



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms M Henry

**Respondents:** Lancashire County Council

**HELD AT:** Manchester

**ON:** 1 and 2 October 2019

**BEFORE:** Employment Judge Hoey  
Ms Atkinson  
Ms Hillon

## REPRESENTATION:

**Claimant:** In person  
**Respondent:** Mr Jones (counsel)

**JUDGMENT** having been sent to the parties on 17 October 2019 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided.

## REASONS

1. This was a claim for detriment by reason of whistleblowing which had been raised by the claimant in a claim form presented to the Employment Tribunal on 7 January 2019. The respondent disputed the claim.
2. The case had been subject to case management at a Preliminary Hearing on 9 July 2019 at which the issues for determination by the Tribunal had been identified and a note issued. The final hearing was also fixed.
3. At the final hearing the claimant represented herself and the respondent was represented by counsel. The parties had worked together to agree a joint bundle of 143 pages and witness statements had been produced in respect of the claimant and the respondent's witness.
4. I began the hearing by discussing the overriding objective as set out in schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. I mentioned the need to ensure that the

approach taken during the hearing was fair and just and that the parties worked together to achieve the overriding objective.

5. I explained to the claimant the rules that apply in relation to the hearing of evidence, and in particular, how the Tribunal can only deal with the matters which is raised before it. It was important to ensure appropriate questions were put to the relevant witnesses and documents referred to. The parties worked together.
6. Counsel for the respondent assisted the Tribunal in achieving the overriding objective and in working with the claimant to ensure that matters were dealt with fairly and justly.
7. This decision is a unanimous decision of the Tribunal and provides the written reasons following the oral judgment that was issued upon conclusion of the hearing.

### **Preliminary matters**

8. At the outset of the Hearing applications were made by the claimant and oral reasons were given in response to each application.
9. Firstly, the claimant sought leave to expand upon the issues which were set out at the Case Management Preliminary Hearing, namely to include a third disclosure and a second detriment. These points had not been raised before but having heard the parties and the Tribunal having taken time to deliberate the Tribunal decided that it was in the interests of justice to allow the claimant to extend the issues to be determined by relying upon a third disclosure and a second detriment (both as set out below).
10. Secondly, the claimant applied for a witness order in respect of an individual who was present at a meeting to which reference was to be made. Following consideration of the application, the Tribunal refused the application. In particular the Tribunal was concerned that the granting of the application had been made at such a late stage in the proceedings (the start of the Hearing) and the claimant had known for over two weeks of the ability to apply for a witness order. It was not clear whether the individual was able to attend the Hearing. No steps had been taken to ascertain this.
11. Granting the application for the witness order would delay the Hearing and its conclusion (which would inevitably have delayed matters for a considerable period of time). The Tribunal took into account that it was able to hear evidence about what happened at the meeting in question without the attendance of the new witness since both the claimant and the respondent's witness who was present would give evidence. The Tribunal would therefore be able to make findings of fact in relation to what happened.
12. The Tribunal applied the overriding objective and balanced the impact upon the parties. The parties were ready to proceed and 2 days had been fixed. It was not in the interests of justice to delay matters, particularly given the

Tribunal would hear evidence from those present at the meeting in question. The claimant's application was therefore refused and the Hearing proceeded.

## Issues

13. The Tribunal was able to clarify and agree with the parties as to the issues arising in this case which required to be determined by the Employment Tribunal following the granting of the claimant's application to extend the issues. The issues are:
  - a. Firstly, the Tribunal required to determine whether or not three specific disclosures set out by the claimant amounted to qualifying and protected disclosures in terms of the Employment Rights Act 1996. These disclosures are:
    - i. On or around mid August 2018 it is alleged that the claimant verbally told Rose Howley (within the respondent) about dangerous practices in social work department, including child assessments being deleted and amended, which the claimant says fails to comply with a legal obligation (namely a statutory obligation), creates a risk to health and safety (children under the respondent's care/control/supervision)
    - ii. On 28 August 2018 it is alleged that the claimant wrote to Rose Howley (within the respondent) (copying the email to the HR department) about dangerous practices in social work department, including child assessments being deleted and amended, which the claimant says fails to comply with a legal obligation (namely a statutory obligation), creates a risk to health and safety (children under the respondent's care/control/supervision)
    - iii. On 19 September 2019 the claimant maintains she repeated to Rose Howley verbally the disclosures made on 28 August 2018
  - b. Secondly, the Tribunal required to determine whether detriments had occurred. The detriments relied upon by the claimant were:
    - i. The ending of her engagement by the respondent on 26 September 2018.
    - ii. The decision by the respondent not to take her application for permanent employment forward.
  - c. The third issue was whether or not the protected disclosure or disclosures materially influenced the detriments alleged (in the sense of being more than a trivial influence).
14. The respondent conceded that the claimant was a worker for the purposes of the Employment Rights Act 1996.

