THE HONOURABLE MR JUSTICE PEPPERALL
Approved Judgment

Neutral citation: [2020] EWHC 163 (QB)

Case No: F90BM169

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
BIRMINGHAM DISTRICT REGISTRY

Birmingham Civil Justice Centre
33 Bull Street, Birmingham B4 6DS

Date: 6/2/2020

Before :

THE HONOURABLE MR JUSTICE PEPPERALL

- -

Between :

PERTEMPS MEDICAL GROUP LIMITED

Claimant

- and -

IMRAAN LADAK

Defendant

- -

Andrew George QC (instructed by **Harrison Clark Rickerbys**) for the **Claimant**
The **Defendant** appeared in person

Hearing dates: 29 and 31 January 2020

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HONOURABLE MR JUSTICE PEPPERALL:

1. By this action, Pertemps Medical Group Limited ("PMG") claims that its former CEO, Imraan Ladak, has pursued a campaign of harassment against the company and its senior directors. It argues that Mr Ladak's actions are in breach of a settlement agreement entered into on 4 December 2018 following the termination of his employment. Further, the company contends that Mr Ladak's actions are in breach of s.1 of the *Protection from Harassment Act 1997*. Mr Ladak denies behaving unlawfully and argues that he has at all times acted as a bona fide whistle-blower properly drawing attention to a substantial fraud upon the NHS.

2. On 19 July 2019, His Honour Judge Worster, sitting as a High Court judge, granted PMG an interim injunction. Judge Worster ordered, among other matters, that Mr Ladak should not:

   2.1 make adverse or derogatory comments about PMG, its directors or shareholders;

   2.2 do anything that might bring PMG, its directors or employees into disrepute; and

   2.3 harass any individual for the purpose of persuading PMG to provide money, assets or any other benefit to Mr Ladak.

3. Judge Worster also ordered that, in the event that Mr Ladak intended to exercise his rights under the *Employment Rights Act 1996* to make a protected disclosure, he should first give PMG's solicitors 14 days' notice of his intended disclosure stating the purpose and intended form of the disclosure, and to whom it would be made. If PMG objected to such disclosure, the judge ordered that Mr Ladak should not make it save with the permission of the court.

4. Although the hearing was on notice, Judge Worster was conscious that the application was made on relatively short notice and that Mr Ladak had not had the benefit of legal representation or a proper opportunity to file evidence in response. Accordingly, the judge ordered that the injunction should only continue pending an early return day.

5. The case came back before the court on 8 October 2019. The company then alleged that Mr Ladak had breached Judge Worster's order and the matter was therefore listed both for the further consideration of the injunction and for the hearing of PMG's committal application. Jeremy Baker J adjourned the hearing in order that Mr Ladak could properly plead his defence to the claim and to give Mr Ladak a further opportunity to obtain legal representation. In doing so, Jeremy Baker J continued Judge Worster's order pending the adjourned return day.

6. This case came before me on 29 January 2020. Mr Ladak was still unrepresented. He did not seek a further adjournment of the return day, but he did indicate that he would prefer to be represented in respect of the committal application. Mr Ladak did not appear to be aware that he would be entitled to non-means-tested legal aid in respect of the committal

proceedings. While such possibility had been properly referred to in an email from Harrison Clark Rickerbys and in counsel's skeleton arguments, I concluded that Mr Ladak should be given one final opportunity to obtain representation in respect of the committal application. In any event, being pragmatic, there was insufficient time to hear both the injunction application and the committal within the one day set aside for the hearing. Accordingly, I adjourned the committal application but heard the parties on the question of whether the court should continue Judge Worster's order pending trial or further order.

7. Plainly I cannot tie the hands of the next judge hearing the committal application, but Mr Ladak should be aware that this is likely to be his last opportunity to obtain legal representation. While the Court of Appeal has repeatedly stressed the importance of affording a contemnor a proper opportunity to obtain representation, there are limits to the court's patience. Further, there is in any event a proper public interest in not unnecessarily delaying the determination of committal proceedings.

8. The argument upon the injunction finished late on 29 January. I then continued the earlier injunctive relief pending a further hearing on 31 January. Mr Ladak did not attend the adjourned hearing. By that time this judgment was substantially complete and I announced that I would continue the injunction until trial or further order subject to the caveat that my order would make plain that nothing in my order prevented Mr Ladak from making disclosures to the NHS Counter Fraud Authority. This judgment sets out my reasons for that decision.

