EMPLOYMENT TRIBUNALS

Claimant: Ms V Madhavji

Respondent: Watson Ramsbottom Ltd

Heard at: Manchester **On:** 9 October 2024 and
15 October 2024 (in chambers)

Before: Employment Judge Slater

Representation
Claimant: In person
Respondent: Mr J Boyd, counsel

RESERVED JUDGMENT

The application for interim relief is refused.

REASONS

Issues

1. This was an application for interim relief. The procedural requirements for making such an application were met: the claimant had presented the claim within 7 days of the effective date of termination. The complaint was of s.103A Employment Rights Act 1996 (ERA) unfair dismissal.

2. The complaint was one of constructive s.103A ERA unfair dismissal. It was agreed that the claimant had resigned. The claimant relied on alleged treatment which she argues constituted a breach of the implied duty of mutual trust and confidence.

3. In accordance with the test in s.128 ERA and relevant case law, which will be referred to in more detail in the section of these reasons on the law, I had to decide whether it was likely that her complaint would succeed at a final hearing. I had to consider whether it was likely, in the sense of having a pretty good chance of

success, significantly higher than 51%, that she would succeed at a final hearing in all the essential elements of her complaint.

4. This required me to consider the chances of success in relation to:

4.1. All elements necessary to establish whether the claimant had made protected disclosures, including whether the claimant had a reasonable belief that the disclosure tended to show one of the relevant wrongdoings in s.43B ERA, and had a reasonable belief that the disclosure was in the public interest.

4.2. Whether the claimant was constructively dismissed, including whether she was likely to succeed in establishing, as a matter of fact, that the acts or omissions by the respondent relied upon occurred as alleged; if so, whether these, taken together, were likely to be considered to be a breach of the implied duty of mutual trust and confidence; whether the claimant had affirmed the contract; and whether the claimant resigned in response to the breach.

4.3. If the claimant was constructively dismissed, whether the reason or principal reason for the constructive dismissal was that she had made protected disclosures i.e. whether the reason or principal reason for the respondent doing the acts and/or omissions which constituted the fundamental breach of contract was that the claimant had made protected disclosures.

The hearing

5. The parties were sent notice of this hearing on 12 September 2024. The hearing was listed for one day, beginning at 11 a.m., a longer hearing than is customary for this type of application. Such hearings are normally listed in this region, in my experience, for 3 hours.

6. On 8 October 2024, the day before the hearing, the claimant applied to postpone the hearing. The respondent opposed the application. The application was referred to me on the morning of the hearing and I directed that it would be dealt with at the hearing.

7. Because, as I was informed by the clerk, the claimant had been distressed when waiting for the hearing, and because, at the claimant's request, the clerk copied various documents before the hearing began, we were not able to start the hearing until around 12 noon. I heard the parties' submissions in relation to the postponement application before lunch and gave my decision not to grant that, with oral reasons, at 2 p.m. I then set out a timetable for the afternoon which would allow me to hear the parties' submissions on the application for interim relief by the end of the day. Since Mr Boyd had said earlier that he would be able to make his submissions in 20 minutes, I gave him a maximum of 30 minutes. I gave the claimant one hour for her submissions and a maximum of 10 minutes to reply to Mr Boyd's submissions. I allowed for short breaks.

8. The claimant had informed me that she suffered from anxiety but could participate in a hearing if given more time and short breaks. I made an

accommodation, without what I considered to be adequate supporting medical evidence, of giving the claimant more time to put her arguments, and additional breaks, but made it clear that this was for this hearing only and was not to be taken as a precedent for any adjustments which may be made at future hearings. The claimant had provided a copy of a letter from her GP dated 14 August 2024, provided in relation to a hearing in her other Tribunal claim, recommending a private hearing and regular short breaks. The letter gave no information about the claimant's condition and why such adjustments would be required.

9. We had a 15 minute break after I gave my decision and reasons for refusing the postponement. I started hearing the claimant's submissions just after 2.30 p.m. We had short breaks before and after Mr Boyd's submissions, before the claimant made her reply to Mr Boyd's submissions.

10. After submissions on the interim relief application, which concluded at 4.25 p.m. I had to reserve my decision on the application, because there was not sufficient time to make and deliver a decision that day. I made orders, subsequently confirmed in writing, about an application the claimant wished to make for a rule 50 anonymity order in relation to this judgment and reasons. **I am giving instructions that the judgment and reasons will not go on the public website until after the claimant's application, if made within the required time period, has been considered. The form of the version to go on the public website will depend on the outcome of that application.**

The information before me

11. The process for dealing with an interim relief application is supposed to be a summary one, conducted speedily and on the basis of limited information.

