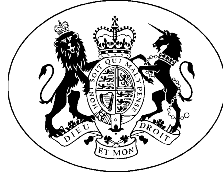
Case No. 2601954/2017



EMPLOYMENT TRIBUNALS

claimant: Mr K Wright

respondent: Boots Management Services Limited

PRELIMINARY HEARING

Heard at: Nottingham (in public) **On:** 17 to 19 December 2018

Before: Employment Judge Camp

Appearances
For the claimant: in person
For the respondent: Mr D Bayne, counsel

JUDGMENT

(1) All of the claimant's complaints of disability discrimination are struck out pursuant to rule 37(1)(a) on the grounds that they have no reasonable prospects of success.

(2) The above judgment was made and took effect on 18 December 2018. Reasons were given orally on that date and written reasons will not be provided unless they are asked for by a written request made by either party within 14 days of the sending of the written record of the decision.

RESERVED JUDGMENT

The claimant did not make any relevant protected disclosures and, accordingly, his entire remaining claim fails and is dismissed.

REASONS

1. These are the written reasons for the above reserved judgment.

2. This reserved decision comes after a 3 day preliminary hearing to deal with preliminary issues. The particular preliminary issue with which these reasons are concerned is (to quote from the original notice of hearing), "*To determine whether the claimant made any protected disclosure within the meaning of*

sections 43B and 43C of the Employment Rights Act 1996 and if not, whether the complaint of whistleblowing should be struck out". This has been understood by me and the parties to mean whether the particular things the claimant relies on as protected disclosures in these proceedings were (to the limited extent this is in dispute) made at all and whether, if so, they were protected disclosures.

3. It should noted at the outset that nothing in these Reasons should be taken as meaning that the claimant has been well treated or, indeed, badly treated by the respondent. Moreover, I have made no findings at all as to why any mistreatment the claimant suffered has occurred. The respondent categorically denies it has mistreated the claimant because he raised concerns about wrongdoing and the claimant does not and cannot know why the respondent has acted as he believes it has.

4. By way of background, the claimant has been a Corporate Investigations Manager at the respondent since 13 January 2005. He presented his claim form on 16 November 2017. This matter began life as a sex discrimination claim. Over time, it turned into a whistleblowing – protected disclosure detriment – claim and a disability discrimination claim. I made a decision to strike out the disability discrimination claim part way through this preliminary hearing. The only complaints that remain are whistleblowing complaints.

5. The claim arises out of internal investigations within the respondent called Operation Platinum and Operation Platinum Plus. In origin, they were concerned with breaches of voluntary, industry-wide restrictions on the sale of baby milk. Contrary to what has been suggested at one stage in these proceedings, the restrictions have nothing to do with concerns about illegal drug smuggling. Instead, they are to do with the smuggling of baby milk itself. There is, or is perceived to be, in China a problem with contamination of baby milk as a result of which European baby milk can be sold in China – that is, smuggled into China and sold on the black market – at an enormous premium. Before these voluntary restrictions were introduced, there was a problem with Chinese buyers buying up all of the stocks of baby milk for sale in certain parts of the country.

6. The claimant was in charge of a team responsible for investigating part of Operation Platinum Plus. The alleged protected disclosures the claimant relies on were made between April and (approximately) June 2016. The claimant made them internally within the respondent as part of his normal duties.

7. Apparently, around 150 of the respondent's stores were in breach of the respondent's restrictions on the bulk selling of baby milk. In the great majority of cases, nothing worse was uncovered than a breach of an internal policy. The respondent's managers had an incentive to allow the bulk buying policy to be breached, namely that their stores' sales figures would be improved. So the fact that a manager permitted someone to breach the restrictions on bulk buying did not by itself suggest that that manager was acting dishonestly, let alone criminally.

8. There were restrictions on the bulk buying of other products than baby milk as well. Operation Platinum Plus, and possibly Operation Platinum too, were also concerned with breaches of restrictions on the bulk buying of No [number] 7 products.

