm that you have paid the tax and NI?*' [**page 224 – 225**]. Ms Tarran forwarded the Claimant's email to Mr Harnby to the Claimant [**page 223-224**] which resulted in a curt exchange between the two [**pages 223-219**]. Essentially, the Claimant was going to speak to her lawyers about something and decided there was no need to meet with the accountants (as suggested by Ms Tarran) [as there was '*no detail to go through'* [**page 219**]. Although the Claimant says that an agreement was reached on **20 February 2023**, that is not the case. No agreement was reached. We find that the Claimant had become particularly combative and that the relationship between her and Ms Tarran was further deteriorating.

32. On **15 March 2023**, at 10.26am, Ms Tarran emailed the Claimant to suggest a meeting to discuss income payments and agree a course of action as they had not come to an agreement on the shareholding. She said they also needed to discuss staff on Seven Medical and business pipeline [**page 233 – also at page 252**]. The Claimant replied that day [**page 231**]. She set out what she said had been agreed at the meeting on **20 February 2023,** that they would go their separate ways and that monies she had been

paid to date which had not yet been payrolled would be grossed up and 'payrolled' by **31 March 2023**, that the company would meet PAYE and NI (both employer and employee) costs. She asked to be removed as **FCA** Director and **MLRO**. Although the Claimant asserted in that email what had been agreed at the meeting on **20 February 2023**, we find that there was no such agreement in the terms she set out. However, it is clear from her own email, and we so find that the Claimant considered the relationship to be over and that they were in fact going to go their separate ways.

33. After the meeting of **20 February 2023** Ms Tarran put a proposal to Ms Hall. We were never shown the proposal even though both were in possession of it. The Claimant refers to the proposal of **08 March 2023** and quotes from it in her email of **15 March 2023**. The claimant said to Ms Tarran she was considering the proposal.

34. On **16 March 2023**, Ms Tarran emailed the Claimant confirming that a Form C application has been submitted to the **FCA** to withdraw her senior management functions as the Claimant requested and that she expected this to be actioned by the **FCA** in the next 24 to 48 hours [**page 255**]. On **17 March 2023**, Ms Tarran asked the Claimant to meet the following week. Ms Hall replied to say that she did not think that was appropriate until she had met with her solicitor [**page 260**].

35. On **17 March 2023** at 12.21pm, Ms Hall emailed Kelly Smith and Ms Tarran asking: *'is sharepoint down for everyone – or just me*?' She said she was unable to do any work or afternoon appointments if she could not access the client folders. At 13.44 (23 minutes later), Ms Smith emailed Cornerstone Service Desk saying '*for some reason, Rachael's sharepoint is not working and she is unable to open client files – could we raise this as urgent as she needs access to the files for meetings this afternoon'* [**page 261**]. At 3.22pm Cornerstone emailed Ms Smith and Ms Hall [**page 262**] asking them to contact the office. Kelly Smith then replied again at 3.24pm and copied in the Claimant [**page 262**].

36. We find that whatever problem existed with sharepoint on the afternoon of **17 March 2023** had nothing whatsoever to do with Ms Tarran or Ms Smith, or anyone acting on either of their instructions. It was one of those things that people using systems such as Sharepoint experience from time to time. Systems sometimes do not work for reasons mysterious to the users. Ms Smith took action immediately upon learning of the problem. We accept her evidence. She too was a credible, measured and reliable witness. The Claimant's sharepoint was not blocked.

37. The Claimant met with her solicitors on **22 March 2023**. Later that evening, at 20.09pm, she emailed Ms Tarran setting out a formal grievance consisting of 7 bullet points and asking to meet the following week to discuss [**page 264**]. She also referred to submitting a Data Subject Access Request ('**DSAR**'). We have no doubt and so find that this was a tactical move by the Clamant which she believed would assist her position in her dispute with Ms Tarran.

38. One of the things referred to in the grievance was that her SharePoint account had been blocked (as, she said, had the account of Tom and Charlotte). This, she said, stopped her from being able to do an appointment. To the extent that there had been a problem accessing sharepoint on that particular day, we are satisfied and so find that Ms Tarran did not stop the Claimant's access; nor did she give instructions to anyone to do so. There was no reasonable basis for the Claimant to believe that anyone had blocked her account. She had access throughout, bar a short period of time on **17 March 2023**.