THE EVIDENCE

9. Andrew George QC, who appears for PMG, relies on the evidence placed before Judge Worster last July. While the company has also served evidence detailing Mr Ladak's alleged further conduct since Judge Worster's order, such evidence goes either to the committal application or matters that could, potentially, be made the subject of a fresh committal application. Mr George wisely did not seek to rely on this further evidence in support of his application for injunctive relief pending trial. Equally, I did not call upon Mr Ladak to respond to such evidence. To have asked Mr Ladak to respond to this evidence would plainly have required a warning against self-incrimination, would potentially have prejudiced his defence to the committal application and undermined my decision to adjourn the committal to allow Mr Ladak to obtain legal representation. Accordingly, I determine the application for interim relief on the basis of the evidence of events up to 19 July 2019 and upon the evidence filed by Mr Ladak.

10. PMG relies on the statements of Thomas Williams, a senior associate at Harrison Clark Rickerbys, and a short statement from Spencer Jones, a director of PMG, in support of the company's cross-undertaking in damages. Mr Ladak relies on his witness statement dated 20 August 2019 and his Defence. In addition, he lodged a bundle of emails running to a further 119 pages at the outset of the hearing. The additional bundle was not exhibited to a witness statement and accordingly was not properly in evidence before me. Nevertheless, I allowed Mr Ladak to make submissions by reference to this additional evidence without objection from PMG.

APRIL 2013 TO JULY 2018

11. PMG is part of the well-known Pertemps group of recruitment companies. It is a subsidiary of Network Ventures Limited and its ultimate parent company is Pertemps Network Group Limited. Although not a director of PMG or the intermediate holding companies, Tim Watts is the driving force behind the Pertemps group. He is a director and significant shareholder of Pertemps Network Group. As its name suggests, PMG specialises in medical recruitment.

12. Mr Ladak has significant experience in medical recruitment. In 2013, PMG acquired Mr Ladak's own medical recruitment business and appointed him as its CEO. The business struggled to cover its overheads and by 2018 other directors and shareholders determined that Mr Ladak's position had become untenable. At that time, Mr Ladak was apologetic as to his inability to achieve sustained profitability and appeared to be leaving the Pertemps group on good terms. His email of 4 July 2018 explained that he was "eternally grateful for being given the opportunity to be a part of Pertemps." He said that he had received support and that "despite the occasional dressing-down in board meetings, every person around the table made [him] feel welcome and part of the Pertemps family." He described the company as "wonderful" and its management team as "very experienced, capable and driven."

13. Mr Ladak's email referred to his then health problems. He said that he had not been "strong enough" to give Pertemps the "best version" of himself and that he needed to rest and re-energise before moving on with his career.

THE SETTLEMENT AGREEMENT

14. Mr Ladak resigned as a director on 20 November 2018. By a settlement agreement dated 4 December 2018, PMG agreed to pay Mr Ladak £129,211.27 upon the termination of his employment. In addition, Mr Ladak agreed to transfer all of his shares in PMG, being 127 ordinary shares, to Network Ventures for the sum of £383,466.67. Mr Ladak agreed, by clause 7.1, that such settlement was in full and final settlement of any claims that he might have had against PMG, any other company within the wider Pertemps group or their officers or employees. In entering into such waiver, Mr Ladak confirmed that he had received independent legal advice. Further, the waiver of rights was supported by the usual certificate from Mr Ladak's solicitor.

15. By clause 14 of the settlement agreement, the parties entered into various agreements in respect of confidentiality and their future conduct towards each other. Clauses 14.4 and 14.5 provided:

> "14.4 The Employee shall not make any adverse or derogatory comment about the Company, its directors or employees and the Company shall use reasonable endeavours to ensure that its employees and officers shall not make any adverse or derogatory comment about the Employee. The Employee shall not do anything which shall, or may, bring the Company, its directors or employees into disrepute and the Company shall use reasonable endeavours to ensure that its employees and officers shall not do anything that shall, or may, bring the Employee into disrepute.

> 14.5 Nothing in this clause 14 shall prevent the Employee from making a protected disclosure under section 43A of the *Employment Rights Act 1996* ….”

