



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Timothy Lumb

**Respondent:** Chief Constable of Greater Manchester Police

**Heard at:** Manchester **On:** 8, 9, & 10 June 2022

**Before:** Employment Judge Liz Ord  
Ms L Atkinson  
Ms B Hillon

**Representation:**

Claimant: Ms J Duane (Counsel)  
Respondent: Ms C Widdett (Counsel)

## JUDGMENT

1. Upon the Employment Appeal Tribunal remitting back to the Employment Tribunal the discrete issue of whether a protected disclosure was made on 4 October 2017, the unanimous judgment of the panel is that the claimant made a protected disclosure on 4 October 2017.
2. The original judgment of 16 June 2020 concluded that, if the claimant had made a protected disclosure, he was subjected to detriments because of that disclosure. Having now found that such a disclosure was made, and with the respondent conceding that detriments flowed from it, the tribunal concludes that the claimant's complaint is well founded and succeeds to the extent set out in paragraphs 191 to 197 of the reasons for the original judgment.

# REASONS

## Complaints and Issues

1. The claimant complains of detriments flowing from a protected disclosure made on 4 October 2017.
2. The issues to be decided are:
  - 2.1. Did the claimant disclose to Mr Millett and Ms Watson in the meeting of 4 October 2017 the matters set out in the List of Issues at paragraph 1.1, sub-paragraphs a) to g)? In essence they concern:
    - a) Telephone records on Opus (TEL) not being researched, resulting in important information being missed;
    - b) Business address records on Opus (ADDs) not being researched;
    - c) Name records on Opus (NOM) and duplicate records not being researched, which contain intelligence items, domestic violence records, crimes as offenders records and organised crime group involvement;
    - d) Certificate holders' written files not being researched and certificate holders associates and duplicate ADDs not being researched;
    - e) AW, LP and JP duplicate addresses and names not being researched correctly;
    - f) GP letters not being added to the file for vetting purposes, which could contain information relating to a person's mental capacity and suitability for a certificate;
    - g) JP deleting PND results.

2.2. If so, were any of these matters a protected disclosure?

The tribunal will consider:

2.2.1. Whether there was a disclosure of information;

2.2.2. Whether the claimant believed that the disclosure was made in the public interest;

2.2.3. If the claimant did hold such a belief, whether it was reasonably held;

The respondent concedes that, if a disclosure occurred, the claimant reasonably believed that it was in the public interest.

2.2.4. Whether the claimant believed that the disclosure tended to show one or more of the matters listed in sub-paragraphs (a) to (f) of section 43B of the Employment Rights Act 1996? The section 43B provisions that the claimant relies on are:

2.2.4.1. (a) that a criminal offence has been committed, is being committed or is likely to be committed;

The claimant relies on the following offences:

- Section 21 of the Firearms Act 1968, which provides for the offence of possession of firearms by persons previously convicted of crime;
- Section 28A (7) of the Firearms Act 1968, which provides for the offence of recklessly making any statement, which is false in any material particular for the purpose of procuring the grant or renewal (for another) of a certificate under this Act; he says the Firearms Licensing Statutory Guidance for Chief Officers of Police 2016 is relevant.
- Malfeasance/misconduct in public office by persons consistently failing to properly vet firearms applicants. The CPS website states: *Misconduct in public office is an offence at common law triable only by indictment. It carries a maximum sentence of life imprisonment. Is it an offence confined to those who are public office holders and is committed when the office holder acts (or fails to act) in a way that constitutes a breach of the duties of that office.*

2.2.4.2. (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject;

The claimant relies on the following obligations:

- Sections 27(1)(a)(b) and (c), and sections 28(1) and (1A) of the Firearms Act 1968, with regards to special provisions about firearms certificates and shotgun certificates;
- The Firearms Licensing Statutory Guidance for Chief Officers of Police 2016, with regards to special provisions about firearms certificates and shotgun certificates.

