محكمة قطر الدولية
ومركز تسوية المنازعات
QATAR INTERNATIONAL COURT
AND DISPUTE RESOLUTION CENTRE

In the name of His Highness Sheikh Tamim Bin Hamad Al Thani,
Emir of the State of Qatar

[2022] QIC (A) 1

(on appeal from [2021] QIC (RT) 2)

IN THE QATAR INTERNATIONAL COURT

APPELLATE DIVISION

Case No. CTAD0005/2021 (on appeal from RTFIC0003/2020 and RTFIC001/2021)

13 February 2022

Between:

PRIME FINANCIAL SOLUTIONS LLC

(FORMERLY INTERNATIONAL FINANCIAL SERVICES (QATAR) LLC)

Appellant

and

QATAR FINANCIAL CENTRE EMPLOYMENT STANDARDS OFFICE

Respondent

JUDGMENT

Before:
Lord Thomas of Cwmgiedd, President
Justice Bruce Robertson
Justice Helen Mountfield QC

ORDER ON APPEAL

1. Permission to appeal is granted and the appeal is allowed on the issue relating to good faith, but the decision of the Regulatory Tribunal is otherwise affirmed.

2. The proceedings are remitted to the Regulatory Tribunal for it to hear the appeal on the issue of good faith from the decision of the QFC Employment Standards Office, subject to the appellant paying within 14 days the amounts awarded to Ms A of QAR 248,679 and Miss B of QAR 112,509.

JUDGMENT

1. The oral application for permission to appeal against the decision of the Regulatory Tribunal (Sir William Blair (Chairman), Justice Laurence Li and Justice Muna Al Marzouqi) was heard solely on the issue as to whether two employees who claimed that they had acted as whistleblowers had satisfied the requirement of acting in good faith under Article 16 of the QFC Employment Regulations when reporting concerns about contraventions of regulations by the appellant (which, at the material time, was named International Financial Services (Qatar) LLC but has since changed its name to Prime Financial Solutions LLC. For ease of reference, the appellant is referred to as "IFSQ" throughout the remainder of this judgment). As we refused the other applications for permission to appeal and the issue raised by the appeal is essentially an important issue of law, it is only necessary to give a brief summary of the facts.

Summary of the factual background

2. IFSQ is a company established and registered at the Qatar Financial Centre (QFC). It is authorised to carry on insurance mediation in Qatar from the QFC and is regulated by the QFC Regulatory Authority (QFCRA)

3. In December 2019 Mr Rudolf Veiss acquired the shareholding in IFSQ through Amberberg Ltd. In January 2020 Mr Veiss became controller of IFSQ and in July 2020 a director. IFSQ had been subject to regulatory action by the QFCRA and it was Mr Veiss' stated intention to turn it around.

The employment of Ms A and Ms B and the investigations by the QFCRA

4. Ms A, one of the two employees whose complaint about their dismissal gave rise to these proceedings, was appointed Chief Operating Officer of IFSQ in January 2020 and was subsequently approved by the QFCRA in the capacity of a Senior Executive Function as Chief Executive Officer. In April 2020 Ms B, the other employee, became Head of Compliance and approved by the QFCRA in that position.

5. On 9 April 2020 the QFCRA issued a Supervisory Notice preventing IFSQ taking on additional customers and new business, including new business from existing customers. On 12 April 2020 the QFCRA appointed investigators. On 24 June 2020 the QFCRA withdrew the ban on new customers, but kept IFSQ under a strict and enhanced supervisory plan and continued its investigation. In the course of the investigation the QFCRA required IFSQ to produce documents about its clients.

The dispute between IFSQ and Ms A and Ms B as to the events relating to their dismissal

6. There was a conflict in the materials before the Regulatory Tribunal on the issue of good faith as there were different accounts of what occurred during the QFCRA investigation and what prompted Ms A and Ms B to make a report to the QFCRA.