39. Ms Tarran wrote to the Claimant on **30 March 2023** [**page 265**]. In that email, she referred to the Claimant having resigned from her Senior Manager position on **16 March 2023.** She said there was significant doubt as to whether the Claimant was ever legally categorised as an employee in her 'adviser role'. She said that the grievance policy applies to current employees only and there was no provision or requirement in the policy to deal with grievances by former employees. She said that she was not prepared at this stage to deal with any complaint or grievance at any meeting today (that being the 30th March). She added: "*as there is no formal agreement in place to date regarding the transfer of Seven Medical, I am also unsure how we can meet to discuss the TUPE transfer of employees*' She said that she was also seeking legal advice regarding the transfer of Seven Medical. She asked the Claimant to let her know when she was available to meet with Ms Tarran and her lawyers to discuss and finalise the terms/renumeration.

40. On **31 March 2023**, the Claimant emailed to say that she had not resigned. We have never seen this email but we infer that one was sent – it is referred to in the subsequent email of **05 May 2023** [**page 324**] which we shall come to.

41. On **05 May 2023**, Ms Tarran, having taken advice from external HR sent the Claimant a letter drafted by HR [**page 324**]. She referred to the Claimant's email of **13 March 2023** where she had said she '*was no longer prepared to carry out the role of the Money Laundering Officer at Seven Stages Ltd'*. That is a reference to the email on **page 215**. Ms Tarran also referred to an email from the Claimant dated **31 March 2023** [the one we have not seen, see paragraph 40 above] where she apparently 'clarified' that she had not resigned. Ms Tarran went on to say that 'the company' '*now feels it has no alternative than to terminate your employment with immediate effect for this role*' (i.e. the role of **MLRO** at Seven Stages Ltd) '*as you are not carrying out these duties'*. She went on to say: '*the company considers your only employment with Seven Stages Ltd, was under the senior management roles you undertook which commenced in May 2023'*. The letter went on to state that the Claimant would be paid up to and including **05 May 2023** based on her monthly income of £800 plus statutory notice of 1 week as well as any accrued but untaken holidays.

42. Following this, the Respondent wrote to the Claimant attempting to engage her in the servicing of her own clients [for example, **page 329**]. Ms Hall did not respond to the correspondence. She did not engage at all. We reject the Claimant's reference to 'slavery' as being wholly inappropriate and misplaced. It is demeaning of those cases

where people are genuine victims of modern slavery. The point we believe she was trying to make, however, is that she did not want to work for 'free' as she put it. However, we find that she would not be working for free because as she accepted the proposal involved her servicing her clients for which she would be paid 80% with 20% going to Seven Stages Ltd. That, however, was not acceptable to her. We find that she would not countenance any monies going to Seven Stages Ltd and was simply unprepared to accede to this request. There was no reliable evidence of any 'trauma' to the Claimant, as she put it, explaining her failure to engage with Ms Tarran on the issue.

43. Far from Ms Tarran ostracising the Claimant, we find that she was failing to engage with the Respondent. Ms Hall had no intention to engage. She was by now looking towards setting up her own new business which she did by **August 2023**.

44. In all the time the Claimant was involved with the Respondent she had a free hand as to her working hours. She was not told when to work or how to go about her job. She did not record hours nor was she expected to. We infer from our findings above about the relationship between her and Ms Tarran that, had anyone tried to tell her when to work or how to go about her work, that she would have resented it.

Relevant Law

Public interest disclosures

45. The Employment Rights Act ('**ERA**') provides two forms of protection to '*whistle-blowers'*: (1) protection from detriment under s47B and (2) protection from dismissal under s103A.

46. By **s103A ERA** 1996, if the reason or principal reason for dismissal is that the employee made a protected disclosure, that dismissal is regarded as being automatically unfair.

47. By **s47B ERA** a worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.

48. Whistle-blowers do not have to be right. They may be wrong in their belief. The legislation is concerned with reasonableness. In order for a disclosure to be considered a protected disclosure under the ERA two things need to be satisfied:

1.1. Firstly, there needs to be a 'qualifying disclosure' within the meaning of section 43B ERA.

1.2. Secondly, it must be made in a manner which accords with the scheme of the Act set out in s43C to s43H. In this way it becomes a 'protected' disclosure.

