



EMPLOYMENT TRIBUNALS

Claimant: Mr Bryan Hennedy

Respondent: Lancashire County Council

Heard at: Manchester **On:** 21, 22, 23 October 2020 and
2 November 2020

Before: Employment Judge Leach
Ms K Fulton (CVP)
Dr H Vahramian (CVP)

REPRESENTATION:

Claimant: In person
Respondent: Mr Ali of Counsel

JUDGMENT

The judgment of the Tribunal is that the claimant was not subjected to detriments, contrary to section 47B Employment Rights Act 1996, on the grounds that he made a protected disclosure to his employer. All his claims are dismissed.

REASONS

A. Introduction and Background

1. This case concerns the claimant's employment at a waste management facility at Middleton near Manchester (Middleton site).
2. The Middleton site was operated by a company called Neales Waste Management Limited ("Neales") until the operation transferred from Neales to Lancashire County Council in April 2018.
3. The Middleton site handles waste collected by refuse collection rounds in the city of Lancaster. The refuse collection vehicles (bin wagons) bring the waste onto the site where it is weighed on a weighbridge and then unloaded in a very large shed. Different types of waste are unloaded and stored separately for recycling purposes. Large lorries come onto the site to remove the waste either for recycling or for landfill or other purposes.

4. The claimant commenced employment at the Middleton site in April 2017. He was employed by Neales. His job title was yard person. We have seen his job description. In summary, the responsibilities were cleaning the site inside and outside, general labouring duties, picking up windblown litter on the site and in the area surrounding the site and “any other task as required by a superior/manager”.

5. On 19 October 2017 the claimant was asked by the Operational Manager responsible for this site and other sites (Graham Roberts) to clean the weighbridge at the site. The weighbridge was not functioning properly and a contractor engineer had been called out. The contractor noted that the areas underneath the weighbridge plates needed cleaning and Mr Roberts asked the claimant to do this.

6. The claimant alleges that he made protected disclosures on that day in connection with the weighbridge and what he was being asked to do. The claimant also alleges that he made other protected disclosures on that day as well as on three other occasions as detailed below. The claimant brings claims under section 47B of the Employment Rights Act 1996 as he claims to have been subjected to detriments on the ground that he made protected disclosures.

7. The parties provided a file of documents, paginated and indexed. References below to page numbers are to the page numbers of this file.

B. These Proceedings

8. This claim was due to be heard in November 2019. However, it was apparent to the respondent and the Tribunal on day one of that hearing that the claimant's case set out in the claim form and witness statements raised additional issues to those which had previously been identified at a preliminary hearing in May 2019. Prior to the November 2019 hearing the respondent had understood that there was only one protected disclosure being relied on, which was a disclosure that had been made on 16 November 2017 and which the respondent had admitted was a protected disclosure. At the November 2019 hearing, the Tribunal decided to allow the claimant to amend his claim to include additional protected disclosures and detriment allegations but then to adjourn the final hearing. A detailed note of the events of that hearing in November 2019 are in the Case Management Summary at pages 78C-H.

9. An amended List of Issues was agreed at the hearing in November 2019, which is repeated below.

10. At the hearing before us the claimant represented himself and attended with a number of witnesses. The respondent was represented by Mr Ali of Counsel. Two of the Employment Tribunal members attended the hearing by Cloud Video Platform (“CVP”), as did one of the witnesses (Mr Roberts).

11. The technology worked well. We thank everyone for their participation in the hearing and those attending in person, for their adherence to social distancing requirements.

12. At the beginning of this hearing, the parties confirmed that the issues to be dealt with were those identified at the hearing on 19 November 2019. They are set

out below. There are references in the issues to “Annex A” which formed part of Employment Judge McDonald’s note of the hearing of 19 November 2019. Annex A is attached to this Judgment.

C. The Issues

1. *The issues identified at the hearing between the parties which potentially fall to be determined by the Tribunal are as follows:*

- a. *Whether the claimant made the disclosures at 2(a) to (d) below and, if so, whether all or any of them are qualifying and protected disclosures in terms of section 43B of the Employment Rights Act 1996 (“ERA”)*
- b. *Whether or not the respondent (or its predecessor for whom it is liable) subjected to the claimant to each or any of the detriments set out below and whether what happened was a detriment as matter of law;*
- c. *Whether the detriments were on the ground that the claimant made protected disclosure or disclosures (as set out below); and*
- d. *What compensation should be awarded in respect of the foregoing.*
- e. *(if the respondent pursues its suggested application for costs): Should the claimant be ordered to pay to the Respondent costs occasioned by the adjournment of the final hearing of this case listed for 11-15 November 2019.*

2. *The disclosures the claimant relies on are:*

- a. *the Roberts conversation (see Annex A.1)*
- b. *the Nicholls conversation (see Annex A.2)*
- c. *the informal collective grievance (see Annex A.3)*
- d. *the George conversation (see Annex A.4)*
- e. *the lodging of the collective grievance on 16 November 2017.*

The respondent concedes that 2(e) is a qualifying and protected disclosure in terms of section 43B of the Employment Rights Act 1996.

3. *The alleged detriments the claimant relies upon are as follows:*

- a. *Mr Roberts changed the claimant’s working hours from 730am-230pm to 9am-5pm;*
- b. *Mr Roberts singled out the claimant to do various jobs on a daily basis that would ordinarily have been done on a monthly basis and by others not just the Claimant. These tasks comprised (1) power washing the sheds (which the Claimant was asked to do himself, rather than with others), (2) cleaning the outside of the buildings (using the scissor lift and otherwise), (3) working outdoors in bad weather over the winter months without proper personal protective equipment and (4) cleaning the weighbridge;*
- c. *Mr Roberts removed the claimant from his duties of driving the municipal sweeper (which the claimant had done for 9 months);*
- d. *The HR department (Ms George) breached the claimant’s confidentiality by revealing a discussion he had with Ms George (HR) to Mr Roberts;*
- e. *Senior management (Mr Stewart and Mr Crank) made allegations that the claimant was bullying Mr Roberts by being part of a group that collectively left a room when Mr Roberts arrived;*
- f. *Being threatened with dismissal (by Mr Nichols) for not signing paperwork that said there were risk assessments in place and that said training had been given in relation to the weighbridge (when in fact no assessments or training had been in or taken place);*
- g. *By Mr Roberts focussing site security cameras on the claimant while he was working to monitor and target him unfairly;*
- h. *By Mr Roberts asking the claimant to speed up loading times of wagons; and*
- i. *By Mr Roberts attending site on a very frequent basis to monitor staff and his making adverse remarks about the quality of the claimant’s work.*

D. Findings of Fact

The events of 19 October 2017

13. Mr Roberts attended at the Middleton site on this day because Mr Nicholls, the supervisor based at the Middleton Site, was going to be off site, attending a health and safety meeting. Also on that day, an engineer from the weighbridge maintenance contractors was scheduled to attend the site to fix the weighbridge which was not at that time operational.