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

The claimant asserts that failure to vet certificate holder applications appropriately can result in firearms being issued to dangerous persons, which is likely to endanger the health or safety of an individual.

2.2.5. If the claimant did hold such a belief, whether it was reasonably held.

### **Evidence**

3. The tribunal had before it a 435 page bundle, which included the original Witness Statements from 1) the claimant and 2) Mr A Millett, Ms J Watson, Mr M Mansley and Ms L Ansbro-Lee on behalf of the respondent. Page numbers in brackets in these Written Reasons refer to the bundle.
4. We were also provided with a Schedule of Paragraphs to read from the original Witness Statements and a List of Issues.
5. We heard oral evidence on oath from the claimant.
6. On behalf of the respondent, we heard oral evidence on oath from Mr A Millet and J Watson.
7. We had written Closing Submissions from both the claimant and the respondent, which were delivered orally to us on the last day of the hearing.

### **Law**

8. **S43B of the Employment Rights Act 1996 – (Disclosure qualifying for protection)** states:
  - (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 of justice 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 one of the preceding paragraphs has been, or is likely to be deliberately concealed.

*Information*

9. In **Cavendish Munro Professional Risks Management Ltd. V Geduld** 2010 ICR 325, EAT, the EAT expressed the view that the ordinary meaning of giving “information” is “conveying facts”.

10. **Williams v Michelle Brown AM** UKEAT/0044/19/00 HHJ Auerbach considered the questions that arise in determining whether a qualifying disclosure has been made:

“9. It is worth restating, as the authorities have done many times, that this definition breaks down into a number of elements. First, there must be a disclosure of information. Secondly, the worker must believe that the disclosure is made in the public interest. Thirdly, if the worker does hold such a belief, it must be reasonably held. Fourthly, the worker must believe that the disclosure tends to show one or more of the matters listed in sub-paragraphs (a) to (f). Fifthly, if the worker does hold such a belief, it must be reasonably held.

10. Unless all five conditions are satisfied there will not be a qualifying disclosure. In a given case any one or more of them may be in dispute, but in every case, it is a good idea for the Tribunal to work through all five.

11. While assessment of whether there has been a qualifying disclosure involves five questions, in certain circumstances it may not be necessary to answer all of them. For example, if it is decided that there has not been a disclosure of information it is not necessary, and may not be possible, to answer the remaining four questions.”

11. In **Kilraine v London of Wandsworth** [2018] ICR 1850 Sales LJ considered what constitutes a disclosure of information:

12. “30....the concept of “information” as used in section 43B(1) is capable of covering statements which might also be characterised as allegations.....Section 43B(1) should not be glossed to introduce into it a rigid dichotomy between “information” on the one hand and “allegations” on the other.....”

13. Sales LJ concluded that for a disclosure of information to fall within section 43B ERA it has to have sufficient factual content and specificity such as to be capable of tending to show one of the matters listed in subsection 43B(1) ERA.

14. The context of any putative disclosure is relevant and the tribunal will consider whether an oral statement could be said to incorporate the factual background.

15. Several communications, taken together, may cumulatively amount to a qualifying disclosure. In **Norbrook Laboratories (GB) Ltd v Shaw** UKEAT/0150/13, Mrs Justice Slade, DBE, held that three e-mails taken together amounted to a qualifying disclosure even though they were not sent to the same individual.