7. Ms A and Ms B's case was that they had acted in good faith. They had noticed in late August 2020 that transfers had not been sent by Mr Veiss for processing. Ms A suspended him from customer facing activities. They had conducted a further review and discovered that further transfers were made without compliance approval and in

some cases during the suspension of IFSQ between 9 April and 24 June 2020. On 30 August 2020, Ms B met the QFCRA to report concerns about IFSQ. Ms A and Ms B produced a report dated 31 August 2020 setting out these and other matters.

8. It was the case of IFSQ put forward by Mr Veiss that Ms A and Ms B did not act in good faith; that they wrote the report dated 31 August 2020 in support of the complaints to the QFCRA for the collateral purpose of forcing him out of the company and acquiring the shareholding for Mr Abbas, who was said to be an associate of Ms A, for a nominal amount; Mr Veiss described it as a "coup". IFSQ relied in particular on the formation by Ms A of a QFC company - Gateway LLC- with herself as a director and another IFSQ employee as secretary. It appears from the application for permission to appeal that Mr Veiss made a case setting out detailed factual matters at the hearing, in addition to the reliance on the formation of Gateway LLC; these matters were not set out in the judgment of the Regulatory Tribunal because it took the view that it was not necessary for it to make detailed findings in the light of the decision it had reached on the requirement of good faith and in the light of Mr Veiss' request for confidentiality. It is not necessary for the purposes of the appeal to set out the detailed matters.

9. During the course of its ongoing investigations, the QFCRA interviewed Ms B under compulsion on 3 September 2020. It made further inquiries and on 6 September issued a notice requiring passwords to access the IFSQ's data.

The dismissal of Ms A and Ms B

10. On 14 September 2020 Mr Veiss became the sole director of IFSQ when the only other director resigned. A board meeting was held and a resolution passed summarily dismissing Ms A. The resolution recorded that:

> "Board decision is made in efforts to maintain the business operations in the best interest to the firm's customers, the Regulator, the shareholders, current and future QFC users enforcing the rule of law. Zero tolerance to 'hidden agendas' or it may be described as an internally organised 'Coup'"

A dismissal letter was sent to Ms A which recorded that the reasons for her dismissal were: that she had misled the QFCRA but this had been resolved on 24 June 2020 when IFSQ's suspension was lifted; that she failed to address a notice from the QFCRA to produce documents in July 2020 and so managed the business as to cause the QFCRA's notice of 6 September 2020 requesting the passwords; that she failed to maintain IFSQ as a positive work environment for all employees. IFSQ set out what it considered was due to her by way of her September salary and benefits amounting in total to QAR 83,270 but claimed QAR 5.9m from her for breaches of her contract. On 15 September 2020 Ms A filed a complaint with the QFC Employment Standards Office (the ESO) which is responsible for employment standards at the QFC and for determining complaints by employees about dismissal.

11. The QFCRA issued a supervisory notice on 17 September 2020 prohibiting IFSQ from carrying on its business save for existing customers. Disputes then arose between Mr Veiss and Ms B about providing information to the QFCRA. On 27 September 2020 IFSQ summarily dismissed Ms B giving reasons similar to those given to Ms A. The letter of dismissal set out further reasons relating to her failures to deal properly with the QFCRA. The letter stated her earned salary would be remitted to her. On 28 September 2020, Ms B filed a complaint at the ESO.

The determination of the ESO and of the Regulatory Tribunal

12. The ESO carried out an investigation.

    (1) On 27 October 2020 the ESO determined Ms B's complaint. It found that none of the failures alleged against Ms B amounted to gross misconduct; she had carried out her role properly; her report to the QFCRA was made in good faith and was protected whistleblowing and was related to the steps subsequently taken by the QFCRA against IFSQ; her whistleblowing was the principal if not sole reason for her summary dismissal and amounted to retaliatory action. Her dismissal without notice for whistleblowing amounted to a breach of Articles 16 and 23 of the QFC Employment Regulations. It ordered IFSQ to pay the amounts outstanding by way of salary and other benefits and compensation in

lieu of notice calculated on the basis of her usual salary and other benefits for a three month period.

