



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Respondent

Ms Rebecca Doran-Brown

AND Blackpool Community Homeless Project
(Registered charity number 1185522)

JUDGMENT OF THE TRIBUNAL

Heard at: Manchester

On: 10,12-14 July 2023

Before: Employment Judge A M Buchanan (sitting alone).

Appearances:

For the Claimant: In person

For the Respondent: Mr Ian Randall - Attorney

JUDGMENT

It is the Judgment of the Tribunal that:

1. The complaint of automatic unfair dismissal by reason of protected disclosure advanced pursuant to section 103A of the Employment Rights Act 1996 is well-founded and the claimant is entitled to a remedy.
2. By consent the respondent is ordered to pay £5000 compensation for unfair dismissal to the claimant forthwith.
3. The Tribunal took no part in the calculation of the amount of compensation ordered above and as a result the Employment Protection (Recoupment of Benefits) Regulations 1996 (“the Recoupment Regulations”) do not apply to this Judgment.

REASONS

Preliminary matters

1.1 The claimant instituted these proceedings on 7 April 2022 relying on an early conciliation certificate on which Day A was shown as 24 February 2022 and Day B was

shown as 11 March 2022. A single complaint of automatic unfair dismissal was indicated.

1.2 The respondent filed a timely response in which all liability to the claimant was denied.

1.3 A private preliminary hearing took place before Employment Judge Cookson on 23 January 2023 and resulted in case management orders. A list of issues was required to be completed. The issues arising in this complaint were finally agreed at the outset of this hearing and are set out below.

The Hearing

2.1 At the outset a timetable was agreed and a full explanation of the procedure to be followed was given.

2.2 The hearing progressed with the claimant giving evidence and being cross examined. She called one witness. There was one witness for the respondent.

2.3 Submissions were heard, and I then adjourned to deliberate. Judgment was given orally on 13 July 2023. Written reasons were requested by the respondent and thus this Judgment is issued with full reasons.

The claim

3. The claimant advances one complaint to the Tribunal namely a complaint of automatic unfair dismissal by reason of having made a protected disclosure relying on the provisions of Part IVA of the Employment Rights Act 1996 ("the 1996 Act") and section 103A of the 1996 Act.

The Issues

4. The issues in the complaint were agreed with the parties as follows:

4.1 The claim is advanced in time.

4.2 Did the claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996?

4.2.1 What did the claimant write in an email to Kevin Long on 3 November 2021?

4.2.2 What did the claimant write in emails to Philip Passmore on 21 November 2021 and 22 November 2021?

4.2.3 What did the claimant write to the Trustees of the respondent in an email on 22 November 2021 and on 23 November 2021?

4.2.4 What did the claimant write to the Trustees on 29 November 2021?

4.3 Did any of the above communications disclose information?

4.4 Did the claimant believe that any such disclosure of information was in the public interest? If so, was any such belief reasonable?

4.5 Did the claimant believe that any information disclosed tended to show that one or more of the circumstances set out in section 43B(1)(a)-(f) of the 1996 Act was engaged? If so, was any such belief reasonable?

4.6 Does any such qualifying disclosure become a protected disclosure by reason of section 43C of the 1996 Act?

4.7 It is not in dispute that the claimant was dismissed.

4.8 Does the claimant prove on the balance of probabilities that the reason or principal reason for her dismissal was that she had made one or more of the above protected disclosures?

4.9. Who took the decision to dismiss the claimant? Were the actions of those who dismissed the claimant influenced by a third party? Can the motivation of any third party be attributed to the dismissing officers?

4.10 If the claimant succeeds, she seeks the remedy of compensation.

4.11 If there is a compensatory award how much should it be? The Tribunal will decide:

4.11.1 What financial losses has the dismissal caused the claimant?

4.11.2 Has the claimant taken reasonable steps to replace her lost earnings for example by looking for another job?

4.11.3 If not, for what period of loss should the claimant be compensated?

4.11.4 Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed or for some other reason?

4.11.5 If so, should the claimant's compensation be reduced? By how much?

4.11.6 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

4.11.7 Did the respondent or the claimant unreasonably fail to comply with it?

4.11.8 If so, is it just and equitable to increase or decrease any award made to the claimant? By what proportion up to 25%?

4.11.9 Does the statutory cap of 52 weeks' pay apply?

4.11.10 Did the claimant act in good faith when making any protected disclosure? If not, is it just and equitable to reduce the claimant's compensation? If so, by what proportion up to 25%?

Witnesses

5. In the course of the hearing, I heard from the following witnesses:

Claimant

5.1 The claimant.

5.2 Terry Field – former trustee of the respondent.

In addition, the claimant produced witness statements from two further witnesses:

5.3 Laura Price – former hub manager of the respondent.

5.4 Susan Howarth – former chair of trustees of the respondent. This witness stepped down from her role with the respondent on 22 July 2021.

Respondent

5.5 For the respondent evidence was heard from Mark Surtees – trustee of the respondent.

Comment on witnesses

6. As this is a case in which I am required to make detailed findings of fact as a result of my assessment of the witnesses before me, I consider it appropriate to make some brief comment on the manner in which each witness gave evidence before me and what, if anything, I take from that assessment.

6.1 The claimant gave her evidence in a straightforward fashion and was not damaged in cross examination.

6.2 Terry Field (“TF”) gave evidence in a straightforward way, and I accepted what he said.

6.3 Mark Surtees (“MS”) was not an impressive witness. He was vague in his answers in relation to the chronology of events leading up to the meeting on 30 November 2021. He appeared at times to be making up his evidence as he went along. Overall, I treated his evidence with a considerable amount of caution.

6.4 I gave only little weight to the statements from Laura Price and Susan Howarth as they did not attend the hearing and thus were not available to be cross examined.

Documents

7. I had an agreed bundle comprising one lever arch file before me running to some 197 numbered pages. The respondent added a copy of the constitution of the respondent at the beginning of the second day of the hearing which increased the bundle to 210 pages. Any reference to a page number in these reasons is a reference to the corresponding page in the agreed bundle.