12. I was presented with a bundle of 229 pages, a 155 page investigation report which the claimant invited me to look at, and various additional documents which the claimant sent in separately. I have not read all the documents in detail, since I do not consider it in keeping with the summary nature of the process, and proportionate, that I should do so.

13. I informed the parties, before they made their submissions, that they should highlight key documents which I would read, if I had not already done so, unless I considered a document unlikely to assist me and/or it was not proportionate to read it, given the summary nature of the assessment to be carried out.

14. I have approached the prospects of success on the basis of the case as pleaded. One of the reasons for the claimant wanting to postpone this hearing was because she wanted to apply to amend her claim. The claimant may, following this decision, make an application to amend her claim, but I consider it in keeping with the summary and speedy nature of the interim relief process, that I consider the claimant's case as pleaded in her claim form. The claimant is a solicitor who practised in employment law, as well as immigration law, so has pleaded her case with the basis of more specialist knowledge than most unrepresented claimants.

15. Although a response to the claim was not due until after this hearing (as is often the case with interim relief hearings due to the required speed with which

they are dealt), the respondent had prepared a response which was included in the bundle. The grounds of resistance begin at p.223.

16. Page references in these reasons are to the bundle of documents unless otherwise stated.

A brief summary of the factual situation

17. The respondent is a company of solicitors, authorized and regulated by the Solicitors Regulation Authority (SRA). Several of the directors, about whom the claimant complains of misconduct, are fee paid members of the judiciary.

18. The claimant is a solicitor who worked for the respondent from February 2017 until her resignation on 3 September 2024. The claimant practised in immigration and employment law.

19. The claimant believes that a number of directors and some employees of the respondent engaged in cyberstalking of her. She raised concerns about this from 2021 onwards. She requested that a grievance submitted by her on 23 December 2022 be investigated by an external investigator. An internal investigation was undertaken. The outcome of this was provided to the claimant on or around 8 February 2023. The claimant was on sick leave from 5 September 2022 until her resignation.

20. The claimant presented a claim in February 2023 (case no. 2402291/23). This case has had a number of private preliminary hearings for case management, the last one being shortly before this hearing. I was informed that a further 2 day private preliminary hearing has been listed for February 2025 and both parties consider that this new claim should be combined with the first claim.

21. The respondent says, in a witness statement from Rachel Horman-Brown, one of the directors of the respondent, that the respondent decided they needed advice from a suitably qualified specialist who could evaluate the state of the claimant's mental health and her prospects of returning to work. Their solicitors wrote to the claimant on 11 June 2024 requesting that she agree to meet a named psychiatrist for this purpose. The claimant requested to see a female psychiatrist. The respondent says they could not find a suitable one in the Manchester area so asked her, by letter dated 8 August 2024, to attend the assessment with the named (male) psychiatrist, with the option of bringing a chaperone. The claimant refused by letter dated 22 August 2024. The respondent says they did not hear from the claimant again until she resigned on 3 September 2024.

22. In the claimant's resignation letter, addressed to Elton Ashworth, she wrote:

> "The reason for my resignation is that WR Ltd has failed to provide me with a safe working environment. It has not taken steps to protect me from acts of harassment and victimization contrary to the Equality Act 2010 and the Protection of Harassment Act 1997 by its employees."

23. In the letter she also complained that, contrary to Tribunal orders (in her assertion), a director of WR Ltd had instructed Chris Mullaney to contact her on

her personal email and that this was an act of harassment and victimization contrary to the Equality Act 2010.

24. The claimant also wrote:

> "I believe that the directors of WR Ltd are concealing knowledge of and participation in cyberstalking and acts of victimization and harassment by various individuals at WR Ltd including yourself, Jonathan Leach, Stuart Maher, Rachel Hornman-Brown. This is a breach of the SRA code of conduct including the duties to act with integrity and honesty, and the duty to respect equality and diversity. I therefore tender my resignation."

The claimant's pleaded case

25. The claimant's pleaded case is set out in the claim form, attached particulars of claim and an application for interim relief that accompanied the claim form.

26. The claim includes complaints of "ordinary" constructive unfair dismissal, s.103A constructive unfair dismissal, notice pay, holiday pay and "other payments". The only complaint relevant for this interim relief application is constructive s.103A unfair dismissal since this is the only one of those complaints which could allow such an order to be made.