16. By clause 15.1, the parties agreed that the settlement agreement comprised the entire agreement between the parties and any group company.

MR LADAK’S SUBSEQUENT CONDUCT

17. At first, matters remained amicable. By emails sent on 20 March and 26 April 2019, Mr Ladak asserted that he was owed an additional £20,000 that had been omitted from his termination payment. Mr Ladak’s tone became more intemperate in his email of 6 May 2019 to three PMG executives, Jon Smith, Spencer Jones and Adam Parrish. As well as pressing his financial claim, Mr Ladak made allegations about John Staden, PMG’s Quality Assurance Director. Mr Ladak wrote:

> “We can pretend my exit was based on performance or choices I made. The truth is I found out that all the money that had been directed to support Staden had not been enough for him to carry out his duties with honour as he had pretended to the board and the SMT for years, revelling in the glory and increase in salary and shares. I found this out prior to our budget cut meeting in Meriden and agreed with Meazza to find out the facts and extent of the fraud and deception before bringing them to the attention of Spencer and Jon. This was enough of a window for the rats to turn the tables and ensure I was executed. Knowing these facts, I've helped those same rats take over my life’s work and walk around with a snigger and swagger. Yet after knowing these facts, Staden remains in his post and continues to risk Pertemps’ brand by allowing doctors to work in breach of framework and legal regulations.”

18. On 15 May 2019, Mr Ladak emailed Mr Watts. His primary focus was again to press his complaints at what he perceived to be his mistreatment and to insist on payment of £20,000. He referred to Mr Watts’ alleged remarks about hiring a hitman to “deal” with him and then added:

> “Jon Smith and Spencer Jones have known about John Staden’s fraud since July 2018 and at the time committed to dealing with it soon. James Meazza and Adam Parrish knew about it the day I did. After I left our meeting (last Thursday) I brought it to the entire boards (sic) attention. Any company with any integrity would have immediately suspended John Staden (possibly the entire SMT) and commenced an independent investigation – this is being covered up. Sadly, but predictably (and prepared for), the entire SMT were allowed to stay onsite and discuss strategy in private – however it wasn’t that private.”

19. Mr Ladak then said that there were two options, peace and war. He explained that peace entailed, among other things, the satisfaction of the debt owed to Mr Ladak and “the Pertemps assets of his choice” being sold to “the vehicle of his choice.” War was defined as follows:

> “Keep the fraudster, the 20k and all my shares.

> After blackmailing and threatening me, threatening every PMG employee, choosing to not honour many financial arrangements over the last seven years, not dealing with the fraud when you were made aware, being a victim of verbal abuse and humiliation (and observing you do the same to Board Members including Jon Smith) and declaring war when I was not for sale, you will not be able to profit from a doctors business once my covenants expire. If you choose to not return my 20 years, work which you took improperly from me, you will make substantial loss and face the consequences of the terrible threats you chose to make."

20. Mr Ladak added that if Mr Watts chose war, he could not win. His email concluded, ominously:

> "And you have this week – when Option 1 expires – to make what you believe to be the right and best choice …"

21. On 12 June 2019, Mr Ladak emailed Mr Watts again. He wrote:

> "Did you know that so many Pertemps employees are offended by your daily racist bile that several businesses have secretly had ESOS switch them off to stop you being sued?
>
> I declined in case you ever found out what goes on behind your back.
>
> Now you know – perhaps you can stop sending your extremist emails because everyone's had enough of it...
>
> Regards,
>
> That little brown guy you declared war on."

22. On 13 June 2019, Mr Ladak forwarded his 12 June email to Mr Watts and the directors and employees of other group companies. Mr Ladak added that Mr Watts was a "drunken pervert" and that the Pertemps business was a "scam" set up to ensure that no one really makes any money. Mr Ladak then alleged:

> "Your behaviour around young girls is abhorrent. Screaming at Jon Smith after 42 years of loyal service in the boardroom in front of minions like me.
>
> You've turned a blind eye to Staden defrauding the NHS, your emails are more racist than Tommy Robinson so stop spouting off about how there's no 'isms'.
>
> And of course, you ripped me off by not honouring my exit agreement reached with Jon and Spencer. And then tried to whitemail me for paying me what you owe me and lost the plot as usual when someone said no.
>
> I accept your declaration of war – the one I recorded along with all the other threats you made to me and MY staff in your beloved boardroom."