Findings of Fact

8. Having considered all the evidence, both oral and documentary, placed before me and in particular the way the oral evidence was given, I make the following findings of fact on the balance of probabilities:

8.1 The claimant was born on 15 January 1982. She began work for the respondent in July 2020 on a temporary contract to prepare a hub for opening. On 1 September 2020 the claimant began work for the respondent on a full-time basis as a Project Manager and remained in that substantive role until she was summarily dismissed by the respondent on 30 November 2021. The claimant’s salary was paid for by funds provided to the respondent by the National Lottery. Some few weeks before her dismissal the claimant had signed a further contract for 12 months. I was not shown a copy of that contract or indeed any other contract of employment provided to the claimant.

8.2 The respondent charity was formed by Ian Long and his brother Kevin Long (“KL”) in 2015 and it was registered with the Charity Commission as a Charitable Incorporated Organisation (CIO) on 27 September 2017. Its registered number is 1185522. On the Charity Commission website, the purpose of the charity is set out as:

“We support and rehome persons of no fixed abode and support them in their future. We operate as a Charity with retail shops to raise funds by donations received”.

At the date of the hearing only one trustee was shown as appointed namely Jaymie Davies-Bloomfield. MS told me he was a trustee of the respondent charity and had been since 4 January 2021. He could not account for why he was not shown as a trustee with the Charity Commission.

8.3 At the material time for the purposes of this matter, the trustees were TS, TF and Ann Marie Morgan (“AMM”). Shortly before 30 November 2021, three other trustees namely Dominic Knight, Donna Reid and Sharon Bleakley resigned. I did not hear from those three trustees and do not know why they resigned at short notice and effectively together, but I infer their resignations were not unconnected to the events which culminated with the dismissal of the claimant. The trustee AMM was appointed at the meeting on 19 November 2021 and the trustee TF was appointed in late 2021/early 2021. The respondent charity did not provide any training to those appointed as trustees. I find that KL effectively chose who should become trustees of the charity and in the main they did his bidding.

8.4 KL had acted as the Chief Executive Officer (CEO) of the respondent charity for some time before November 2021, but he resigned suddenly as CEO at the end of a meeting of trustees on 19 November 2021. It remained unclear whether he was stepping down from his role immediately or effective from 30 November 2021 as he later asserted was the case. KL continued to have influence over the trustees of the charity after 19 November 2021. I accept that KL had acquired a shop next door to the shop run by the respondent and was wishing to devote his time to what was to become his business which was to be run commercially.

8.5 The respondent charity had as its central aim the prevention and relief of poverty in Blackpool by providing grants, items and services to individuals in need particularly, but not exclusively, homeless people. The respondent raised funds by running a second-hand shop where items were sold which had been donated by members of the public. In 2020 and 2021 the respondent obtained funding from the National Lottery to fund the recruitment and employment of the claimant as Project Manager and then in July 2021 a Hub Manager and that role was filled by Laura Price (“LP”).

8.6 The trustees of the respondent decided in 2020 to expand their services by opening a Hub above the charity shop. This was open three days per week Tuesday to Thursday inclusive for three hours and allowed homeless people to drop in to have a shower, collect clothes and receive advice. The charity also sought to find accommodation for homeless people and to place them in tenanted properties and then to support them to maintain their lives off the streets. A Housing Officer was funded through the National Lottery and that role was taken by Iris Laing (“IL”).

8.7 The final paid employee of the respondent at the material time was Christine Doran (“CD”) who was employed as a Shop Supervisor from 15 October 2020 until she too was summarily dismissed on 30 November 2021. The only employee to remain in post after the meeting on 30 November 2021 was IL. In addition, the respondent had a team of between 10 and 20 volunteers who came in at various times to help run the shop and the hub.

8.8 The claimant’s duties as Project Manager covered all aspects of the operation of the charity. She spent around 20% of her time involved in the Hub and its operations and the remaining 80% of her time was devoted to the shop, liaising with and supporting volunteers, developing policies for the respondent, applying for grant funding and generally administering the charity.

8.9 I infer that KL treated the respondent charity as his own fiefdom. He effectively chose the trustees of the charity and was the driving force behind it.

8.10 The claimant had had previous experience of working in the charity sector when she joined the respondent in 2020 and raised concerns with KL about what she saw as administrative failings in respect of various required policies and the lack of transparency as to how people were chosen to be supported by the respondent as candidates to be rehomed. She expressed her view that it seemed to her that KL and IL rehomed whom they liked with no clear selection criteria in place. Her concerns were dismissed by KL.

8.11 I accept the evidence from the claimant that KL was prone to criticise volunteers and trustees to other volunteers and trustees and a culture developed in the charity which was subsequently described as “toxic”. During 2021 after LP became employed, the claimant and LP worked together to update required policies and, in particular, to develop the hub service to better reflect the purpose of the charity.

8.12 Funding from the Community Fund of the National Lottery was obtained on 11 May 2020 (page 107) of £26,820. Funding was obtained on 22 February 2021 for £151,709 over 2 years (page 112) which was to fund the positions of project manager (the claimant’s role) and of housing officer (the role taken by IL) and all associated costs of those employments together with office rent of £9600 per annum and a further sum of £3536 per annum in respect of the building. Thus, funding was in place until February 2023 (page 113). The purpose of the funding (page 116) was so that *“vulnerable people will be better able to maintain their tenancies and will be less likely to end up back on the streets. They will be better able to manage their own financial affairs and to support themselves, gaining confidence and a feeling of self-sufficiency. Some may enter employment. The expected number of beneficiaries over two years is 60”*. The standard conditions of the funding (pages 124- 127) provided for reports to be sent to the National Lottery, for written consent to be obtained before any significant change to the project was made, to immediately return any part of the grant not used at the end of the project, to have appropriate whistle blowing policies and procedures in place and to ensure that staff were trained on its principles and operation. There were provisions for funding to be clawed back in the event that the conditions were not complied with.