(2) On 17 November the ESO determined Ms A's complaint. It found that although its investigation found a genuine belief on the part of IFSQ, none of the failures alleged against her amounted to gross misconduct; she had been obstructed in her role by Mr Veiss and had not been able to carry out her role effectively. Her establishment of Gateway LLC had not amounted to gross misconduct as it had been discussed with Mr Veiss. She had a duty to the QFCRA to make the disclosures which she had made; it amounted to whistleblowing. She had an objectively reasonable belief that IFSQ was in contravention of the rules and had raised her concerns with the QFCRA in good faith. Her whistleblowing was a material and essential factor in her dismissal and the real reason for the retaliatory action taken to dismiss her. It made a similar determination that her dismissal was in breach of the Employment Regulations and ordered IFSQ to pay amounts outstanding by way of salary and other benefits; compensation in lieu of the notice in the amount of her usual salary and other benefits for a three month period.

13. IFSQ appealed to the Regulatory Tribunal against the decisions of the ESO in respect of the complaints of Ms A and Ms B. The appeals were brought on a number of grounds, including the failure of the ESO to carry out a balanced and objective determination, the ESO's bias and lack of independence, failures by Ms A and Ms B, the fictitious evidence given by Ms A with malicious intent, and procedural failures by the ESO. As the grounds of each appeal had the same factual background, the Regulatory Tribunal determined that the appeals should be heard together. IFSQ's case was that the dismissals were for good cause and that the investigation by the ESO had been unfair. Skeleton arguments were exchanged.

14. The appeals were heard by the Regulatory Tribunal on 19 April 2021. IFSQ was represented at the hearing by Mr Veiss; no lawyer appeared on its behalf. The ESO was represented by Mr Parker of Clyde & Co. No witnesses were called, but the Regulatory Tribunal took into account as relevant to the perception of Ms A and Ms B their written report dated 31 August 2020. It determined by a judgment given on19 May

2021 that the appeal failed on each ground of appeal. In summary, the Regulatory Tribunal held that:

(1) The ESO had carried out a balanced and objective determination.
(2) The ESO had breached no procedural rules.
(3) The ESO had not acted in a way from which a fair minded and informed observer would have concluded that there was the possibility of bias.
(4) The investigation carried out had not been one sided.
(5) There had been no professional failures on the part of Ms A and Ms B.
(6) Ms A and Ms B had raised concerns with the QFCRA about and reported contraventions by IFSQ. Each had done so in good faith under Article 16 of the QFC Employment Regulations. The submission of IFSQ that they did so maliciously or for an ulterior motive were rejected. Each was summarily dismissed because she had made the report to the QFCRA.
(7) IFSQ had failed to establish that it was entitled to dismiss Ms A and Ms B summarily without notice under Article 24 of the QFC Employment Regulations. Compensation on the basis assessed by the ESO was due.

15. On 26 May 2021 the ESO quantified the claims of Ms A and Ms B by way of Payment Orders for the sums to be paid for outstanding salary and compensation in the amount of QAR 248,679 and QAR 112, 509 respectively. IFSQ agreed the calculations. IFSQ nonetheless contended that the payment should await the completion of the investigation by the QFCRA in the light of IFSQ's financial position. On 31 May 2021 the Regulatory Tribunal dismissed these objections and stated that if the amounts due were not paid, Orders for Payment would be made.

16. The ESO also imposed financial penalties on IFSQ for the contraventions of the Employment Regulations in the total sum of US$3,000.

17. By a further decision dated 27 June 2021 the Regulatory Tribunal ordered that the amounts set out in the Payment Orders be paid forthwith.

Permission to appeal

18. On 18 July 2021 IFSQ (which had instructed Eversheds Sutherland (International) LLP) made an application for permission to appeal on three grounds:

    (1) Ms A and Ms B had not satisfied the requirement of good faith under Article 16 of the QFC Employment Regulations so that their report to the QFCRA was not protected whistleblowing.
    (2) Ms A and Ms B had not been dismissed because of whistleblowing; that was not the cause.
    (3) IFSQ were entitled under Article 24 of the QFC Employment Regulations summarily to dismiss Ms A and Ms B without notice.