9. Near the start of this preliminary hearing, entirely unprompted, I expressed a concern that it might not be appropriate for the issue of whether protected disclosures were made to be resolved at a preliminary hearing at all. There have been discussions about this throughout the hearing. By the end of the hearing, I had reached the view that although I would not myself have convened a preliminary hearing to deal with that kind of issue as a preliminary issue, having spent three days in the tribunal, mainly on this issue, and having heard evidence from 11 witnesses, including the claimant on the issue, I surely am – or at least ought to be – in as good a position to resolve the question of whether or not protected disclosures were made as a tribunal at a final hearing would be; and I also think it would be something of an abrogation of responsibility for me, given all the time I have spent, not to decide the preliminary issue if I can fairly do so, and I think I can.

10. The only slight qualification to that is in relation to the seventh and final alleged protected disclosure, which is said to be contained in a document that the respondent claimed to have no knowledge of and that the claimant did not disclose until the start of day 2 of this hearing. The reason it is possibly different is that given this very late disclosure, the respondent and its witnesses were necessarily dealing with it rather 'on the hoof' and it may be that if they were given more time they would be able to produce further relevant evidence on the question of whether that document was ever passed to the respondent by the claimant.

11. This was the fifth preliminary hearing. There has been considerable evolution of the claimant's case during the course of the proceedings. Because the claimant's claim has been put in a number of different ways at different times, I wanted to make absolutely sure what the alleged protected disclosures were and on what basis the claimant was alleging they were protected disclosures. The claimant confirmed at the start of the hearing – and did not during the course of the hearing suggest otherwise – that he was relying on 7 alleged protected disclosures and 7 alleged protected disclosures only. The 7 alleged protected disclosures are identified in further particulars of his claim dated 18 July 2018, provided to comply with an order made by Employment Judge Milgate following a preliminary hearing on 12 June 2018. Three of the alleged disclosures are made in documents and four in conversations.

12. Alleged protected disclosure 1 is contained in an attachment to an email sent by the claimant on 19 April 2016. The attachment is a 'daily update'. This kind of daily update was routinely produced by the claimant or members of his team. The update consists, essentially, of a summary of an interview that had been conducted with an Area Manager called Mr Malik. Mr Malik was the Area Manager of a part of London where there were significant issues with breaches of the bulk buying policy. The update ended with a recommendation that Mr Malik be subjected to disciplinary proceedings for knowingly breaching the bulk buying policy.

13. Alleged protected disclosure 2 is said to have been made in a telephone conversation between the claimant and the claimant's line manager, Mr Iden, on 20 April 2016. The contents of that disclosure are alleged to be broadly similar to the contents of the update of the previous day and there is no dispute that there

was a conversation between the claimant and Mr Iden on 20 April 2016 that, at least to some extent, related to the subject matter of update.

14. The third alleged protected disclosure relied on is part of a weekly investigation summary report for the week commencing 23 May 2016, which was prepared on or around that date. It is common ground that there were regular, approximately weekly, meetings between the claimant and senior management where individual cases under investigation were discussed. The report contained a summary of what was happening in relation to a large number of cases. The relevant part of it states that Mr Malik had "*admitted to lying to investigators and breaching policy numerous times and has been suspended for breach of trust*".

15. Alleged protected disclosures 4 and 5 were alleged to have been made in a telephone conversation on 24 May 2016, or thereabouts, between the claimant and Mr Iden and then, separately, between the claimant and a Miss Day, who at the time was an Employee Relations Partner. There is no dispute that conversations between the claimant and these two individuals took place around that day concerning Mr Malik and, in particular, about the rights and wrongs of suspending him.

16. Alleged protected disclosure 6 was allegedly made in the course of the meeting where the summary report constituting alleged protected disclosure 3 was discussed, which was on or about 25 May 2016. Again, there is no dispute that the meeting took place, nor that there was some discussion of the Malik case at that meeting.