14. The engineer attended and lifted some metal plates off the top of the weighbridge. He noted that the weighbridge was not clean and there was a build-up of debris underneath the plates.

15. Mr Roberts asked the claimant if he would clean the weighbridge and underneath the plates which had been removed. At this stage there is a dispute about what was said by the claimant. In his written statement Mr Roberts states as follows:

“He initially stated that this was not the responsibility of site staff but I informed him that site staff had done this previously, mentioning two names. It turns out I was innocently mistaken in the two names I gave, but as part of the grievance investigation a short statement was obtained from a former employee named Christian Whittaker who confirmed what I had told the claimant.”

16. When he gave evidence at the hearing Mr Roberts' recollection was that the claimant had simply agreed to get on with the task.

17. The claimant's evidence is also inconsistent. At the November 2019 hearing the claimant provided the information that he raised a number of issues in this discussion, listed at 2(a) to (f) under “Annex A1 – the Roberts conversation” (see Annex A attached).

18. The claimant's witness statement does not provide any detail of this conversation, but he does describe the events of 19 October 2017, in a note made by him shortly after then (at page 108). The information contained in that note (which we understand was written by the claimant as part of his grievance) includes the following:

“On 19/10/2017 I was outside working in the yard in Middleton when Mr Roberts the Site Manager called me over to the outweigh bridge. He pointed out the open chamber and said the service engineer thought the problem with the bridge was that it was full of dirt (this was later proved to be incorrect) and Mr Roberts wanted me to clean it out. I pointed out that my supervisor Darren Nicholls had already argued with the contractor that this was not our responsibility. I have never been instructed to clean it out whilst working for the company. I was informed by Mr Roberts that this was in fact our job and always had been the same as at Preston site. And Dave and Charlotte, the weighbridge staff, had cleaned it for years. So hearing this I then proceeded to shovel out the first chamber in the weighbridge.”

19. Later in the same note (page 108) the claimant refers to a short additional discussion with Mr Roberts as follows:

“Mr Roberts then returned and requested that I power wash the chamber after shovelling out all the dirt, which I did, then I returned to my yard duties only to be called back over to the weighbridge by Mr Roberts who said he now wanted all the weighbridge chambers cleaning. The contractor had by this time packed up and was leaving. I replaced the first chamber lid but trapped my hand doing so causing bruising to my left hand. I continued cleaning the other chambers as Mr Roberts left for the day.”

20. The claimant was questioned on this by Mr Ali. Having considered all of the evidence provided, we find as follows:

- (1) That Mr Roberts asked the claimant to clean the weighbridge.
- (2) The claimant queried whether it was in fact the job of site personnel to do that and Mr Roberts informed him that it was.
- (3) Mr Roberts provided the names of two individuals who he said had cleaned the weighbridge previously.
- (4) The claimant then got on with the job.

21. We also find that, as the claimant detailed in his grievance statement, he suffered an injury to his hand as he attempted to put metal plates back onto the weighbridge structure. His hand was badly bruised as a result.

22. A further relevant discussion took place later that day. This discussion was between the claimant and Darren Nicholls, the site supervisor (who had by then returned from his health and safety meeting). We find that Mr Nicholls expressed concerns to the claimant about him carrying out the task of cleaning the weighbridge. We find that it was Mr Nicholls who was raising concerns rather than the claimant. As the claimant noted in his evidence to us, he *“couldn’t get a word in edgeways”*. Mr Nicholls raised concerns about a lack of risk assessments and lack of training/agreed processes. Our finding is consistent with the evidence provided to us by Mr Nicholls and also by the claimant himself as well as the terms of the claimant's statement at page 108.

Informal collective grievance meeting on 7 November 2017

23. A meeting was arranged on this day as it was apparent that the employees at the Middleton site were unhappy. We have a note of the meeting which is at pages 111-112. Much of what was covered at the meeting is not relevant. What is relevant though is what is recorded under the claimant's name, which is as follows:

“BH (i.e. the claimant) cannot understand why he was asked to come off training one day and then told he could go back on it.

BH finds it quite stressful having to load so quickly especially as he has the paper and comingle to load which is lighter than green waste so takes more moves to load a vehicle.

GR told DN to get BH to traffic manage without explanation, and BH was not comfortable with this. BH stated that 'you needed to be qualified to do this' and BH isn't."

24. Although the claimant was employed as a yard person, it was not long after his employment started that he was given an opportunity to train up on the shovel loader. This is a large piece of machinery in use at the Middleton site. It is a piece of industrial plant equipment that picks up and tips large amounts of waste into a lorry. The terms of the contract with the Council meant that the operation of loading a lorry all had to be done within 20 minutes. In fact (as Mr Pyke explained in his evidence) 20 minutes was timed from weighbridge to weighbridge, in other words it was from when the lorry entered the site to the lorry leaving the site – there was less than 20 minutes for the actual loading to take place.

25. It is clear from the meeting note extract above, that one of the issues raised at the informal grievance meeting was a concern about this 20 minute period not being adhered to and that it was sometimes not possible to fully load a wagon in 20 minutes. This was discussed and concerns were raised by the claimant (and by others) about the loading time available.

26. We also note here that the claimant was unhappy about the 20 minute loading time and decided therefore to no longer continue as a trainee operating the shovel.

The Amanda George discussion.

27. On 14 November 2017, the claimant telephoned and spoke with Amanda George, the respondent's HR manager. We make the following relevant findings of fact:-

- (1) That the claimant told Ms George that he thought he was being picked on by Mr Roberts.
- (2) That the claimant told Ms George that his working hours had been changed and it was inconvenient for him.
- (3) That the claimant raised concerns about being asked to work with a cherry picker or a scissor lift raised platform in order to clean building facias. The concern he raised was that he had not been trained on the machine.
- (4) That the claimant raised concerns about the number of jobs he was being given and the pressure he was being put under.
- (5) That the claimant told Ms George that some of the outdoor cleaning jobs would not be possible because of freezing weather.

