



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms P Gravell

**Respondent:** Greenwich Housing Rights

**Heard at:** London South

**On:** 3-4 December 2018, 5 December in chambers

**Before:** Employment Judge Martin  
Ms Bharadia  
Ms Murray

**Representation**

**Claimant:** In person

**Respondent:** Ms Beattie – Litigation Manager

## RESERVED JUDGMENT

The unanimous judgment of the Tribunal is that the Claimant's claims are dismissed

## RESERVED REASONS

1. By a claim form presented to the Tribunal on 21 March 2017 the claimant claimed she suffered detriments for making protected disclosures. The Respondent defended the claim in its response presented on 24 April 2017. At a case management hearing on 16 May 2017 the issues were identified and recorded in an order dated 16 May 2017 as follows:
  1. *The claimant claims she was subjected to detriments on the grounds she had made protected disclosure pursuant to section 47B of the employment Rights Act 1996.*
  2. *The following appear to be relied upon as qualifying disclosures: -*
    - i) *Around 6 June 2016 the claimant reported to Tracey Trotman a "verbal Expression of Dissatisfaction" by a client regarding the conduct of Ben Odofin in a meeting; ("disclosure 1")*

- ii) *Around end of July 2016 the Claimant reported verbally to Tracey Trotman that Ben Odofoin had committed a data protection offence in that he had given a sensitive document relating to a client of Plumstead Law Centre to one of the Respondent's clients; ("disclosure 2")*
  - iii) *Around August 2016, the Claimant reported verbally to Tracey Trotman and Ola Alalade that Ben Odofoin had failed to dispose of confidential waste by shredding it. ("disclosure 3")*
3. *Did the Claimant make the disclosures of information?*
4. *If so, did the Claimant have a reasonable belief that each disclosure of information were made in the public interest?*
5. *If so, did the Claimant disclose information that in her belief showed or tended to show the following and if so, objectively was that belief reasonably held?*
- a. *That the Respondent had failed or was failing to comply with legal obligations to which it was subject.*
6. *If the Tribunal conclude a projected disclosure(s) were made, was the Claimant subjected to the following detriments by the Respondent because she made such disclosures;*
- a. *Revealing to Ben Odofoin the identity of the Claimant as the complainant regarding the alleged disclosures in paragraphs 2(i) and 2(ii) above. ("detriment 1")*
  - b. *On 23 November 2016 Ben Odofoin becoming abusive to the claimant during a meeting with Ola Alalade. ("detriment 2")*
  - c. *On 23 November, at the same meeting with Ola Alalade, Ben Odofoin and the Claimant, Ola Alalade failing to stop Ben Odofoin verbally abusing the Claimant and insisting that the claimant stay in the meeting; ("detriment 3")*
  - d. *Failing to respond to the Claimant's request for annual leave in a timely manner. These requests were made by the Claimant to Ola Alalade orally on or around 15 January 2017 and in an email to Ola Alalade on 17 January 2017; ("detriment 4")*
  - e. *On 28 November 2016, Ola Alalade raising her palms of her hands and rolling her eyes at the Claimant in an expression of disbelief or disapproval; ("detriment 5")*
  - f. *On 15 January 2017, Ola Alalade telling the Claimant that if she had been stronger and returned to work sooner she would not have been deprived of wages. ("detriment 6")*
  - g. *The Respondents delays in dealing with the Claimant's grievance dated 24 November 2016. ("detriment 7")*
7. *Are any of the alleged Respondent's acts or omissions established to have occurred out of time? If so, are the acts or omissions part of a series of acts and if so is the last in the series in time? If no, is the Tribunal satisfied that it was not reasonably practicable for the claim to have been presented within the time limit?*

2. I heard from the Claimant on her own behalf, and for the Respondent from Ms Ola Alalade (Senior Supervisor Solicitor), Mr Peter Okali (Director) and Ms Clare Paget (Trustee).
3. I had before me an agreed bundle of documents numbered to 248 and written statements for all witnesses.
4. The evidence and submissions were heard over two days with the Tribunal meeting in chambers on the third day.

### **The law as relevant to the issues**

#### **5. Employment Rights Act 1996**

**i) 43A Meaning of 'protected disclosure'**

In this Act a 'protected disclosure' means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any sections 43C to 43H.

**ii) 43B Disclosures qualifying for protection**

(1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the following –

(a) .....

(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation

(c) .....

6. If there were one or more protected disclosures then the Tribunal will consider the claims of having suffered detriments.

#### **47B Protected disclosures**

- a. A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.