17. The seventh alleged protected disclosure is, as already mentioned, a document that was not disclosed in these proceedings until the start of the second day of this hearing. It has been referred to as a "chronology". The claimant alleges it was prepared by him as a summary of the entire investigation and then provided by him to Mr Iden, who he expected, in turn, to provide it to a Mr Horner, Deputy General Counsel for the Retail Pharmacy International Division of Walgreens Boots Alliance. The claimant understood that Mr Horner used it as the basis for the information that Mr Horner provided to Baker McKenzie, solicitors, to enable them to prepare a letter that was given to the police at a meeting at Baker McKenzie's offices in July or August 2016.

18. The respondent's case, based on the witness evidence of Mr Horner and Mr Iden, is: that there was indeed such a meeting; that they had never seen the document relied on by the claimant – or at least that version of it – before it was disclosed in the course of these proceedings; that no such document was used by Mr Horner as the basis of the information that he provided to Baker McKenzie; that it was not taken to, or relied on, or referred to, at the meeting.

19. The claimant has similarly pinned his colours to the mast in terms of which subsection of section 43B of the Employment Rights Act 1996 ("ERA") he relies upon, namely subsection (1)(a). Although the preliminary issue is put in terms of whether a protected disclosure was made, the real issue is whether a qualifying disclosure was made. There is no dispute that if a qualifying disclosure was made, it was made to the claimant's employer in accordance with ERA section 43C and was therefore a protected disclosure.

20. The relevant alleged protected disclosures the claimant relies on are said to be disclosures of information which in the claimant's reasonable belief was made in the public interest and tended to show that a criminal offence had been committed, in accordance with ERA section 43B(1)(a). The particular criminal offence the claimant relies upon is bribery. The claimant is very precise about this deliberately; his case is very specific. (Generally, when I am discussing what the claimant's case is, I am describing the case as put forward by him at the hearing before me which may, in certain respects, be different from the case put forward in writing at various times during these proceedings.) His case is that he was subjected to detriments <u>specifically</u> because he raised concerns about an Area Manager, Mr Malik, potentially being the recipient of bribes or inducements. He is not alleging that he was subjected to detriments because he raised other concerns about Mr Malik, for example the concerns everyone agrees he raised about Mr Malik breaching the bulk buying policy and, in the claimant's view, lying to the claimant in interviews.

21. Within Operation Platinum and Operation Platinum Plus, the respondent uncovered a number of instances of members of staff taking bribes or inducements and, as I understand it, those staff were sacked and referred to the police. Those staff were, however, relatively low level staff. They were not in a relatively senior position like Mr Malik. The claimant's case is that the respondent acted to suppress his concerns about Mr Malik being in receipt of bribes and persecuted the claimant for raising those concerns because the respondent did not want one of its senior managers to be publicly associated with something as serious as bribery.

22. Accordingly, although the claimant undoubtedly did disclose information that tended to show wrongdoing by Mr Malik in a number of respects, it is a fundamental part of the claimant's case that the particular alleged protected disclosure or disclosures for which he was subjected to detriments are disclosures relating to bribery of Mr Malik.

23. The first subsidiary issue for me is: what relevant information was disclosed by the claimant? In theory this is very much in dispute. In practice, however, apart, possibly, from the question of whether protected disclosure 7 was made at all, there is really nothing to choose between the parties' positions.

24. The potentially relevant information contained within alleged protected disclosure 1 – the daily update of 19 April 2015 – is:

    24.1 that Mr Malik was aware of baby milk and other bulk buying issues in London over the last 2 or 3 years;

    24.2 that Mr Malik initially denied sanctioning bulk buying by a Mr Lin but later, after he was shown a copy of a text message sent to him by an Assistant Manager asking if it was ok for Mr Lin to buy "*thousands*" in store, admitted that he had breached the bulk buying policy and said that he did it "*for commercial reasons as it is very competitive*";

    24.3 that five members of staff had said Mr Malik was aware Mr Lin had a discount card and that Mr Malik had said they were not telling the truth and that he was not aware, that he was also not aware of any gifts or incentives being offered, or of a WhatsApp group message which allegedly

referred to him stating it was ok for Mr Lin to have a discount card, and that he understood that the breach of policy should not have happened.