*Belief*

16. The worker only needs to establish a reasonable belief that the information tended to show the relevant failure.
17. ***Chesterton Global Ltd (t/a Chestertons) and anor v Nurmohamed (Public Concern at Work intervening)*** 2018 ICR 731, CA, held that this is a mixed objective/subjective test. The subjective element is that the worker must believe that the information disclosed tends to show one of the relevant failures and the objective element is that that belief must be reasonable.
18. In ***Darnton v University of Surrey*** 2003 ICR 615, EAT, the EAT held that the question of whether a worker had a reasonable belief must be decided on the facts as reasonably understood by the worker at the time the disclosure was made, not on the facts as subsequently found by the tribunal.
19. ***Darnton*** was cited with approval by the Court of Appeal in ***Babula v Waltham Forest College*** 2007 ICR 1026, CA, which provided that a worker will still be able to avail him/herself of the statutory protection even if s/he was in fact mistaken as to the existence of any criminal offence or legal obligation on which the disclosure was based.
20. ***Twist DX Ltd and ors v Armes and anor*** EAT 0030/20 held that it is not necessary for the person making the disclosure to have stated explicitly that s/he reasonably believes that the disclosure tends to show one or more of the matters set out in section 43B(1)(a)-(f)

*Likelihood of occurrence*

21. In the EAT's view in ***Kraus v Penna plc and anor*** 2004 IRLR 260, EAT, "likely" should be construed as "requiring more than a possibility, or a risk, that an employer (or other person) might fail to comply with a relevant legal obligation. Instead, the information disclosed should, in the reasonable belief of the worker at the time it is disclosed, tend to show that it is *probable or more probable than not* that the employer will fail to comply with the relevant legal obligation. The EAT said this approach could be taken in respect of all the relevant failures (ie subsections (a) to (f)).

*Health and Safety*

22. The need to provide detail in the disclosure of the nature of the perceived threat to health and safety does not appear to be too onerous.
23. In ***Fincham v HM Prison Service*** EAT 0925/01 *an employee wrote a letter to her employer stating "I feel under constant pressure and stress awaiting the next incident."* The EAT said that this was a statement that the employee's health and safety was or was likely to be endangered.
24. ***Maqbool v RT Elliott Ltd*** ET Case No.1800440/16 : the tribunal accepted that a pharmacist's disclosure that the pharmacy at which he worked suffered from a busy workload and lack of qualified staff tended to show that the health and safety of patients was likely to be endangered.

**Findings of Fact**

*Context*

25. In 2015, inadequacies were found in the operation of the firearms vetting system, and a review was requested of Certificate Holder (CH) applications.
26. Before issuing/renewing firearms certificates, vetting checks were undertaken by Investigative Support Officers (ISOs). There was a three stage process of checking the adequacy of information of files, namely OPUS (the respondent's intelligence system), the Police National Computer (PNC) and the Police National Database (PND), plus dip testing.
27. The claimant was very familiar with the system and had trained others to use it. Only he and Martin Mansley were authorised to do the PND checks.
28. The purpose of the vetting was to protect the public so that unsuitable people did not get firearms certificates. The claimant had concerns about the way some ISOs were handling the vetting. He had a meeting with Mr Millett (Firearms Licensing Manager) and Ms Watson (Acting Sergeant) on 4 October 2017 to discuss matters.

*Findings from the original judgment on the alleged 4 October disclosure*

29. The following findings of fact from the original Reserved Judgment of 16 June 2020 are relevant:

- 29.1. Paragraph 51: The claimant relied upon what he called his "trigger notes" as evidencing what he had said in the meeting. He accepted that he had not provided a copy of the notes to Mr Millett or Ms Watson either at the meeting or thereafter. Although the notes covered a multiplicity of matters, the claimant identified the following entries as supporting the assertion that he had disclosed information to them, which amounted to protected disclosures.

"Merging – led to – never given any by Jerry, Gary, Alan, Lee – DCCs orders – all told + PND....

Covering the last 18 months, advising, helping – led to hostility from all.....

Alan ....Misses/does not even bother with several checks – virtually every file....

Summary...

Going on for 18 months – nothing being done....

Jerry deleting PND results"

- 29.2. Paragraph 52: In his witness statement Mr Millett stated that he did not recall many of the things that the claimant had alleged he had said. On a number of occasions he said that the claimant might have mentioned some of those things.