7. The enquiry of the Tribunal will therefore initially be whether there was in fact any detriment, and then whether that detriment was 'on the ground' of a protected disclosure having been made. Section 48 provides so far as is relevant:

#### **48 Complaints to employment tribunals**

(1) – (1ZA) . . . .

(1A) A worker may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of section 47B.

(1B) . . .

(2) On such a complaint it is for the employer to show the ground on which any act, or deliberate failure to act, was done.

8. In coming to its conclusions, the Tribunal focused on the issues as set out above. During the hearing evidence was given about other matters. The Tribunal has confined its findings of facts to those facts that are relevant to the issues and necessary to explain its decision. All evidence has been heard and considered even if not set out below.

## **Background**

9. The Respondent is a small charity with approximately 16 employees. It shares office space with Plumstead Community Law Centre (PCLC). The Claimant was employed by the Respondent from January 2007, first on a locum contract and then on a permanent contract as a housing advisor and caseworker. She worked 3 days per week.
10. The Respondent's main source of funding is from the Legal Aid Agency and from a service level agreement with the local authority. As part of those agreements there is a Specialist Quality Mark (SQM) which required the Respondent to meet certain standards including client care, confidentiality, data protection and so on.
11. The key personnel involved in the issues this claim raises are:
  - a. Ola Alalade who is a Senior Supervisor Solicitor. She has responsibility for the supervision of the advisors and the organisation in general and was the Claimant's overall manager at all material times. She joined the Respondent in 2010.
  - b. Peter Okali joined as a Director of the charity on 1 February 2017. He dealt with the Claimant's grievance.
  - c. Clare Paget is a volunteer Trustee and heard the grievance appeal.
  - d. Tracey Trotman was the Claimant's direct line manager. She left in the beginning of October 2016 and did not give evidence or provide a statement.
12. Around May 2016 a volunteer was recruited to help with giving housing advice to clients over the telephone and face to face during drop in advice sessions. He will be referred to as B. Ms Trotman gave him his induction and training. The Claimant's witness statement says that she found him poor at accepting directions from the start and she asked him to observe and not take any part in Client interviews. She said she had to report to Ms Trotman from the start of B's employment, issues relating to the advice he was giving. She referred to a letter she saw on B's desk about a personal issue and was concerned about what she saw as a very aggressive tone he was taking.

## **The disclosures**

13. The Tribunal considered each of the matters identified as protected disclosure in the list of issues in turn.
14. **Disclosure 1** - This resulted from a client interview conducted by B which the Claimant supervised. The interview did not go well and resulted with the client walking out. The Respondent has a process to record client dissatisfaction called a verbal record of dissatisfaction ("VED"). This could be completed by the client themselves or if the client could not complete it by an employee. Here, as the client walked out the Claimant wrote up a VED on their behalf setting out what she had observed of the Bs advice and behaviour.
15. In her witness statement the Claimant says that she reported the VED to Ms Trotman because of her own performance issues: "*As my own failure to stop the interview sooner was an issue I needed to report this to Tracey as my supervisor*" (paragraph 6). The Tribunal needed to know what the Claimant told Ms Trotman and in cross examination the Claimant said went to Ms Trotman and told her that the interview she had supervised with B had gone very badly, that he talked over the client, did not listen and tried to stop her retrieving documents. Ms Trotman asked her to write something setting out B's performance issues, so she could deal with B.
16. The Tribunal finds that the Claimant held a reasonable belief (even if that belief was wrong) that the SQM set out legal obligations. However, the Tribunal find that the purpose of reporting this to Ms Trotman, on the Claimant's own evidence, was in relation to her performance and that of B. The actual VED is no longer available, so the Tribunal does not know what it said. Therefore, the Tribunal must rely on what the Claimant said she told Ms Trotman as Ms Trotman was not a witness.
17. Having considered what the Claimant said in evidence, the Tribunal finds that there was nothing to alert the Respondent that the Claimant was disclosing information that tended to show a breach of a legal obligation. There was no suggestion that the Claimant made any reference to the SQM in her discussion with Ms Trotman and the information she provided was produced to reveal her own performance issues and those of B. Therefore, the Tribunal's conclusion is that this is not qualifying disclosure which attracts the protection of the legislation.
18. **Disclosure 2:** The Respondent shares office space with PCLC and shares resources such as printers and photocopiers. The Tribunal heard evidence that on occasion a document from one organisation is printed between documents from the other. Both organisations have documents which contain sensitive personal information. This disclosure relates to an incident when the Claimant saw a client who gave her a document which was a PCLC document, saying that B had given it to her at a previous visit to the Respondent with other papers. The Claimant took this document and went to see the Manager of PCLC who was in the same room as Ms Alalade to say what happened and ask what to do with the document. The Claimant's case is she also told Mr Alalade it. Ms Alalade says she was not told and was unaware of it.