23. On 14 June 2019, PMG's lawyers sent their first cease and desist letter. Meanwhile, on 19 June 2019, Mr Ladak sent an email to Mr Watts and copied to Jon Smith and Spencer Jones. The email addressed Mr Watts as "Timmy Saville." It accused him of having sexually molested female staff, defrauded the taxpayer and threatened to hire a hitman. He said that

he was loving "Perexit" and "the imminent demise of its perverted, racist, fraudulent, bullying leader." The subject of the email ("Check Mate") and the indications that he had spent the last 18 months preparing for that day and that even his closest friends and family "didn't have a clue until tonight", all hinted at Mr Ladak's having taken some decisive action that day. Mr Ladak has subsequently explained that he made disclosures to the NHS Counter Fraud Authority on 19 June.

24. On 24 June 2019, Mr Ladak emailed PMG's lawyers copying in directors and employees of Pertemps group companies. His email alleged that the PMG compliance team still engaged in "all sorts of naughty things." Of Mr Staden, he wrote:

> "His actions are criminal. Falsification of returns and amending health and other compliance documents are an extremely serious matter. Being useless at your job is one thing, but criminal activity another."

Further, he again made allegations of sexual impropriety, racism, bullying, intimidation, financial and physical threats and drunkenness against Mr Watts.

25. On 5 July 2019, a mass email was sent from the address counterpertempsfraud@gmail.com which was set up so as to show the sender as "Pertemps Medical" in recipients' inboxes. It is now common ground that Mr Ladak sent the email, although he maintains that he sent it as representative of eleven members of staff. The email was sent to a substantial number of NHS trusts and other PMG customers. The email explained that it was being sent to make readers aware of "several significant, deliberate, fraudulent and criminal breaches" of locum framework agreements. The frauds had been "instigated, controlled and overseen by the ultimate decision makers of the main Pertemps holding company." It was alleged that Pertemps had covertly diverted vacancies received under the framework agreements to a new company called Health People. The email asserted that Health People had been deliberately incorporated to show no connection to Pertemps and that it was being used as a vehicle for fraud. The fraud was said to involve charging the NHS five times the agency fee which was then split with a Pertemps group company. It was, the writer asserted, a "deliberate criminal fraud."

26. Mr Ladak forwarded the 5 July email to Harrison Clark Rickerbys and a number of Pertemps directors and employees. In an apparent attempt to conceal his own involvement in the 5 July email, Mr Ladak wrote:

> "I'm writing in relation to a letter which was forwarded to me yesterday."

27. On 12 July 2019, Mr Ladak emailed the solicitors and PMG stakeholders, including Mr Staden. He wrote:

> "And Staden, I cannot believe you are so selfish that you are still coming to work. You are a fraudulent, useless, hated fool whose presence in PMG makes the companies (sic) collapse more likely by the minute. Your career is over and you still want to ruin everyone else's! Make sure your next job doesn't need a CRB check."

28. Finally, on 15 July 2019 Mr Ladak wrote to a wider group of PMG personnel. He asserted that the set-up and relationship between PMG and Health People was criminal and that it would lead to prosecutions and custodial sentences.

29. Mr Ladak accepted that he sent the emails although he maintains that the email of 5 July was written by PMG employees. He says that he edited the email and sent it on their behalf. He insists that his allegations are true, that he is working with others to pursue the matter and that his only interest is in exposing and stopping a significant fraud on the NHS. He says that he has no interest in seeking to damage Pertemps. He asserts that his life has been threatened and that staff have been threatened that they will lose their homes.

30. Mr Ladak insists that he remains a shareholder and that he has a 2% shareholding held on trust for him. He complains bitterly of Harrison Clark Rickerbys' letter of 23 July 2019 informing third parties of the injunction. He says that the letter implies that he is a liar.

THE PARTIES' SUBMISSIONS

31. Mr George argues that Mr Ladak has acted in clear breach of clause 14.4 of the settlement agreement. He accepts that Mr Ladak is entitled to make protected disclosures pursuant to the *Employment Rights Act 1996* and stresses that no complaint is made as to the alleged disclosures to the NHS Counter Fraud Authority. Mr George carefully analysed each of Mr Ladak's emails and submits that they did not amount to protected disclosures:

    31.1 First, he argues that, for the most part, they failed to convey facts but rather consisted of gratuitous allegations and abuse.