15. It was agreed between the parties that remedy would be dealt with separately in the event the Tribunal found for the claimant.

## Facts

16. The Tribunal heard evidence from the claimant and from Ms Howley, the claimant's line manager and is able to make the following findings of fact which are based on the balance of probabilities which is that it is more likely than not that the facts took place. The Tribunal makes these findings and reaches its judgment on a unanimous basis. The findings are made only from the information to which the Tribunal's attention was directed, both in terms of the oral evidence and on the basis of the paperwork within the agreed bundle to which the Tribunal's attention was directed. The Tribunal only makes the following findings based on the issues it needs to determine rather than more generally in relation to the evidence it heard.
17. The respondent is a county council which provides social work services for the area for which it is responsible.
18. The claimant was employed as a Locum Social Worker to provide services to the respondent. She was engaged from 14 May 2018 until 26 September 2018.
19. When the claimant was recruited by the respondent she was advised that her appointment would be of a short-term duration due to changes that had been agreed by the respondent's cabinet (the controlling body within the respondent).
20. In or around 2018 the respondent had been inspected by OFSTED which led to a number of recommendations, one of which included the making of permanent appointments within the Multi Agency Safeguarding Hub (MASH) team, which was the team in which the claimant worked.
21. The respondent took the decision to make the Locum Social Worker posts within that team permanent in light of the regulator's recommendations. The Locum Social Workers affected, which included the claimant, were advised that their arrangements would be terminated in due course and that following a recruitment process, each of the positions including the position carried out by the claimant would be replaced by a permanent full-time replacement.
22. The respondent's position was that each of the vacancies would be on a full time permanent basis.
23. As each post was filled, the relevant locums who carried out the roles that were filled, including the claimant, were given notice that their engagement would cease. Their positions were thereafter carried out by a permanent full-time members of staff that had been recruited.

24. The claimant began working for the respondent on a full-time basis on 14 May 2018. She was told that her position was short term dependent upon the said recruitment process.
25. The claimant's line manager was Mrs McLean and her senior manager was Ms Howley.

### Disclosures

26. In relation to the **first disclosure**, the claimant met with Miss Howley on or around mid-August 2018. Neither party was able to be precise as to when the meeting took place. The date is not material. The Tribunal is satisfied that a discussion took place between both the claimant and Miss Howley in August 2018.
27. The claimant advised Miss Howley that she believed her line manager had deleted some work from a record the claimant had completed. No other detail or information was provided by the claimant at this meeting in relation to that matter.
28. Miss Howley's response was that if that had happened that would be a serious matter which would require to be investigated, but the claimant required to provide more details. That was the entire extent of the discussion.
29. In relation to the **second disclosure**, the claimant sent an email on 28 August 2018 to Miss Howley. This is found at page 94 of the bundle. That email says:-

"Dear Rose

Following an earlier discussion, I am raising a formal complaint that I wish you to address in relation to the behaviour that I have experienced from Michelle McLean. During my short time here I have experienced:

- Psychological Abuse;
- Verbal Abuse;
- Misrepresentation;
- My work being corrupted and deleted in parts and feeling unsafe within my practice as a Social Worker.

The complaint is one of harassment and bullying as set down in the Local Authority's guidelines which say in part may include verbal or physical abuse, display of offensive materials or negative treatment of a person ...

I would like this matter investigated formally in line with the borough's procedure and code of conduct as laid out by the GSCC/HPCP guidelines with the allocated personnel officer dedicated to children's social care.