28. Ms George then raised the issues directly with Mr Roberts. This was an understandable next step; an employee had raised a number of concerns about aspects of his role and the way he was being treated. His manager may have been able to do something to assist allay the claimant's concerns and to ensure the claimant was being treated properly. Whilst we therefore understand why Ms George

spoke with Mr Roberts, we find that she should have made clear to the claimant that she proposed doing this.

The Formal Grievance

29. A formal collective grievance was lodged on 16 November 2017. This is at pages 114-115. It raises a number of concerns about the weighbridge at the Middleton site including health and safety concerns. 5 employees, including the claimant, lodged the grievance. The respondent accepts that this document includes protected disclosures.

Transfer of the Middleton site.

30. Neales, had hoped that they would be successful in a contract review exercise in 2016/17 and would continue the operation of the Middleton site. Their bid was unsuccessful and the site was transferred over to Lancashire County Council at the end of February 2018. Neales knew for some time (since around April 2017) that their bid had been unsuccessful and the site would be transferred.

31. Although the employment of those employees assigned to the site would transfer under the Transfer of Undertakings (Protection of Employment) Regulations 2006, Neales were required to undertake a number of improvements to the site before transfer.

32. Mr Roberts decided that significant improvements were required and he started to attend the site on a more frequent basis. This was noted by employees at the site, who in October 2017 had stated that his increased presence had taken place over the previous six months or so and that his attitude changed/worsened.

33. We find that Mr Roberts was keen to improve the state of the site and its operation. We find that he and Neales wanted to leave a good impression with the Council, who was their customer and potential future customer for them. We also find that the improvements that Mr Roberts wanted to make, particularly around condition and cleanliness of the site, meant that the claimant's work was more affected than the work of other site employees. The other site employees were more engaged in the site's operation – receiving and removal of waste and recycling materials. The claimant on the other hand was a yard operative. A significant focus of his role was on the cleaning and upkeep of the site. His job description is at page 97 and includes “sweeping, litter picking, cleaning of buildings internally and externally, driving municipal road sweeper” as well as “general labouring duties”, and “any other task as required by a superior/manager”.

Change in the claimant's working hours

34. Shortly after the claimant started, Darren Nicholls (site supervisor) agreed with him that he could start and finish work earlier than his stated contracted hours. Mr Nicholls agreed that the claimant could work 7.30am until 3.30pm rather than his contracted hours of 9.30am until 5.30pm. The claimant gave evidence (and we accept) that this was helpful to him because it meant that he could avoid heavier traffic at either end of the working day.

35. On a date between 7 and 14 November 2017 Mr Roberts asked that the claimant go back to his contractual working hours. The claimant did not immediately complain and in fact reverted to a 9.30am start the following morning. We accept that Mr Roberts did not require an immediate return to a 9.30am to 5.30pm working day, but that he wanted the claimant to resume those hours a couple of weeks or so after requesting this.

36. For reasons which we have explained above, the claimant was no longer at that stage operating the shovel loader. The claimant had been operating the shovel loader as a trainee, particularly earlier in the morning. One of the tasks that Mr Roberts had asked the claimant to keep on top of was keeping the drains clear in the main shed on site. That was a task that was best done towards the end of the working day at the site when there were fewer heavy goods vehicles on site. It was a task therefore that fitted better with a later finish, which was why Mr Roberts asked the claimant to go back to the hours that the yard operative normally worked.

Cleaning tasks provided to the claimant

37. Towards the end of 2017 the claimant was asked by Mr Roberts to carry out a number of specific tasks. The tasks that he was asked to do are consistent with the programme of readying the site for transfer in February 2018. We do not have precise dates of when particular tasks were being asked of the claimant. However, the following is clear from the evidence:

- (1) On a date shortly before 14 November 2017, the claimant was asked to clean the gutter fascias on the main office building. We know this was before 14 November because it was something that the claimant raised in his discussion with Ms George on the morning of 14 November.
- (2) At around the same time the claimant was asked to carry out other similar tasks. The claimant asked for these in writing and they were set out on a site maintenance sheet which is at page 168. They are as follows:
 - (a) *Clear all pavements and doorways of visible moss growth;*
 - (b) *Clear all weeds from kerb edges and yard area including car park;*
 - (c) *Clear moss from office fascias using MEWP (only trained operator to use MEWP);*
 - (d) *Clean all moss and debris from roller doors (trained operator to assist using MEWP where required).*

38. Reference to "MEWP" is a reference to a scissor lift or similar. We find that these tasks were consistent with the claimant's role at the Middleton site and that of all employees at the Middleton site the claimant was the most appropriate employee to be given these tasks.

39. We also find that the claimant was asked to pay closer attention to the drains in the shed to ensure that there was no blockage. This was also consistent with the claimant's role and there was a power washer available for the claimant to use.

Further, because there had been a significant drain blockage issue, Mr Roberts had arranged for an external power wash/drainage company to initially undertake a drain clearance.

40. We also make the following findings relevant to tasks being asked of the claimant:

- (1) The scissor lift/MEWP – Mr Roberts asked the claimant to access the gutter fascias (which were at the top of the one storey office building) by using a scissor lift or similar which was on site. Mr Nicholls was trained to operate the scissor lift and the claimant was asked to work alongside Mr Nicholls.
- (2) Mr Nicholls and the claimant had concerns about the use of the scissor lift on some parts of the site because of the unevenness of the ground. The claimant was able to effectively clean the fascias by using a power wash with an extender and to do this from the ground rather than the use of a scissor lift. The claimant was resourceful in deciding to adopt this alternative way of working. We note that he was not criticised for it. We also note that the claimant himself has admitted that the fascias were in a terrible state and needed cleaning, and that the job was carried out safely by him.

41. It is also relevant to note here that:-

- (1) The role description notes *“physically demanding role and requires claimant to work outside in all weathers.”*
- (2) Some concern was raised about the number of tasks that were identified for the claimant to do. However, the claimant was not held back after his standard working hours in order to finish tasks; he was not criticised for not working hard enough (it was clear to us that he was regarded as a good worker and we have no doubt that he worked hard), he was not given tight deadlines. Although he was given at the same time a number of tasks to do, he was able to complete those tasks within his normal working days, completing the list of tasks over the following days and weeks.