    31.2 Secondly, he challenges that s.43H is engaged at all on the basis that the alleged disclosures were not of exceptionally serious conduct.

    31.3 Thirdly, he argues that even if the early emails could be justified as internal whistleblowing pursuant to s.43C of the 1996 Act, the subsequent disclosures to Pertemps' clients were plainly not reasonable disclosures pursuant to ss.43G-43H.

32. In addition, Mr George argues that Mr Ladak's conduct amounts in any event to a campaign of harassment contrary to the *Protection from Harassment Act 1997*.

33. Recognising that this application engages Mr Ladak's rights under Article 10 of the *European Convention on Human Rights*, Mr George accepts that the court must apply the enhanced test for interim relief pursuant to s.12(3) of the *Human Rights Act 1998*. He argues that such test is plainly met and that, upon the evidence, the court can be satisfied that liability is likely to be established at trial.

34. I heard Mr Ladak in response for around 2½ hours. His principal focus was to seek to persuade the court that his allegations were true. He insists that there is evidence to support his allegations but that much of the evidence cannot be deployed at this stage. He summarises the allegations as a "high-level, high-volume, deliberate, ongoing and systematic corporate conspiracy to defraud the NHS, knowingly endanger patient safety and gain unfair

competitive advantage in the marketplace." He points out that the claimant has not chosen to sue in libel.

35. Mr Ladak asserts that his actions are protected by the *Employment Rights Act 1996*. He argues that he tried making internal disclosures but that didn't work. He then made a disclosure to the NHS Counter Fraud Authority but their investigations can take a couple of years. The allegations are, he argues, exceptionally serious. While it was not in evidence, he told me that Pertemps had engaged Mishcon de Reya in respect of the nursing part of its recruitment business and that Mishcon had complained in correspondence that Mr Ladak's allegations were of the "utmost gravity" and that it was "difficult to conceive of more serious allegations." Thus, he argues that his wider disclosures were protected since they related to exceptionally serious conduct and were in any event reasonable. He stresses that his intention throughout has been to expose wrongdoing and reform PMG rather than cause it harm.

DECISION

THE PROPER APPROACH TO THIS APPLICATION

36. Freedom of expression is protected by article 10 of the *European Convention on Human Rights*:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers ...
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, and for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

37. The importance attached to article 10 is underlined by s.12 of the *Human Rights Act 1998* which requires the court to apply an enhanced merits test before granting interim relief that might affect the exercise of a respondent's freedom of expression. Section 12(3) provides:

> "No such relief is to be granted so as to restrain publication before trial unless the court is satisfied that the applicant is likely to establish that publication should not be allowed."

Accordingly, the usual *American Cyanamid* test is modified and no relief can be granted merely on satisfying the court that there is a serious issue to be tried.

38. In *Mionis v. Democratic Press SA* [2017] EWCA Civ 1194, [2018] Q.B. 662, Sharp LJ observed, at [67]:

> "… the fact that the parties have entered into an agreement voluntarily restricting their article 10 rights can be, and in my judgment in this case is, an important part of the analysis which s.12 then requires the court to undertake. Whilst each case must be

considered on its own facts, where the relevant contract is one in settlement of litigation, with the benefit of expert legal advice on both sides, particularly where article 10 issues are in play in that litigation, it seems to me that it would require a strong case for the court to conclude that such a bargain was disproportionate and to refuse to enforce it other than on ordinary contractual or equitable principles."

39. Sharp LJ added, at [91] and [104]:

> "91. Parties are of course generally free to determine for themselves what primary obligations they accept; and legal certainty requires that they do so in the knowledge that if something happens for which the contract has made express provision, then other things being equal, the contract will be enforced (*pacta sunt servanda*). This is a rule of public policy of considerable importance. Furthermore, the principled reasons for upholding a bargain freely entered into, obviously apply to one that finally disposes of litigation with particular force …
>
> 104. The wording of s.12 requires a consideration of article 10, because the court is being asked to grant an injunction that affects freedom of expression. However, in my view, the analysis after a settlement agreement has been freely entered into and the parties have waived their respective rights, is not the same as that which arises at the interim stage say, in a contested privacy or defamation action. That is to ignore the importance in the public interest of parties to litigation, including this kind of litigation, being encouraged to settle their disputes with confidence that, if need be, the court will be likely to enforce the terms of a settlement freely entered into on either side."