8.13 The relationship between the claimant and KL began to deteriorate in October 2021. A dispute arose between them as to whether a service user should be excluded

from the service because his former partner, who had an exclusion order against him, was a volunteer in the shop. A confrontation took place on 3 November 2021 which led to the claimant writing an e-mail to KL (pages 130-136). The claimant set out details of the disagreements which had taken place between herself and KL in relation to certain volunteers and service users. She indicated that in her view KL was not ensuring that all service users and volunteers were being safeguarded properly. The claimant continued: *“You do not allow me to do my job fully as you pick and choose the job roles you wish to do, there are no clear boundaries and it just leaves the rest to me and I'm left not knowing which of these are for me to pick up. When I returned from sick leave, I requested clear boundaries for my job role and still it is unclear which does not allow for smooth running of the charity..... You are only willing to hear praise or to bad mouth others. Any perceived criticism that focuses on you or your job role and you instantly deflect and explode. This is not a healthy work environment. I cannot come to you with concerns or issues as I won't get an honest answer or support. My honest feeling is that this is a toxic work environment and this is in large part due to the fact that, whether you realise it or not, you are playing staff and volunteers off one another criticising other people's work, lack of support and direction..... Today you acted in a very immature way which provoked an immature reaction from myself. However I'm tired of being reasonable and trying to get you to see what needs doing and how you should be treating people Being CEO means making difficult decisions, it means being clear and concise in your vision. These are not getting done and it is in great detriment to BCHP... It was my understanding that hiring a project manager was for us to build up BCHP and that means utilising my knowledge and guidance. It means working together with one clear vision and boundaries. I am trying to get us to that point and it's not about attacking you or upsetting you personally, it is about what the charity needs”.*

8.14 On 5 November 2021 the claimant wrote to KL requesting a one-to-one meeting. KL responded on 6 November 2021 (page 137) indicating he was taking legal advice from a *“legal solicitor”* before responding to the claimant's e-mail. It is clear evidence of a dysfunctional working relationship when a CEO needs to take legal advice before feeling able to respond to concerns raised by his manager.

8.15 Some weeks, if not months, before these events, KL had requested an audit of the respondent charity from consultants and a report was to be produced by Philip Passmore (“PP”). On 14 November 2021 PP produced an interim report (pages 100-106) which was sent to the trustees and marked for discussion and comment by 30 November 2021. PP had been investigating the charity from July 2021 onwards. The interim report did not make explicit recommendations as the author wished the trustees and the staff to discuss and explore issues and reach a consensus. It was hoped to produce a final report by January 2022. Strengths of the charity were noted as including the fact that KL was well respected and well known in the community, that the shop was well located in the town centre and that the hub provided essential services to a wide range of service users and that financial accounting appeared to be generally well managed. Weaknesses included some differences of opinion as to the effectiveness of the hub given that other organisations in the town provided a similar service. It was noted that there was heavy reliance on a single source of funding, no strategic approach to marketing and that there were unhealthy levels of tension and conflict between trustees and *“a toxic culture is developing in some parts of the organisation, with a deterioration in climate and relationships”.*

8.16 The claimant became acquainted with PP as he conducted the review, and she wrote to him on 3 November 2021 a lengthy e-mail (page 138) which detailed her complaints particularly with the conduct of KL.

8.17 After receiving the claimant's e-mail dated 3 November 2021, KL went on sick leave for two weeks and the claimant was left to manage the charity. When he returned to work, KL took the claimant out for lunch and informed her that he was leaving the charity effective from the end of November 2021 to open his own business next door to the respondent's shop in which he proposed to sell out of date products. It was agreed that KL would hand over the reins to the claimant for her to manage the charity on an interim basis until the trustees decided what to do. A trustee meeting took place on 19 November 2021 which was attended by 6 trustees. In that meeting, a review took place of the services being provided through the hub and a new programme of services to become operative at the beginning of 2022 was agreed. During the meeting detailed proposals worked up by the claimant were discussed and approved and the proposals were received enthusiastically, and the claimant was praised by the trustees for the good job she was doing. At the end of the meeting, KL announced to the trustees that he was leaving as CEO, and it was suggested that the claimant "*held the fort*" until the trustees decided how they wished to proceed. PP was in attendance at that meeting.

8.18 On 21 November 2021 PP wrote (page 143) to the claimant asking her opinion as to what had happened at the respondent charity over the last couple of weeks and what the standing down of KL from the position of CEO would mean for the day-to-day running of the organisation. The e-mail from PP continued: "*I was left uncertain on Friday evening of exactly when Kevin leaves as CEO, who is going to be in day-to-day management control moving forward, or of any arrangements for the appointment of a new CEO: and I am duty bound to report on this situation within the audit. I will also be reporting on my perceived weaknesses in the organisation of appointments of trustees and potential non compliance with the organisation's charitable constitution*".

8.19 In response the claimant sent a lengthy e-mail (pages 145-157). The claimant expressed the view that KL was leaving the organisation because he had become aware of the gaps in his knowledge and the audit results had frightened him as he was aware that he was out of his depth. She expressed the view that the Housing Officer was not very interested in the role she was fulfilling. She criticised KL for having taken on the shop next door to the charity which at one time was being considered by the charity as an additional shop for the sale of furniture. The claimant noted she had a meeting scheduled with KL for 2:00pm on 22 November 2021. The claimant set out her views as to what was needed by the charity to make it successful which, amongst other things, included training for trustees to enable them to understand their role. The claimant mentioned a potential conflict of interest by reason of the decision of KL to stay on as a trustee.