25. The only potentially relevant additional thing the claimant claims was said to Mr Iden in the telephone call on 20 April 2016 which forms the subject matter of alleged protected disclosure 2 is (quotation from paragraph 28 of the claimant's witness statement), "*There were grounds for thinking* [Mr Malik] *could well be involved in bribery*". If that was indeed said it would not be additional information but merely a bare allegation, in accordance with Kilraine v London Borough of Wandsworth [2018] EWCA Civ 1436. The only information it conveyed would be as to what the claimant was thinking.

26. I note, in passing as it were, that the claimant alleges Mr Iden required him to "*remove* [from the daily update] *any reference to dishonesty … and to keep it to the internal element of merely 'breach of policy'.*" When questioned about this part of his witness evidence, the claimant alleged that what Mr Iden had asked him to take out from the daily update was a reference to Mr Malik allegedly lying. In fact, the daily update as produced by the claimant himself on 19 April 2016 [wrongly dated 19.04.2015] contained no reference to Mr Malik's alleged dishonesty / lying either.

27. The claimant's original case on protected disclosures seemed to be that he had disclosed information which tended to show both that a criminal offence had been committed and that a criminal offence had been or was likely to be deliberately concealed, pursuant to ERA section 43B(1)(f). Although the claimant confirmed at the start of the hearing that that part of his case was not being pursued, to the extent that he was relying on something to do with Mr Iden supposedly instructing him to remove references to dishonesty or lying in this daily update as a protected disclosure, the claimant's case is not made out to any extent.

28. I was encouraged by respondent's counsel's submissions to deal, at least initially, with all of the claimant's alleged protected disclosures individually. I do not, however, think this is necessary so far as concerns protected disclosures 3 to 6. I have already quoted all of the relevant part of protected disclosure 3. What the claimant seems to be relying on in particular in relation to that is the fact that in the document, the word "*Bribery*" appears as the "*Investigation type*". However, the claimant confirmed in evidence that that is a reference to the investigation as a whole, not just the small part involving Mr Malik; that the whole investigation was categorised by the respondent as a bribery investigation. At least dozens of individuals were investigated. A small percentage of them were ultimately found by the respondent to be guilty of bribery. The fact that someone's name, for example Mr Malik's, appears in a weekly investigation summary does not mean that that individual is accused of bribery. The document I have before me is, I understand, simply an extract of a longer report. But even in that extract, I can see that there are people against whom allegations of bribery are specifically made and others, like Mr Malik, in relation to whom bribery is not mentioned. In short, the fact that the word "*bribery*" appears on the page is in practice irrelevant to what information about Mr Malik has been conveyed in the summary report.

29. So far as concerns alleged protected disclosures 4, 5 and 6, suffice it to say that I am not satisfied that any more relevant information was conveyed than that which had already been conveyed in protected disclosures 1 to 3. In fact, the claimant does not really seem to be alleging that any more information was conveyed in those alleged protected disclosures. Again, the potentially relevant thing he is saying about the contents of those conversations is that during the course of them he made allegations of, or raised concerns about, possible bribery of Mr Malik. Again, even on his own case, he does not seem to have done anything in terms of disclosing information that the respondent does not accept he disclosed.

30. Whether the claimant did in fact allege bribery on these occasions could be relevant to the question of whether he reasonably believed that the information he disclosed tended to show that the criminal offence of bribery had been committed. However, I have not in the end attempted to decide that issue because, for reasons explained below, I haven't had to.

31. Moving on to the seventh alleged protected disclosure – the 'chronology': for the purposes of this hearing, because I don't need to answer it, I have put to one side the question of whether or not I am satisfied that this document was ever actually provided to the respondent at any relevant time. I shall assume for present purposes that it was indeed provided, to Mr Iden at least, in or around late June 2016.

32. During the hearing before me, the claimant identified the specific parts of the chronology document he is relying on. One of the parts of the document that he relies on is virtually identical to the daily update that forms protected disclosure 1. With one possible exception, none of the parts of the chronology document the claimant relies on provides any information over and above the information which is provided in protected disclosures 1 to 6. The possible exception to that is part of the chronology which relates to 12 April 2016. The information provided in that entry that is possibly additional to information provided in other alleged protected disclosures is that Mr Malik knew that Mr Lin had a care home discount card and that a particular named member of staff had heard that Mr Malik had given it to Mr Lin.