19. After considering the notice of appeal and the response to it, we ordered on 15 September 2021 that the application for permission to appeal on the first ground of appeal be heard orally at a rolled up hearing with the appeal to follow if permission was granted. The application and appeal were heard by us online; IFSQ was represented by Amy Rogers and Michael White of Counsel, London and the ESO by Jonathan Parker of Counsel, Clyde & Co, Doha.

20. We refused leave to appeal on the other two grounds stating we would give our reasons in our judgment on the ground relating to good faith. Those reasons are set out at paragraphs 52 to 55 below.

21. It followed from our refusal to grant permission on the third ground of the appeal that IFSQ were not entitled summarily to dismiss Ms A and Ms under Article 24 of the QFC Employment Regulations and the summary dismissals were wrongful. IFSQ therefore had no basis for their continued non-payment of the amounts due under the Payment Orders.

The requirement that an employee raised concerns or made reports in good faith

Article 16

22. Article 16 of the QFC Employment Regulations made provision protecting employees from dismissal for whistleblowing in the following terms:

> "Any person who in good faith raises concerns about or reports crimes, contraventions (including negligence, breach of contract, breach of law or requirements), miscarriages of justice, dangers to health and safety or the environment and the cover up of any of these by their Employer shall not be dismissed or otherwise penalised directly or indirectly for such acts, including in respect of any prohibition against disclosure of non–public information."

The Regulations apply to all employees of the QFC Authority, the Regulatory Authority and other QFC Institutions and all employees of QFC financial institutions. The terms of Article 16 appear in identical form in Article 27 of the contracts of employment of Ms A and Ms B.

The decision of the Regulatory Tribunal

23. The Regulatory Tribunal set out its conclusion on the requirements of Article 16 at paragraph 78 of its judgment:

> " (1) The person concerned must have raised concerns about, or reported, crimes, contraventions (including negligence, breach of contract, breach of law or requirements), miscarriages of justice, dangers to health and safety or the environment, and the cover up of any of these by their employer (as noted above, such report may be made to the employer itself or to a third party such as a regulator or both).
>
> (2) The person concerned must have done so in good faith – as noted above, a report is made in good faith if the individual who made it believes on reasonable grounds that it is true.

(3) In such cases, the person concerned is not to be dismissed or otherwise penalised directly or indirectly for doing so (this includes the situation in which there is a prohibition, e.g. in the contract of employment, against disclosure of non–public information".

24. The Regulatory Tribunal then applied its view to the circumstances as set out in its judgment and held at paragraph 79 that the ESO had been right to conclude that Ms A and Ms B had raised concerns, that they had done so in good faith and that they were summarily dismissed for doing so. The Regulatory Tribunal stated in respect of good faith at paragraph79(2):

> "They did so in good faith – as set out above, the Tribunal rejects IFSQ's submissions that they did so maliciously or for an ulterior motive. The Tribunal agrees with the reasoning of the ESO in this regard."

The Regulatory Tribunal considered that IFSQ's allegations that Ms A and Ms B had acted with ulterior motive were based principally on the establishment of Gateway LLC to which we have referred at paragraphs 8 and 12(2) above. It decided (at paragraph 70) that there was no malicious intent on the part of Ms A (or Ms B to the extent she was involved) in the establishment of Gateway LLC and that Gateway LLC had been intended as a company that would refer corporate business to IFSQ.

25. It was IFSQ's contention on appeal that the Regulatory Tribunal had misdirected itself at paragraph 79(2) of its decision on the proper interpretation of good faith in Article 16. A belief on reasonable grounds that the matter reported was true, although relevant, was insufficient to establish good faith. A person might believe on reasonable grounds the matter reported to be true, but would not be acting in good faith if the report was made for other motives such as a malicious or collateral purpose or without integrity. It was submitted that the Regulatory Tribunal, as a result of its misinterpretation of Article 16, had mistakenly concluded it did not need to make findings as to what took place to determine whether Ms A and Ms B had acted in good faith. Heavy reliance was placed on the decision of the Court of Appeal of England and Wales in *Street v Derbyshire Unemployed Workers Centre* [2004] EWCA Civ 964 [2005] ICR 97 in which the

requirement of good faith in making a protected disclosure was closely analysed, in particular in its relationship to a requirement of a belief based on reasonable grounds. This decision was not drawn to the attention of the Regulatory Tribunal.