What is a qualifying disclosure?

information

49. The worker must disclose information: **Cavendish Munro Professional Risks Management Ltd v Geduld** [2010] IRLR 38, EAT. In **Kilraine v Wandsworth Borough Council** UKEAT/0260/15/JOJ Langstaff J observed that tribunals should observe the principle in **Cavendish Munro** with caution to the extent that it must not be 'seduced' into thinking that it must decide whether something is either 'information' or an 'allegation'. Information may be provided in the course of making an allegation. However, the requirement is still for information to be disclosed. If there is a disclosure, it is necessary to consider whether that disclosure is a qualifying disclosure. This will depend on the **nature of the information disclosed**.

50. As can be seen from the exercise undertaken by Langstaff J (in paragraphs 31-35 of the **Kilraine** case) it is a question of carefully assessing what was said or written so as to determine whether information was provided (which meets the qualifying criteria in the Statute) whether or not an allegation was made as well, or whether what was said does not amount to information, for example because of the vagueness or lack of specificity or clarity.

The information must, in the reasonable belief of the worker, tend to show a relevant failure

51. Section 43B identifies 6 things which the disclosed information must, in the belief of the worker, 'tend to show'. Each of the six categories involves some form of malpractice or wrongdoing and are referred as the 'relevant failures'. The worker is not required to establish that the information is true. He must establish that at the time he made the disclosure, he/she held a **reasonable** belief that the **information disclosed tended to show**. It is not a question of whether a hypothetical reasonable employee held a reasonable belief, but whether **the particular worker's belief was reasonable**.

52. There is a subtle but vital distinction, in that it is not a case of asking whether the worker reasonably believed that a breach of a legal obligation had occurred, is occurring or is likely to occur. Rather, it is a case of asking whether he/she held a reasonable belief that the information they were disclosing **tended to show** that such a breach had occurred, is occurring or is likely to occur.. It is the reasonableness of the belief of the particular worker which is being assessed.

53. In cases where a claimant relies on breach of a legal obligation, the source of the legal obligation must be identified before going on to assess the reasonableness of the belief of the employee.

Public interest

54. The worker must reasonably believe that he is making the disclosure in the public interest. That aspect is to be determined in accordance with the guidance of the Court of Appeal in **Chesterton Global Ltd (t/a Chestertons)v Nurmohamed** [2018] I.C.R 731.

55. What is clear from that authority is that there is no 'bright line' between personal and public interest. It is not the case that any element of personal interest rules out the statutory protection. In a case of mixed interests, it is for the tribunal to determine as a matter of fact as to whether there was **sufficient** public interest to qualify under the legislation.

56. The question of what is 'in the public interest' does not lend itself to absolute rules, still less when the decisive question is not what is in fact in the public interest but what could reasonably be believed to be.

57. In **Chesterton Global**, Underlhill LJ, at paras 36-37 said:

> *"I am not prepared to rule out the possibility that the disclosure of a breach of a worker's contract of the **Parkins v Sodexho** kind may nevertheless be in the public interest, or reasonably be so regarded, if a sufficiently large number of other employees share the same interest. I would certainly expect employment tribunals to be cautious about reaching such a conclusion, because the broad intent behind the amendment of section 43B(1) is that workers making disclosures in the context of **private workplace disputes** should not attract the enhanced statutory protection accorded to whistleblowers – even, as I have held, where more than one worker is involved. But I am not prepared to say never."*

58. His lordship added:

> *"where the disclosure relates to a breach of the worker's own contract of employment (or some other matter under section 43B(1) where the interest in question is personal in character), there may nevertheless be features of the case that make it reasonable to regard disclosure as being in the public interest as well as in the personal interest of the worker…. "*

59. He identified four factors. The four factors adopted are 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 – as [counsel for the employee] put it in his skeleton argument, "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."

60. It is important to note that the mental element involves a two-stage test: (i) did the clamant have a **genuine belief at the time** that the disclosure was in the public interest, then (ii) if so, did he or she have **reasonable grounds** for so believing? I would add that the claimant's motivation for making the disclosure is not part of this test: **Ibrahim v HCA International** *[2019] EWCA Civ 207.* As the judgment of Underhill LJ puts it: 'the necessary belief is simply that the disclosure was in the public interest'.