Provision of PPE

42. The claimant was provided with PPE in order that he could undertake the role. This included gloves, a high visibility coat, a hard hat and safety footwear.

43. The claimant claimed that there was no onsite store of PPE. We find that there was a small store of PPE. Our finding is supported by evidence from Mr Roberts and Mr Nicholls. We also find that the store was small and it may have been necessary for Mr Nicholls to have ordered more equipment in; for example, if a different size was needed or if the store of gloves was running out.

44. At the Tribunal hearing the claimant noted that he was required to work in cold weather and was not provided with thermal clothing. We note that generally, an employee who is required to work outside during winter, will dress warmly and then

apply their workplace PPE on top of their own clothing. The claimant did not disagree with this at the hearing. We also note that the issue of thermals had not been raised at the internal grievance meeting on 4 December 2017. The possibility of issuing knee pads was discussed. We find that knee pads might have helped the claimant when cleaning the weighbridge but that these were not items of PPE that had been raised before and were not provided or stored by the respondent.

45. We were not provided with any examples of the claimant requesting PPE and not being provided with it.

The claimant's operation of the sweeper

46. One of the tasks specified in the claimant's job description was to operate a municipal sweeper that was at the Middleton Site.

47. The claimant had been doing this during his employment up until 22 November 2017. On this date Mr Roberts asked the site supervisor (Darren Nicholls) to "get him trained"). This is the text that Mr Roberts sent to Mr Nicholls:

"Daz, as discussed, with regards Brian operating the small machine, we need to get him trained and have documentation to confirm this in place before we can allow him to operate the machine in future, will you explain this to him and let him know about it today and give me his response once you do."

48. Mr Roberts was asked by us about this text; particularly why he wanted to know what the claimant's response to the instruction was. Mr Roberts informed us that he was aware that the claimant enjoyed operating the sweeper and that he may well be upset by the news, and if so that he would arrange to speak with the claimant.

49. Mr Roberts also gave evidence that he anticipated that the period of time that the claimant would not operate the sweeper would be a short one. He explained that this was part of a tightening of processes at the Middleton site and that the training could be carried out internally and quickly.

50. We accept this evidence of Mr Roberts.

51. We also find that the claimant was not prepared to cooperate with a short-term training exercise and signing off. His reasoning was that:

- (1) If training was required it should have been put in place at the commencement of his employment;
- (2) He had been operating the sweeper without incident for about six months;
- (3) He first wanted an answer to his grievances, including the issue as to why he was taken off the sweeper in the first place.

52. As the claimant did not engage in the training and sign off processes to provide assurances of competency, he did not return to operate the sweeper. Whilst he raised a legitimate enquiry about why training had not been provided at the

beginning of his employment, his refusal to engage in that training when the issue was raised, meant that he did not return to an aspect of his role that he had enjoyed.

53. Other employees at the site were already trained in plant machinery operation – as they were trained in and operating the much larger shovel loader – therefore did not need further training. The claimant on the other hand had been a trainee on the shovel loader although had by then decided that he was not prepared to continue to operate the shovel loader as a trainee.

54. The claimant accepted on questioning from Mr Ali that he refused to undertake the training.

The “brew room” incident

55. This incident was raised during the claimant's grievance and grievance appeal. One of the matters about which the claimant was aggrieved was that of Mr Roberts' continued presence at the Middleton Site. The claimant claimed he was aggrieved because this was an indication that his employer had a total disregard for the welfare and concerns of staff at Middleton site. Essentially his position was that he and others had raised serious concerns about Mr Roberts and so they should not have to be managed by him. The grievance outcome was that it was not for the claimant to dictate what operational management took place on site:

“There will therefore always be an Operations Manager spending some time on site and this is not a matter that you are entitled to direct. In fact for the reasons already discussed and set out above there needs to be more presence on site to ensure that all is in order prior to the site being handed back to LCC at the end of February.”

“Notwithstanding this, while your grievances have been considered and given the nature of your concerns, [Mr Roberts] has been asked to keep a low profile and given an instruction to speak with you only when someone else is present.”

“You openly admitted that Graham has tried to have a conversation with you in the brew room. I have asked Graham about this and he has said that he just tried to make polite conversation but that when he has done this you have removed yourself without saying anything. I have to say that here I see someone trying to create a better atmosphere but not being allowed to by you. I have also been made aware of a recent incident when Darren, Colin, Roy and yourself were in the brew room and as soon as Graham walked in you all, with the exception of Roy, walked out without saying a word. This is not an appropriate response from you and others on site – excluding people is itself a form of bullying. You should therefore consider this to be an instruction that you should interact with Graham in a professional manner. This situation will be monitored and if there is further behaviour of this type we will have to consider whether further action is appropriate.”

56. At the grievance appeal the matter was raised and the claimant said that Mr Crank at the grievance stage did not get the facts right and that his comments were unfounded.

57. The grievance appeal outcome letter notes as follows:

“...The incident referred to in Mr Crank’s response to your grievance that yourself and others had deliberately walked out of the mess room at Middleton when Mr Roberts entered the room. I interviewed Messrs Nicholls, Pyke, Duckworth, Roberts and Johnson concerning this incident and received varying accounts of what happened. I cannot therefore reach a definitive decision on this matter and have excluded this alleged incident from my deliberations.”

58. We find as follows:

- (1) The claimant did not want to deal with Mr Roberts at all.
- (2) He expected Mr Roberts to remain absent from site. Additional support for this finding is at page 148 – email from claimant to Ms George dated 11 December 2017:

“Dear Ms George

Once again I’ve come into work this morning and Mr Roberts is on site. You assured me in an earlier email that you were taking my welfare as a Neales employee seriously and my whistle-blowing grievance. If so, why is Mr Roberts able to continue work from Middleton site as he has done it so little over the past few years”.

- (3) Mr Roberts was minimising his interaction with the claimant directly. Those were his instructions and we note that, for example, he was relaying his requests/requirements through Darren Nicholls (see the communication regarding the sweeper, noted earlier, as an example).
- (4) We agree with that part of the grievance outcome letter which stated that it was not for the claimant to say how the site is to be managed or who is to manage the site.
- (5) We accept there was a need for an increased presence on site by Mr Roberts in the run-up to the handover to Lancashire County Council.
- (6) Mr Crank did not approve of the claimant’s behaviour towards Mr Roberts and he wanted it to stop. This was why he noted to the claimant that excluding people is a form of bullying and instructed him to behave more professionally.

Tightening up of risk assessments etc.