Our approach

26. Unlike the position before the Regulatory Tribunal, we had full argument with reference to international materials on the requirement of good faith on the part of the whistleblower for the purposes of protected disclosure.

27. The encouragement of whistleblowing through affording protection to the whistleblower is an issue that has received attention across financial and other markets and in relation to the prevention of corruption. It was common ground in the appeal that legislation across the world which protects a whistleblower has to draw a careful balance between on the one hand the public interest in encouraging employees to act as whistleblowers by ensuring that they are protected from abuse or dismissal by the employer and on the other mitigating against the risk of an employer being prejudiced by actions of an employee that cannot be justified or which are motivated by a personal grudge or some collateral purpose. There are three means which can be used to achieve the balance, either singly or in combination, but there is a divergence between states as to which are used:

    (1) A requirement that the whistleblower has a belief in the truth of what is being reported;
    (2) A requirement that that belief be based on reasonable grounds;
    (3) A requirement that the employee acts in good faith, by, for example, not acting for an ulterior purpose or without integrity.

28. The QFC, as an important international market, sets its standards by seeking to give effect to international standards. When approving the QFC Employment Regulations in May 2006 the QFC Board stated their purpose:

> "The Employment Regulations establish a legal framework governing the relationship between the employer and employee that is consistent with those in effect in major market jurisdictions. Among other things, it prohibits discrimination in the workplace, makes explicit provision for whistleblowing, contains minimum terms governing the terms of employment, prohibits unauthorized deductions from salary, and establishes the QFC Employment Standards Office."

29. As the QFC Regulations were intended to be consistent with those in other major market jurisdictions, it is necessary to have regard to the relevant legal framework in other markets. However before turning to consider the position in other major markets, including the UK, we will, consistent with the usual practice of the QIC, consider the natural meaning of Article 16 and have particular regard to other provisions of Qatari law and conditions in Qatar, as guided by the observations in two decisions of this court. In *Chedid & Associates Qatar LLC v Said Bou Ayash* [2015] QIC (A) 2, when interpreting the restraint of trade provisions in the QFC law, a submission was made that the QIC should be guided by English case law. The court said at paragraph 18

> "This is not the correct approach. QFC Regulations set out detailed codes of employment law and general contract law. Some of the provisions reflect principles of common law, but in many respects conditions in Qatar differ markedly from conditions in England and other common law countries. Where an issue is governed by a QFC Regulation, the correct approach is to apply that Regulation according to its natural meaning and having particular regard to conditions in Qatar. Foreign jurisprudence can sometimes be of assistance, but it should be used sparingly as a last and not a first resort."

30. The importance of these observations was affirmed at paragraph 45 of the judgment in *Leonardo S.p.A v Doha Bank Assurance Company* [2020] QIC (A) 1 whilst making it clear that the Court would always consider and take into account international practice where relevant.

The term as used in QFC and Qatari legislation

31. We therefore begin with the language of the QFC Employment Regulations and other law and legislation in Qatar.

32. The wording of Article 16 simply refers to raising concerns or reporting in good faith. Good faith is a term, together with bad faith, widely used in Qatari legislation in many different contexts. It plainly has in many contexts a wide meaning – see for example in the QFC Contract Regulations Articles 13 (negotiating in bad faith) and 86 (estimating in set off). Article 14 of the QFC Partnership Regulations provides that a partner must act in good faith to the partnership or other partners. There is nothing in the language of Article 16 that suggests the term should be read down simply to require a belief on reasonable grounds.

33. It is therefore helpful to consider other provisions of the QFC regulatory regime. First, Chapter 4A of the General Rules 2005 (GENE) which provides a framework for making confidential reports about alleged wrongdoing by authorised firms. As the introductory wording notes:

> "Protected reporting is often called whistleblowing. The maker of such a report is often (but not necessarily) an employee of the firm concerned."