61. As to the requirement of **reasonableness** of the belief in public interest this may (in an atypical case) arise on later contemplation by the employee and need not have been present at the time of making the disclosure. **However, not so with the actual belief**. The employee must at the time actually and genuinely believe that she is raising the matter in the public interest.

62. The law protects the worker only against **the act of disclosure**. If the principal reason for dismissal is not the act or fact of disclosure then there can be no unfair dismissal contrary to s103A ERA. If the worker was not subjected to a detriment because he made the disclosure, there is no contravention of section 47B.

Protection

63. If a disclosure is a qualifying disclosure then it becomes 'protected' if (among other things) it is made to the employer (s43(c)(1)(a)). A disclosure made to any person senior to the worker with express or implied authority over the worker should be regarded as having been made to the employer. In **Meridian Global Funds Management Asia Ltd v Securities Commission** 1995 2 AC 500, PC**,** Lord Hoffmann ruled that it will be a question of construction in each case as to whether the legislation in question requires that a person's state of mind be attributed to the corporate body. The purpose of the whistleblowing provisions would therefore have to be considered in any case in which the question arose.

64. Section 47B(1A) provides:

> A worker ("W") has the right not to be subjected to any detriment by any act, or any deliberate failure to act, done—
>
> (a) by another worker of W's employer in the course of that other worker's employment, or
>
> (b) by an agent of W's employer with the employer's authority, on the ground that W has made a protected disclosure.

65. Thus, the employer is liable for the wrongs of its employees, workers or agents.

66. If the Claimant has established on the balance of probabilities that he made protected disclosures, that there was a detriment and that the employer subjected him to that detriment, then the burden sits with the employer to show that he was not subjected to the detriment on the ground that he made the protected disclosure. The employer must show that, in subjecting the worker to the detriment (if indeed it did) that the protected disclosure did not materially influence its decision to do so: **Fecitt v NHS Manchester** [2012] I.C.R. 372.

S103A: The reason for dismissal

67. Where the employee lacks the requisite continuous service to claim ordinary unfair dismissal (i.e. two years), he or she will acquire the legal burden of proving, on the balance of probabilities, that the reason for dismissal was an automatically unfair reason: **Ross v Eddie Stobart Ltd** EAT 0068/13. An employee will only succeed in a claim of s103A unfair dismissal if the tribunal is satisfied, on the evidence, that the reason or 'principal' reason is that the employee made a protected disclosure. A principal reason is the reason that operated in the employer's mind at the time of the dismissal.

68. If the fact that an employee made a protected disclosure(s) was merely a subsidiary reason to the main reason for dismissal, then the employee's claim under s103A will fail.

S47B: causation and burden of proof

69. Causation under s47B has two elements:

    a. Was the worker *subjected* to the *detriment* by the employer?

    b. Was the worker subjected to that detriment *because* he had made a protected disclosure?

70. When considering a case of detriment due to making one or more protected disclosures, a tribunal should be precise as to the detriments and disclosures and should not just roll them up together: **Blackbay Ventures Ltd v Gahir** [2014] IRLR416, EAT (see paragraph 98 of the judgment).

Section 104 Employment Rights Act 1996

71. This provides that an employee who is dismissed shall be regarded as unfairly dismissed if the reason or the principal reason is that the employee alleged that the employer had infringed a right of his which is a relevant statutory right. It is immaterial whether she has the right alleged or whether it has been infringed. The employee need not be right about what she alleges, nor need she descend into detail so long the right alleged to be infringed is reasonably clear. The same principal on burden of proof applies where the employee lacks two years' continuous employment.

Discussion and conclusions

72. We deal firstly with the question of whether the Claimant made any qualifying disclosure in her email of **22 March 2023**.

22 March 2023 email

73. In his closing submissions Mr Ali made a generous concession that the Claimant had disclosed information in this email. He submitted that in setting out that information however, any belief of the Claimant that she was doing so in the public interest was not reasonable. Indeed, he submitted that the Claimant did not in fact hold such a belief, whether reasonable or not, that the email was sent in bad faith. It was 'bad blood' as he put it following the failure to agree the shareholders' agreement.