19. The Respondent's position is that the data controller for this document was PCLC and not them. However, the Tribunal find that the Claimant held a reasonable belief that the Respondent was in breach of the Data Protection Act even if it was not. On 1 August 2016 the Claimant sent an email to Ms Trotman asking if she had raised the issue, she mentioned the previous week with B. This would tend to show that she told Ms Trotman not Ms Alalade. The email says *"Did you raise the issue with [B] about inadvertently giving out a page of PCLC's PIP appeal with our confirmation of advice last week. I mentioned to him today that our copier has the habit of inserting printed documents in the middle of photocopying when I was looking for a document I'd sent to print. I asked if he'd been told about the PCLC document being given to our client and he said nobody had said anything to him about it, well they have now as I've told him !!"*
20. The Tribunal finds that this disclosure is a qualifying disclosure. It gives information about the document being given to a client, and the circumstances. The Tribunal is satisfied the Claimant had a reasonable belief that there was a breach of the Data Protection Act. However, given Mr Alalade's evidence that she was not told and did not know about this until the Claimant's claim form, and looking at the email at page 64 set out above, the Tribunal finds on balance that the Claimant did not make the disclosure to Ms Alalade.
21. **Disclosure 3** - The parties both agree that there was an issue with confidential documents not being shredded. This related to records of advice given to clients and court lists (which the Claimant did not realise should be shredded). There was conflicting evidence about who raised this issue, with the Claimant saying she disclosed it to Ms Alalade and Ms Alalade saying she was the one who raised it. The Tribunal heard evidence from Ms Alalade that she inspected the bins nightly as there had been an infestation of mice and she wanted to ensure there was no food left in the bins overnight and this is when she saw the confidential documents in the bin. The Claimant says she went to Ms Alalade about the advice information she found, and that later Ms Alalade found the court lists. The Tribunal has been unable to reconcile these two versions and decide who is correct. However, considering its findings below it has not found it necessary to come to a firm conclusion on who raised this issue.
22. In determining the findings below the Tribunal took the Claimant's claim that she did disclose this at face value and first considered if there was a causal link between the detriments in the list of issues and this disclosure. It found there was none, and therefore did not revisit this disclosure to make a final determination of who said what to who.

## The detriments

23. The Tribunal first considered whether the incidents occurred, if they did whether they amounted to a detriment and if they amounted to a detriment whether there was a causal link to the disclosures found to be protected.
24. **Detriment 1** – The detriment relied on is that the Respondent revealed to B the identity of the Claimant as the complainant regarding the alleged disclosures in paragraphs 2(i) and 2(ii) of the list of issues. The Tribunal has found that the disclosure at paragraph 2(i) was not a protected disclosure and has therefore not considered matters relating to this further. The Tribunal has found that the Claimant told B about the document referred to in paragraph 2(ii) of the list of issues so does not find that this detriment is made out by the Claimant.
25. **Detriments 2 and 3** – These detriments are taken together as they relate to the same meeting on 23 November 2016. The Respondent agrees that B acted in a dreadful manner.
26. By way of background to this detriment, the Claimant had a supervision review with B on 22 November 2016 in the evening. The Claimant says B became abusive to her in this meeting and she therefore went to Ms Alalade the next day to ask for her assistance. Ms Alalade agreed to come to meet them both with the expectation that matters could be resolved informally. Ms Alalade was unaware of any tensions between the Claimant and B before this date despite the difficulties being long standing. Ms Alalade was not therefore able to anticipate that the meeting would be anything more than a discussion to sort matters out.
27. When she went into the meeting, B immediately became very abusive and raised his voice calling the Claimant many offensive names. Although the Tribunal accepts that it is a detriment to be subjected to this type of behaviour, this was not behaviour done by the Respondent, and was not behaviour that it could have anticipated given that the Claimant had kept quiet about the problems she was having with B even when she went to Ms Alalade to ask for help. There was nothing the Respondent could have done to prevent this happening.
28. The Claimant says the meeting carried on in this vein for 2 hours, with Ms Alalade shouting over B and the whole office being able to hear what was happening. Ms Alalade says the meeting was short because of the behaviour of B lasting no more than 20 minutes. The Tribunal finds that Ms Alalade did tell B to stop and that his behaviour was unacceptable and finds on balance that the meeting was relatively short lasting about 20 minutes.
29. There was no supporting evidence on the Claimant's behalf even though many people in the office heard the shouting from the room and could therefore have confirmed how long it lasted. Ms Alalade said that she wanted to bring the meeting to a close and asked B to put his grievances in writing. The Claimant agreed with this course of action. Ms Alalade was not challenged when being cross examined when she said she did tell him

to stop his behaviour and that she had to raise her voice to get heard as B had raised his voice. The evidence from the Claimant and from the Respondent was conflicting. The Claimant also says that she did not know what B's issues were following that meeting until he put them in writing. This would indicate a shorter meeting than the Claimant says.