GENE 4A.1.2(1), introduced into GENE on 1 May 2018 a provision referred to by the Regulatory Tribunal at paragraph 77 of its judgment. This provision specifies what is meant by a protected report by reference to a number of requirements which the report has to meet to be protected. The first is that "a report is made in good faith". Paragraph 2 provided that

> "A report is made in good faith only if the individual who made it believes on reasonable grounds that it is true."

GENE 4A.1.3 provides that a firm that receives a report that purports to be a protected report must treat it as such until it has decided, on the basis of a proper investigation, that the report is not a protected report.

34. As these provisions were only added to GENE in 2018, they are not of great assistance in determining what was meant in 2006 when the QFC Employment Regulations were made. However, the term "only if" was relied on by the ESO in argument as implying that the sole meaning of good faith was a belief on reasonable grounds that it was true. As the Regulatory Tribunal noted at paragraph 77 of its judgment, the provision helped to provide adequate safeguards to a firm against spurious reporting. Although we agree that it helps to provide an adequate safeguard to employers, it does no more than help. We consider that a more natural reading of the words "only if" is to establish that a disclosure which an employee makes without believing it, on reasonable grounds, to be true, can never be made in good faith whatever other reasons the employee may have had for expressing concern. In other words, a reasonable belief in the truth of a disclosure made is a necessary, but not necessarily (on its own) sufficient condition of good faith.

35. This is the better reading because an employer requires protection from an employee who acts from an improper motive or without integrity, even if the employee can show that he has a belief in the truth of what is disclosed based on reasonable grounds. Thus there is good reason to adopt the more natural reading of the words "only if" as making it clear that a person does not act in good faith unless that person also has a belief in the truth of the report and that belief was based on reasonable grounds. It helps to protect, but without good faith being read in its ordinary meaning it does not provide as balanced and as adequate a protection.

36. The second provisions we wish to consider are set out in Rule 2 of the Individuals (Assessment, Training and Competency) Rules 2014 (INDI). Again, these were enacted long after the QFC Employment Regulations and may therefore be of limited assistance. Rule 2.1.2 sets out Principle 1:

> "The individual must act with integrity at all times."

Rule 2.1.5 sets out Principle 4:

> "The individual must deal with the Regulatory Authority in an open and cooperative manner, and must disclose appropriately to the authority any information that the authority would reasonably expect to be informed of."

Principle 4 sets out the duty to disclose to the Regulatory Authority in terms of acting appropriately. That may not be of much assistance in determining the level of conduct required when making a disclosure, though the duty of integrity set out in Principle 1 is entirely consistent with giving good faith a broad interpretation and not confining it to a belief in truth based on reasonable grounds.

37. Thus we conclude that there is nothing to suggest that good faith should have a narrow meaning and require simply a belief on reasonable grounds in the truth of what was reported. To the extent that the requirement in GENE 4A can be considered of assistance, the language suggests that its purpose was to add the precondition of reasonable grounds for belief in the truth if good faith was to be established. Similarly principle 1 of the INDI Rules, by making clear the duty to act with integrity at all times, is a further pointer to good faith having its ordinary and wider meaning.

The use of international regimes

38. We are grateful to counsel for the assistance they gave us in relation to international practice on the requirements for protected whistleblowing, and which may, if they disclose common standards, cast light on the likely meaning of 'good faith' in the law of a developed legal system by analogy. There are five particularly relevant matters.

39. It is first helpful to refer to Article 33 of the UN Convention against Corruption 2005. That Article made clear that the requirements were good faith and reasonable grounds and that these were distinct requirements.

> "Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention."

As this Convention was signed by Qatar on 1 December 2005 shortly before it entered into force (and was subsequently ratified on 30 January 2007), it suggests that when the QFC legislation was enacted in May 2006, the legislature is likely to have legislated on the assumption that good faith cannot simply be equated to a subjective belief on reasonable grounds that the matters reported were true, but that there must also be objectively reasonable grounds for the belief.

40. Secondly, a similar inference can be drawn from the recommendations to corporations to prevent and detect bribery set out in the *Good Practice Guidance on Internal Controls, Ethics and Compliance* adopted by the OECD Council in February 2010. These included at paragraph 11 protection of confidential reporting by employees "in good faith and on reasonable grounds". As this post-dates the making of the QFC Employment Regulations, the inference as to the requirements may not be of much additional assistance.