27. In box 9.1 on the form, the claimant does not seek reinstatement or re-engagement but compensation only. In box 9.2, however, she states that she seeks "continuation of my contract of employment."

28. In the particulars of claim, the claimant asserts, at paragraph 10 (p.110) that, in response to her protected disclosures, the respondent behaved, by a series of acts and omissions to breach the implied term of trust and confidence and she resigned in response to those acts and omissions.

29. At paragraphs 23-26, the claimant sets out the acts and omissions of the respondent which she asserts constitute a fundamental breach of contract (implied term of trust and confidence). These are as follows:

> "23. WR Ltd did not have adequate security systems in place, which meant that its employees and several members of the board of directors were able to access my private data and misuse it.
>
> 24. WR Ltd did not adequately investigate my complaint 23.12.22 and I allege that the managing director Elton authorized the WR Investigation Report 2023 the contents of which he knew was false.
>
> 25. WR Ltd did not implement the reasonable adjustments recommended by its occupational health advisor.
>
> 26. WR Ltd did not act upon repeated alerts in 2023 and 2024 to deficiencies in the WR Investigation Report."

30. The Particulars of Claim refer to an attached Schedule of Protected Disclosures to the SRA. This appears at pages 115-116 and sets out a summary

of disclosures the claimant says she made in the period 21 February 2023 to 3 September 2024.

31. The claimant also refers, at paragraph 8 (p.109) to making protected disclosures to the respondent, the ICO and the Equality and Human Rights Commission. No further details of alleged protected disclosures to the ICO or EHRC are given in the Particulars of Claim or annexed documents.

32. Paragraph 12 (p.110) refers to an alleged disclosure to the respondent on 23.12.22, containing allegations relating to the misuse of her private data by employees of the respondent and allegations of breaches of the Equality Act by employees of the respondent. She wrote that she had complained that, from 2021, until the commencement of her sickness absence, there had been a campaign of harassment and victimization against her. This alleged protected disclosure is contained in annex 5 to her Particulars of Claim (pp. 122-132). This is described in the document as a formal grievance and contains a request for an independent investigation.

33. The claimant writes, at paragraph 29 (p.112), that, by encrypted file share, she submitted a copy of the protected disclosures to the respondent's solicitors on 1 July 2024. At paragraph 30 (p.113), she wrote that the respondent did not correct is position at paragraph 20 of its response that "it had carefully considered all the evidence". She wrote at paragraph 31 "I resigned in response to the above omissions."

The claimant's written application for interim relief

34. The claimant repeats the summary list of alleged protected disclosures which was attached to the Particulars of Claim but writes (p.105) that it is "not a comprehensive list, which shall follow in further and better particulars." I am not aware of any further and better particulars having been provided prior to this hearing.

35. The claimant submits, at paragraph 6 (p.105) that she had a "pretty good chance" of establishing that she has been unfairly dismissed "because I have made protected disclosures to *inter alia* the SRA reporting alleged breaches of the Respondent (WR Ltd's) regulatory obligations." She writes, at paragraph 7, that the alleged breaches relate to her complaint of cyberstalking by individuals at the respondent and the omission of the respondent to protect her from that cyberstalking, including by the authorization of the WR Investigation Report 2023, which she maintains is a "sham" report.

36. The claimant referred to the EAT decision of **Dobbie v Paula Felton t/a Felton Solicitors UKEAT/0130/20/00** paragraph 43, as authority for solicitors being subject to high requirements of honesty and integrity and potential breaches of regulatory requirements being expected to raise matters of public interest because the regulations are there to protect the public.

37. In reply to Mr Boyd's submissions, the claimant said she did not accept that she had affirmed the contract. She said she had remained but in protest and made reports to regulatory bodies and the respondent.

38. The claimant said the firm's own procedure required her to make notifications to the regulator, the SRA.

The claimant's oral submissions

39. The claimant highlighted particular allegations made in her grievance/alleged protected disclosure of 23 December 2022, giving an outline of the alleged campaign of cyberstalking which she said started in 2021. Many of her submissions related to the facts about making protected disclosures.

40. The claimant said she stayed employed, despite continued cyberstalking, but did so under protest.

41. The claimant said it was continued cyberstalking and continued concealment of wrongdoing by the respondent which led to the breach of the implied duty of mutual trust and confidence.

