



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs K Burton

**Respondent:** Harrogate and District NHS Foundation Trust

**Held at:** Leeds **on:** 23 and 24 May 2022

**Before:** Employment Judge Cox

**Members:** Mrs G Fleming  
Mr P C Langman

**Representation:**

Claimant: Mr Bronze, counsel

Respondent: Ms Nowell, counsel

## REASONS

1. The Claimant claims that she has been subjected to two detriments because she made protected disclosures, contrary to Section 47B of the Employment Rights Act 1996 (the ERA). The Respondent accepts that she was subjected to those two detriments: in July 2020 Ms Suzanne Lamb made the decision to subject her to a disciplinary process and on 4 February 2021 Mrs Jane Smith made the decision to subject her to a capability process. The issue for the Tribunal is whether they subjected her to those detriments on the ground that she had made one or more protected disclosures. With the agreement of the parties, the Tribunal has decided to rule first on whether the Claimant in fact made any protected disclosures.
2. The Claimant alleges that she made seven protected disclosures. The Respondent accepted that if these were qualifying disclosures within the definition in section 43B ERA, they would be protected disclosures, because they were made to the Claimant's employer (Section 43C(1)(a) ERA).
3. The relevant parts of the definition in Section 43B(1) ERA state that a qualifying disclosure is:

“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-

...

(d) that the health or safety of any individual has been, is being or is likely to be endangered

...”

4. The Claimant’s case, set out in her claim form, is that she disclosed information which she reasonably believed tended to show that the health, safety and welfare of her colleagues and herself was being endangered. She says that she believed that she was making the disclosures in the public interest, “this being a public service”.

#### **The evidence**

5. The Tribunal has heard oral evidence from the Claimant and Mrs Cook, to whom she made the disclosures. The Tribunal also has read various documents to which it was referred by the parties. On the basis of that evidence the Tribunal makes the following findings.

#### **The facts**

6. Mrs Cook is Service Manager for the Respondent Trust’s North Yorkshire 0 to 19 Service, managing the provision of specialist health services for children and young people within that age range and in that area. She became the Claimant’s line manager on 2 December 2019. The Claimant’s job was as a Locality Manager, one of seven Locality Managers covering the North Yorkshire area. Her work originally involved managing a team of specialist nurses providing services for children within the 5 to 19 age range. When Mrs Cook took over as Service Manager, she decided that the Claimant’s workload was comparatively light compared with other Locality Managers in the area and so expanded the Claimant’s duties to cover services to the full 0 to 19 age range. This gave the Claimant the additional responsibility of managing a health visiting team.

#### **Content of disclosure 1**

7. On 17 December 2019 Mrs Cook held a meeting with the Claimant and Ms Rolf, another Locality Manager. They discussed, amongst other things, the decision Mrs Cook had made to give the Claimant responsibility for the 0 to 19 age range and management of a health visiting team. There was a general discussion at the meeting about staffing issues and the re-alignment of teams. The Locality Managers expressed their concern about the rate of referral into the 5 to 19 Service and whether the number of referrals exceeded the ability of the team to review the cases.
8. Neither the Claimant nor Mrs Cook said in their evidence that the Claimant raised any issues at this meeting about the health and safety of herself or her colleagues being at risk.

#### **Content of disclosure 2**

9. On 18 December 2019 the Claimant had a discussion with Mrs Cook in which the Claimant explained that she had not had a line manager for six months and that her appraisal was outstanding for that reason. She also mentioned that she had a nine-year old disabled son with an educational healthcare plan. Neither Mrs Cook nor the Claimant in their evidence said that any issue of health and safety was raised during this discussion.

### Content of disclosure 3

10. On 14 January 2020 the Claimant met Mrs Cook again for an appraisal meeting. The Claimant's own evidence was that the meeting covered issues of workload, staff commitment, staff containment and the general direction and future of her role. She did not say that she raised issues of her own or her colleagues' health and safety. The Tribunal accepts Mrs Cook's evidence that this was a straightforward discussion about roles and responsibilities.