41. Thirdly, in 2016 the OECD Report *Committing to Effective Whistle-blower protection* reviewed a number of different national legislative regimes. It concluded at pages 51-52 that the principal requirement for protection of the whistleblower in most anti-corruption conventions and corresponding national legislation was that the disclosure be made in good faith and on reasonable grounds.

42. Fourthly, at our request at the oral hearing counsel for both parties jointly provided us subsequent to the hearing with information as to the position in other jurisdictions. This showed a divergence in practice as to how the right balance between the public interest and the interests of the employer was achieved. For example, in New York, under the general labour law, protection is given for disclosure activities that are in breach of laws or regulations and which present a substantial and specific danger to public health or safety; there is no requirement of good faith, but there is no protection if the matters

reported are untrue. In France, disclosure is protected for certain types of information, provided that the whistleblower acts in good faith and, for some types of whistleblowing, is disinterested in the sense that the person receives no financial advantage and is not a victim; it is not a separate requirement that the person making the disclosure believes that the facts are true as such a belief is inherent in the concept of good faith.

43. Fifthly is the decision of the Court of Appeal of England and Wales in *Street.* In the UK at the time of that decision the legislation protected whistleblowers who made disclosures who satisfied certain conditions including good faith. The lower courts held that an employee who had made disclosures which complied with the other relevant conditions including a reasonable belief in the truth of the matters disclosed had been motivated to make them by personal antagonism; he had therefore not satisfied the condition of acting in good faith. The Court of Appeal of England and Wales upheld those decisions. It concluded that a person could honestly believe on reasonable grounds in the truth of what was being disclosed, but at the same time be actuated by other motives such as personal antagonism. As Auld LJ set out in his judgment the disclosure was therefore not made in good faith "when the dominant or predominant purpose of making it was for some ulterior motive" such as private gain or a personal antagonism (see paragraphs 53-58). As Wall LJ explained in his short judgment, the primary purpose of protecting a disclosure was the public interest. If the disclosure was to be protected, the predominant motivation in making the disclosure should be the public interest in remedying the wrong that was occurring or bringing it to the attention of a person or authority that could and not an ulterior motive.

44. We accept, as was submitted by the ESO, that the provisions as to whistleblowing in the then UK legislation were much more complex than that contained in the QFC Regulations, but that does not detract from the analysis in *Street.* We agree with the conclusion set out in *Street* that a person can honestly believe on reasonable grounds that what was disclosed was true, but be driven by another motive; such a person would not be acting in good faith. The statutory provisions in the UK have been different since 2013. It is no longer necessary to establish protection that the disclosure was made in good faith; in place of good faith, the disclosure has to be made in the public interest. If the other conditions are satisfied, but the disclosure is not made in good faith, then

although the disclosure is protected, the compensatory award can be reduced by up to 25%. The change has no bearing on the meaning of good faith – the correctness of the decision in *Street* has not been doubted. Nor does the change detract in any way from the analysis.

Our conclusion as to the meaning of good faith in Article 16

45. We cannot therefore agree with the Regulatory Tribunal that the requirement of good faith in Article 16 is satisfied if the individual who made it believed on reasonable grounds that it was true. If that had been the requirement, that would have been stated.

46. Plainly something more is required. The person must act with integrity and in accordance with good regulatory practice: i.e., with the primary motive of righting a wrong, in the public interest. This would be consistent with the subsequent requirement set out in Principle 1 of the INDI principles.

47. In our view, if the employee believes on reasonable grounds that what is reported is true, a significant step has been made to satisfying the requirement of good faith in Article 16, but it does not establish good faith. More is required. The employee must also act with integrity. A failure to act with integrity is not necessarily established by showing that there is another motive, even a significant motive. The circumstances must be considered in full and the conclusion reached that the person making the report has acted with integrity.