59. One of the issues that came out of the Weighbridge incident was that the task of cleaning under the weighbridge had not been risk assessed and there was no operation process in place for carrying out the task.

60. The respondent’s health and safety manager (Roy Johnson) and the Middleton site supervisor (Darren Nicholls) put together a safe system of work. This is at page 160.

61. They met with the claimant to go through this with him, to make sure that he knew what to do and what was expected of him. At the end of this meeting they asked the claimant to sign a training record (page 159) and the safe system of work document as evidence that he had received the training and understood the operation procedure set out.

62. The claimant refused to sign. He was asked about this by Mr Ali. He accepted that he was taken through the operation process by Mr Johnson which included pictures of the operation. When he refused to sign the documents, he said that comments were made to him by Mr Johnson and Mr Nicholls implying that he would be sacked if he didn't sign. When Mr Ali asked the claimant if it was his case that, if he hadn't made his protected disclosure, he would have been treated differently, the claimant replied that "he couldn't say".

63. We also heard from Mr Nicholls who explained that he and Mr Johnson had gone through the process with the claimant and so he should have signed the document. Mr Nichols also explained that this process was undertaken with everyone on the Middleton site; that he and Mr Johnson spoke to them all in what is called "the Brew Room" and they were all given time to consider the information. Mr Nicholls explained that when the claimant refused to sign the document, he pointed out to the claimant that it was a health and safety requirement and it could lead to his dismissal if he didn't sign.

64. Mr Ali asked Mr Nicholls whether one of the reasons he had referenced dismissal was because the claimant had raised a complaint. Mr Nichols said no, it was because the need for signed paperwork was (in Mr Nichols clear view) a legal requirement. We accept Mr Nicholls' evidence on this point.

65. We also note that there was no written threat of dismissal that followed this discussion and no evidence of further threats of dismissal. The claimant did eventually sign the documents; on 12 December 2017.

Site security cameras

66. The Middleton site had a number of security cameras on site. There was an external security company contracted and their security arrangements including close circuit cameras. These were not hidden. Everyone knew that the close circuit cameras were there before they were in plain sight of employees and visitors.

67. It was not just the external security company that had access to each of these cameras. A number of employees, including Mr Roberts, were able to access and control the cameras, as were employees at Lancashire County Council. There were therefore employees across three organisations that could view and control these cameras.

68. We find that Mr Roberts, as one of those with access to the camera footage, did monitor the site from time to time, and this would include monitoring activities on the site.

69. Mr Roberts gave evidence about one example when he used one of the cameras to communicate with the claimant. No date was provided to the Tribunal as

to when this occurred, but we find that it was in or after November 2017 when relations had broken down between Mr Roberts and the claimant. Mr Roberts' gave evidence that he saw the claimant speaking with the weighbridge operator (Mr Duckworth) at the weighbridge office window. Mr Roberts told us that he had concerns that the claimant was standing in a dangerous position – HGVs could come around the corner into the path of the claimant.

70. Mr Roberts told us that he indicated to the claimant that he should move from there by moving the camera from side to side. He knew that the claimant would see this, which he did, and duly moved.

71. We found this to be a bizarre incident and an unfortunate method of communication. We would have expected a concerned manager in the same circumstances to have telephoned the weighbridge office and spoken with the weighbridge operator or the claimant directly. We find the reason that Mr Roberts did not do this was due to the breakdown in relations between him and the claimant. Had relations not broken down then Mr Roberts would have called the weighbridge and spoken with the claimant directly.

D. The Law

72. The claimant claims that he was subjected to detriments on the grounds that he had made a protected disclosure. Section 47B Employment Rights Act 1996 ("ERA") provides as follows:

"(1) 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."

73. Section 43A ERA - 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 of sections 43C to 43H."

74. Section 43B ERA– 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, is made in the public interest and tends to show one or more of the following –

- a. That a criminal offence has been committed, is being committed or is likely to be committed;*
- b. That a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject;*
- c. That a miscarriage has occurred, is occurring or is likely to occur;*
- d. That the health or safety of any individual has been, is being or is likely to be endangered;*

- e. *That the environment has been, is being or is likely to be damaged;*
or
- f. *That information tending to show any matter falling within any of the preceding paragraphs has been or is likely to be deliberately concealed.*

...”

75. Section 43C ERA:

“A qualifying disclosure is made in accordance with this section if the worker makes the disclosure... –

- (a) *to his employer, or*
- (b) *where the worker reasonably believes that the relevant failure relates solely or mainly to –*
 - (i) *the conduct of a person other than his employer, or*
 - (ii) *any other matter for which a person other than his employer has legal responsibility,**to that other person.*

...”

76. Section 48(2) ERA: This section provides that on a complaint under these provisions:

“...it is for the employer to show the ground on which any act or deliberate failure to act was done.”

77. In considering whether there has been one or more qualifying disclosures in this case we have considered guidance provided by a number of cases including

- (1) Chesterton Global Limited v Nurmohamed [2017] IRLR 837 (“Chesterton”),
- (2) Parsons v Airplus International Limited UKEAT/0111/17.
- (3) Korashi v Abertawe Bro Morgannwg University Local Health Board [2012] IRLR 4 (“Korashi”);
- (4) Wharton v Leeds City Council EAT 0409/14;
- (5) Kilraine v London Borough of Wandsworth [2018] ICR 1850.
- (6) Kuzel v. Roche Products [2008] ICR 799 (“Kuzel v. Roche”)

78. Having regard to the terms of the ERA and the case law referred to above, the following is relevant:

- (1) The worker making a disclosure has to reasonably believe that it is made in the public interest and also has to reasonably believe that it “tends to show” one or more of the subject matters listed at 43B(a) to (f) ERA (see above).
- (2) The terms of section 43B ERA require a reasonable belief of *the worker making the disclosure* (our emphasis). This wording provides a mixed objective and subjective test. The test is not whether there is a reasonable belief on the part of a reasonable worker; rather the test is whether the particular worker making the disclosure has a reasonable belief.
- (3) The question whether a disclosure is in the public interest depends of the character of the interest served by it rather than simply on the numbers of people sharing the interest (Chesterton - paragraph 35).
- (4) The question as to whether the particular worker has a reasonable belief that there is or is not a disclosure in the public interest is a question to be answered by the Tribunal on a consideration of all the circumstances of the particular case.
- (5) There must be some objective basis for the worker’s belief in order for that belief to be reasonable. Some evidence is required; rumours, unfounded suspicions, uncorroborated allegations and the like will not be good enough to establish a reasonable belief (Korashi).
- (6) The information disclosed only has to “tend to show” one or more of the matters set out in (a) to (f) of section 43B. It does not have to prove the matter and information may, in the reasonable belief of the worker “tend to show” one or more of the matters at section 43B(a) to (f) even if the worker is in fact mistaken. (Kilraine)
- (7) Where a claimant relies on breach or likely breach of an unspecified legal obligation as the relevant failure, that claimant may have difficulty in persuading a Tribunal that his or her belief was reasonable (Kilraine).
- (8) Where a Tribunal cannot identify the grounds on which a respondent subjected a claimant to a detriment, it does not automatically follow that the claimant’s claim – by which he or she asserts an unlawful reason for the detriment – is successful (Kuzel- Roche)