74. Before assessing whether a public interest belief is reasonable, a tribunal must consider whether the purported whistleblower actually believed she was doing so in the public interest. We are entirely satisfied and conclude that when she set out the information in this email, the Claimant did not believe that she was doing so in the public interest nor did she believe that there was any wider interest beyond her own personal interests. We found that the email was a tactical manoeuvre by her to assist in her dispute with Ms Tarran. She had been to see her solicitors that very day. There is not a hint on **page 264** that the Claimant had in mind any interest other than her own personal interest. We do agree with Mr Finlay that this need not be apparent on the page. A person may of course believe she is acting in the public interest without expressing (or even hinting at it) in the document containing the disclosure. However, we are satisfied and conclude that looking at all the evidence and matters in the round, the Claimant had no-one's interests but her own in mind when she sent that email or at any time before or after the email.

75. Although extremely confident of that conclusion, we went on to consider the reasonableness of the belief in the public interest which she claims to have had. This was in recognition of any argument (although not run by Mr Finlay) that it is unnecessary to have held the belief at the time, so long as the purported whistleblower later comes to believe that what she disclosed at the time was, nevertheless, made in the public interest. Therefore, we carefully considered the guidance in **Chesterton Global** case.

The numbers in the group whose interests the disclosure served.

76. Taking the alleged disclosures one by one:

'no pension contributions'

77. This matter applied to the Claimant only. There is no suggestion that the Respondent failed or was failing to auto-enrol or to pay pension contributions for anyone other than the Claimant. Indeed, the evidence produced shows that other staff did have pensions. Therefore, this was entirely about her, as the Claimant well knew. It was a purely personal issue or concern.

'*not confirming if my tax and NI has been paid or responding to my requests for confirmation in my different emails'*

78. This was, again, entirely personal to the Claimant and affected no one else.

'*not adhering to the working time directive despite me confirming how many hours I have done this last fortnight*.'

79. This was entirely personal to the Claimant and did not in any way relate to anyone else.

The nature of the alleged wrongdoing disclosed.

'no pension contributions'

80. There was no wrongdoing identified here. The Claimant confirmed in her oral evidence that this related to the £800 a month being processed through payroll. However, she knew that auto-enrolment obligations did not arise on employment income of less than £10,000 a year. It simply did not arise. To the extent that she might be taken to be suggesting (for the purposes of these proceedings) that there was wrongdoing in failing to auto-enrol her in a workplace pension scheme from the beginning or at some point after the shareholder agreement broke down and to regard her payments as income, apart from being a disingenuous argument, it simply arises out of the failure of two business-women to reach an agreement on a shareholders' agreement. It is nothing more than that – as the Claimant well understood.

'*not confirming if my tax and NI has been paid or responding to my requests for confirmation in my different emails'*

81. The same goes for this matter. No wrongdoing is identified. The staff were paid through payroll. The Claimant had never believed she should be subject to tax and NI and did not regard herself as staff. She expected and wanted her payment to be by dividends. In our judgment, this complaint was, in keeping with our findings, a tactical complaint, to assist her to respond to whatever tax liabilities might come her way from HMRC. It arises out of the breakdown of their negotiations and we consider there to be no wider public interest element in the nature of the complaint or alleged wrongdoing.

'*not adhering to the working time directive despite me confirming how many hours I have done this last fortnight.'*

82. As regards this aspect of the purported disclosures, there is nothing that we can identify and nothing that the Claimant has identified regarding breaches of the provisions of the WTR. The Claimant had a free hand as to her working hours. She was not told when to work or how to go about her job. We inferred that she would have resented this, had anyone tried to tell her. She did not seek anyone's permission to take holidays and was not required to. There was precious little evidence of working practices or of any

wrongdoing at all with regards to the Working Time Regulations/Directive and there was little attempt by the Claimant to bring this out or develop this in evidence.

The identity of the alleged wrongdoer

83. Mr Finlay, who really had very little material to work with in this case, sought to persuade us that the nature of the sector in which the Claimant worked – financial services – was a significant factor in assessing the reasonableness of the Claimant's belief that what she set out in her email was sufficient to render it in the public interest. We say he had little material to work with because he conceded at the outset – as he had to really – that the things set out in the email which were said to amount to qualifying disclosures all affected the Claimant personally. Of course, we recognise that the law does not preclude a disclosure that is in the personal interests of a person from being a qualifying disclosure. A disclosure of information can be made in a person's personal interests as well as in the public interest. It is only if the disclosures are purely in the person's personal interests that will mean they are do not qualify for protection.