33. I now turn to the question of what the information disclosed tended to show, and what the claimant reasonably believed about this.

34. Before discussing what the phrase "*tends to show*" means as a matter of law, I need to discuss other relevant information or potentially relevant information that provides some context to the alleged protected disclosures made. Part of the claimant's case is to the effect that even if the information he provided within the alleged protected disclosures themselves taken in isolation does not tend to show that the criminal offence of bribery has been committed, it does tend to show this when taken together with the information that was, he alleges, in both his and the respondent's minds at the time the disclosures were made.

35. Unfortunately, I found this part of the claimant's case very unclear. On the one hand, as already mentioned, the claimant was categorical as to what he was relying on as the alleged protected disclosures. Of course there is background and context relevant to what the contents of those disclosures would

communicate, i.e. what they would tend to show and what the claimant might reasonably believe they tended to show. However, the claimant seemed unwilling or unable to provide me with specifics in terms of what additional information he wanted me to take into account.

36. It occurred to me that if the claimant was saying, and at times he appeared to be, that he disclosed additional relevant information on other occasions than the 7 occasions be relied on, then what he would effectively be saying is that the protected disclosures were contained in things other than the conversations and documents that he relies on. If he were relying on an eight or a ninth or a tenth alleged protected disclosure, he would have to specify this and he has not done so. Instead, he has clearly said that he is relying just on 7 protected disclosures, made in 7 specific, discrete ways.

37. In summary, I am willing to accept that the following background information – and only that information – was known to the respondent and the claimant at the time of alleged protected disclosures <u>and</u> is relevant to the question of what the information disclosed within the 7 alleged protected disclosures tended to show or what the claimant reasonably believed they tended to show:

    37.1 that one of the things being investigated as part of Operation Platinum/Platinum Plus was whether members of staff had been bribed to allow customers to breach the respondent's bulk buying policies;

    37.2 that a minority of staff who had been involved in breaches of the bulk buying policy had been found to have been recipients of bribes;

    37.3 that individuals identified as Chinese businessmen had been found to have bribed them;

    37.4 that the Mr Lin connected to Mr Malik's case was a Chinese businessman.

38. There is a relevant issue to do with Mr Lin's identity that I ought to mention. There were, in fact, two individuals referred to as Chinese businessmen who were known as Mr Lin. The Mr Lin who was involved in Mr Malik's case was not, in fact, named Lin at all. Apparently, his real name was Mr Jan. I have not been taken to any evidence suggesting that Mr Jan was involved in any other cases of suspected bribery (to the extent Mr Malik's case was a case of suspected bribery). The other Mr Lin, the "real Mr Lin" as it were, was involved in a number of cases of suspected bribery.

39. In his oral evidence during cross-examination, the claimant suggested that at the time he made his disclosures be believed that Mr Jan was, generally, suspected of bribery. If and to the extent that was what the claimant believed at the time, I am not satisfied that that was a reasonable belief. His evidence on this issue was rather vague and he did not begin to explain how he had formed the view that Mr Jan was suspected of this. Perhaps more importantly in the context of the question of what he reasonably believed his disclosures tended to show, I am not satisfied that he reasonably believed the people to whom he was making his disclosures thought at the time that Mr Jan was suspected of bribery of people other than Mr Malik. It was not, I note, put to any of the respondent's witnesses in cross-examination that they thought or believed this.

40. The key legal issue in this case is what phrase "*tends to show*" in ERA section 43B(1) means. Counsel was unable to find any case directly on point. In the absence of authority on the point, I note two things about the wording of the section. First, what I am concerned with is whether information disclosed tends to show that a criminal offence has been committed and not merely that a criminal offence might have been committed. Secondly, the words used in the legislation are "*tends to show*" and not just "shows". The phrase *"tends to*" must, it seems to me, have been added in order to lower the threshold that a worker has to cross to establish that a qualifying disclosure has been made.