Kind Regards"

30. This was the only response the claimant provided in respect of Miss Howley's earlier request for further information about the issue the claimant had raised. Miss Howley responded by asking the claimant at page 93 for more information. Two minutes later the claimant stated that she would provide details but did not do so. The claimant provided no further information.
31. In connection with the **third disclosure**, on 19 September 2018 the claimant met with Miss Howley and Miss Pike. Before this meeting took place the respondent had taken the decision to end the claimant's engagement as a Locum Social Worker as the respondent had recruited a permanent replacement for that role.
32. At the meeting on 19 September 2018 the claimant was told by Miss Howley that her engagement was ending due to the respondent having recruited an individual on a permanent contract for the role the claimant was carrying out. Miss Howley also told the claimant that a complaint had been lodged about her by the Modern Slavery Unit, a division of the Police, but that the complaint against her was not upheld.
33. No further information or detail was provided by the claimant about the disclosure further to the information that had already been provided by the claimant to the respondent under the headings of the first and second disclosure above.

### **Staffing**

34. At this time, the staffing position within the respondent's organisation and in particular in the relevant team in which the claimant was employed was fluid. The respondent required on occasion to rely on locum cover but on a diminishing basis. The claimant's engagement ended because the respondent had secured an individual on a permanent contract to carry out the role to which the claimant was assigned.
35. The information disclosed by the claimant to Miss Howley (in terms of the disclosures relied upon) had no connection whatsoever to the ending of her engagement. It was not a reason for (nor connected to) the ending of her engagement.

### **Part time working**

36. In connection with the recruitment process, the respondent had decided that each of the roles being carried out had to be carried out on a permanent full-time basis. The claimant applied for that role.

37. In the application form completed by the claimant, she makes no reference to the pattern of work to be carried out. The application form that was carried out was dated 11 September 2018.
38. The claimant had made it clear to the team, including her managers, that she wanted to work part time. This was well known throughout the team, including by the relevant managers involved in the recruitment process.

**Reason for not taking the application forward**

39. The claimant's application for the permanent position was not progressed.
40. The reason why the claimant's application was not progressed was because the respondent understood that the claimant wished to work part time.
41. As the respondent was unable to identify a suitable job share partner and as the role required full time cover, the respondent did not take her application forward.
42. The respondent had erred by not realising that the claimant was prepared to work full time. This was overlooked by the respondent.
43. The reason why the claimant's application did not progress was entirely unconnected with any disclosure the claimant made to Miss Howley.

**The law**

44. In terms of section 47B of the Employment Rights Act 1996 an individual has the right not to be subjected to any detriment by any act or deliberate failure to act by his employer done on the grounds that the worker has made a protected disclosure.
45. A protected disclosure is a qualifying disclosure made by a worker in accordance with sections 43(c) to (h) of the Employment Rights Act 1996. A qualifying disclosure is defined by section 43 as any disclosure of information which in the reasonable belief of the worker is made in the public interest and tends to show:-
  - (a) A criminal offence has been committed;
  - (b) A person is failing to comply with the legal obligation to which it is subject;
  - (c) A miscarriage of justice has occurred;
  - (d) The health and safety of any individual has been endangered;
  - (e) The environment has been damaged; or

(f) Information falls within the preceding paragraphs has been or is likely to be deliberately concealed.

46. In the present case the claimant clarified that the only basis upon which she relies is in connection with section 43(b) namely that the respondent has failed to comply with a legal obligation. In this regard the claimant's position was that there was a breach of child protection law.
47. In relation to the legal position in connection with disclosure of information the legal position was set out by Sales LJ in **Kilraine v Wandsworth** [2018] EWCA Civ 1436. He noted that the question in each case is whether or not a statement or disclosure is a disclosure of information which in the reasonable belief of the worker tends to show the relevant matters as set out above. In order for a statement or disclosure to be a qualifying disclosure it has to have "a sufficient factual content and specificity such as is capable of tending to show one of the matters set out".
48. He continued to say that whether an identified statement or disclosure in any particular case meets that standard is a matter for the evaluative judgment by a Tribunal in light of all the facts. If the worker subjectively believes the information does show one of the matters and makes a sufficient factual content and specificity such as is capable of tending to show that, it is likely that the belief will be reasonable.
49. The claimant also requires to show that the disclosure was in her reasonable belief made in the public interest.
50. Finally, section 48(2) of the Employment Rights Act 1996 states that it is for the employer to show the ground on which any act (or failure to act) was done (see **Fecitt v University of Manchester** [2011] IRLR 111). The test is whether or not the protected disclosure materially influences the treatment in question in a more than a minor or trivial way.