30. On balance, the Tribunal find that it is more likely that Ms Alalade told B to stop when he started shouting at the start of this meeting. It is likely that it took some minutes for him to stop. Everyone accepts his language and the name calling towards the Claimant was totally unacceptable.
31. The second part of this detriment is whether Ms Alalade insisted the Claimant stayed in the meeting. The Claimant said that she initially wanted to stay to hear what B had to say. At one point B mentioned problems with his sight and possible issues relating to equality. Her evidence is he did not want to talk about them with her present, so she stood to leave. Ms Alalade's evidence is that he did not want to talk about that issue at all.
32. In her claim form the Claimant said that: *"my supervising solicitor took hold of my arm and pulled me back to my seat and indicated I needed to stay"*. In her witness statement (paragraph 19) she wrote *"Ola took my arm and pulled me back down towards my seat saying "no, no sit, stay"*. In cross examination the Claimant said: (taken from the Judge's notes of evidence) *"she had hold of my right arm, I went to move, the more I moved the tighter she gripped"*. At page 100 (part of the Claimant's grievance of 24 November 2016) the Claimant wrote: *"for my part I should have just got up and left the room but I felt that I hadn't heard what I had said or done to cause Ben to say such insulting things to me and although I was upset, hurt and offended I wanted to hear the allegations he was making..... When Ben started to say he hadn't wanted to raise his sight and her health problems with anybody at GHR before and didn't want to go into detail with Ola in my presence I immediately started to stand to leave the room and said I'd facilitate that by removing myself. Ola took hold of my arm to indicate that I should stay... and wanted a witness to the conversation"*.
33. Ms Alalade's evidence was that she did not hold the Claimant's arm and it is not something she would do. The Tribunal find the evidence difficult to reconcile. The Claimant's description of what happened has become more graphic each time she has told it. Her first description, written very soon after the event is mild. Given the proximity to the meeting itself the Tribunal find this to be the more accurate version.
34. If Ms Alalade did indicate that the Claimant should stay by touching her arm this does not mean that the Claimant was forced to stay or that there was any insistence by Ms Alalade apart from touching her arm. If it did happen as the Claimant now says, the Tribunal accepts this would be a detriment if the Claimant had wanted to leave the meeting. Whichever version of events occurred however, the Tribunal does not find there is any causal link between the disclosure found to be protected and this detriment.
35. It is highly unlikely that Ms Alalade had her mind the disclosures. For the reasons stated above the Tribunal does not find that Ms Alalade knew of the issue relating to the PLC document and even had the Claimant informed her about the shredding this was some months before and the Tribunal finds this was not in Ms Alalade's mind. She says it was not and the Tribunal has



no reason to doubt her evidence in this respect. Ms Alalade was simply reacting to a situation sprung upon her. This part of the Claimant's claim is therefore not made out.