- 29.3. Paragraph 53: In paragraph 42 of his statement Mr Millett said he recalled

that issues were discussed “around standards of research, merging of nominals and vetting addresses”.

- 29.4. Paragraph 54: In his oral evidence Mr Millett accepted additionally that:
- 29.4.1. The claimant voiced concerns over potentially dangerous people having access to firearms;
  - 29.4.2. The claimant reminded him of the implications for the department if someone should get hurt, or worse, from a firearm which got into the wrong hands;
  - 29.4.3. That, as he was the Firearms and Explosives Licensing Unit (FLU) manager, it was ultimately his responsibility to make sure this did not happen;
  - 29.4.4. He told the claimant that it was totally unacceptable and that things would be changing for the better;
  - 29.4.5. The claimant may have alluded to the risk to public safety.
- 29.5. Paragraph 55: The thrust of Mr Millett’s evidence was that, if the claimant had raised anything of significance, he would have expected to have documented the facts within his daybook, but if it was generic and lower-level attention to detail, that he and Ms Watson would have reiterated the requirements and standards.

***Findings from the remitted hearing on the alleged 4 October disclosure***

30. The meeting lasted about one and a half hours from 7.30 to 9.00 (p245).
31. Mr Millett conceded in evidence that the claimant raised the following matters, which were discussed at the meeting:
- 31.1. Merging of duplicate files;
  - 31.2. GP letters not being added to the file;
  - 31.3. Address records not being properly researched;
  - 31.4. A lot of discussion about Jerry Pointon and him deleting Police National Database (PND) records.
32. We considered the claimant’s “trigger notes” (pp 234-235 handwritten; pp 236-237 typed), which reference a number of behavioural issues with colleagues. The respondent accepts that the claimant discussed the matters set out in these notes. We found the following references to be of particular relevance:
- 32.1. *“Merging – led to – never given any by Jerry, Gary, Alan, Lee – DCCs orders – all told  
+ PND .....  
Covering for last 18 months, advising, helping...  
Jerry.....Martin tells him from PND – Martin also complained about this.  
Nothing done several times  
Led to April 2016 piles of files, still nothing else done  
Jerry – Due to behaviour – constantly chatting/internet/hovering/brew making/banging*



- 32.2. There was no reference to any specific Certificate Holder (CH) in the notes.
33. Mr Millett's evidence was that details of individual cases of concern would, as a matter of routine, have been noted in his daybook, an example of which is shown at page 245 in the bundle. No individual cases were recorded from the 4 October meeting.
34. In oral evidence, the claimant said he raised the issue of poor researching standards, which was unchallenged. He confirmed that he warned about telephone records on Opus not being properly researched, files not being merged, Jerry deleting PND results, GP letters not being filed and consequently, dangerous people being issued with firearms licenses resulting in risk to public safety.
35. Turning to Ms Watson's diary, (p233), this has an entry for Wednesday 4<sup>th</sup> October 2017 which reads:
- 35.1. *"Meeting with Tim Lumb and Mr Millett.  
List all addresses,  
Send for merging,  
Security vetting  
.....Tim will send guide again."*
36. Following the meeting, and Ms Watson's request for the guide, the claimant sent two e-mails to Ms Watson referring to matters discussed. They set out what was discussed at the meeting with respect to duplicate records being sent for merging and details of how various aspects should be handled such as addresses and nominals.
37. The first was at 9.47 (p 246) and was headed "*MERGING.*" It started "*Please find below what was discussed in the meeting earlier.....It is a force order that all duplicate records are sent for merging.....*" It then detailed how certain aspects of the work should be dealt with, such as nominals and addresses.
38. The second e-mail was sent at 10.00 (p248) and was headed "*FILES*". It said "*In addition to the merging, please can you ask that everyone detail records from the paper file of any warning letters. I have found some where the paper file hasn't even been looked through (as I'm sure you have too).*"