40. The Court of Appeal further endorsed this approach in *ABC v. Telegraph Media Group Ltd* [2018] EWCA Civ 2329. [2019] E.M.L.R. 5, at [24]:

> "… the weight which should be attached to an obligation of confidence may be enhanced if the obligation is contained in an express contractual agreement. One type of situation where this consideration is likely to have a significant influence on the balancing exercise which the court has to perform is where the obligation in question is contained in an agreement to compromise, or avoid the need for, litigation, whether actual or threatened. Provided that the agreement is freely entered into, without improper pressure or any other vitiating factor, and with the benefit (where appropriate) of independent legal advice, and (again, where appropriate) with due allowance for disclosure of any wrongdoing to the police or appropriate regulatory or statutory body, the public policy reasons in favour of upholding the obligation are likely to tell with particular force, and may well outweigh the article 10 rights of the party who wishes to publish the confidential information."

41. This case turns not on confidentiality but rather on Mr Ladak's contractual obligations not to make adverse or derogatory comment or bring PMG, its directors or employees into disrepute. Nevertheless, I consider that, for the reasons explained in *Mionis* and *ABC*, the court should accord particular weight to the fact that this action is brought to enforce obligations contained in a settlement agreement that was freely entered into, involved the payment of a six-figure sum in full and final settlement of all disputes arising from the employment and in respect of which Mr Ladak had the benefit of independent legal advice.

I agree, however, with the observation of Judge Worster that this case is not as strong as a case such as *Mionis* where the agreement was entered into to settle pending litigation.

BREACH OF THE SETTLEMENT AGREEMENT

42. Clause 14.4 was an agreement not to make adverse or derogatory comments or act so as to bring others into disrepute. As a matter of ordinary language, a comment can of course be both adverse and derogatory but true. Equally, one can bring another into disrepute by publishing true statements about their disreputable conduct. Accordingly, on the proper construction of this settlement agreement, it is no defence to a claim for breach of clause 14.4 to establish that an adverse or derogatory comment or an action bringing another into disrepute was true. I am fortified in this conclusion by the like conclusion reached by Judge Worster in this case and by Her Honour Judge Walden-Smith sitting as a High Court judge in *RSM International Ltd v. Harrison* [2015] EWHC 2252 (QB), at [43], in a case of an agreement not to make disparaging and derogatory statements.

43. I am satisfied that the contractual obligation at clause 14.4 is enforceable at law. Indeed, Judge Walden-Smith enforced a similar obligation in *Harrison* and Heather Williams QC sitting as a Deputy High Court judge enforced like obligations in *Taher v. Cumberland* [2019] EWHC 524 (QB).

44. Further, I am satisfied upon the evidence that Mr Ladak has persistently made adverse and derogatory comments about PMG, its directors and employees. Further, he has acted in a way that might bring the company, its directors and employees into disrepute. Specifically, Mr Ladak has alleged that the company, its senior management team and, in particular, Mr Staden have acted criminally. Mr Ladak's further comments about Mr Watts, the controlling shareholder of PMG's ultimate parent company, were also likely to bring PMG into disrepute. Accordingly, I am satisfied that, subject to any defence under clause 14.5, PMG is likely to succeed in establishing a breach of clause 14.4.

PROTECTED DISCLOSURES

45. As explained above, the settlement agreement was subject to clause 14.5 which expressly recognised Mr Ladak's right to make protected disclosures. Such provision was of course necessary because, by s.43J of the *Employment Rights Act 1996,* any provision in an agreement is void in so far as it purports to exclude the right to make a protected disclosure.

46. The scheme of Part IVA of the 1996 Act is first to define qualifying disclosures. Section 43B defines a "qualifying disclosure" as:

> "any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following:
>
> (a) that a criminal offence has been committed, is being committed or is likely to be committed,
>
> (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,

(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,

(d) that the health or safety of any individual has been, is being or is likely to be endangered,

(e) that the environment has been, is being or is likely to be damaged, or

(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed."