8.20 On 22 November 2021 (pages 92-95) the claimant sent a lengthy email to all the trustees. This document was also sent in the form of a report left for the trustees on 29 November 2021 for their meeting on 30 November 2021. In this lengthy document, the claimant makes various disclosures which she says are disclosures of information, which are bullet pointed, and in evidence the claimant indicated which of those matters she relied on as protected disclosures. There were seven in all:

8.20.1 The first related to KL having hired IL on a part-time basis notwithstanding that the role had been granted full-time funding from the National Lottery, and she indicated that IL had been paid a premium rate for part-time work instead of having to earn the same money for full-time hours.

8.20.2 Secondly, she alleged that KL had hired CD but had kept her paid appointment secret from staff and volunteers and required CD to lie, which had left her uncomfortable, and was deemed by the claimant to be unprofessional.

8.20.3 The claimant indicated that KL was working as CEO but had no contract entitling him to that position or indeed the income which he was paying himself at that time (£27,000 per annum pro rata).

8.20.4 The claimant indicated that the water rates for the property occupied by the charity had not been paid and that she had been told by KL incorrectly that the water rate was included in the rent.

8.20.5 The claimant indicated that the business rates payable by the respondent charity were invoiced in different names of individual volunteers and she saw this as an attempt fraudulently to obtain small business rate relief.

8.20.6 The claimant indicated that the charity did not have in place trained first-aiders, safeguarding officers, fire safety leads and that Disclosure and Barring Service ("DBS") checks were not in place.

8.20.7 The claimant asserted that KL had paid himself excessive holiday pay without authorisation and had made payments to IL of bonuses without authorisation, as she was his favourite and his friend. She made reference to other bonuses which had been paid to IL.

8.21 On 23 November 2021 the claimant wrote again to the trustees (page 168) and in that email she referred to her previous email of 22 November 2021 and says this:

"I would like to state that Kevin paid himself just over £4,600 on Monday. It is my understanding he did not have the legal authority to do so. It is also far more than a monthly wage..... The accountant states he has left with 200 hours' accrued holiday. Was this authorised by the trustees?"

The claimant then went on again to refer to bonus payments to IL and the fact that KL was still an authorised signatory at the respondent's bank and her difficulties in trying to alter that situation given that KL had left his post.

8.22 The claimant sought to convene a meeting of trustees, but she was told by the trustee AMM (page 171) that she did not have the authority to do so, and she was reminded that she was employee of the trustees, and it was for the trustees to call meetings and not the claimant. The claimant was reminded that the trustees needed to comply with the constitution of the respondent charity. I infer that the relationship between the trustee AMM and the claimant was not a good one and that AMM was a close ally of KL.

8.23 On 25 November 2021 KL (pages 175-177) wrote to the trustees. In that message he made a formal complaint about the claimant - he having clearly read the emails which the claimant had sent to the trustees. I conclude that he had seen all the correspondence to which I have referred at 8.20-8.22 above. KL goes on that he had been greatly upset by the way the claimant had conducted herself over the matter of his stepping down as CEO and KL stated his opinion that the claimant had breached confidentiality and the data protection regulations in informing everyone of his salary. (Pausing there, I cannot see how informing the trustees of something they should already know could possibly be a breach of those regulations). KL indicated his view that the claimant had made libellous and slanderous remarks and statements which would be classed as defamation of character and had said that he had paid £4,600 to himself as an unauthorised payment implying that he had illegally taken money, which had caused him upset and stress. He indicated he was still the CEO and thus asked the trustees to take steps to resolve what he was putting forward as a grievance. That letter was sent by KL to Sharon Bleakley and she sent it out to her fellow trustees (page 180) some 20 minutes after she received it. She reminded her colleagues that it was confidential.

8.24 I infer that both the trustee AMM and MS were supportive of KL, and on 26 November 2021 MS wrote an email to his fellow trustees (pages 179-180) in which he expressed his concern about the content, nature and tone of the emails sent by the claimant which were besmirching of KL's character unfairly and contained no evidence to substantiate the accusations. He made comment on a bonus of £500 paid to IL and the fact that he considered that to have been properly within the jurisdiction of KL and he indicated it would be a good idea to have a trustee meeting. AMM responded to MS to the effect that she agreed a meeting was a good idea.

8.25 Around the same time, TF also emailed his colleagues and in that email on 27 November 2021 (page 183) he criticised AMM for taking upon herself the position of chairperson and expressed his concern whether the charity could fold.

8.26 A meeting of the trustees, namely AMM, TF and MS took place on 30 November 2021. It was a meeting which lasted no more than 45 minutes, and a minute was produced of that meeting (pages 96-98), which is remarkable for what it does not say rather than what it does say. In the minute it appears that the meeting was called to consider the concerns raised by the claimant and by CD who had also raised some concerns, and also to consider the matters raised by KL and apparently matters raised also by IL and LP: thus, there were at least five letters which required consideration by the trustees.

8.27 The minute deals with the fact that on the day before this meeting (on 29 November 2021) the claimant, CD and LP had all become ill and were away from work and as a result the hub had had to close that day for the lack of staff. It noted that trustees had resigned over the recent days (see paragraph 8.3 above). It noted that two volunteers who had worked in the shop had left, and that the hub had been closed due to the findings that the services were duplicated by other charities. I find that that is an incorrect minute. That is not why the hub had closed: it had closed for one day because its staff were absent, and I do not accept the accuracy of the minute so far as that is concerned. The minute records that a proposal was made (I know not by whom) that the hub be permanently closed with immediate effect and all staff terminated. The

minute records that that proposal was unanimously agreed. I do not accept that that was the case and I accept TF's evidence that he abstained.

8.28 It is startling that in a very short meeting decisions of the most fundamental and profound effect on the operation and running of this charity were taken, namely to close a hub for which funding had been obtained (at least until February 2023) and to make redundant (although that word is not used) three of the four members of staff employed by the respondent charity without out consultation or process of any kind.