Detriment

79. This term is not more accurately defined in the legislation. It means putting under a disadvantage and that should be looked at from the point of view of the worker. (Ministry of Defence v. Jeremiah [1980] ICR 13 CA).

E. Analysis and Conclusions

Protected disclosures.

80. The respondent has conceded that the lodging of the collective grievance on 16 November 2017 amounted to a protected disclosure by the claimant.

81. We have decided that the “Roberts Conversation” on 19 October 2017 did not contain a protected disclosure. The claimant queried whether it was the role of site personnel to carry out the weighbridge cleaning but, having been instructed to do this and told that it was his responsibility, he got on with the job. This discussion did not involve any disclosure of a failure to comply with a legal obligation or health and safety. If, which we do not find, any legal obligation issues had been raised by the query about whether it was the responsibility of site personnel to carry out the cleaning, there was no reasonable belief that was being raised in the public interest. The claimant simply queried and wanted assurance that the cleaning was a task that he should be doing. He had not been asked to do it before.

82. We have also decided that the “Nicholls Conversation” on 19 October 2019 did not involve a protected disclosure by the claimant. This conversation involved Mr Nicholls raising health and safety concerns to the claimant but not the other way around.

83. As for the “Informal Collective Grievance” on 7 November 2017, the claimant claims that he made a protected disclosure concerning the reasons why he decided to remove himself from training on the Shovel Loader and that he raised health and safety concerns and a lack of risk assessments. We do not find these matters were raised. As noted in our findings of fact above (supported by the notes of the meeting and the document of 1 November at 109 and 110) the issue raised was the time available to complete a load of a wagon and the claimant’s refusal to be put to that pressure of time whilst training. The claimant regarded this as an unreasonable expectation being put on him personally. Issues of health and safety were not mentioned. There were no discussions at this meeting about risk assessments or training records as the claimant alleged at the hearing in November 2019.

84. The claimant raised a number of concerns in the “George Conversation” on 14 November 2017. We agree that the claimant alleged that he was being picked on. Being picked on is (or can be) a form of bullying. We also accept that he raised issues about working from a platform (scissor lift) as he had not been trained and that he was being asked to carry out wet work in cold weather. The issues all have an element of health and safety to them. However, we do not find that these issues were raised by the claimant with a reasonable belief that they were in the public interest. The raising of health and safety issues on a site being used by a variety of visitors would often give rise to a reasonable belief that there were public interest issues. Here, the claimant’s focus was entirely on what was being asked of him and whether the instructions he was provided were reasonable.

85. In relation to the George conversation, we note that this occurred on 14 November 2017. The respondent admits that the claimant made protected disclosures some 2 days later on 16 November 2017.

Did the respondent subject the claimant to one or more detriments?

Claimed detriment 1 – change of hours

86. The claimant was required to change his hours on a date which was before 16 November 2017 and therefore cannot have been done on the ground that the claimant made the protected disclosure on 16 November 2017.

87. We also note that it was a matter raised in the George Conversation and therefore happened before 14 November 2017.

Claimed detriment 2 - singling the claimant out to do various jobs on a daily basis

88. As with the issue of change of hours above, Mr Roberts had asked the claimant to fulfil a number of specific cleaning tasks before the protected disclosure on 16 November 2017. These were also a topic raised by the claimant in the Amanda George Conversation on 14 November 2017.

89. Further, we find that there was no task that was asked of the claimant that fell outside what the claimant might reasonable expect to undertake in his role as a yard person. Cleaning was a significant focus of the role, as was working outdoors.

90. As for the use of the scissor lift to clean the gutter fascias:-

- a. Mr Nicholls, the site supervisor had been instructed to work with the claimant on this. Mr Nicholls had been trained to use the scissor lift.
- b. The claimant found a better method of cleaning the fascias. He carried out the work in this way without any criticism from the respondent.
- c. The claimant accepted that this was a task that needed to be carried out. We find that the claimant was the most appropriate person to carry out the task.

Claimed detriment 3 – removing the claimant from driving the sweeper

91. We have set out our relevant findings of fact at 45 to 51 above.

92. Whilst the claimant was removed from driving the sweeper the intention was that this would be for a short period only and it would have been had the claimant cooperated with training and documentary confirmation about his competence to operate.

93. He was not moved from the sweeper because he made a protected disclosure.

Claimed detriment 4 – breaching the claimant's confidentiality by Ms George revealing his discussion between the claimant and Ms George on 14 November 2018

94. This occurred before the protected disclosure on 16 November 2017.

95. It was almost inevitable, having raised concerns with Ms George, that these matters would be discussed with Mr Roberts. We have commented already that it would have been preferable for Ms George to make clear to the claimant that she intended speaking with Mr Roberts directly and, in doing so, hopefully gain his

agreement that this would be the best course of action. Whist she did not do this, we find that her intention was to try and resolve matters.

Claimed detriment 5 – allegations against the claimant that he was part of a group bullying Mr Roberts by leaving a room when Mr Roberts arrived

96. This alleged detriment relates to the comments made by Mr Crank in the grievance outcome as noted at paragraph 55 above.

97. Mr Crank made the comments because he understood that the claimant had purposefully ignored Mr Roberts and walked out of the room. The comments were not made on the grounds that the claimant had made a protected disclosure.

Claimed detriment 6 – being threatened with dismissal by Mr Nicholls for not signing paperwork.

98. We have set out our findings of fact above. The claimant and others were told that it was a legal requirement to sign off the operating procedure set out and if the claimant did not sign then it could lead to dismissal.