41. A further, more general, thing that needs to be taken into account is the purpose for which whistleblowing protection exists. If one adopts an interpretation of section 43B that makes it too difficult for a worker to get the protection afforded by the legislation, one creates a disincentive to individuals who wish to raise concerns about potential wrongdoing which they, legitimately and reasonably, would like their employer to investigate but which, as they appreciate, may turn out to be unfounded.

42. In addition, I need to take into account the fact that the test involves looking at what the worker reasonably believed the information tended to show, rather than what the information actually tended to show; although, of course, what the information actually tended to show is relevant to what the worker reasonably believed it did. It is not difficult to envisage situations where a worker might reasonably believe that information disclosed tends to show something when, in fact, that is not the case.

43. The two competing interpretations of the phrase "*tends to show*" that have been under discussion in this hearing are:

    43.1 that information that tends to show a criminal offence has been committed is evidence that points towards that specific conclusion;

    43.2 that, alternatively, it is merely evidence that suggests the commission of a criminal offence as one possibility, amongst others.

44. My own research into the law after the hearing does not take matters very much further. I did at least find one instance of the phrase "*tends to show*" being judicially considered, but that was in a completely different context, namely in relation to section 1(f) of the Criminal Evidence Act 1898. This provided that a person charged and called as a witness should not be asked any question 'tending to show' that he had previously been convicted in specified circumstances. In that very different context, Lord Reid, in Jones v Director of Public Prosecutions [1962] 1 All ER 569 at 575, stated: "*In my judgement 'tends to show' means tends to suggest to the jury*". I do not find it helpful to replace the phrase 'tends to show' with the word 'suggests' when considering section 43B of the ERA.

45. What I have found a little more useful are paragraphs 31 and 32 of the decision of the EAT in the well-known case of Darnton v University of Surrey [2003] IRLR 133 in which the following was said to accurately state the law: "*the whistleblower may have a good 'hunch' that something is wrong without having the means to prove it beyond doubt or even on the balance of probabilities ... The notion behind the legislation is that the employee should be encouraged to*

make known to a suitable person the basis of that hunch so that those with the ability and resources to investigate it can do so. … to be a qualifying disclosure, it must have been reasonable for the worker to believe that the factual basis of what was disclosed was true and that it tends to show a relevant failure even if the worker was wrong but reasonably mistaken".

46. It is easier to see how the competing definitions of "*tends to show*" might apply by looking at the specific facts of this case.

47. The relevant information disclosed in any one of the alleged protected disclosures, and in all them taken together, amounts to no more than this: Mr Malik at the very least condoned the breaching of the respondent's bulk buying policy to the benefit of a particular individual; there was evidence that Mr Malik had, or might have, favoured that individual in other ways as well; Mr Malik had, potentially, lied about this. There was, then, evidence suggestive of inappropriate commercial relationship with Mr Jan; or to put it another way, there was, in my view, information which tended to show that Mr Malik did favours for Mr Jan in breach of the respondent's policies and was prepared to lie about this.

48. Anyone in Mr Malik's position who allowed a customer to breach the bulk buying policy in the way that Mr Jan seems to have done might have been bribed to do so, in the same way that anyone who does something that should not have done which is to somebody else's benefit might have been bribed by that somebody else to do that something. But, in Mr Malik's case, there were a number of other possible explanations for why he would do this, not least the explanation the respondent accepted, namely that, essentially, Mr Jan buying lots of products helped the sales figures of the stores for which Mr Malik was responsible. In short, there is no evidence – information – of bribery at all, direct or indirect. The information disclosed merely leads one to wonder whether Mr Malik might have been bribed and perhaps to think that there ought to be further investigations to see whether some actual evidence of bribery could be uncovered.