8.29 As a result of that meeting a letter was prepared (page 184) which was dated 30 November 2021 (the same day) and delivered apparently that same evening to the claimant's address in which the claimant was told that there had been a meeting of the trustees where it had been unanimously decided to permanently close the hub. She was told that as a result her position was no longer available, and she was given four weeks' notice. She was told not to work that notice and not to enter the premises but to return her keys, her ID card and her uniform. I accept that a similar letter was sent to CD and to LP on the same day. Only IL – a close confidante of KL - was spared dismissal.

8.30 The job description of the claimant is set out at page 185 and that sets out the details of the role she was to carry out. By no stretch of the imagination can it be said that her duties were exclusively tied to the hub, and I find and I accept her evidence that her duties in or around the hub comprised no more than 20% of her working week.

8.31 I accept that concerns (because of the minute) had been raised with the trustees by CD and LP. I accept that the hub was closed from 30 November 2021 and has not reopened. I accept that the employee IL remained in employment and shortly after those events, namely early in 2022, an advertisement was placed for a charity shop support officer, effectively the role from which CD was supposedly made redundant on 30 November 2021, and that role was filled. The respondent charity still exists although it is now apparently not trading in the shop, and it is not effectively in operation. I am advised, and I have no reason to question the evidence of MS on this point at least, that certain funding obtained from the National Lottery was reclaimed by it as a consequence of the closure of the hub.

Submissions

9. I have given detailed consideration to Mr Randall's detailed written submission, for which I was most grateful, and indeed to the oral submissions made by both parties to me which I have noted. I will not rehearse the submissions, but I have noted all that was said, and I have taken them into full account.

The Law

10.1 I reminded myself of the provisions of section 103A of the 1996 Act which read;

“An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or if more than one the principal reason) for the dismissal is that the employee made a protected disclosure”.

and of the relevant provisions of Part IVA of the 1996 Act and section 43B(1) which read:

“(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 an 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 the preceding paragraphs has been or is likely to be deliberately concealed”.*

Section 43C which reads:

(1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure....

(a) to his employer

(2) A worker who, in accordance with a procedure whose use by him is authorised by his employer, makes a qualifying disclosure to a person other than his employer is to be treated for the purposes of this part as making the qualifying disclosure to his employer.

Protected Disclosures

10.2 I note that any disclosure must amount to a qualifying disclosure. The fact that the information being disclosed is already known to the respondent does not prevent the disclosure being qualifying. The Tribunal must not apply a rigid distinction between information being disclosed and allegations being made and the Court of Appeal in **Kilraine -v- London Borough of Wandsworth 2018 ICR 1850** held that the information referred to in section 43B is capable of covering statements which might also be characterised as allegations. Allegations and information are often intertwined. However, the disclosure must have sufficient factual content to be capable of tending to show one of the matters listed in section 43B(1)a-f. If the worker subjectively believes that the information he discloses does tend to show one of the listed matters and the statement or disclosure he makes has a sufficient factual content and specificity such that it is capable of tending to show the listed matter then it is likely that his or her belief was reasonable. A disclosure of information must convey facts. In **Goode -v- Marks and Spencer plc EAT 0442/2019** the disclosure made by the employee had merely expressed an opinion about Marks and Spencer’s proposals and so could not fall within section 43B. The EAT stated the only information the letter disclosed related to Goode’s state of mind so this could not possibly tend to show a relevant failure. It is necessary for the worker to give evidence of what information he had actually provided to his employer. A mere inquiry about a matter is very unlikely to amount to a disclosure of information.

10.3 The question of whether a disclosure of information is made in the public interest is unlikely to arise save in cases advanced under section 43B(1)(b) of the 1996 Act. Where it is an issue, the focus is on whether the worker reasonably believed the disclosure was in the public interest. The concept of public interest was inserted into the 1996 Act to prevent a worker from relying on a breach of his or her contract of employment where the breach is of a personal nature and there are no wider public interest implications. A relatively small group may be sufficient to satisfy the public interest test but that is a matter for each tribunal. Factors which might be relevant (the so-called Chesterton guidelines) are the number of people whose interests are affected by the disclosure, the nature of the interests affected, the nature of the wrongdoing disclosed and the identity of the alleged wrongdoer. A case where a worker is the principal person affected can be in the public interest if it affects the wider interests of employees generally. Case law suggests that complaints about contracts of employment and working conditions can still attract protection and that the public interest aspect is not a significant hurdle. In **Dobbie-v- Felton t/a Feltons Solicitors 2021 IRLR 679 the EAT** the distinction between disclosures which serve the private or personal interests of the worker making the disclosure and those that serve a wider interest was considered. There may be a difference between a matter of public interest and a matter that is of interest to the public and there may be subjects that most people would rather not know about that may still be matters of public interest and it may be in the public interest even if the disclosure relates to a specific incident without any likelihood of its repetition.

10.4 I note that it is necessary for the Tribunal to consider what the worker considered to be in the public interest, whether the worker believed the disclosure served the public interest and whether that belief was held reasonably. It does not matter if the genuine belief was wrong and even if there was no public interest in the disclosure being made provided that the worker's belief that the disclosure was made in the public interest is objectively reasonable. The courts have stressed that the necessary belief is simply that the disclosure is in the public interest and the particular reasons why the worker believes that to be so are not of the essence. A disclosure does not cease to qualify simply because the worker seeks to justify it after the event by reference to specific matters which the Tribunal finds were not in his or her mind at the time. In principle, the Tribunal might find that the particular reasons why the worker believed the disclosure to be made in the public interest did not reasonably justify his or her belief but nevertheless find it to have been reasonable for different reasons which he or she had not articulated at the time. All that matters is that his subjective belief was objectively reasonable.