99. This statement was made because the claimant refused to sign the paperwork provided, not because he had made protected disclosures.

Claimed detriment 6 - By Mr Roberts focussing on site security cameras

100. We have set out our findings of fact in relation to the use of security cameras. A range of individuals across 3 organisations have remote access to the security cameras. The security cameras were in active use for monitoring purposes. Monitoring included the monitoring of activities on site.

101. We have noted an occasion when Mr Roberts used the movement of a security camera to communicate with the claimant. We find that the reason why Mr Roberts communicated with the claimant in this way was to tell the claimant to move from a dangerous position. The method of communication was poor and was a consequence of a breakdown in relations between Mr Roberts and the claimant.

Claimed detriment 7 - By Mr Roberts asking C to speed up the loading times of wagons

102. This issue arose during the informal collective meeting on 7 November and so before the protected disclosure on 16 November 2017.

103. Further:-

- (1) Mr Roberts mentioned loading times because the contractual 20 minute loading period had not been adhered to on a number of occasions;
- (2) By the time of that informal collective meeting the issue of loading times had been raised and the claimant had decided that he no longer wanted to train on the shovel loader, loading wagons.

Claimed detriment 8 - By Mr Roberts attending site on a very frequent basis to monitor staff

104. We have found that the reason that Mr Roberts attended site more frequently was that the contract had been lost and Mr Roberts decided that improvements to the site and the operations on site needed to be made before it was handed back to Lancashire County Council.

Claimed detriment 9 - By Mr Roberts making adverse remarks about the claimant's work

105. We heard evidence about loading times not being adhered to – our findings are noted above.

106. It was also clear that there was a general concern that the operation of the site needed to improve. That was the main reason for the increased presence of Mr Roberts (which predated any of the alleged protected disclosures). A number of the improvement tasks, particularly in terms of cleanliness and tidiness, did fall on the claimant to carry out but that was part of the claimant's role. The tasks needed doing and the claimant was the best person to do them. However, criticisms about the site were not made by Mr Roberts because the claimant had raised protected disclosures. Also, we heard no evidence that criticisms were directed at the claimant who had only recently started working at the site.

Employment Judge Leach

Date 17 November 2020

JUDGMENT AND REASONS SENT TO THE PARTIES ON
20 November 2020

FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Annex A – Alleged Protected Disclosures and Detriments

1. At a preliminary hearing on 12 November 2019 the claimant clarified the four further disclosures which he claims are protected disclosures for the purposes of section 43A of the Employment Rights Act 1996 (“ERA”).
2. There are four potential disclosures in addition to the disclosure already accepted by the respondent as a qualifying and protected disclosure, namely the collective grievance by the claimant and his colleagues on 16 November 2017.
3. The four “new” potential protected disclosures are:
 - A conversation with Mr Graham Roberts on 19 October 2017 (“the Roberts conversation”);
 - A conversation with Mr Darren Nicholls on 19 October 2017 (“the Nicholls conversation”);
 - Disclosures made at an informal meeting of the claimant and colleagues with representatives of the management of Neales Waste Management on 7 November 2017. (The respondent accepts that liability transferred to it pursuant to TUPE regulations in early 2018) (“the informal collective grievance”);
 - A telephone conversation between the claimant and Ms George on 14 November 2017 (“the George conversation”).
4. In relation to each of these alleged protected disclosure, the claimant was asked at the case management hearing on 12 November 2019 to clarify the following:
 - (i) What information he said was disclosed;
 - (ii) Which of the factors in section 43B of ERA in his reasonable belief the information tended to show;
 - (iii) On what basis he reasonably believed that the disclosure was in the public interest.
5. To assist the respondent when responding to the claimant's case, the claimant also provided brief details of when and where the disclosure was said to have taken place and who, if anyone, witnessed that disclosure.
6. I have recorded in square brackets matters which the claimant initially raised but then decided not to pursue.

Annex A.1 – the Roberts conversation

Brief details of incident and those present

1. On 19 October 2017, the claimant said he was standing outside the weighbridge office when Mr Roberts asked him to lift the plates on the weighbridge to clean the weighbridge chambers. The claimant said that Charlotte Howard was in the weighbridge office, the window of which was open. He said she did not directly witness the conversation.

Information disclosed

2. The information disclosed by the claimant to Mr Roberts, according to the claimant, was as follows:

- (a) That he had been instructed by Darren Nicholls that cleaning under the weighbridge plates was not the responsibility of staff on site;
- (b) That there had been no risk assessment carried out of the risks involved in cleaning under the weighbridge plates;
- (c) That the claimant had not been trained in how to clean the weighbridge;
- (d) That none of the staff at the site had been trained in how to clean the weighbridge;
- (e) That there were not the proper tools or personal protective equipment (PPE) for the task;
- (f) The claimant said to Mr Roberts “you do know there are electrics down there”. The claimant says that Mr Roberts replied that it was very low voltage.

Which of the factors in section 43B of ERA in his reasonable belief the information tended to show:

3. Disclosure (a) – relevant factors were 43B(1)(b) failure to comply with a legal obligation, and (d) that the health or safety of any individual has been, is being or is likely to be endangered.

4. For disclosures (b) through to (e) the claimant said that the relevant factors were those relevant to (a) but with the addition of 43B(1)(a) i.e. that a criminal offence has been committed, is being committed or is likely to be committed. The claimant said that the criminal offence was the failure to have a valid risk assessment when the work was carried out.

5. In relation to disclosure (f), the claimant said that he relevant factor was 43B(1)(d) i.e. that the health or safety of any individual has been, is being or is likely to be endangered.

On what basis the claimant reasonably believed that the disclosure was in the public interest.

6. The claimant said he reasonably believed that disclosure was in the public interests because the concerns related to all staff at the Middleton and Preston sites run by the respondent; that those sites had the same kind of weighbridge and therefore considerations about staff cleaning the weighbridge without risk assessments or tools or training applied to all of them.

7. He also reasonably believed that there was a public interest in making the disclosure because the site itself was a public site so disclosure was in the interests of the site's clients, including Lancashire County Council.

Annex A.2 – the Nicholls conversation

Brief details of incident and those present

1. On 19 October 2017, the claimant said that he had had a conversation with Darren Nicholls when Mr Nicholls returned from a health and safety meeting off site. The claimant was cleaning the chambers on the weighbridge at the time and Mr Nicholls wanted to know why he was doing so. The claimant told Mr Nicholls about his conversation with Mr Roberts (see Annex A.1).