### Content of disclosure 4

11. On 20 January 2020 there was a meeting of Locality Managers, including the Claimant, conducted by Mrs Cook. The Claimant's evidence was that she said at this meeting that her role and the role of other Locality Managers was changing without consultation and they did not feel listened to. They all felt an increase in workload with the re-alignment of the teams.
12. The Claimant did not say in evidence that she raised issues about her own or her colleagues' health and safety at this meeting. Mrs Cook's evidence also confirmed that health and safety was not raised. In Mrs Cook's perception, the most significant feature of the meeting was the hostile reaction from the Locality Managers when she raised the issue of Locality Managers undertaking record-keeping audits to ensure that clinical records were being kept properly. The Locality Managers reacted in a hostile manner to Mrs Cook's suggestion that they should make sure that these were done because, they said, they did not have time to do them.

### Content of disclosure 5

13. On 4 March 2020 the Claimant met Mrs Cook again. She told her that her workload currently felt overwhelming and that she had little time to spend with the 0 to 5 practitioners. They discussed how she might manage her workload. She said that her Royal College of Nursing leadership course was nearly finished and this would improve her work-life balance. Her work had been affecting her home life. Mrs Cook suggested that she submit a flexible working request.
14. The Tribunal does not accept that the Claimant raised any issues of health and safety during this discussion.

### Content of disclosure 6

15. On 18 May 2020 the Claimant emailed Mrs Cook. The text of that email was as follows:

*Hi Anne-Marie*

*So you are aware, I haven't had chance to do the record audit properly in April (I managed only a deep dive with Lisa) and I haven't done any yet for May. I have been extremely pushed for time and would find it difficult to complete these and feedback appropriately.*

*What is reassuring is that safeguarding, LAC and yourself have completed various audits on records which have highlighted issues and enabled us to feedback to staff as a whole group.*

*I wonder if it's worth a discussion with the other locality managers about this to explore what is having to give/or what has had to give in order for us to support staff and lead change during the Covid-19 pandemic. I think we should also take into account there was already and increase in demand for locality managers prior to Covid-19 as we saw locality manager hours not replaced when people left and expectations of locality manager role increase.*

*The end of March, April and beginning of May has seen over a third or more of my day taken up with duties relating to Covid-19 and supporting staff throughout this pandemic on a as need arises basis due it being an unprecedented time.*

*I am aware that Covid-19 is on the risk register – but I do think this needs looking at to explore what it has impacted on in practice. Certainly for me it has been record audits and performance management that have not been completed to trust expectations as I have tried to prioritise the dissemination of information from Gold and Bronze via our call and then managing the well-being of staff whilst translating and facilitating the demand of change to frontline practice.*

*I guess I just feel like the locality managers have been leading the teams and facilitating change setting out the vision for practice in teams as we work through a time of uncertainty where staff required daily support opposed directly managing performance of staff, or certainly that has been the case for me.*

*Regards*

*Kirsty*

16. The Tribunal finds that there were no issues of health and safety raised in this email. The Claimant was raising various issues of concern with Mrs Cook but the health and safety of herself and her fellow Locality Managers was not one of them.

#### **Content of disclosure 7**

17. On 11 June 2020 the Claimant had a telephone conversation with Mrs Cook. The Claimant explained that she had had a COVID test on 10 June but was feeling slightly better today. She said she had increasing stress levels in relation to the amount of work and the expectations placed upon Locality Managers and felt frustrated with the demands placed upon her. The COVID-related work was affecting her workload on a day-to-day basis. She was continuing to find it difficult to complete the record keeping audit. Mrs Cook said that the demands on and capacity of Locality Managers would be discussed at the senior management meeting due to take place the following day. Mrs Cook and the Claimant discussed the Claimant's working pattern and the fact that she would be returning to a 22-and-a-half-hour week from the following week. (The Claimant had temporarily increased to full-time hours to help cover long-term sickness absences in the Locality Manager team.) They discussed looking at the Claimant's working pattern to see what was most beneficial for her work-life balance, given the demands on her personal life arising from her care responsibilities for her son.

18. The Tribunal accepts Mrs Cook's evidence, which was supported by the note of the call to which the Tribunal was referred, that the Claimant was telling Mrs Cook that she was stressed and frustrated but she did not say that her health and safety was at risk. Nor did she say that the health and safety of her colleagues was at risk. She was raising concerns about her own personal workload and how best to manage it.

