

IN THE EMPLOYMENT TRIBUNAL

Case No: Tri 41/2017

BETWEEN

GYLNIS BROADFOOT

Claimant

and

AUSTIN FRIARS SERVICES LIMITED

Respondent

RULING

Janieve Buhagiar Esq. for the Claimant

Andrew Haynes Esq. for the Defendant

1. The Claimant was employed by the Respondent as an Executive Assistant. The Claimant claims that she was dismissed on 4 October 2017 and that her dismissal was:
 - (i) automatically unfair as the reason for her dismissal was that she made a protected disclosure within the meaning of section 45 of the Employment Act ("the Protected Disclosure Claim"); alternatively
 - (ii) unfair pursuant to section 59 of the Employment Act on the basis that the reason for the dismissal was not for one of the permitted reasons and/or was procedurally unfair;
2. The Claimant also claims wrongful dismissal on the basis that the Claimant failed to provide notice in accordance with the Respondent's employment contract.
3. The Respondent denies the claims being brought against it on the basis that it says that the Claimant resigned on 31 August 2017 and/or alternatively that the Claimant committed various breaches of her employment contract which in themselves entitled the Respondent to summarily dismiss the Claimant and that it did fairly in all of the circumstances. The Respondent vehemently denies that the Claimant was dismissed for the reason that she made a protected disclosure.

The hearing and the evidence

4. The hearing of this matter took place over one day on 18 December 2019 including closing addresses by Counsel for both parties. During the course of the hearing the Tribunal heard evidence from the Claimant, Dean Moore, Christopher Wawn, Colin Sayer, Steve Riggs, Helen Piccone and Claire O'Brien. Witness statements for all the aforementioned persons had also been previously filed.
5. Mr Wawn is the Chief Executive Officer of ASFL and is the joint owner. I found his evidence to be clear and consistent throughout and I felt that he proved to be a very helpful witness who was prepared to answer questions truthfully. I found him sincere and to be an individual of principle.
6. The Claimant's evidence was not as clear and/or consistent. Indeed, she provided evidence which at times contradicted her own evidence and her own case as set out in her Claim Form and Particulars of Claim. The Claimant did not seem to have a clear recollection of some of the fundamental facts upon which she bases her claim against the Respondent as I set out in greater detail below. Of course, I am acutely aware of the amount of time that has lapsed since the date on which the relevant incidents took place and the date of the hearing and I have accordingly taken this account when considering the evidence, especially the oral evidence.
7. All of the other witnesses could be considered as neutral in terms of the outcome of these proceedings and I am grateful for their evidence which has also been helpful. Mr Sayer is an insurance consultant and he met Mr Wawn when they were both directors of Focus Insurance Company in or around 2005 and from there, he and Mr Wawn became close working colleagues and friends.
8. In 2016, Mr Sayer started work on a niche product for Sigma Insurance Services Limited ("Sigma"). As part of that project, Sigma partnered with Beacon Insurance Company Limited ("Beacon") which led to Mr Sayer resigning as a director of Sigma and being appointed to the board of Beacon. The Respondent shared offices with Beacon and Sigma in Gibraltar and Mr Sayer would spend every other two weeks in the shared office. Mr Sayer confirms that he personally enjoyed a good friendly relationship with the Claimant and her husband and on at least two occasions stayed over in their home in Spain.
9. Mr Riggs is an FSC approved director for Experience Investor Funds and he is currently a director of the Trading Room Limited. Mr Riggs and Mr Wawn were co-directors of a Gibraltar Experience Investor Fund called Nesso Fund PCC Limited ("the Fund"). The Claimant alleges that the Respondent's behaviour changed when she reported two suspicious activities in relation to the Fund and which in her view needed to be reported to the Financial Services Commission ("FSC"). On 3 October 2017, the Claimant made a protected disclosure to the FSC concerning the Fund. She was interviewed by the FSC on 4 October 2017.

10. Ms Claire O'Brien is now an Executive Administrator at Juno Fund Management. At the material time she was an underwriting manager at Beacon and so she also shared the office with the Claimant and Mr Wawn. I was left with the very distinct impression that the relationship between Ms O'Brien and the Claimant was not one of friendship but was limited to being colleagues at work.
11. Ms Piccone confirmed from the outset of her evidence that she was Mr Wawn's sister in law but having heard Ms Piccone I am of little doubt that there is any reason to doubt the reliability of her evidence and to counsels credit no such submission was ever made in that regard. Ms Piccone is a director of Fastamotors Limited but assisted the Respondent with various administrative duties. She held the chequebook for the Respondent in her office to make various payments including PAYE, Social Insurance and employee wages.
12. Finally, Mr Moore is a Pier Master in Queensway Quay and he provided evidence in relation to the incident that took place on 31 August 2017. He did not know either the Claimant or Mr Wawn on a personal level at the time of the incident.

Background and Chronology of Events

13. Mr Wawn is an FSC approved director for Experience Investor Funds in Gibraltar and ASFL is the corporate vehicle by which Mr Wawn provides his directorship services in the financial services market in Gibraltar. ASFL was at the material time a small start-up company which Mr Wawn had aimed to grow and develop.
14. Mr Wawn also works for the Ministry of Defence and as a result is regularly deployed to areas outside of Gibraltar, often for weeks at a time. As a result of Mr Wawn's regular absences from Gibraltar, Mr Wawn decided that the business required an individual who was more senior and had more experience than a personal assistance or secretary but someone who he describes as an "Executive Assistant". As defined by Mr Wawn, the role required a good level of knowledge and experience in the financial services market and a good level of competency in relationship management, IT skills, problem solving and troubleshooting. In effect, Mr Wawn was seeking to employ someone who could ably assist in all of his matters and in the provision of directorship services through AFSL.
15. Mr Wawn was introduced to the Claimant through an employment recruitment service, First Choice Recruitment. In her Curriculum Vitae, the Claimant confirmed that she had attended a course of Microsoft packaging including word and excel. She also stated the following:

"I have an extensive background in Financial, Administrative and Client orientated positions. I have excellent interpersonal skills, communication abilities and work disciplines which enable me to prioritise, organise and delegate work on a daily basis enabling me to complete tasks efficiently. I have an open flexible and professional approach when dealing with challenging customers."