42. The claimant said she was concerned about members of the judiciary acting in a harassing way. She considered it important to hold the firm to account. She felt strongly as a lawyer that she had a duty to challenge the conduct because of how egregious it was. She did not want other women to be harmed. She considered there was a risk to the public.

The respondent's submissions

43. Mr Boyd said that, in the witness statement of Rachel Horman-Brown, they had concentrated on correspondence in the period June to September 2024. They identified three things going on at the time: (1) an attempt to get the claimant to attend a clinician; (2) issues about holiday pay; (3) how communication was to be undertaken with the claimant.

44. The claimant had been absent from work for nearly two years by the time of her resignation. The claimant had presented her first Tribunal claim before the outcome of the investigation. Most of her PID detriments in her first claim had been struck out by Employment Judge Butler (p.56).

45. The respondent suggested that the claimant resigned out of the blue. The claimant was saying it was because of historical matters.

46. The investigation report was February 2023. The claimant did not appeal the outcome because she disputed the independence of the report. The respondent submitted that the likelihood was that, even if there was a breach of contract (and the respondent says there is no evidence of this), the claimant has a significant affirmation problem.

47. Mr Boyd referred to **MOJ v Sarfraz 2011 IRLR 562,** for authority that "likely" requires a significantly higher degree of likelihood than more likely than not; nearer to certainty than mere probability.

48. The claimant needed to persuade the Tribunal of the merits of the causative link. Mr Boyd submitted that conjecture or coincidence was insufficient to discharge the burden on the claimant.

49. Mr Boyd referred to paragraphs 23-26 in the Particulars of Claim (p.112). He suggested that, taking the claimant's case at its highest, there was no real particularity in paragraph 23. At best, the Tribunal could not say at the moment how this would be resolved until there was an analysis of the evidence. The Tribunal could not say with near certainty that this would succeed.

50. In relation to paragraph 24, Mr Boyd submitted that the Tribunal could not conclude the Managing Director, Elton Ashworth, knew the contents of the investigation report were false. The Tribunal could not say, on the face of the 155 page report, that it was inadequate. This would need to be determined.

51. In relation to paragraph 25, Mr Boyd noted that the claimant had said nothing about this in her submissions. The occupational health report of 20 December 2022 which referred to a point of contact was not before the Tribunal. Even if adjustments were recommended and not provided (about which there was no evidence), there was an affirmation problem.

52. In relation to paragraph 26, Mr Boyd acknowledged that the claimant did challenge the report but submitted that the Tribunal would need to understand a lot more about the back story to determine whether something about whistleblowing was going on.

53. The respondent, in its grounds of resistance, paragraph 30 (p.226), asserts that the claimant provides no basis for any causal link between the alleged protected disclosures and the alleged acts or omissions.

54. Mr Boyd submitted that the Tribunal could not conclude there was a prospect of success near to certainty.

55. Mr Boyd submitted that there was an affirmation problem but this was secondary to the main point.

56. Mr Boyd suggested that the claimant's email suggests that the real reason for her resignation was some other reason than the acts and omissions relied upon.

57. Mr Boyd submitted that there was no cogent or compelling evidence that the claimant's resignation was because of making protected disclosures.

Law

58. The law relating to protected disclosures is contained in the Employment Rights Act 1996. Section 43B defines disclosures which qualify for protection, saying that:

> "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 of the preceding paragraphs has been or is likely to be deliberately concealed."

59. To be a protected disclosure the qualifying disclosure has to have been made either to the employer (that is section 43C) or to another person falling within the definitions of sections 43D through to 43G in the Employment Rights Act 1996.

60. Section 103A of the Employment Rights Act 1996 says that 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.

61. Section 128 Employment Rights Act 1996 allows an employee bringing a complaint of unfair dismissal relying on s.103A Employment Rights Act 1996 to make an application for interim relief provided the claim is presented within 7 days following the effective date of termination.

62. Section 129 Employment Rights Act 1996 provides:

"(1) This section applies where, on hearing an employee's application for interim relief, it appears to the tribunal that it is likely that on determining the complaint to which the application relates the tribunal will find –

(a) That the reason (or if more than one the principal reason) for the dismissal if one of those specified in –

(i) Section…..103A, or

(ii) ……."

63. In **Taplin v C Shippam Ltd 1978 ICR 1068**, the EAT said the correct test to apply when considering whether or not it is likely that the Tribunal will find that the reason or principal reason for dismissal is one of those reasons where interim relief can be granted was whether the claimant has a "pretty good chance of success" at the full hearing.