48. It is unfortunate that the decision in *Street* and a wider range of international materials were not drawn to the attention of the Regulatory Tribunal. As we have explained at paragraphs 29-30 above, the QIC has found that it has been of significant assistance that the QFC Institutions provide such materials, so that the law relating to the QFC is developed and applied in the QFC in accordance with the highest international standards, given Qatar's position as a significant and important international financial centre. Where there is a litigant who is not legally represented, it is important that the QFC Institutions follow their usual practice of providing the court with all the relevant material.

Was good faith as we have interpreted it established?

Although it was powerfully argued that some of the passages in the judgment of the Regulatory Tribunal, particularly those at paragraphs 70 and 79 (2) showed that the Regulatory Tribunal had found that Ms A and Ms B had not acted with an ulterior motive and had no malicious intent, the correct legal principles were not applied and the necessary wider findings were not made.

49. In our judgment, this is therefore an appropriate case, despite the way in which IFSQ has behaved, in which to grant permission as it involves an important point of law.

Remedy

50. As we have refused permission on all issues other than good faith, it follows that the judgment of the Regulatory Tribunal on all other issues is affirmed. The appellant, if it has not already paid the judgment, must do so forthwith. If not paid, then from 27 February 2022, it will bear additional interest at the rate of 7% in accordance with Practice Direction 3/2021.

51. On the basis of the law as we have found it to be, the decision on whether the disclosures were made in good faith requires findings of fact which we are not in a position to make as an appellate tribunal. We therefore remit the issue of good faith to the Regulatory Tribunal subject to the following:

(1) The appellant may not refer the matter to the Regulatory Tribunal unless the Payment Orders made by the Regulatory Tribunal are paid by 27 February 2022.

(2) The ESO may refer the matter to the Regulatory Tribunal if matters arise on which further consideration by the Regulatory Tribunal is necessary or desirable.

Reasons for refusing permission on the other two grounds of appeal

52. In ground 2 of the notice of appeal IFSQ contended that the Regulatory Tribunal failed to deal properly with the issue of whether the dismissals had been for making the report to the QFCRA. It was contended that as the Regulatory Tribunal had found that Mr Veiss believed that they had tried to force him out, it could not have properly concluded that they had been dismissed for making the report. It was further contended that the Regulatory Tribunal had to determine whether Mr Veiss had learnt of the reports made by Ms A and Ms B before they were dismissed.

53. We did not consider that this ground of appeal provided any basis for saying that the decision was erroneous. It is clear from the whole of the judgment of the Regulatory Tribunal that it was satisfied that Mr Veiss knew that Ms A and Ms B had made a report to the QFCRA of their concerns about Mr Veiss' actions before the decision was taken to dismiss them; and that their conduct in making a report to the QFCRA was the reason that had led IFSQ to dismiss them. Those were sufficient findings to support the conclusion that they were dismissed for making the report. It was not necessary for the Regulatory Tribunal to make any more detailed findings as to Mr Veiss' belief or state of mind.

54. In ground 3 of the notice of appeal IFSQ contended that the Regulatory Tribunal had erred in law when it found that the matters relied on by IFSQ for summary dismissal did not amount to material breaches of contract or gross misconduct which would permit dismissal under Article 24.

55. It is clear from the decision of the Regulatory Tribunal that it was satisfied that there had been no material breaches or gross misconduct within Article 24. It was not necessary for the ESO or the Regulatory Tribunal to make the detailed findings of all the relevant circumstances which it was contended that the English law authorities suggested was the proper approach. As this Court has made clear, it applies the provisions of the QFC Law and Regulations as they have been drafted and promulgated. It would not be the correct approach nor in the interests of good employment practices in the QFC to encumber the law or the approach to determinations in employment cases

with the encrustation of case law that has made employment law in the United Kingdom so technical and difficult. Save on important transnational issues in the maintenance of financial markets such as whistleblowing, the language of the legislation and the regulations should be sufficient.

By the Court

[signed]

Lord Thomas of Cwmgiedd
President

A signed copy of this judgment has been filed with the Registry

Representation:

The Appellant was represented by Ms. Amy Rogers and Mr Michael White of Counsel, 11 KBW, London, UK.

The Respondent was represented by Mr. Jonathan Parker of Counsel, Clyde & Co, Doha. Qatar.

DIGITALLY SIGNED AND VERIFIED
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