### **Submissions**

39. In brief, the claimant submits that he made a protected disclosure at the 4 October meeting, namely that substandard vetting checks were being carried out by colleagues, which tended to show that potentially dangerous people were likely to gain access to firearms and that a repeat of the failings in 2015 were likely to recur. He contends that this disclosure tended to show that a criminal offence/breach of a legal obligation/the endangering of the health and safety of an individual had, was and/or was likely to occur. He says the 2015 review gives instrumental background context to his disclosure.
40. In brief, the respondent submits that nothing relied on by the claimant is capable

of tending to show the matters in section 43B(1)(a), (b) or (d), and he was unlikely to have had a reasonable belief that it did. There were three safeguards in place to ensure firearms did not get into the wrong hands, and no false statements were made by ISOs.

## **Discussion and Conclusions**

### **What was said at the meeting?**

41. We have had regard to Mr Millett's concessions that the claimant raised issues with the standards of research, including merging, Jerry deleting PND results, nominals, addresses, dangerous people having access to firearms, implications of firearms in wrong hands, duplicate files, and GP letters. The contemporaneous trigger notes, the emails, Ms Watson's diary notes and the claimant's unchallenged evidence of poor researching, together reflect and add to this.
42. This evidence is sufficient to demonstrate that the claimant warned Mr Millett and Ms Watson at the meeting that Opus telephone records, business records, nominal records and address records were not being researched, and that duplicate records were not being properly merged. Also that GP letters were not being put on files and that Jerry had deleted PND results. As a consequence, the claimant told them that he was concerned that firearms would get into the wrong hands resulting in risks to public safety.
43. There is no evidence that specific CH files were referred to and we accept Mr Millett's evidence that details of individual cases of concern would, as a matter of routine, have been noted in his daybook, which in this instance, they were not.

### **Was this a protected disclosure?**

#### *Information*

44. The claimant identified specific ways in which ISOs were not complying with the appropriate standards in the vetting process, and warned of the dangers that might result from this. His disclosures contain sufficient factual detail and specificity to qualify as "information".

#### *Belief of Public Interest*

45. The respondent conceded that, if such information was disclosed, it would be reasonable for the claimant to believe that it was in the public interest. We agree with this, and find that this part of the test is met.

#### *Belief of Criminal Offence; Legal Obligation; Endangering of Health and Safety*

46. Mr Millett conceded that the claimant reminded him of the implications for the department if someone should get hurt or worse from a firearm, which got into the wrong hands. He also accepted that the claimant may have alluded to the risk of public safety.
47. This shows that it was in the claimant's mind at the time (a) that guns were likely to get into criminals' hands because of the poor vetting, (b) that offences

were likely to be committed, endangering public safety and (c) that what he was saying at the meeting tended to show this likelihood. This is reflective of section 21 of the Firearms Act, which provides for the offence of possession of firearms by persons previously convicted of crime. In the context of what the claimant had discovered on files, and the issues relating to standards of research, it was reasonable for him to have held that belief.

48. We do not find however, that there is sufficient evidence to demonstrate that the claimant had in mind the matter of making a reckless statement, which is covered by section 28A(7) of the Firearms Act, or malfeasance in public office.
49. With respect to non-compliance with a legal obligation, the claimant was well familiar with the three stage process of checking and vetting, which in itself was a good system. Whilst he thought there was human error in the way it was operated, it is unlikely that he believed this was a breach of a legal obligation. There is insufficient evidence to demonstrate that this was in his mind at the time he disclosed the information.

### **Overall Conclusion**

50. The claimant made a qualifying disclosure of information at the 4 October meeting, which in his reasonable belief tended to show that a criminal offence was likely to be committed (possession of firearms by persons previously convicted) and that the health and safety of members of the public was likely to be endangered.

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Employment Judge Liz Ord

Date 2 September 2022

JUDGMENT SENT TO THE PARTIES ON

2 September 2022

FOR THE TRIBUNAL OFFICE