16. After interviewing the Claimant and on the basis of the information provided in her CV, Mr Wawn decided to employ the Claimant. At all material times, Mr Wawn and the Claimant made up the entirety of the Respondent's workforce.
17. The Claimant's terms of employment are governed by a standard ETB contract together with a job offer letter both of which are signed and dated 1 June 2016 (together "the Employment Contract"). This states that the Claimant's role was to "assist the Board in managing AFSL on a day to day basis, supporting the individual fund, insurance and corporate clients."
18. The working relationship was rather different to the usual employer/employee relationship. It required a very high-level degree of trust and confidence in what was a very close working relationship. This is particularly evident from the fact that the Claimant had full access to Mr Wawn's email account and would therefore have access to and knowledge of the entirety of Mr Wawn business and ongoing matters. Furthermore, the Claimant would attend to the day to day management of the Respondent (often with limited access to Mr Wawn) during Mr Wawn's absences from Gibraltar.
19. I have no doubt that the Claimant and Mr Wawn enjoyed a good working relationship from the outset of the Claimant's employment. The Claimant received a discretionary bonus of £1,000 from the Respondent in December 2016 and July 2017. The performance reviews which clause 3 of the Employment Contract stipulated would take place after 6 weeks, 3 months and 6 months did not take place but, in my view, this suggests that there were no issues which needed to be addressed by either party at that stage at least. Additionally, Mr Wawn would on occasions invite the Claimant and her husband to dinner to entertain clients of ASFL and indeed the Claimant also assisted Mr Wawn in dealing with some of his personal matters.

The Fund and Allegation of Whistle Blowing

20. ASFL was a director of the Fund. Mr Riggs who also gave evidence to the Tribunal was a co-director of the Fund. At paragraph 4 of the Particulars of Claim the Claimant states that "on or around August 2017" she became aware of two false wire payments which had come into the office in relation to the Fund. The Claimant goes on to state that she "reported it to her superior Mr Wawn, and advised that it should be reported to the Financial Services Commission. Mr Wawn did not agree and became very defensive. He stated that there was no need to inform the Financial Services Commission." At paragraph 11 of the Particulars of Claim the Claimant claims that this was the principal reason for the termination of her contract.
21. Much of the evidence which the Claimant gave in oral evidence centred around the Fund, the two false wire payments and the disclosure made by her to the FSC. In her oral evidence, the Claimant was highly critical of the manner in which Mr Wawn had

dealt with the matter. She claims that she reported both wire payments to Mr Wawn in or around August 2017. She says that Mr Wawn was being selective with the information that he was providing to the FSC. She also stated quite categorically in evidence that she “did not believe that Mr Wawn did what he should have with the two wire payments”. Mrs Broadfoot told the Tribunal that Mr Wawn had compiled an A4 lever arch file that he used to regularly call his “defence” and she rhetorically asked why else would he need a defence if he was of the opinion that no illegal or fraudulent activity was taking place”.

22. Mr Wawn’s evidence is that the first wire payment and the reason for his first concern arose in April 2017 and not in August 2017 and that “nothing could be further from the truth” to allege that it was ignored by him and that it somehow resulted in the termination of the Claimant’s employment. Mr Wawn says that the first wire payment came to light when the Claimant was away on a 3-week cruise. He denies that the Claimant identified the first concerning payment first. When this was put to the Claimant in cross examination, she acknowledges that the first payment could have been made in April 2017 but responded by saying “well I reported them when I saw them”.

23. By an email dated 7 April 2017 from Mr Wawn to the other directors of the Fund it is clear that Mr Wawn had by that stage already taken up his concerns about the Fund with his co-directors. Mr Riggs also confirms that by March/April the FSC were already informed of their concerns and that they were having almost weekly meetings with the FSC. It is clear from an email dated 5 May 2017 from Mr Wawn to members of the FSC that the FSC had already been onboarded, and had been for some time. Mr Wawn’s email dated 5 May says:

“Thank you for coming to see us yesterday and provide us with the opportunity to brief you on our [Fund] action plan.”

24. Mr Wawn went on to say that at the beginning of May 2017 further information came to light which prompted a report to the Fund’s compliance officer who in turn made two suspicious activity reports to the Gibraltar Financial Crimes Unit in June and July. That of course is the correct route for such matters. Mr Wawn told the Tribunal that he began to produce an outline organisation-linkage-chart to try and understand the broader reaches of the Fund giving the complexity of the Fund structure which involved many different entities in different jurisdictions. He confirms spending “endless hours working and researching” and with more time he spent the bigger the chart grew. Mr Wawn produced at the hearing what I understand to be the final chart and it is clear that Mr Wawn must have put a lot of work into the investigation. In his oral examination, Mr Riggs was clearly well acquainted with the chart and referred to it as the “dreaded family tree” when he was shown it. Mr Wawn stated that he was proud of the work that he had undertaken in relation to the fraud surrounding the Fund and that his work was acknowledged by the FSC.

25. Mr Riggs was highly complimentary of Mr Wawn's role in to the investigation surrounding the Fund. He told the Tribunal that it was "incredible what [Mr Wawn] did, he did extremely well". Referring to Mr Wawn's work, he said that in all his years of experience as a director he has never "seen something this extensive". Mr Riggs confirms in his witness statement that "the Regulator was kept fully informed of our enquiries and the process was undertaken diligently and with full transparency". He specifically confirms that "It is not the case that any pertinent information or any information relation to "false wire transfers" was held back from the Regulator. At the end of the process, the Regulator in fact congratulated [Mr Wawn] and myself for our work in reporting and researching the matter.
26. Mr Riggs goes on to say in his witness statement that he had told Mr Wawn "that he would only serve again as an EIF Director if a) Chris Wawn would be on the board with me or b) somebody of his calibre".
27. In relation to Mrs Broadfoot, Mr Riggs said as far as he was aware Mrs Broadfoot was "kept in the picture, only in terms of copying into emails and filing of documents etc;" but that said that it was "not credible" that she raised the alarm concerning the two false wire payments.