## Submissions

### Submissions for respondent

51. The respondent argued that the information that was communicated did not amount to a relevant disclosure. The claimant did not satisfy the evidential burden of showing what was said met the legal tests.
52. The information communicated by the claimant in respect of the first and second disclosures was scarce. There were no facts that tend to show breach of any legal obligation.
53. There was no reasonable belief that the public interest was engaged. This was a private dispute.



54. The respondent argued that even if there was a disclosure, there was no evidence that any such disclosure had any influence on the detriments alleged.
55. The claimant's engagement ended because of the restructure and engagement of an employee.
56. The failure to progress the claimant's application was because the claimant wanted to work part time. That may have been an error but there is no evidence to make any causal link between any disclosures and the decision.
57. The respondent argued that the claims should be dismissed.

### **Submissions for claimant**

58. The claimant argued that she suffered a detriment, the losing of her role. She believed this had happened to others.
59. The claimant argued that she had referred to changing the outcome of an assessment and that she was fearful of the position which was why she wanted to move teams.
60. The claimant wanted a formal investigation.
61. The claimant believed there was a culture of dismissing those who "speak up" and that she had suffered as a result.
62. The claimant referred to the baby P case and of the need to speak up. She submitted she had raised concerns and these ought to have been progressed.

### **Decision and reasons**

63. This is a unanimous decision of the Tribunal and follows the Tribunal carefully considering the evidence which was presented before it over and the detailed submissions provided by the claimant and the respondent.

### **Disclosures**

64. The first issue the Tribunal requires to determine is whether the first disclosure falls within the protection set out under the Employment Rights Act 1996.
65. The **first disclosure** was the meeting held in the course of August 2018 at a date that was unknown. The claimant's position (which the Tribunal accepted) was that she said her manager had deleted some work from a record that she had completed. The claimant alleges that this relates to the failure to comply with child protection law.

66. The Tribunal requires to apply the statutory test, namely that there was sufficient factual content for the disclosure to be capable of tending to show a breach of a legal obligation. Having considered this matter very carefully the Tribunal finds that the detail provided by the claimant in the course of that disclosure was not a disclosure of information which tended to show a breach of the legal obligation in connection with child welfare.
67. The information that was disclosed by the claimant during that disclosure was a statement that her work had been deleted. That was it. No detail was given by the claimant in the course of the discussion as to what specifically had been deleted, nor in what way any deletion of her work related to child protection law. The only information that was disclosed was that her manager had deleted some of her work. The information that the claimant alleged she communicated (as set out in the issues section above) was not given to the respondent who were not aware of it.
68. We carefully considered the claimant's submissions and the respondent's submissions in this matter and prefer the respondent's submissions which set out at length why in the circumstances there was no disclosure of information.
69. We also carefully considered the context in which that information was provided and found that that gave no further information as to the connection between the information provided and the alleged breach of the legal position. We find that the disclosure in this situation was a vague allegation provided by the claimant in relation to her manager, there was no information to suggest reasonably there was a breach of any obligation. Instead this was a change in a record not linked in any way to the legal obligation alleged.
70. This was a generalised allegation by the claimant of inappropriate behaviour by her manager which we find lacked any specificity required under legal test. We therefore conclude that the first disclosure does not amount to a qualifying disclosure.
71. The **second disclosure** relied upon by the claimant was that set out at the fourth bullet point of the email sent by the claimant on 28 August 2018. The part of that email relied upon by the claimant is her stating that "my work was being corrupted and deleted in parts and I feel unsafe within my practice as a Social Worker". That was the only part of the email relied upon by the claimant as amounting to a protected qualifying disclosure.
72. The claimant argues that this relates to a failure to comply with general child protection law. We require to consider whether that email and that passage in particular provides information which tends to show a breach of child protection law. We considered the submissions of both parties very carefully and concluded that the respondent's submissions are to be preferred in relation to this disclosure.
73. The Tribunal finds that this email does not disclose information which tends to show a breach of the legal obligation in relation to child welfare. This written response was a repetition of the allegation that the claimant had made

previously and in response to the request to provide further information. It is important to consider the communication in context.