47. While Mr George argues that some of the earlier emails did not disclose information but simply made bald allegations against PMG and its senior management team, he conceded for the purposes of this interim application that the email of 5 July disclosed information. Taken at face value:

47.1 such information tended to show the commission of at least one criminal offence, namely fraud; and

47.2 the allegations of racism, bullying and sexual misconduct (even if falling short of a sexual offence) tended to show that Mr Watts had failed to comply with his legal obligations in respect of the proper treatment of staff.

48. For the purpose of this application, I am prepared to assume in Mr Ladak's favour that such disclosures were made by him in the reasonable belief that he was acting in the public interest. Accordingly, I treat him as having made qualifying disclosures within the meaning of s.43B.

49. A qualifying disclosure is, however, only protected under the Act if it is made in accordance with ss.43C-H. The statutory scheme creates escalating tiers of disclosure, each requiring greater justification than the lower tiers:

49.1 Section 43C protects disclosures made to the employer or other person where the failure relates solely or mainly to such other person's conduct or any other matter for which such other person has legal responsibility.

49.2 Section 43F protects disclosures to a prescribed person. Among other requirements, the worker must reasonably believe that the information disclosed and any allegations contained within such information are substantially true. The prescribed person for the purpose of complaints of fraud upon the NHS is the NHS Counter Fraud Authority.

49.3 Section 43G protects wider disclosures where the worker has, among other matters, already made a disclosure of substantially the same information to his employer or in accordance with s.43F.

a) Section 43G(1) provides that, in such cases, the disclosure is protected if:

"(b) the worker reasonably believes that the information disclosed, and any allegation contained in it, are substantially true.

(c) he does not make the disclosure for purposes of personal gain …, and

(e) in all the circumstances of the case, it is reasonable for him to make the disclosure."

b) Section 43G(3) provides:

"In determining … whether it is reasonable for the worker to make the disclosure, regard shall be had, in particular to:

(a) the identity of the person to whom the disclosure is made,

(b) the seriousness of the relevant failure,

(c) whether the relevant failure is continuing or is likely to occur in the future,

(d) whether the disclosure is made in breach of a duty of confidentiality owed by the employer to any other person,

(e) in a case [where there has been an earlier disclosure to the employer or the prescribed person], any action which the employer or [the prescribed person] has taken or might reasonably be expected to have taken as a result of the previous disclosure, and

(f) in a case [where there has been an earlier disclosure to the employer], whether in making the disclosure to the employer the worker complied with any procedure whose use by him was authorised by the employer."

49.4 Section 43H further protects the disclosure of information in respect of a failure of an "exceptionally serious nature." Protection is only given if the worker reasonably believes the information, and any allegation contained within it, is "substantially true", the worker does not make the disclosure for personal gain, it is of an exceptionally serious nature and it is reasonable in all the circumstances of the case to make the disclosure. Section 43H(2) provides that, in determining reasonableness, regard shall be had in particular to the identify of the person to whom the disclosure is made.

50. While it is not conceded, I treat for the purpose of this interim application the disclosures made to PMG and to its senior management as being protected disclosures to Mr Ladak's former employer pursuant to s.43C. Further, I treat any disclosure to the NHS Counter Fraud Authority as a protected disclosure pursuant to s.43F.

51. The email of 5 July was, however, neither restricted to an internal Pertemps audience nor directed to the prescribed person. Accordingly, such disclosures can only be protected under ss.43G or 43H. While I am sympathetic to Mr Ladak's argument that his allegation of widespread fraud on the NHS was a disclosure of exceptionally serious conduct such as potentially to bring the disclosure within s.43H, I do not have to decide that point at this interim stage. Indeed, for current purposes I am prepared to assume in Mr Ladak's favour that all of the requirements of ss.43G and 43H are satisfied in this case, save for the matter of reasonableness.

52. Mr Ladak pleaded at paragraph 23 of his Defence:

> "The Defendant chose to increase the pressure on the Claimant over the following two weeks in a final attempt to convince the Claimant to resolve matters internally, whilst delaying the provision of requested evidence to the authorities."