64. In **Wollenberg v Global Gaming Ventures (Leeds) Ltd EAT 0053/18,** the EAT said this is a significantly higher threshold than merely "more likely than not" that the claim would succeed.

Conclusions

65. I conclude that the claimant has a pretty good chance of success in the Tribunal concluding that she made one or more protected disclosures to the respondent and/or the SRA. The respondent, in its grounds of resistance, has made no admission as to whether any of the matters referred to by the claimant amount to protected disclosures (p.224). Mr Boyd did not make submissions to the effect that I could not conclude that the claimant had a pretty good chance of success in this argument. I do not consider it necessary, for the purposes of this summary assessment, to analyse the alleged protected disclosures in detail and this conclusion should not be taken as a conclusion that the claimant is likely to establish that she has a pretty good chance of success in establishing all the alleged protected disclosures. However, the alleged disclosures include allegations about what the claimant describes as cyberstalking. I consider the claimant has a pretty good chance of establishing that these are disclosures of information which would tend to show breaches of legal obligations. I conclude the claimant has a pretty good chance of establishing that she had a reasonable belief that cyberstalking was occurring, based on comments being made which she thought could only have come about by having had access to her personal internet browsing. I make no comment on whether or not the claimant was correct in her belief, but she does not have to be correct for the belief to be reasonable. I also conclude that she has a pretty good chance of success in establishing that she reasonably believed the disclosures to be made in the public interest. Although some of the alleged disclosures, such as information relating to the alleged cyberstalking, appear to relate only to her, I consider she is right in her argument that there is a public interest in solicitors and members of the fee paid judiciary not breaching legal obligations and/or regulatory requirements.

66. I do not, however, feel able to conclude, on the basis of a summary assessment of material before me, that the claimant has a pretty good chance of establishing that she was constructively dismissed and, if constructively dismissed, that the reason or principal reason for the acts and omissions relied upon as constituting the breach of contract, was that she had made protected disclosures.

67. I have not considered it proportionate to read all the documents put before me, given the summary nature of the exercise. I consider that I am entitled to rely principally on the claimant's own pleaded cases but have also read part or all of other documents which I consider likely to be of assistance. From the claimant's pleaded case, taking this at its highest, it appears to me that I cannot assess the chances of success in these arguments as being pretty good.

68. I consider that evidence would need to be heard to assess the prospects of establishing the matters alleged in paragraphs 23 to 26 (p.112) as a matter of fact. I cannot, therefore, conclude, on the basis of a summary assessment, that the matters relied on in paragraphs 23-26 have a pretty good chance of being established as a matter of fact and, therefore, being found to constitute a breach of the implied duty of mutual trust and confidence.

69. I do not feel able to conclude that the claimant has a pretty good chance of success in the Tribunal concluding that she resigned because of those matters. There are differences between what is said at paragraphs 23-26 of the Particulars of Claim about why the claimant resigned and what she said in her resignation

letter. The grounds of resistance at paragraph 33 (p.227) also asserts that the principal reason for the claimant's resignation, in view of the timing of this, was her unwillingness to attend a medical assessment with the named psychiatrist, taken together with her awareness that without medical evidence indicating a likely date for her return to work she faced the possibility of dismissal for lack of capability.

70. Even if the Tribunal concluded that the claimant was constructively dismissed as a result of the treatment alleged in paragraphs 23 to 26 of the Particulars of Claim, I do not consider there is any basis on which I could conclude, on a summary assessment, that the claimant has a pretty good chance of the Tribunal concluding that the reason or principal reason for those acts and/or omissions is because the claimant made protected disclosures. For example, the matters alleged at paragraph 23 start before the alleged protected disclosures, and cannot, therefore, be because of any of the protected disclosures. The reasons for the respondent acting as it did cannot properly be assessed without hearing the evidence of relevant witnesses for the respondent.

71. The claimant may face difficulties with an affirmation argument, but I do not rely on this for concluding that the claimant does not have a pretty good chance of success in her claim since my impression is that the claimant has been protesting regularly about the alleged misconduct.

72. For these reasons, I conclude that the claimant does not have a pretty good chance of success in her s.103A ERA unfair dismissal complaint. I, therefore, refuse the application for interim relief.

Employment Judge Slater

Date: 16 October 2024

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

18 October 2024

FOR EMPLOYMENT TRIBUNALS

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https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/