The Sigma / Beacon Project and other matters leading up to 31 August 2017

28. Mr Wawn and Mr Sayer both confirmed that in or around early 2017 they began discussions to explore a possible business relationship which would see AFSL take on some of the new product administrative functions for Beacon and Sigma arising from the Sigma / Beacon Project. It was estimated that launch for those products would be in the last quarter of 2017.
29. Mr Wawn was naturally very keen to expand the business and to take on a new client. It was envisaged that the Claimant would for some of her time be outsourced to Sigma to carry out certain administrative tasks. However, the exact role that the Claimant would have to adopt was not clear given that it was a developing and evolving project. Mr Wawn felt it was a good opportunity not only for himself but also for the Claimant.
30. It is Mr Wawn's evidence that despite his best efforts he found the Claimant to be continually obstructive and negative about the work. Evidence of these instances are listed in paragraph 34 below. According to Mr Wawn the Claimant was regularly pushing back whenever instructions were giving to her. Mr Wawn conceded that the Sigma / Beacon instructions were "not always clear" but he expected the Claimant to "run with the project".
31. In or around June /July 2017, Mr Wawn commenced a Work Log on 10 July to monitor the Claimant's process and to provide constructive feedback as he says he began to develop a growing concern regarding the Claimant's work performance and

capabilities. The headnote to the worklog states "Glynis Broadfoot ("GB") commenced with AFSL on the 1 June 2016 and had a fairly good first 7-months, settling into her new Executive Assistant position. However, GB's attitude and performance seemed to have deteriorated while CW was away in June / July 2017 and on CW's return on the 10 July 2017, GB had a tendency to push back when questioned over her work quality and quantity".

32. Matters listed in the Work Log include failing to accept directions, lacking an attention to detail, not understanding the difference between an Insurance Company and an Insurance Broker. The Work Log often refers to the Claimant answering back (occasionally impertinently) and sometimes refusing to follow instructions or to simply take on board the advice/instructions being given. Ms Obrien states that "despite always being a considerate director I was aware that on occasions GB was rude and abrupt towards CW but he let these instances pass."
33. Mr Wawn confirms that the Claimant was never shown the Work Log and nor were any formal disciplinary steps taken in relation to any of the matters contained in the Work Log. It is clear from the Work Log that Mr Wawn dealt with all of the issues on an informal basis as and when they arose. What is clear from the Work Log is that some tension had developed in the relationship between Mr Wawn and the Claimant. Before I list some of the matters referred to in the Work Log, I should add that the Claimant disputes the accuracy of the Work Log but regrettably provides no details of what it is she claims is not accurate. The Work Log records:

33.1 1 – 10 July 2017 –

"When hearing that CW and Beacon Insurance were going to Liverpool to test the Sigma system, GB obtained an invitation from Sigma to join the visits. CW felt this was too soon and the visit would incur AFSL cost that may not have been recoverable... GB demonstrated resentment for not being allowed to visit Liverpool on the phone and on CW's return"

33.2 24 July 2017

"AFSL undertakes a risk review at the end of each quarter for all its clients and was meant to be GB's responsibility to initiate the task. When CW was away at the end of June / early July, GB did not start the review and on CW's return, CW agreed to a one off simpler file check list cross-referring the electronic and physical files to see that documents were missing... GB was nominated to sign off the check list as a third party but would not accept the basic reasonability of signing and when challenged by CW, GB commented that "I do not sign anything"

33.3 26 July 2017

"Whilst ensuring that AFSL's client files contained copies of all the client minutes and resolutions, GB openly challenged the exercise and said "it was stupid that we were creating duplicate files"

33.4 2 – 9 August 2017

"Various errors were found during the review of electronic files and GB took this personally when CW generally pointed this out".

"CW provided GB with a draft filing strategy diagram which GB was openly negative about, even when is clearly stated at the top of the page that it was a draft and invited GB to contribute towards its development"

"GB's file hole punching was often off centre and made her physical files look untidy. It was explained to GB that if ever the GFSC or Auditors required to see ASFL's files, a tidy file demonstrated a professional attitude and approach. Even under supervision, GB demonstrate a lack of care and attention".

33.5 23 Aug 2017

"GB was asked by Sigma to witness a tenant's agreement (Watergardens Apartment). GB commented that "I don't sign documents" and "thrust" it to another Sigma member of the team to sign"

33.6 30 Aug 2017

"GB expressed frustration over the Beacon / Sigma relationship and she wished she had been more involved from the start. In response to GB, CW explained that new start ups do not have perfect procedure on day 1.

"GB knew that CW was struggling with a house completion and during the afternoon CW found out that the NatWest payment for the house would have to be sent manually. GB commented "I could have told you that before" and later said "Natwest wants your source of wealth". CW presumed the two conversations were linked and said he had already done this. GB then forcefully said "let me finish". It transpired the second comment was linked to Sigma and not CW's house completion".

34. The evidence provided by the Claimant also indicates that she was becoming generally disillusioned and frustrated at work. As a result of the Sigma / Beacon Project, during the course of 2017, the Claimant was asked by the Respondent to carry out a range of tasks for Sigma, including, but not limited to, setting up bank accounts, looking for office premises, looking for an apartment for Mr Sayer etc; The Claimant states that her role however was continually changing and it was clear from her evidence that she found this frustrating and unfair.