49. The information disclosed certainly does not, then, show that bribery has taken place. At its reasonable highest, it raises the possibility that there might have been bribery. The question I ask myself is: is that enough? In my view, information that tends to show that bribery has taken place would be evidence positively pointing towards this having happened. Because of the words "*tends to*", the worker does not have to disclose information that is proof positive of criminality, but it must be more than merely information that leads one to wonder whether criminality has occurred, which is what we have in the present case. The distinction is, I think, between information that would make one wonder, "why was Mr Malik behaving in this way?", and information that made one think that bribery, rather than something else, may well be the explanation for why Mr Malik behaved in this way. Examples of what that information might be would be something like direct or indirect evidence of Mr Malik having received gifts. Another example might be evidence that Mr Jan had, or had been suspected of, bribing other staff within the respondent to breach the bulk buying policy.

50. My decision is, then, that: none of the information disclosed within the alleged protected disclosures tended to show that the criminal offence of bribery had taken place, i.e. that Mr Malik had received an inducement of some kind or reward of some kind from Mr Jan in return for which he had allowed Mr Jan to

breach the bulk buying policy and, potentially, had allowed Mr Jan to use a discount card for which Mr Jan was not entitled. This is so taking full account of the relevant background information known to the claimant and to the recipients of his disclosures; and is so whether those alleged protected disclosures are looked at individually or cumulatively.

51. However, as already mentioned, it is in principle possible for the information disclosed by the claimant not to have tended to show criminality but for the claimant to have reasonably believed that it did. Is the claimant's case that he made protected disclosures saved by this?

52. My ultimate conclusion in this case is that, in the particular circumstances, the question of reasonable belief is something of a red herring. This is because I do not think even the claimant believed that the information he disclosed tended to show that bribery had occurred between Mr Jan and Mr Malik, adopting the meaning of "*tends to show*" that I think is appropriate.

53. Taking all of his evidence into account, I think the claimant accepted that there was no direct or indirect evidence of bribery and that what existed was no more and no less than information that made him suspect bribery as a possibility. I think the reality was that, at the time, he thought bribery might have occurred but knew he had no evidence that it had occurred and that further investigation by the police would be necessary in order for that evidence to be uncovered and for the matter to be taken forward at all. He was clearly exercised by the fact that, in his view, Mr Malik had lied to him. This undoubtedly made him think worse of Mr Malik than would otherwise have been the case and to think Mr Malik more capable of dishonesty than would otherwise be the case. To put it another way, his reasonable belief that he had been lied to by Mr Malik – the (in his mind) 'fact' that he had been lied to – was information that he reasonably believed tended to show that Mr Malik was a dishonest person. But I am not satisfied that, at the relevant time, the claimant made the leap from "Mr Malik is a dishonest person" to "Mr Malik's dishonesty is evidence that he has been bribed". If and to the extent he did make that leap, it was, in my view, an unreasonable one.

54. The line between a baseless suspicion and the 'good hunch' referred to in Darrnton is not an easy one to draw. The legislation only protects those who have a real basis for their hunches; there must be (also from Darnton), "*some information which tends to show that the specified malpractice occurred*". In the present case, there is merely some information which tended to show that the specified malpractice might possibly have occurred.

55. I have to confess to being rather uncomfortable with my decision. I have not, in the end, decided whether the claimant specifically raised concerns about bribery in connection with Mr Malik, as he alleges he did during the course of the conversations he relies on as alleged protected discloses 2, 4, 5 and 6. I have not done so because, on my analysis of the case, it is not necessary for me to do so and, indeed, the question is irrelevant to the issue before me. The reason I am troubled is that if I am right, someone who, in a reasonable way, raises reasonable suspicions of wrongdoing that they reasonably think ought to be investigated is not covered by the legislation unless there is some information which they disclosed to back their suspicions up. For example, I think the claimant ought to be, but wouldn't be, protected from suffering a detriment for

saying to the respondent, "Mr Malik should be investigated further, to see whether there is evidence to support my hunch that he has been bribed".

56. However, unfortunately for the claimant, the legislation does not protect those who raise reasonable suspicions of wrongdoing, but only those who disclose information which they reasonably believe tends to show wrongdoing.

57. In conclusion, the claimant did not make any relevant protected disclosures and what remains of his claim necessarily fails on that basis.

Employment Judge Camp

6 February 2019

Sent to the parties on:

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For the Tribunal:

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