84. We considered Mr Finlay's submission carefully but we do not accept on the facts of this case that the nature of the sector in which the Claimant works renders her belief (which we found she did not have in any event) that she was doing this in the public interest to be a reasonable belief. There is, in our judgement, nothing special about the nature of the financial services sector that would mean that this in itself was sufficient to render the Claimant's belief that she was acting in the public interest in sending her email of **22 March 2023** a reasonable belief. It could only be a factor in the overall assessment. It is right to say that it is a highly regulated industry but that is so for the protection of consumers; to protect them from mis-selling and other dubious or nefarious activities. But this is essentially a private business and a small one at that where the protagonists main ambition is their own personal interests and enrichment. We are not dealing with a household name here but a small private business that employs a few staff.

85. Standing back and looking at matters overall and having regard to the nature of the interests affected in this case and the extent to which they are affected by any alleged wrongdoing disclosed, we are entirely satisfied that the Claimant, in sending the email of **22 March 2023** was acting purely in her personal interests. It was, moreover, a tactical move on her part, which she believed would help her in battles to come. That she was doing so in the public interest did not enter her mind and had it done, there is no reasonable basis for any such belief. We reach this conclusion having had regard to the submission of Mr Finlay. We considered and applied the guidance in the Court of Appeal decision in **Chesterton Global**. In our judgement there are no features of the case that make it reasonable to regard disclosure as being in the public interest as well as in the personal interest of the claimant.

86. Therefore, the Claimant did not make a qualifying/protected disclosure. We would add that, we were also satisfied that – even if in the public interest – any belief that the matters tended to show a failure of the legal obligations relied on was not reasonably held. There

was no credible or reliable evidence to support the reasonableness of any belief that the information tended to show that the Respondent failed to comply with its legal obligations regarding auto pension enrolment, payments of tax and NI and the Working Time Regulations.

87. That means that the claims for detriment and automatically unfair dismissal under section 103A fail and must be dismissed. We would add for completeness:

    a. We conclude that the Claimant was not ostracised or sidelined because she sent the email of **22 March 2023** or at all.

    b. The Claimant's pay was not reduced to nil from **March 2023** as alleged. Nor, in any event was the reduction in pay anything to do with her email of **22 March 2023**. We reject Mr Finlay's submission that the email was the final straw for Ms Tarran. The payment of £800 ceased for the only reason that the Claimant asked to be removed as the **MLRO**. Her other payments (those she expected to be categorised by HMRC as dividends) reduced because of the profitability of the business and because the company's costs were excessive, leaving Ms Tarran and Ms Hall (who were paid the same throughout) with less to distribute.

Section 104 claim

88. We then considered the claim that the reason or principal reason for dismissal was that the Claimant had asserted a statutory right or rights. In our judgement, there is just about enough in the email of **22 March 2023** to amount to an allegation that a statutory right had been infringed. Much as this email was a tactical move by Ms Hall, nevertheless there can be extracted from the words in bullet points 1, 3 and 6 of the email sufficient to amount to an allegation. As set out under the relevant legal principles above, the Claimant need not be right about what she alleges, nor need she descend into detail. It is immaterial whether she has the right alleged or whether it has been infringed. It is enough that the right alleged to be infringed is reasonably clear.

89. Nevertheless, this claim fails simply because the reason for dismissal had nothing whatsoever to do with the fact that the Claimant had infringed these rights. The reason for dismissal was that Ms Tarran felt that there was no other alternative but to part company or terminate the contractual relationship, given the breakdown in the shareholder discussions, the claimant's decision to remove herself as **MLRO** and as an **FCA** director and her refusal to agree to any proposal put to her regarding remuneration and servicing of clients. Ms Tarran had by the end of March believed that Ms Hall had removed herself from the business. After all, in her email of **30 March 2023**, Ms Hall herself had set out her understanding that they had agreed they would go their separate ways (even though we found that had not, in fact, been agreed on **20 February**). The explanation for terminating the relationship on **05 May 2023** is explained by the advice Ms Tarran received from HR consultants that she needed to tie things up properly and

document matters, particularly in light of the Claimant's email of **31 March 2023** where she had clarified she had not resigned.