35. The Claimant says in her witness statement “that she was not against completing tasks for Sigma and was happy to do whatever was required to make it a success as it would have a positive financial outcome for Mr Wawn”. That said, it was clear she was frustrated by what she perceived to be a lack of clarity and/or direction in what she was being asked to do. One of the tasks set by the Respondent was to prepare a procedure manual and job description for Sigma. She says in her witness statement that “she did not understand why I was being asked to do this. In my opinion, Sigma Insurance Services Limited was to provide the job description and what services they required of me”.
36. The Claimant explains in her witness statement that she did try to write a job description but was unable to do so given that she had not been “involved in any discussions as to what was essential and what was required to make the company successful. I did not have sufficient knowledge to prepare a job description or the procedure manuals. I regularly questioned what was required by me verbally and via email and no one seemed to know.”
37. Mr Sayer said in his evidence that in his view the Claimant seemed to “be struggling” and was concerned that the Claimant lacked the experience and expertise to perform in the role required to assist in the Sigma/Beacon Project. Mr Sayer referred to a training course for the new IT systems held in Bradford which the Claimant, Mrs Obrien and himself attended on 23 August 2017. He recalls that the Claimant did not engage during the course and remained very much on the side-lines. He said he “couldn’t see that” the Claimant had “some” IT experience especially in Excel.
38. Central to the Claimant’s claim is that Mr Wawn’s attitude towards her changed in or around August 2017 following her reporting of the false wire payments. She complains that Mr Wawn had removed her from dealing with all other clients. Mr Wawn confirmed that he had started to reduce the Claimant’s work with other clients in June or July. He explained that this was not because of the report regarding the false wire payments but because he wanted the Claimant to concentrate on the Sigma/Beacon Project. He said in his live evidence that he “wanted to on-board Glynis” in the Sigma / Beacon Project. He considered that the Sigma/Beacon Project represented a decent livelihood out of the business” for both he and the Claimant and that he wanted the Claimant to “embrace” the role rather than be obstructive and difficult as she had been.
39. In an email exchange between Mr Wawn and the Claimant dated 30 August 2017, Mr Wawn wrote to the Claimant saying “I have said a few times: this is an opportunity for you to build a role that you are comfortable with and we can find someone else to fill the gaps. I want you to work from home on Friday in an office free environment, so that you can go over the job description and Sigma task list with a clear mind”.
40. In the Claimant’s response of the same day her frustration is clear. She responds by saying “I still believe that the project is exciting and I am aware that this is an

opportunity for not only me, but also you, however it seems that every man and his dog is involved in this project apart from the person who is actually, at the end of the day going to be responsible for doing a large part of the job, me..." In Mr Wawn's response he confirmed that "the bottom line is I want you to be happy in your work".

The meeting of 31 August 2017

41. On 31 August 2017, the Claimant and Mr Wawn held a meeting at the Waterfront to discuss the Sigma/Beacon Project and the job description and to "clear the air". It was common practice for the Claimant and Mr Wawn to leave the shared offices to discuss more private business.
42. Both Mr Wawn and the Claimant have given detailed (varied) accounts about what happened on 31 August 2017. The Claimant says in her witness statement the following:

"I stated to [Mr Wawn] that I was very much looking forward to the new project and thought it was a great opportunity for the Respondent and myself. I expressed that at present I could not write a job description or procedure manuals as I did not have the requisite information and had not been involved in the process of the set up of the company.

We discussed that I would be travelling to Birkenhead in the United Kingdom to further discuss my job description and the procedures manuals. In my opinion, this was a solution to the problem. At this point Christopher Wawn stated that he was not going to pay for me to go to Birkenhead and then return refusing to do everything. This shocked and confused me as I was consistently being asked to write my own job description.

Mr Christopher Wawn resorted to telling me to not come to the office on the 1st day of September 2017. I questioned why he was losing his temper with me. He then became very aggressive, he picked up a can of coke and stood over me and swore at me profusely and told me to "fuck off".

I was extremely upset and shocked at Christopher Wawn's behaviour towards me. I was shaking and left the scene. I went to our office and informed Mr Malcon Ruffell and Ms Claire O'Brien that I was leaving for the day.

As I left the office, I walked past Christopher Wawn by Queensway Quay Pier. He started shouting at me again and continued to swear profusely. I did not respond and kept quiet. I was very shaken up and close to tears. No one has ever spoken to me in such a manner and was tempted to report this to the Royal Gibraltar Police.

43. For his part, Mr Wawn says in his witness statement that:

“the Complainant resigned from her post at ASFL following a heated meeting between us on Thursday the 31 August 2017. The meeting was held out of the office to enable us to speak freely because in a shared office it was not possible to discuss matters without being overheard and the subject for discussions had, in my view, a risk of conflict with one of our colleagues.

....

“the meeting of the 31 August went badly from the start. I found the Complainant obstructive and unhelpful. She had known for months that this was a key opportunity for AFSL and that if it came to pass it could be significant for future turnover but instead of being proactive and “showing willing” I found her approach during the meeting to be entirely negative and an exercise in fault finding. In light of the important of the Sigma opportunity and my growing awareness that the negativity expressed at the meeting had been evolving in the two or three months prior I allowed my frustration to show and I became extremely cross. My ill temper was matched by her own but at no time did I threaten her and when things came to a head she walked out of the restaurant in a state of fury”

“When I returned to the office after GB walked out of our meeting, I was informed that GB had been there before I arrived had collected her personal effects and announced her resignation. My view at the time was that this was a hasty decision and when I met her by chance, a few minutes before I was prepared to overlook matters and offered her a way back by saying “see you on Tuesday”. I do not accept that at that second meeting I was either rude or ill-tempered as suggested by the Claimant”

44. The Work Log produced by Mr Wawn also provides a more detailed version of the events of 31 August 2017 which records “were recorded by hand at 1310, whilst they were fresh in CW’s mind and added to the log sheet the following day. To place the discussion into context, CW was trying to be reasonable with GB and offer her a role that best fitted in with her comfort zone. CW was also aware at this time that Beacon were questioning CW and GB’s ability to service the Sigma contract (Beacon had a say as they had provided the development funding).

45. The Work Log states:

“CW took GB down to the Water Front Restaurant at 1140 and on the way, CW commented that the Sigma testing next week will be delayed as the marketing and servicing platform were currently not compatible. GB responded by saying “I should have been involved much earlier and this is another example how I have been bypassed” CW explained that it was not our role to be involved with the development and it had been to our advantage not to be involved due to the various technical delays”.

The meeting over coffee was initially constructive and CW once again said that "this is an opportunity to design a job that GB was comfortable and happy with: take the best bits." CW continued that "this afternoon we will print of the various job description and draft procedures and you can work from home on Friday with a highlighter to indicate which roles you want" CW concluded by saying that "he wanted GB to come into the office on Tuesday with a positive attitude, grab the job and run with it".