74. We find the information the claimant provided amounted to a vague allegation against her line manager, that her work had been changed in some way (and did not provide the information the claimant said she had communicated, as set out in the issues section above). The information did not specify or give any detail as to precisely what was changed or whether or not what was changed could in some sense amount to a breach of the legal obligation alleged.
75. The reference to being “unsafe” as a social worker related to the claimant’s personal position and her concerns as to her professionalism and the inappropriate behaviour she saw by her manager. There was a lack of detail provided by the claimant nor any suggestion that the changing of her record related to a breach of child protection law.
76. This was a complaint by the claimant about her line manager and in the circumstances, there was a lack of specificity capable of tending to show the relevant obligation had been breached.
77. We looked at the context in which this information was provided and found no assistance had been provided given the very clear and basic nature of the communication. The Tribunal concluded that this second disclosure did not amount to a qualifying disclosure.
78. In relation to the **third disclosure** relied upon by the claimant we find that no information had been provided regarding any breach of legal obligation. For the reasons set out above we find that there was no protected disclosure in relation to the meeting on 19 September 2018. The third disclosure relied upon by the claimant provided no more information or details to the respondent than the claimant had already communicated to the respondent in the first and second disclosures.
79. We took a step back to assess all of the information that the claimant had provided to the respondent from our findings of fact to determine whether or not the legal test relating to a protected disclosure was satisfied looking at the information on the round. We considered carefully the submissions by the parties and the evidence to which the Tribunal was directed and concluded that in none of the three alleged disclosures did the claimant provide the respondent with information that tends to show a breach of the legal obligation regarding child welfare had taken place (and not as set out in the issue section above).
80. The claimant had raised verbally and in her email a dispute with her manager and a generalised allegation that her work had been altered. No specific detail had been provided by the claimant as to what was altered and there was no suggestion by the claimant that what was altered in some way resulted in a breach of any legal obligation nor any specific legal obligation in connection with child care.

81. The detail provided by the claimant taken in context did not amount to information which suggested a breach of the legal obligation alleged. The information was fundamentally lacking in detail to convey information about any legal obligation being breached.
82. We took into account the fact that in the claimant's mind she was protecting her professionalism and her beliefs but the disclosures did not provide the necessary information to qualify.
83. In light of our conclusion that the information communicated by the claimant did not disclose the relevant information, and did not amount to a qualifying disclosure, it was not necessary to consider whether or not the claimant reasonably believed the disclosures to be in the public interest.
84. As the information communicated by the claimant did not satisfy the legal tests, her claim was not well founded.

### Causation

85. Even although the Tribunal has found unanimously that no protected or qualifying disclosures were made, we did, however, go on to consider whether or not the two detriments relied upon by the claimant were in some sense influenced in not a trivial or minor way by the alleged disclosures.
86. In relation to the **first detriment**, we considered the reason why the claimant's assignment was ended with the respondent. On this point the Tribunal unanimously finds that the clear evidence provided by Miss Howley was compelling and we accept it.
87. The reason why the claimant's engagement was terminated was in no sense whatsoever connected to any alleged disclosure the claimant made but was solely linked to the respondent's decision to recruit a permanent employee to carry out the claimant's work.
88. Any disclosure made by the claimant to the respondent was in no way connected to the ending of her assignment. The third disclosure relied upon by the claimant post-dated the respondent's decision to end her assignment and could not be connected with it.
89. In relation to the **second detriment**, the failure to consider the claimant's application, on this point we again found the clear evidence of Miss Howley to be compelling and accept it. The reason why the claimant's application for a permanent position had not been progressed by the respondent was due to the respondent's belief that the claimant's preference was only to work on a part time basis, even although that was mistaken.
90. We found that the claimant's desire to work part time was well known throughout the respondent's team and was known by the respondent's managers who were involved in the recruitment process. We find that there

was no connection between any alleged disclosure and the decision not to progress the claimant's application for permanent employment.

91. As the detriments relied upon were in no sense whatsoever connected with any of the disclosures (even if they were protected disclosures), the claim was not well founded.

### **Observations**

92. The Tribunal considers that the respondent ought to have clarified the position with the claimant given the claimant's desire to work full time and given she had previously worked full time. There was an error in the respondent's procedures.
93. The Tribunal also acknowledges that the claimant's professionalism and desire to protect those under her care which was never in doubt.

### **Summary**

94. The claimant's claims are dismissed.

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Employment Judge Hoey

Date: 28 January 2020

JUDGMENT AND REASONS SENT TO THE PARTIES ON

4 February 2020

OFFICE

FOR THE TRIBUNAL