90. The Claimant had less than two years' service. Therefore, she must establish that the reason for dismissal was the proscribed reason. Not only has she failed to do this, we are clear in our conclusion that the decision to terminate her employment was because she had ceased to carry on the **MLRO** role, ceased to be an FCA director and had removed herself from activities and the Respondent felt that it had to address that situation. It did so by sending the letter of **05 May 2023**. The reason was wholly unrelated to the email Ms Hall had sent some six weeks earlier, in which she asserts an infringement of her statutory rights.

Summary of conclusions

91. By reference to the list of issues, the questions are answered as follows:

    a. Was the Claimant an employee? Yes
    b. Did the Claimant disclose information to Christine Tarran in an email of 22 March 2023? Yes
    c. Did she believe she was making the disclosure in the public interest? No
    d. Was that belief reasonably held? No
    e. Did the Claimant believe that the information in the email tended to show that the Respondent had failed, was failing or was likely to fail to comply with the identified legal obligations? No
    f. Was that belief reasonably held? Even if the Claimant did believe the information tended to show such breaches, the answer to this question is no: the belief was not reasonably held.
    g. Did the Respondent sideline the Claimant by isolating and ostracising her as alleged or at all? No
    h. Did the Respondent reduce the Claimant's income to nothing from March 2023? No
    i. Was the reason or principal reason for dismissing the Claimant that she had made a protected disclosure or that she had asserted a statutory right? No

92. All of the claimants' claims are therefore dismissed.

Employment Judge **Sweeney**
Date: 31 January 2025

APPENDIX

LIST OF ISSUES ON LIABILITY

Status

1. Was the Claimant an employee of the Respondent within the meaning of section 230(1) of the ERA 1996?

2. Was the Claimant a worker within the meaning of section 230(3) of the ERA 1996?

Protected Disclosure (section 43B ERA 1996)

3. Did the Claimant make a disclosure on 22 March 2023 to Christine Tarran via email?

4. Did the Claimant disclose information?

5. Did the Claimant believe that the disclosure was made in the public interest?

6. Was that belief reasonably held by the Claimant?

7. Did the Claimant believe that the information tended to show that a person has failed, is failing or is likely to fail to comply with the following legal obligations to which it is subject?

    a. The legal obligation to adhere to the Working Time Directive / not to breach this legislation.

    b. The legal obligation to pay the relevant pension contributions for its employees.

    c. The legal obligation to pay the relevant tax and National Insurance contributions for its employees.

8. Was the Claimant's belief a reasonable belief?

9. Did the Claimant make the disclosure to her employer?

Detriment (section 47B ERA 1996)

10. Did the Respondent do the following things:

a. Sideline the Claimant by isolating and ostracising her from her participation in the business making the Claimant lose all trust and confidence in Ms Tarran and affecting her ability to work for the Respondent.

b. Reduce the Claimant's income to nothing as the Claimant was not given any further payments for any role with the Respondent from March 2023.

11. By doing so, did it subject the Claimant to detriment?

12. If so, was it done on the ground that she made a protected disclosure?

Automatic Unfair Dismissal (section 103A ERA 1996)

13. Was the Claimant dismissed on 05 May 2023?

14. Was the reason (or, if more than one, the principal reason) for the dismissal that the Claimant made a protected disclosure on 22 March 2023?

Automatic Unfair Dismissal (section 104 ERA 1996)

15. Did the Claimant, on 22 March 2023, in an email to Christine Tarran, allege that her employer had infringed a right of hers which is a relevant statutory right, namely:

a. The right to be provided with written particulars under section 1 ERA 1996.

b. The right not to suffer unlawful deductions from wages under section 13 ERA 1996.

c. The rights conferred on her by the Working Time Regulations 1998.

16. Have the Claimant's claims of her statutory rights being infringed been made in good faith?

17. Was the reason (or, if more than one, the principal reason) for the dismissal, that the Claimant alleged that the Respondent had infringed a statutory right of the Claimant?