GB pushed back and said that she "had only 1 day of training and she could not be expected to do the Sigma job without more training." As a quick solution CW said the he "will fund her to go to Liverpool for a week and sit down with Rosie and fully understand the job. CW commented that "if more time was required, GB could go on a regular basis and a further 3 training days in Bradford had already been paid for"

GB then pushed back on the "lack of a procedures manual and job description". CW explained that "in any start up situation, no one knows what it will look like and CW will be giving this some attention over the next two weeks".

CW took this opportunity to explain that "GB had been sending out mixed messages" and reminded her of the wash up meeting in Bradford. At this point GB pulled out and waved in the air various draft job descriptions, CW's 1 draft claims procedure and said that "things keep changing".

GB then repeatedly kept stabbing with her finger at the draft Sigma / Aston job description written about 10 months ago. "Look" she point out "it says that I will be the supervisor and I won't have to be involved with the work". Again, GB waved the draft 1 of the claim procedure with a stabbing motion with her fingers and said "there is nothing about me in this". CW repeated once again that this was a start --up and nothing will be set in stone until we get going: this is not a bank or big corporate where you have the text book procedure on day one". In an already escalated sharp and loud voice GB said "now you listen to me".

It was at this point that CW felt that GB was being completely unreasonable and CW very firmly said through gritted teeth so as not to draw attention to the adjoining tables "you are making me lose my temper". GB replied that "I am not putting up with that" and stormed off shouting as she went. It took CW a few seconds to comprehend what had just happened before CW stood up and said "Well fxxx off then". At the time CW thought that GB may have been out of ear shot as she was passed the second table by this stage. CW went in and paid the bill and on the way back to the office met GB, having collected her things. CW said in a formal manner "I look forward to seeing you on Tuesday with a positive attitude". GB screeched back with air punches "no one has ever spoken to me like that". CW replied once again in a professional tone "that's because you pushed me to the edge". At this point GB stormed off again towards Queensway"

Arriving back in the office, CW explained to Brach that GB had walked out after he had expressed frustration over her attitude towards work which had not ended well. Beacon confirmed that GB had entered the premises and said that she was quitting. Beacon commented that with all CW's dealings with GB, CW had been fair, such as giving her time off at short notice to sort out her life such as the recent property purchase.

After leaving Queensway, GB visited 4 Cathedral Square to pick up her pay cheque. GB commented to CW's sister in law that "she had walked out on her hob because CW was a very aggressive man"

46. Dean Moore also witnessed the events of 31 August 2017. He said as follows:

"I was walking down the south walkway of the Sails Apartments. Approximately 100 metres from where I was, I saw a man and a woman standing by the E Pontoon. The man was behaving quite aggressively, shouting loudly at the woman and waving his right arm at her. I heard him shout at the woman that she was "useless", "shit" and did not do her job properly". I slowed my pace down as I was approaching them as I did not want to get involved. As I got nearer, I realised that both the man and the woman worked together in the same building as I do. I knew they worked together as I had seen them walk into the building and leave the office together and even having a few coffees in the Waterfront Restaurant.

As I got closer, at a distance of about 25 metres, I noticed that the man realised I was nearby. At this point, he lowered his voice but his demeanour was still aggressive and he continued to wave his hand and point at her in a rude manner.

During this dispute the woman remained calm, quiet and still. I did not hear her say anything to the man. She did not at any point act aggressively or retaliated. BY the time I go near them, the man left the Queensway Quay area. The woman stood still in the same spot she was. She was shaking and stuttering. I now know this woman as Glynis Broadfoot. I walked with her to the car park and she left the area."

47. By an email timed at 11:46 on 31 August 2017, Mr Wawn wrote to Mr Sayer confirming that "sadly Glynis has just walked out. It is not often that I tell someone that "you are making me lose it" but I found her consistently negative about her task ahead.

48. Mrs O'Brien was in the shared office when the Claimant returned after the incident at the Waterfront. In her witness statement she says when the Claimant returned she "was very angry, I could tell by her demeanour, she spoke loud enough for the two of us still in the office Mr Malcom Ruffell and myself to hear "I will not be treated like that" or words to that effect. GB did not remain long in the office as she seemed to just take a handful of items rather than diligently clear out her desk. After a few minutes she returned to the office and apologised to us for her behaviour. She then

left never to return. I cannot remember the exact words spoken, but it was very clear to me that she had quit her employment and was not returning.

49. Mrs O'Brien also says that she was "surprised at GB's complainant against CW because CW has always conducted himself in a calm and courteous manner. CW was patient with GB and was always willing to help teach and lend her a helping hand. If CW lost patience with GB or was angry with her it was definitely the first such event".
50. As set out above, following the incident with Mr Wawn, the Claimant attended 4 Cathedral Square to pick up her pay cheque for the month. In her witness statement, Mrs Piccone confirms that

"Mid-morning on the 31 August 2017, Glynis Broadfoot, walked into my office at 4 Cathedral Square asking for her salary cheque, as was the norm. I asked her if she could wait or come back half an hour later, as I had just come back from holiday and was very busy trying to catch up with my work. She then dropped the shocking news that, and I quote "I've had enough! I've packed it in" – that she was walking out of her job. She apologised for giving me extra work but pushed me to pay her there and then"

She then tried to tell me the reasons why she had decided to "pack it in" but I stopped her in her tracks saying the details were none of my business, as I only had an administrative role in Austin Friars...

It was very clear to me that on that day, the 31 August 2017, GB has resigned of her own volition. I found this particularly shocking as GB was well aware that CQ was leaving imminently on a four-week trip to the UK with the Army and would find himself with no-one to manage his office and look after his affairs. I have no doubt at all about this and was thus truly gobsmacked when a short while later, she presented CW with a sick note. To me, she had left her job on 31 August 2017.

51. In her cross examination, the Claimant had confirmed that she told Mrs Piccone that "she was leaving for the day". This was put to Mrs Piccone during her cross examination to which she replied "absolutely not" and there was "no shadow of a doubt about that".

Events after 31 August 2017

52. The 1 September 2017 was a Friday. In her witness statement, the Claimant states that she did not go into the office "as Mr Christopher Wawn stated that he did not want me at work." She says that throughout the day she thought that Mr Christopher Wawn would contact me and apologise for his outburst".