10.5 The breach of legal obligation referred to in section 43B of the 1996 Act can cover the provisions of a contract but does not extend to a breach of guidance or best practise. It also is wide enough to cover the employer's duty not to discriminate under the 2010 Act. In **Fincham -v- HM Prison Service 0925/2001** it was observed that there must be some disclosure which actually identifies albeit not in strict legal language the breach of legal obligation on which the worker is relying. In **Bolton School -v- Evans 2006 IRLR 500** it was accepted as obvious that the disclosure related to sensitive information about pupils falling into the wrong hands and that could give rise to a potential legal liability. The EAT reached a similar conclusion in **Western Union Payment Services UK Limited-v- Anastasiou EAT 0135/2013**. It was accepted that reference to misleading information in a prospectus was sufficient specificity. In **Blackbay Ventures Limited -v- Gahir 2014 ICR 747** the EAT stated that, save in

obvious cases, if a breach of legal obligation is asserted the source of the obligation should be identified and capable of verification by reference for example to statute or regulation. Clearly a worker need not always be precise about what legal obligation he envisages is being breached or is likely to be breached. In cases where it is obvious that some legal obligation is engaged, the absence of specificity will be of little evidential relevance. However, in less obvious cases a failure by the worker to at least set out the nature of the legal wrong he believes to be at issue might lead a Tribunal to conclude that the worker was merely setting out a moral or ethical objection rather than a breach of legal obligation.

10.6 I have reminded myself of the guidance in respect of public interest but in view of the quite proper concession by the respondent in this case in that regard I will not refer further to those matters.

10.7 I have reminded myself of the question of the burden of proof in this matter and I have particularly noted the submission made on behalf of the respondent which relies on the decision of Lord Justice Mummery in the Court of Appeal in **Kuzel v Roche Products Limited [2008] ICR 799**. That decision sets out the burden of proof in respect of an automatic unfair dismissal for protected disclosure where an employee has qualifying service to bring an ordinary unfair dismissal claim. In this case of course the claimant does not have that right in view of her short service, and the burden of proof in respect of this matter lies at all times with the claimant so far as the reason for dismissal is concerned.

Discussion and Conclusions

11.1 The first question is whether the claimant has made any protected disclosure because without any protected disclosure this claim can go no further. That question breaks down into several sub questions. I have given consideration to the documents in which the claimant says disclosures were made and first I have considered whether information was disclosed in any one or more of such documents.

11.2 I have considered whether the letter to KL of 3 November 2021 disclosed information. I have looked at that letter in detail. It is a robust exchange between the CEO and the Project Manager. It is a message in which the claimant clearly expresses her dissatisfaction with KL and the reasons for that dissatisfaction. I conclude it is just that – a message which sets out the disagreements between the claimant and KL, but it does not contain any information sufficient to bring the matter within section 43B of the 1996 Act. Even if it did, the claimant gave no evidence whatever in respect of how and why she says any information which might have been contained in it fell within section 43B(1). The burden lies with the claimant to establish qualifying disclosures, and so far as the message of 3 November 2021 is concerned, she made no attempt to do so. Therefore, I conclude that that message did not disclose information and thus it did not amount to a qualifying disclosure, let alone to a protected disclosure. I need not consider the message of 3 November 2021 any further.

11.3 I have next considered the letters or emails written by the claimant to PP on which she relies as protected disclosures being messages of 21 and 22 November 2021. I conclude that information, as opposed to mere allegations, is indeed contained in those messages, but again the matter falls down because the claimant did not make any

attempt to explain to me how any such information became a qualifying disclosure for the purposes of section 43B(1)(a)-(f) of the 1996 Act. No evidence at all was placed before me about that crucial matter, or indeed about any belief that the matters disclosed were in the public interest. Furthermore, and most crucially, even if the claimant had established that those emails were qualifying disclosures, they are not protected disclosures because PP was not a person falling within section 43C onwards of the 1996 Act to whom qualifying disclosures could be made so as to become protected. PP was a self-employed auditor, not in the financial sense but an auditor of business (business consultant, if you like) who had been employed to give his opinion on the business of the respondent charity. PP was not the claimant's employer, and it was not argued before me that PP fell within any of the other sections of section 43, and indeed I cannot see how he could have done so. Any information disclosed to PP, even if it had amounted to a qualifying disclosure, could not have amounted to a protected disclosure. Accordingly, I do not need to consider the messages to PP of 21 and 22 November 2021 any further.

11.4 The same is not true, however, of the letters written to the trustees of the respondent charity on 22 November 2021, repeated on 29 November 2021 in the same terms, and supplemented by the email to the trustees of 23 November 2021. The email message of 22 November 2021 is lengthy and in evidence the claimant stated that she relied on seven paragraphs in that message as containing disclosures of information which she says amounted to protected disclosures. I have had to consider therefore the seven paragraphs on which the claimant relied and whether in that correspondence information as opposed to allegation (as the respondent would say) was disclosed. In fact, I find that in each of the seven paragraphs, information was indeed disclosed by the claimant to the respondent.

11.5 First, information is given (page 92) that KL had employed IL effectively at a premium rate on a part-time basis by which she was paid the full-time salary that had been agreed with the funding agency. That is information, it is sufficiently specific to amount to information.

11.6 Secondly, I find that information was provided (page 92) that KL had required CD not to tell the truth about her paid position to members of staff and other volunteers. That information is followed by an opinion that the request from KL was unprofessional which would not amount to information, However, the information about the instruction itself does amount to the disclosure of information.

11.7 Thirdly, I find that there is information disclosed (page 93) that KL had not been properly engaged as the Chief Executive Officer and had not had his salary of £27,000 per annum confirmed in a contract or approved by the trustees as it should have been. That is information.

11.8 Fourthly, I find that there is information (page 93) given to the trustees that the water rates had not been paid for the property owned by the respondent charity and that the water rates were not included in the rent as had been stated by KL to the claimant.

11.9 Fifthly, I accept that information was given (page 93) that the invoices for the business rates of the premises owned by the respondent were in some cases in the

names of individual volunteers, and copy invoices were sent to the respondent's trustees to evidence that position. That was information.

11.10 Sixthly, I accept that information was given to the trustees (page 93) that there was an absence of trained first-aiders, safeguarding officers, fire safety leads and DBS checks for volunteers.