36. **Detriment 4** – This relates to the failure to respond to the Claimant's requests for annual leave in a timely manner. The Respondent accepts that the Claimant's request was not dealt with promptly but says that this was not just for the Claimant and it received other complaints about the same issue at this time. Ms Alalade said she was extremely busy at that time, with a shortage of management staff, three new paralegals to settle in and that she had to cross reference rotas and other requests to ensure that advice sessions and court hearings were covered. The Tribunal finds that there was a detriment to the Claimant, but this was not because of any protected disclosure she had made. It was the same for other staff who had not made protected disclosures and the Tribunal accept the reasons given by Ms Alalade for the delay in dealing with the Claimant's request for annual leave.
37. **Detriment 5** - The context of this alleged detriment is that on 28 November 2016 Claimant returned to work after the incident on 23 November 2016 and went into the library (where the meeting on 23 November had taken place) which reminded her of that meeting resulting in the Claimant becoming very upset. Ms Tracey Wilkinson-Hoy was comforting the Claimant. The Claimant was due to supervise an advice session and clients had arrived and were waiting. Ms Alalade went into the room to find out why the Claimant was not at the advice session as clients were waiting. She saw that the Claimant crying, and Wilkinson-Hoy comforting her. The Claimant says she saw Ms Alalade roll her eyes and raised her palms in what she interpreted as disbelief or disapproval. Ms Alalade denies doing this and says that she was concerned for the Claimant. The Claimant told her that she was not thinking straight at the time as she was very upset. Both the Claimant and Ms Alalade agree that Ms Wilkinson-Hoy asked Ms Alalade to get the Claimant a glass of water. Ms Alalade says she went straight out to get it and when she returned the Claimant was shaking so much, she tried to help her drink her water.
38. The Claimant's evidence is that Ms Wilkinson-Hoy asked Ms Alalade to get the water to get her out of the room. Ms Wilkinson-Hoy did not give evidence to the Tribunal (even though she accompanied the Claimant on day two).
39. On balance the Tribunal finds Ms Alalade did not gesture as the Claimant says and, if she did make a gesture, the Claimant misinterpreted it. The Tribunal bears in mind that Ms Alalade entered the room to ask why the Claimant was not at the advice session and was confronted with the Claimant in tears and find it possible that any gesture made was a gesture of surprise. Any manager would be surprised to find an employee so upset. Given that the Claimant's in her witness statement (paragraph 28) says she was crying and not thinking straight at that time, the Tribunal on balance prefer the evidence of Ms Alalade. Therefore, there is no detriment.

40. Even if the Tribunal had accepted the Claimant's allegation, there is right nothing to suggest a link with the disclosures for the same reasons as set out in the previous detriment conclusions.
41. **Detriment 6** – Ms Alalade denies this allegation. The Tribunal notes that this was not raised as part of a grievance and that the Respondent sorted out the Claimant's pay (which related to a previous period of sick leave). The Claimant had not had any pay deducted for her last period of sick leave. The Tribunal find the evidence to be difficult to reconcile but even if this detriment occurred as the Claimant says it did, the Tribunal cannot find a causal link between the detriment and the disclosures it has found to be protected for the reasons already stated.
42. **Detriment 7** – The Respondent accepts that there were delays in dealing with the Claimant's grievance. Failure to deal with a grievance promptly is clearly a detriment. The question is whether the reason was because of the protected disclosures. The Tribunal looked to the reason for the delay.
43. When the grievance was raised, Mr Okali was not in post. Vanessa was given job of investigating and there is no suggestion that she was aware of the disclosures. The evidence is that she was inexperienced in dealing with grievances. The Claimant sent three different versions of her grievance. The first was sent to Ms Alalade. The Claimant then realised she was a witness so sent a different version to Siraj Chaudry, Chair of trustees (who appointed Vanessa to investigate). There was a further amended grievance sent on 29 November 2016.
44. B also put in a grievance against the Claimant just before Christmas and initially it was decided to deal with them together as there was a lot of cross over in the issues. Vanessa started the investigation but did not complete it.
45. Mr Okali started working for the Respondent on 1 February 2017. By the end of February, he realised that the Claimant's grievance had not been dealt with, so he took it on himself to investigate and hear it. Mr Okali explained that Vanessa had not progressed the grievance because of her work load and inexperience. He described the Respondent as being chaotic when he joined and said that he had a lot of work to do to redress this.
46. On 3 March Mr Okali interviewed Vanessa and Ms Alalade. At that time, he agreed he would write to B but then changed his mind as had not heard from B since November and did not want to contact him for him to open up a grievance. The Claimant asked for an outcome on 14 March and on 16 March 2017 Mr Okali said he was not able to finalise grievance then. Further delays were explained by Mr Okali who said he had to clear time in his diary to write the outcome letter and it was difficult to find that time. He had clearly worked hard on her grievance as shown by the table of evidence and conclusions which was in the bundle. He did however keep the Claimant up to date and assured her she would be paid what was due and that no disciplinary matters would be brought against her relating to anything that B had said. Mr Okali was aware of the disclosures, but the

Tribunal does not find there to be a causal link between them and the delay in finalising the grievance. The Tribunal accepts Mr Okali's explanations.

47. Even had the Tribunal accepted that all the disclosures were qualifying disclosures and even had the Tribunal found all the detriment had occurred, the Claimant's claim would still have failed as the Tribunal can not see any causal link between these disclosures and the detriments. The Respondent has provided an adequate explanation.

48. In all the circumstances the Claimant's claims are dismissed.

Employment Judge Anne Martin

Date 10 December 2018