53. In her Particulars of Claim the Respondent position is slightly different. Paragraph 7 and 8 of the Particulars of Claim states:

Para 7 "On 1st day of September 2017, the Complainant was asked by the Respondent to work from home. The Complainant advised the Respondent that she would come into the office. The Respondent made it clear to the Claimant that under no circumstances was she to go into the office. This was the case until the Complainant's employment was terminated."

Para 8 "The Complainant was not contacted by the Respondent following the incident of 31 day of August 2017. The Complainant suffered stress and anxiety as a result of the Respondent's conduct."

54. Mr Wawn's evidence is that the Claimant had prior to the events of the 31 August 2017 already arranged for the Respondent to work from home. He confirms that there was no ban preventing the Claimant from attending the AFSL offices on 1 September nor from having direct dealings with clients. By an email dated 30 August 2017 timed at 10:55, Mr Wawn states:

"I have said a few times this is an opportunity for you to build a job role that you are comfortable with and we can find someone else to fill the gaps. I want you to work from home on Friday in an office free environment, so that you can go over the job description from Sigma's task list with a clear mind".

55. Mrs Broadfoot was well aware of this arrangement as by an email from the Claimant to Mr Broadfoot dated 30 August at 13:16, Mrs Broadfoot states:

"Chris has said that he wants to take Friday off to take a look at the tasks I will be doing, basically look at what I want to do and what I don't...."

I wondered if you would be interested in going half way to Playa Flamenca on Friday, maybe stopping in Almeria or somewhere. That way it would be a shorter journey to Playa Flamenca. I know we have the bank Friday morning..."

56. On Tuesday 5 September 2017 (Monday 4 September being a bank holiday) a telephone discussion took place between Mr Sayer and the Claimant. Mr Sayer said that he had become close colleagues with the Claimant and that he called to see how she was having heard about the incident on 31 August 2017. The Claimant suggested that they meet for a coffee to which Mr Sayer agreed. In his witness statement, Mr Sayer states that to his "surprise [Mr Broadfoot] used the meeting not for a general catch-up but to give her side of the events of 31 August 2017 and to propose that she take on the Sigma services project instead of AFSL. In his oral evidence Mr Sayer said "there was a pitch to do the work" for Sigma. Mr Sayer was very clear in his evidence "that it happened".

57. Following the meeting, Mr Sayer says he rang Mr Wawn to explain that he met with the Claimant and that she had attempted to take on the Sigma project from ASFL. Mr Wawn states in his witness statement “that after that he was no longer prepared to accept the Claimant’s return to her former role.”
58. The Claimant denies making any such proposal to Mr Sayer at their meeting and in response in her oral examination she stated that “Mr Sayer will not be telling the truth” and that she was “very shocked that he would say that”. The Claimant said that she was still an employee of AFSL at the time and denies “touting for business or to take business away from ASFL”.
59. On Thursday 7th September 2017, the Claimant provided the Respondent with her first Medical Certificate dated 5 September 2017. The Medical Certificate provided Mrs Broadfoot with two weeks sick leave for stress and anxiety. Mrs Broadfoot had not previously made the Respondent aware of this. Further medical certificates were obtained up to 16 October 2017.
60. Mr Wawn says he was surprised by the receipt of the medical certificate as he considered that the Claimant had walked out on 31 August 2017 and by this time was aware of the conversation between the Claimant and Mr Sayer where she had touted for a role in Sigma. Mr Wawn states that at the time of receipt of the medical certificate the Respondent was undergoing an IT overhaul (for the Sigma / Beacon Project) “and in light of the my growing concern that the Claimant was preparing to file for unfair Dismissal I took the opportunity provided by the IT overhaul to review the documents stored in the AFSL server which originated from” Mrs Broadfoot’s account.” Mr Wawn says the *“review revealed both the output of work by the Complainant in connection with her personal affairs and the data breaches pursuant to outsourcing AFSL work to the Complainant’s husband. The information forthcoming from the review had it been known to me earlier would have resulted in the summary dismissal of the Complainant. As matters stood, however she had resigned so that the issues arising appeared to be academic but the Medical Certificate indicated that, at least for the Complainant, it was as if she had never left AFSL and I could only imagine that an Unfair Dismissal action was in the making.”*
61. By email dated 12th September 2017, Mrs Broadfoot wrote to Mr Wawn offering to “honour the contract” by returning to the office “to cover” during Mr Wawn’s planned absence for three weeks from 20th September 2017. Mr Wawn did not respond to this email but instead a telephone conversation was held between Mrs Broadfoot and Mr Wawn on 15 September 2017. In a note of the telephone call, Mr Wawn states that he based his conversation on a pre—thought-out-list. It records the following:

“1. As you are still signed off, I want to make sure you are happy to speak to me?”

GB: Yes

2. *I wish to reassure you that you are still on the payroll while on sick leave*

GB: *Yes*

3. *I believe that what has happened has happened and we both must now move on.*

GB: *I agree*

4. *Sadly, I cant see how we can reverse the situation and I wish that we can reach a mutual understanding.*

GB: *What do you mean?*

5. *I wish to make you an offer that will honour the contract and any other entitlements.*

GB: *What you are saying is that you are sacking me?*

CW: *No, but I don't believe that we can go back and have what we had before.*

GB: *What happens if I want to come back?*

CW: *I believe that what has happened has happened and we can't go back.*

GB: *If I come back things will have to change. Remember it was you who shouted at me and not me.*

CW: *The purpose of this call is not to discuss this but look at how we can move on.*

6. *Happy to commit in writing an offer based on*

- *Respect the notice period.*
- *Remaining holiday pay*
- *The period you have been signed off*
- *A contribution to your legal fees.*
- *A reference*

GB: *I understand from "a little bird" that you are already looking for someone else.*

CW: *Yes, you know the plan was to always find a junior to do the Sigma number crunching and you yourself have been speaking to people.*

GB: *Why do you want me to go to a lawyer?*

CW: *I have always been fair to you (GB acknowledged this) and I want you to be sure that what I am offering you is fair to both parties.*

CW: Are you prepared to look at an offer which I will get to you before I go away on Tuesday.

GB: I shall see what you have say.

CW: Thank and I will be in touch, bye."