53. As Judge Worster observed, the audience for the 5 July email appears to have been "picked for effect." In my judgment, and despite Mr Ladak's protestations to the contrary, the court at trial is likely to find that the disclosure of 5 July was deliberately targeted to cause damage to PMG's business and to the reputations of both the company and its senior management team. In circumstances where, on Mr Ladak's own case, he had already made disclosures to the NHS Counter Fraud Authority, I am satisfied that the trial judge is likely to find that these further disclosures were not reasonably made. Further, it was not reasonable to withhold proper co-operation with the authorities and instead to act so as to increase the pressure on PMG, as Mr Ladak pleaded that he did.

54. While I have carefully avoided making any findings about subsequent events that might prejudice the committal proceedings, it was clear from Mr Ladak's submissions that he remains focused on his campaign to expose fraud and other wrongdoing within the Pertemps group. Indeed, he told me that he is working with other substantial backers to expose such criminality and, at the end of the hearing on 29 January, he specifically gave notice of his intention to make further public statements shortly. He insisted that such statements would not name PMG or its personnel but rather be generic statements about the fraud that, he says, is rife in this sector. Nevertheless, it is clear that, unless restrained by this court, Mr Ladak would threaten and intend to make further adverse and derogatory comments about PMG, its directors and employees and act so as to bring such persons into disrepute.

55. Accordingly, I conclude that PMG is likely to succeed at trial in its claim for injunctive relief to prevent further breaches of clause 14.4.

THE HARASSMENT CLAIM

56. Section 1(1A) of the *Protection from Harassment Act 1997* provides:

> "A person must not pursue a course of conduct–
>
> (a) which involves harassment of two or more persons, and
>
> (b) which he knows or ought to know involves harassment of those persons, and
>
> (c) by which he intends to persuade any person (whether or not one of those mentioned)–
>
> (i) not to do something that he is entitled to or required to do, or
>
> (ii) to do something that he is not under any obligation to do."

57. In view of my conclusions in respect of the contractual claim, the claim under the 1997 Act adds little to the analysis at this interim stage. I am, however, satisfied that the court is likely to find at trial that Mr Ladak has pursued a campaign of harassment against John Staden, Tim Watts, Adam Parrish and James Meazza in an attempt to persuade PMG to pay further

compensation to him following the termination of his employment. Accordingly, PMG is also entitled to injunctive relief pursuant to s.3A(2)(b) of the 1997 Act.

THE ADEQUACY OF DAMAGES

58. I am satisfied that PMG would not be adequately compensated in damages. On the other hand, I do not consider that Mr Ladak will suffer any real loss by being unable to breach the settlement agreement pending trial. Any order will in any event be qualified so as to make plain that it does not prevent disclosures to the NHS Counter Fraud Authority and will retain the mechanism first put in place by Judge Worster to allow Mr Ladak to seek the court's permission before making any wider disclosure. Even if Mr Ladak suffers some loss, I am satisfied that his interests are adequately protected by the cross-undertaking in damages offered by both PMG and, more particularly, Network Ventures.

CONCLUSIONS

59. For the reasons explained above, I am satisfied that PMG is likely to succeed at trial in its claim for injunctive relief. Further, I am satisfied that it is just to grant interim relief pending trial or further order. It is, however, important to stress that this judgment makes no findings as to the truth of the serious allegations made by Mr Ladak. Plainly it is important that no fetter should be placed upon Mr Ladak's right to raise his concerns with the NHS Counter Fraud Authority. To that end, my order will not prevent any further disclosure to such body. In addition, my order will adopt Judge Worster's mechanism allowing Mr Ladak to seek the prior approval of the court before making any wider disclosure.

60. Against that, and in fairness to PMG and the various executives named by Mr Ladak, it is fair to observe that despite his impassioned and determined advocacy, Mr Ladak wholly failed to persuade me that the papers before me disclose evidence of fraud, racism or sexual impropriety. If there is compelling evidence of the same then it has not been deployed before me.

61. Upon sending out the draft judgment to the parties in order that they could identify any typographical or other errors in my draft, Mr Ladak emailed further submissions and documents seeking to dissuade me from the view expressed in the previous paragraph. Such course was not appropriate. Evidence should be properly served and filed in advance of a hearing and not sent by email to the judge's clerk after judgment has been circulated in draft in a last-minute attempt to shore up any earlier deficiency. Equally, the time for submissions had passed. Accordingly, I did not consider the additional evidence and submissions filed after circulation of the draft judgment.