11.11 Finally, I accept that information was given (page 193) that KL had paid himself excessive holiday pay without authorisation and had provided for bonuses to IL without the knowledge or authorisation of the trustees. I find that that particular matter was again referred to on 23 November 2021 when information was given to the trustees (page 168) that "*Kevin paid himself just over £4,600 on Monday*", and a copy of the accounts evidencing that payment was provided.

11.12 Accordingly, I conclude that the first element of the test for qualifying disclosures was made out in the seven paragraphs of the message of 22 November 2021 on which the claimant relies.

11.13 I have therefore moved on to the next question, which is: did the claimant have a subjective belief in the matters which she disclosed, and was that belief objectively reasonable?

11.14 So far as the first matter is concerned, the question of the IL contract, I find that the claimant did subjectively believe that the respondent was in breach of a legal obligation to the funding authority to deal with the funding obtained in accordance with the conditions imposed and also that that matter had been concealed or was likely to be concealed. Having looked at the matter and considered the evidence in detail, I conclude that that belief was objectively reasonable.

11.15 In relation to the second matter, I do not accept that the claimant had a subjective belief that any legal obligation had been breached or anything had been or was likely to be concealed in respect of the instruction to CD to keep her paid position a secret. The claimant could not explain even in general terms what legal obligation she considered had been breached. The claimant set out her view that it was unprofessional, but that is an opinion and I conclude that that is not sufficient to bring the matter within the ambit of section 43B(1) of the 1996 Act. Accordingly, I take that matter no further.

11.16 I have considered each of the other five matters relied on in turn. I am satisfied that the claimant held a subjective belief that a legal obligation had been breached in relation to the payment of salary to KL, the payment of water rates, the incorrect names on the business rates invoices, the failure to provide first aid officers, safeguarding officers and the like and the payment of the bonus and holiday pay to KL. Further, I accept that the claimant held a subjective belief that the information disclosed in respect of the absence of first aid officers, safeguarding officers, fire safety leads and the DBS checks put at risk the health and safety of others. I accept also that the claimant held a subjective belief that the irregularities over the business rates invoices revealed matters which evidenced that a crime may have been committed. Accordingly, I am satisfied that the claimant held a subjective belief in respect of six out of the seven disclosures of information made by her that they fell within section 47B of the 1996 Act.

11.17 I have next considered whether those subjective beliefs of the claimant in respect of the six matters were objectively reasonable. I conclude that in each case they were objectively reasonable. The matters raised were potentially serious. There was documentary evidence to support the disclosures, and I conclude that the claimant's beliefs were objectively reasonably held.

11.18 The next question for consideration is whether the claimant believed that each disclosure made was in the public interest. However, in this case the respondent conceded that that element of the definition of a qualifying disclosure was made out. That concession was properly made. The disclosures all related to an organisation which was relying on public funds, and which was offering services to disadvantaged and vulnerable clients. Accordingly, I conclude that there were six qualifying disclosures made by the claimant.

11.19 I have moved on to the final question, which is whether those qualifying disclosures became protected disclosures. I conclude that in disclosing the information as she did in the messages of 22, 23 and 29 November 2021, the claimant made the disclosures to her employer within section 43C of the 1996 Act. The trustees of the charity, and not KL, were her employer and she correctly made her disclosures to the body of people who collectively employed her. Therefore, I conclude that there were six protected disclosures which the claimant had raised with her employer shortly prior to her dismissal.

11.20 I pause there just to say that it is not my function to say whether any of the matters raised by the claimant were true or untrue. It is not part of my function to make any such assessment and I have not done so, and I make no comment on the veracity of the disclosures at all. An employee is entitled to protection if she raises matters in accordance with section 43B of the 1996 Act on the basis of reasonable belief in the matters relied on. It is not a matter for me to say whether what the claimant has alleged has any degree of truth save to the extent that I have to be satisfied that she had a belief in the matters disclosed which was objectively reasonable. The question of the motivation of the claimant only arises – if at all – at the remedy stage.

11.21 I turn to the final and crucial matter in this case which is whether the protected disclosures made by the claimant were the reason or principal reason for her dismissal. I remind myself that the claimant carries the burden of proof in this matter given her short service with the respondent.

11.22 The first matter that I have considered is whether the claimant has in fact raised any evidence at all that that is the case, because the burden lies with her to establish the reason. I have considered these matters.

11.23 First, the claimant made disclosures to her employer in November 2021. I am satisfied that two of her colleagues namely CD and LP also raised concerns. Only one employee did not raise concerns and that was IL. I do not know the details of the concerns raised by CD and LP or whether or not they amounted to protected disclosures. However, what is clear is that shortly after raising their concerns the claimant, CD and LP were summarily dismissed. IL was not dismissed. That is one factor.

11.24 Secondly, the disclosures by the claimant were all made a short time before a decision was taken to summarily dismiss the claimant, in what can only be described as unusual circumstances - to put it at its mildest.

11.25 Thirdly, when the claimant was dismissed on 30 November 2021, she was dismissed ostensibly for redundancy. However, there was no warning or consultation about that matter with the claimant and no reports of any description before the trustees at their meeting on 30 November 2021 setting out why the dismissal of the claimant (and her colleagues) was necessary. Why would trustees charged with acting in the best interests of a charity, with funding in place, act in such an arbitrary and hasty manner? Those are questions which trouble me.

11.26 Fourthly, the trustees themselves had reduced from six to three a matter of days before these events. That is indicative in my view of some disagreement between the trustees – it cannot be coincidence, it seems to me, that half the body of trustees should suddenly resign shortly before the dismissal of the claimant took place.