**Applying the definition of a qualifying disclosure to these facts**

19. The onus is on the Claimant to establish on the evidence before the Tribunal that she made disclosures that fell within the statutory definition in the way she alleges.
20. There was no evidence before the Tribunal, from the Claimant or otherwise, to indicate that when the Claimant made these disclosures she did so believing that they tended to show that her health and safety was being endangered. In general, the Tribunal does not consider it necessary or appropriate to infer that that was her belief from the content or context of her disclosures, whether taking them individually or standing back and viewing them as a whole. She was raising issues about her workload, but it is far from obvious that she was doing so in the belief that this tended to show that her health and safety was being endangered by it.
21. The sole exception to this is a partial concession by the Respondent in relation to disclosure 7. The Respondent has conceded that, because the Claimant mentioned her increasing stress levels during this conversation, it could be inferred that she did so in the belief, and the reasonable belief, that the information she was giving about her workload tended to show that her own health and safety was being endangered. (The Respondent did not concede that it could be inferred that the Claimant reasonably believed when making this disclosure that it indicated that the health and safety of her colleagues was also being endangered.)
22. The Claimant did not say in her witness statement that when she made the disclosures she did so believing that they tended to show that her colleagues' health and safety was being endangered. The Tribunal does not consider it necessary or appropriate to infer that that was her belief from the content or context of her disclosures, whether taking them individually or standing back and viewing them as a whole. She was giving information about her own workload and the way in which she was managing it, but it is far from obvious that she was doing so in the belief that the health and safety of her colleagues was being endangered by the workload. The only evidence before the Tribunal in relation to this issue came in cross-examination, when the Claimant was asked whether she had it in her mind when she made the disclosures that the information she was giving was to make her employer aware of the health and safety risk to her colleagues. Her response was "yes". When she was asked why she did not mention this in her witness statement, she did not reply directly, she said that not only were employees at risk, patients were as well. The Tribunal does not find this isolated response credible. It is not satisfied that the Claimant believed when making the disclosures that the information she was giving tended to show that her colleagues' health and safety was at risk.
23. Even if the Tribunal had accepted that the Claimant believed the information she was giving tended to show that her colleagues' health and safety was being

endangered, it would not have accepted that that belief was reasonable. The information she was giving mainly related to herself and the way in which her work and workload were affecting her. The Tribunal heard no evidence from the Claimant about the actual impact of the workload on the Claimant's colleagues or her state of knowledge about the impact of the work on her colleagues. In the absence of such evidence, the Tribunal is not satisfied that any belief the Claimant had that the information she was giving tended to show that her colleagues' health and safety was being endangered was reasonable.

24. Likewise, there was no evidence before the Tribunal, from the Claimant or otherwise, that when she made the disclosures she believed that she was making them in the public interest. The Tribunal does not consider it necessary or appropriate to infer that that was her belief from the content or context of the disclosures, whether taking them individually or standing back and viewing them as a whole. The focus of her communication with Mrs Cook was on her personal situation and the issues she had with the demands of her job in the light of the allocation of new duties, the impact of COVID-19 on the work, and her need to balance the demands of her work and family life. The fact that the Claimant's work was for the Respondent and the Respondent is a public service is not, in and of itself, enough to establish a sound basis for an inference that the Claimant believed when she was making her disclosures that she was doing so in the public interest.

#### **Summary and conclusion**

25. In summary, the Tribunal finds that the Claimant has not shown that she made her disclosures in the belief that they tended to show that the health and safety of her colleagues was being endangered. Even if she did make them in that belief, she has not shown that that belief was reasonable. Other than in relation to disclosure 7, she has not shown that she made the disclosures in the reasonable belief that they tended to show that her own health and safety was being endangered. The Claimant has not shown that she made any of the disclosures, including disclosure 7, in the belief, reasonable or otherwise, that she was making them in the public interest.
26. As the Claimant has not established she has made any qualifying disclosures, her claim fails and is dismissed.

Employment Judge Cox  
Date: 6 July 2022

REASONS SENT TO THE PARTIES ON  
Date: 6 July 2022