2. The claimant said the conversation with Mr Nicholls happened on the weighbridge and he thought it was just after 12.00pm. Mr Roberts had left the site. David Duckworth was also a witness to that conversation.

Information disclosed

3. The claimant said there were two pieces of information disclosed:

(a) The contents of the Roberts conversation i.e. that the claimant had been asked to clean the weighbridge by Mr Roberts and been told by Mr Roberts that staff at the site had always done that job in the past, referring in particular to staff called Charlotte and Dave who had carried out the work.

(b) The claimant told Mr Nicholls that the claimant had questioned with Mr Roberts the legality of staff cleaning the weighbridge and had told Mr Roberts that Mr Nicholls had said that staff should not do that job.

Which of the factors in section 43B of ERA in his reasonable belief the information tended to show;

4. The claimant said for both disclosures he believed that they tended to show section 43B(1)(b) i.e. that a person had failed or is likely to fail to comply with a legal obligation and/or section 43B(1)(d) i.e. that the health or safety of any individual has been, is being or is likely to be endangered.

5. [Although the claimant initially suggested that section 43B(1)(f) might be relevant, i.e. that it tended to show that matters falling within any of the other paragraphs in section 43B(1) had been or was likely to be deliberately concealed, the claimant then said that he was not alleging that Mr Roberts was covering up one of those breaches. He accepted section 43B(1)(f) did not apply.]

On what basis the claimant reasonably believed that the disclosure was in the public interest.

6. The claimant said that Mr Nicholls was the health and safety officer. The same reasons applied as in relation to his disclosure to Mr Roberts in Annex A.1, i.e. that the issues he raised had an impact on other staff and on the public served by the site.

Annex A.3 – the informal collective grievance

Brief details of incident and those present

1. On 7 November 2017 the claimant attended a meeting at the Middleton site. This was around dinnertime, i.e. the middle of the day. It took place in the meeting room. The claimant said he was asked at the meeting why he had come off, i.e. stopped working on, the shovel loader. The claimant said that he was asked that by Mr Stewart.

2. The meeting was attended by Ms George, Mr Roy Johnston and Mr Hugh Stewart for the employer, and by the claimant, Colin Pike, Darren Nicholls, David Duckworth and Charlotte Howard, the staff at the Middleton site. Mr Roberts was not present – he was covering at Preston.

Information disclosed

3. The claimant said there were one piece of information disclosed, namely that when asked by Mr Stewart why the claimant had taken himself off the shovel loader the claimant said he had taken himself off it because there was no training, no training records in place and no risk assessments relating to trainees (like himself) using the shovel loader.

4. [The claimant initially suggested that he had disclosed a second piece of information in telling Mr Stewart that he was not going to be pressured into meeting time limits when operating the shovel loader. On consideration he accepted that this was more a statement of his position rather than a disclosure of information and did not want to include it as a potential disclosure.]

Which of the factors in section 43B of ERA in his reasonable belief the information tended to show;

5. The claimant said that section 43B(1)(b) and (d) were relevant i.e. failure to comply with legal obligations and health and safety risk.

6. [The claimant tentatively suggested that (e) was also relevant, i.e. that the environment is being or is likely to be damaged. I explained to him that the environment in this case meant the environment generally and that this was aimed at, for example, pollution of the environment. The claimant said that he had misunderstood and thought it might apply to the work environment. On that basis he accepted that (e) was not relevant.]

On what basis the claimant reasonably believed that the disclosure was in the public interest.

7. The claimant said that he was driving the shovel loader in an environment where there were a number of other vehicles and other members of staff. There were also members of the public coming in to do their job on site. Primarily, it was the other workers in the shed where the vehicles were being moved around who were potentially affected - inadequate training or risk assessment meant that there was a risk to those staff.

Annex A.4 – the George conversation

Brief details of incident and those present

1. The claimant said that this conversation took place early in the morning on 14 November 2017. The claimant was out doing a litter pick while Mr Roberts and Mr Nicholls were in a meeting. The claimant said that he rang Ms George on his mobile while she was in her office. The claimant said that he rang from around the main gates to the compound. The conversation lasted about 30 minutes.

2. In terms of the information disclosed, it was mainly matters about being bullied, victimised and being given jobs that he did not think suitable. These included jobs out in the freezing cold and being told to do jobs such as cleaning the fascias with a mop and bucket without, according to the claimant, adequate PPE.

Information disclosed

3. The claimant said there were four pieces of information disclosed, namely that
- (a) the claimant was being bullied and victimised by Mr Roberts and given unfair jobs, such as cleaning the fascias with a mop and bucket in the freezing cold;
 - (b) he was told to use the scissor lift (which is used to clean high walls or repair lights) when he had not been trained on it;
 - (c) he was being told to use the scissor lift on uneven ground which was inappropriate because the scissor lift only operated safely on even ground;
 - (d) they could have better PPE, with the equipment they were given being inadequate as it was freezing cold.

Which of the factors in section 43B of ERA in his reasonable belief the information tended to show:

4. For disclosure (a), the claimant said the factors at section 43B(1)(b), (c) and (d) were all relevant.

5. We discussed what legal obligation the claimant said had been breached relevant to s.43B(1)(b) but the claimant was not in a position to clarify those. It will be for him to explain at the final hearing the legal obligations he says were breached in his reasonable belief when he made the disclosure.

6. In relation to disclosure (c), i.e. that a miscarriage of justice had occurred, it was put to him it was difficult to see how that could apply to his case. He maintained, however, that that was something which he reasonably believed.

7. In relation to s.43B(1)(d), i.e. health and safety, the claimant said that the jobs he was given were a risk to his health and safety.

8. In relation to disclosures (b)-(d), the claimant relied on 43B(1)(b) i.e. breach of legal obligation, and (d) i.e. health and safety risks.

On what basis the claimant reasonably believed that the disclosure was in the public interest.

9. The claimant said that in relation to disclosure (a), i.e. his being bullied, he reasonably believed disclosure was in the public interest because it took place in a public place, i.e. a site to which the public had access. He also said that it went further than just the treatment of he himself. The way he put it was that if Mr Roberts got away with treating him that way then “where would it stop?” His suggestion was that Mr Roberts would bully others in the way the claimant alleged Mr Roberts had bullied him.

10. In relation to (b)-(d) the claimant said that the public interest in that matter was the health and safety of staff and staff not being treated respectfully.