11.27 Fifthly, the meeting of trustees on 30 November 2021 is troubling. It was a short meeting at which a decision was taken which was wide-ranging and fundamental to the future of the charity and yet there was little, if any, discussion about that. The trustees had (according to MS) no reports before them except the interim report of PP, and on any reading of that report, it does not recommend the closure of the hub. No advice was taken about the implications of making staff redundant and no financial information was before the trustees. The decision taken on 30 November 2021 was in stark contrast to the decision taken on 19 November 2021 at which plans prepared by the claimant for the future operation of the hub were enthusiastically received by the trustees. What had changed between 19 and 30 November 2021? The claimant had made protected disclosures and three trustees had resigned. I conclude that there is ample evidence raised by the claimant to suggest her dismissal was by reason of her having made protected disclosures.

11.28 So I turn to what the respondent says was the reason for the dismissal. The respondent says of course that the dismissal was by reason of redundancy and not by reason of the protected disclosures made by the claimant. I reiterate, so far as that is concerned, that funding was in place to pay the claimant for the foreseeable future and that only 20% of her job role was taken up in the hub, whereas the 80% was in other areas including the shop, for which very shortly after the event the trustees advertised for a further paid member of staff. No consultation of any kind took place with the staff concerned, and the claimant was simply given notice of dismissal completely out of the blue through her door on the evening of the trustee's meeting on 30 November 2021. The claimant had signed a new contract for 12 months just shortly before these events. The hub had had to close on 29 November 2021 because the claimant and her two colleagues were absent through illness but that was the first time the hub had had to close in such circumstances and was certainly no reasonable basis for a permanent closure decision. All that suggests to me that redundancy was not the reason for the dismissal of the claimant, but that that is a contrived and manipulated reason which seeks to conceal the real reason for the dismissal.

11.29 What then was the principal reason for this dismissal? I have to go back and look at all the evidence in the history of this matter.

11.30 KL had stepped down as CEO on 19 November 2021. He had had difficulties with the claimant, and I infer that she had become a thorn in his side. This was a charity that KL had founded, and I infer that he ran it as he wished to see it run and he effectively controlled the appointment of its trustees. KL did not like the challenges to the way the charity was run which came from the claimant who had much greater experience of running charitable businesses than did KL. I conclude that the meeting on 19 November 2021 was a positive one which put in place future plans for the charity which included the hub as an integral part of the service to be offered. Shortly after the meeting on 19 November 2021 at which KL resigned as CEO, three trustees resigned which left only three trustees of whom two, namely AMM and MS, were particular allies of KL. The relationship between KL and the claimant deteriorated further and sharply after the claimant made protected disclosures on 22 and 23 November 2021, which she did after assuming control of the administration of the charity and gaining access to all the records of the charity for the first time. I infer that the trustees MS and AMM joined KL in condemning the content of the protected disclosures and joined with him in a scheme to dismiss the claimant and her colleagues. The fact that AMM was ill disposed to the claimant is shown by the tone and content of her email to the claimant on or around 26 November 2021 (paragraph 8.22 above). I further infer because of the speed at which things happened that the trustees MS and AMM colluded with KL to force a proposal through the meeting of trustees on 30 November 2021 to dismiss the claimant under the guise of redundancy and to execute that plan on the same evening. I conclude that the reason they acted as they did was because the claimant had made what were protected disclosures. Having heard MS in evidence, I conclude that he had no appreciation of the protections afforded to employees who make protected disclosures or indeed what a protected disclosure is. I infer the same applied to KL and AMM given the manner in which they conducted themselves after receiving protected disclosures from the claimant.

11.31 The plans of the charity changed dramatically between the meeting on 19 November 2021 and the meeting on 30 November 2021. The only matters of significance that happened in that eleven-day period were the making of disclosures by the claimant and the resignation of three trustees. The fact that the hub had had to close on 29/30 November 2021 was not in my judgment a significant event but was used as an excuse to dismiss three members of staff as redundant when there was patently no redundancy situation. I conclude therefore that on balance the only reason that there can be for the dismissal of the claimant was that she had raised her concerns which were protected disclosures and that had led the respondent to find a way to dismiss her. I infer that that plan was devised by KL and that AMM and MS colluded with him to dismiss the claimant. I infer that in acting as they did the trustees of the charity were not acting in the best interests of the charity but were colluding with KL to rid himself of the claimant in a manner which was contrary to the law.

11.32 That being so, the dismissal of the claimant was automatically unfair pursuant to section 103A of the 1996 Act and the claimant is entitled to a remedy.

Remedy Hearing

12.1 Having announced my judgment on liability, the parties asked for a short time to consider matters. The parties returned to the Tribunal to advise that agreement had been reached and, by consent, the respondent is ordered to pay to the claimant £5,000

compensation forthwith. In those circumstances the Recoupment Regulations do not apply.

**EMPLOYMENT JUDGE A M BUCHANAN
JUDGMENT SIGNED BY EMPLOYMENT
JUDGE ON 17 August 2023**

**JUDGMENT SENT TO THE PARTIES ON
6 September 2023
AND ENTERED IN THE REGISTER**

FOR THE TRIBUNAL



NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990 ARTICLE 12

Case number: **2402542/2022**

Name of case: **Miss R Doran-Brown** v **Blackpool Community Homeless Project (Registered charity number 1185522)**

Interest is payable when an Employment Tribunal makes an award or determination requiring one party to proceedings to pay a sum of money to another party, apart from sums representing costs or expenses.

No interest is payable if the sum is paid in full within 14 days after the date the Tribunal sent the written record of the decision to the parties. The date the Tribunal sent the written record of the decision to the parties is called **the relevant decision day**.

Interest starts to accrue from the day immediately after the relevant decision day. That is called **the calculation day**.

The rate of interest payable is the rate specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as **the stipulated rate of interest**.

The Secretary of the Tribunal is required to give you notice of **the relevant decision day**, **the calculation day**, and **the stipulated rate of interest** in your case. They are as follows:

the relevant decision day in this case is: 6 September 2023

the calculation day in this case is: 7 September 2023

the stipulated rate of interest is: **8% per annum.**

For the Employment Tribunal Office