62. An offer was made by the Respondent to the Claimant on 18 September 2017. That offer was marked "Without Prejudice" but was before the Tribunal in any event. No submissions were made by Counsel for either party as to whether it should be before the Tribunal or not. Mr Wawn was not in the jurisdiction between 20 September and early October 2017.
63. In her oral evidence, the Claimant confirmed that she made a report to the FSC on 3 October 2017 and that she attended an interview with the FSC the following day. The Claimant produced a copy of the report she made to the FSC at the hearing. The report was one sheet long, it was undated and was not signed by the Claimant. The Claimant confirmed that no cover letter accompanied the report.
64. By a letter dated 4 October 2017, the Respondent wrote to Mrs Broadfoot terminating her employment ("the Termination Letter". The letter states:

"This letter is to notify you that Austin Friars Services Limited is terminating your employment contract in accordance with Clause 12 of your contract of your employment dated 1 June 2016.

The reasons for terminating your contract of employment include but are not limited to your poor attitude, poor performance, inability to meet the requirements of the role and a mutual breakdown of trust and confidence between yourself and Austin Friars Services Limited. Your contract of employment terminates with immediate effect and your last day of employment is today, 4 October 2017...."

Did the Claimant resign on 31 August 2017

65. The Claimant must first prove that she was dismissed by the Respondent within the meaning of s. 64(2)(a) of the Employment Act, namely that "the contract under which he is employed by the employer is terminated by the employer, whether it is so terminated by notice or without notice". The first issue that I must therefore determine is whether the Claimant resigned on 31 August 2017. If she did resign then her claims for both unfair dismissal and wrongful dismissal must necessarily fail.
66. Section 59 of the Employment Act provides: -

"Right not to be dismissed unfairly.

59.(7) in every employment to which this section applies every employee shall have the right not to be unfairly dismissed by his employer.”

Section 64 provides:-

“Interpretation.

...64.(2) ... an employee shall be taken to be dismissed by his employer if, but only if

(a) the contract under which he is employed by the employer is terminated by the employer, whether it is so terminated by notice or without notice;

...

(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct’.

67. The burden of proving that a dismissal has occurred is on the Claimant and only then if proved does the burden of proof shift to the Respondent to show that the dismissal was fair. Turning to the law on this area, there are two distinct types of cases: those cases in which the words or conduct giving rise to the alleged resignation is held to ambiguous and those where it has held to be unambiguous.

68. In *Sovereign House Security House Services Limited v Savage*, May LJ said:

“[G]enerally speaking, where unambiguous words of resignation are used by an employee to the employer direct or by an intermediary, and are so understood by the employer, the proper conclusion of fact is that the employee has in truth resigned...However, in some cases there may be something in the context of the exchange between the employer and the employee or, in the circumstances of the employee himself, to entitle the tribunal of fact to conclude that notwithstanding the appearances there was no real resignation despite what it might appear at first sight”

69. The possible exception suggested in the above dicta was further considered by the Employment Appeals Tribunal in *Kwick Fit (Gb) Limited v Lineham* [1991] ICR 183 at page 191:

*“If words of resignation are unambiguous then prima facie an employer is entitled to treat them as such, but in the field of employment personalities constitute an important consideration. Words may be spoken or actions expressed in temper or in the heat of the moment or under extreme pressure (“being jostled into a decision”) and indeed the intellectual make-up of the employee may be relevant: *Barclay v City of Glasgow District Council* [1983] IRLR 313. These we refer to as “special circumstances”. Where special circumstances arise, it may be unreasonable for an employer to assume a resignation and to accept it forthwith. A reasonable period of*

time should be allowed to lapse and if circumstances arise during that period which put the employer on notice that further enquiry is desirable to see whether the resignation was really intended and can properly be assumed, then such inquiry is ignored at the employer's risk. He runs the risk that ultimately evidence may be forthcoming which indicates that in the special circumstances the intention to resign was not the correct interpretation when the fact are judged objectively.

70. In the other cases, if the words used or conduct is ambiguous, it becomes necessary to consider all of the circumstances of the case, and in particular I must consider whether the words spoken or the action taken, and to consider how a reasonable employer would, in all the circumstances have understood the employee's words or conduct: *Tanner v DT Kean Limited* [1978] IRLR 110.
71. In the *Tanner* case the Employment Appeal Tribunal also said that "it would become relevant to look at the later events following the utterance of the words and preceding the actual departure of the employee. Some case, it seems to us, is necessary in regard later events, and it might be put, we think, like this: that later events, unless relied on as themselves constituting a dismissal, are only relevant to the extent that they throw light on the employers intention..."
72. In my view the current case falls within the second category of cases and therefore in determining whether or not in fact the Claimant resigned I am required to consider (i) all of the circumstances of the case; and (ii) how would a reasonable employer have understood the words or conduct in the circumstances.
73. Having weighed up all of the matters, evidence and the submissions I find that the Claimant resigned on 31 August 2017 and that a reasonable employer would have understood such in the circumstances. In arriving at that conclusion, I have considered the evidence given by the various individuals regarding the events of 31 August 2017 (other than the Claimant herself) and who were left without any doubt whatsoever that the Claimant had resigned on that day. I accept Ms O'Brien's evidence regarding the events that happened when the Claimant returned to the office after her heated discussion with Mr Wawn and in particular that the Claimant said "I will not be treated that way" as she collected her personal belonging and left the office. I do not accept the Claimant's evidence that she said she was "leaving for the day".
74. I find that the words spoken between Ms Piccone and the Claimant were those as described by Ms Piccone, namely "*I've had enough! I've packed it in*". I do not accept the Claimant's evidence that she told Ms Piccone she was "*leaving for the day*". The Claimant would have known that O'Brien and Ms Piccone would have informed Mr Wawn of their conversations with the Claimant. The fact that they do so is evident from Mr Wawn's email to Mr Sayer on 31 August 2017 confirming that the Claimant "had walked out".

75. I have also taken into account the fact that the Claimant's actions stemmed from a very heated meeting with Mr Wawn. I am conscious that if I was considering this case under the first category of cases as referred to above at paragraph 68, that this may amount to a "special reason" for the employer not to accept the resignation forthwith but in any event such matters fall to be considered in the category of all of the circumstances of the case. On this I would comments as follows:
- 75.1 I consider that the most reliable and accurate account of the incident of 31 August 2017 is the detailed records contained in the Work Log.
- 75.2 I find that the words Claimant's words "now you listen to me" whilst "stabbing her finger into a document" to be antagonistic, disrespectful and, in my view, is no manner in which an employee should address an employer. The Claimant general attitude and questioning of Mr Wawn's management was equally, in my view, unacceptable and inappropriate. I am reminded of the expression that familiarity breeds contempt.
- 75.3 Whilst I believe that Mr Wawn's behaviour and conduct was brought on by the words spoken by the Claimant his reaction was equally inappropriate. Mr Wawn's frustration clearly got the better of him and the way in which he handled the situation was no way in which an employer should approach an employee.
- 75.4 The Claimant is a mature experienced individual who is clearly able to defend her position, make rational decisions and to speak her mind. Her intellect does not give rise to any special circumstances.
- 75.5 I accept Mr Wawn's evidence that following the heated debate he informed the Claimant that he "looked forward to seeing her on Tuesday with in a positive manner". Furthermore, I also find that that he did not accept the Claimant's resignation until Tuesday 5 September 2017 after he had been informed by Mr Sayer of his meeting with the Claimant.
- 75.6 In other words, the Claimant was provided with a very reasonable "cooling off" period where she could have reconsidered her position. The Claimant chose not to and, in those circumstances, I find that the Respondent acted as any reasonable employer would have done at that point in accepting the Claimant's resignation.
76. I should also comment on the evidence provided by Mr Moore to which I would say that I have been left in no doubt that Mr Wawn and the Claimant had a very heated argument on that day. I do not however believe that the only party being aggressive and/or behaved inappropriately was Mr Wawn although this may have appeared so Mr Moore. By his own evidence, Mr Moore was a 100m distance away from Mr Wawn and the Claimant which is a considerable distance to reliably comment the

details of the words being spoken and which party was being more aggressive than the other.

77. The Claimant's actions post the 31 August 2017 are also significant and assist in throwing light on the intentions of the Claimant's conduct and words on 31 August 2017. It is not disputed that the Claimant attended a meeting with Mr Sayer on Tuesday 5 September 2017. The first point to note at this point is that the Claimant felt well enough to attend a meeting with Mr Sayer but did not even provide notice (as she was contractually bound to do) of her absence from work to the Respondent.
78. Secondly, I have considered the evidence of both Mr Sayer and the Claimant in respect to what was said at that meetings. In that regard, I find Mr Sayer's evidence more reliable and I find that the Claimant did indeed propose that she take on the Sigma services project instead of ASFL. It is my strong belief that the Claimant had no intention of returning to work (as she knew she had resigned) for the Respondent but still wanted to take up the Sigma role. I find support in that belief by the fact that despite having obtained the Medical Certificate on the Tuesday 5 September 2017 the Claimant did not provide it to the Respondent until Thursday 7 September 2017.
79. I should also refer to two other matters. I have not lost sight of the fact of the Respondent's conduct after the 31 August 2017 which included:
 - 79.1 during a telephone conversation with the Claimant, he referred to her as "still being on the pay roll while on sick leave" and "wishing to make an offer that will honour the contract and any other entitlement";
 - 79.2 in the Termination Letter the Respondent purported to terminate the Claimant's employment contract
80. I do not find these matters inconsistent with the conclusion that I have indicated. I fully accept Mr Wawn's explanation that he had concerns that the Claimant may mount an action for unfair dismissal and that in those circumstances he was trying his best to reach an amicable solution with the Claimant in order to avoid any such proceedings.
81. Given that I have found that the Claimant's resigned on 31 August 2017 and as such the claims for unfair dismissal and wrongful dismissal fall away, I feel obliged to provide my thoughts on the Protected Disclosure Claim.
82. I have been left very unimpressed by this part of the Claimant's claim which in her Particular of Claim she states was the principal reason for the dismissal. The first thing to note is that Protected Disclosure Claim appears for the first time in the Particulars of Claim which are signed by the Claimant with a Statement of Truth dated 17 September 2018, that is approximately a year after the claim was initiated by the Claimant. Quite remarkably the Tribunal Claim Form (where the Claimant has set out considerable details of her claim for unfair dismissal under section 59 and

where she had already taken legal advice) the Claimant makes no reference whatsoever to the Protected Disclosure Claim. There is no mention whatsoever of the Fund, Mr Wawn's alleged failures in respect to the wire payments or the alleged change in attitude by Mr Wawn. The Protected Disclosure Claim was clearly an afterthought.

83. On the evidence before me I have been more than satisfied that Mr Wawn handled the issues arising in relation to the fund in an appropriate manner. If the Claimant truly believed that Mr Wawn was not handling the matter in appropriate manner and was "not telling the FSC the whole story" together with the fact that by her own evidence she believed she was under a legal duty to report to the FSC (which I do not agree with) it begs the questions why then did she not report it much earlier instead of waiting until the 3 October 2017.
84. I also note that the Respondent made clear to the Claimant on 15 September 2017 that he would be offering terms of settlement following termination. Even if the Respondent believed that she had not resigned on 31 August 2017 she knew by the very latest on 15 September 2017 that the Respondent no longer wished to employ her. The report to the FSC was not made until three weeks after that and therefore could not have formed part of Mr Wawn's position (expressed on 15 September 2017) that they could no longer work together. Furthermore, by the Claimant's own evidence she did not make the Respondent aware of the report to the FSC and there is no evidence to suggest that the Respondent was indeed aware of the report by the Claimant so it simply could not have formed part of the Respondent's reason at the time of the writing of the Termination Letter.
85. All of these matters would have been known to the Claimant and in all of these circumstances, I believe there is some weight in the Respondent's submissions that the report to the FSC was a vengeful action but given that I have found that she resigned on 31 August 2017 I make no final finding in that regard.
86. In conclusion, I find that the Claimant resigned on 31 August 2017 and her claim is accordingly dismissed.

Christopher Allan
Christopher Allan
Chairman
14 May 2020