



EMPLOYMENT TRIBUNALS

Claimant

Respondents

Ms Elaine Williams

v

Hertfordshire County Council

Heard at: Watford (via CVP)

On: 19-20 October 2023 and
12-15 February 2024

Before: Employment Judge Daley

Members: Mr C Grant
Mr P Hough

Appearances:

For the claimant:

Ms L Hudson, of Counsel Public Access

For the respondents:

Mr Ryan Anderson, Counsel

WRITTEN JUDGMENT ON LIABILITY MAJORITY DECISION

1. Judgment was given to the parties on 15 February 2024, and written reasons have been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided.

Introduction

2. The claimant's claim is that she made a protected disclosure, and that because of that protected disclosure, the respondent a local authority whom she had worked with for six weeks, as a locum social worker, gave her a poor reference which resulted in the loss of a permanent employment role, which had been offered subject to references.
3. The Claimant began early conciliation on 31 August 2022 and the Employment Tribunal claim was issued on 16 October 2022. The claimant was employed as a locum social worker

4. In her ET 1 The claimant pleaded that on 9 June 2022, the claimant claims that she made a protected disclosure via email setting out concerns that she had about two foster children. In her email the claimant set out that “I have escalated my concerns to the child’s social worker, my manager, Fostering Services Manager and Independent Reviewing Officer”. The claimant claims that because of this she was provided with a poor reference which was not factually accurate which resulted in her offer of employment being withdrawn.
5. The claimant’s claim is that the respondent treated her detrimentally for making a protected disclosure within the meaning of section 43A of that Act, contrary to section 47B of that Act. Her claim was for compensation only.
6. On 13 December 2022, the employment tribunal wrote to the parties as follows- : “As both parties are represented, they are to: - 1. Agree and file and serve a list of issues 2. Provide details of the number of witnesses they each intend to call 3. Provide that agreed time for the Full Merits Hearing within 28 days of this letter. An Employment Judge will then determine if the matter can be listed or whether a Closed Preliminary Hearing is required”.
7. The claimant provided a list of issues and on 14 April 2023, following this, the respondent’s solicitor wrote to the Tribunal indicating that they agreed to the list of issues as drafted. On 16 April 2023 the Tribunal sent a notice of hearing to the parties listing the claim for hearing on 18 October 2023, for three days. Directions were given to the parties. The hearing was subsequently shortened however on 17 October 2023 the hearing was adjourned part heard, and directions were given listing it to be heard for 4 days from 12 February to 15 February 2024, with the Friday 16 February 2024 to be reserved for a Remedy hearing if necessary.

The issues

8. (i) Did the Claimant make a qualifying disclosure as defined in Section 43B of the Employment Rights Act 1996?
 - (2) The Claimant claims on 9 June 2022, as pleaded at paragraph 6 of the of Claim, she emailed the Respondent’s Fostering Service Manager, raising concerns regarding the level of care being provided to two siblings by their foster parents. In particular:
 - a. Child A’s nose was dirty and was struggling to breathe;
 - b. Child A had been placed in a pram and was on his own in the garden, despite only being 4 months old and it not being a warm day;
 - c. that the foster parents gave mixed messages when confirming what Child I, had for breakfast;
 - d. The Claimant was concerned the foster parents were not acting in the best interests of the children and that unannounced monthly spot checks should take place

(3) The Claimant confirmed she was not happy with the level of care hence why she had copied

(i) Child's Social Worker, her manager, Fostering Service Manager and the Independent Reviewing Officer into her e-mail

(4). Did the Claimant disclose information?

(5) Did the Claimant believe the disclosure of information was made in the public interest?

(6). Was the Claimant's belief reasonable?

(7). Did the Claimant believe it tended to show that:

(i) A person had failed, was failing or was likely to fail to comply with any legal obligation to which they were subject (the Claimant claims the relevant legal obligation was the foster parents' duty of care to Child A and Child I); or b. That the health or safety of any individual had been, was being or was likely to be endangered.

(8). Was that belief reasonable?

9. DETRIMENT (SECTION 47B ERA 1996)

10. (I). Did the Respondent do the following things:

11. a. On or around 29 June 2022, Grete Lund, Fostering Service Manager, submitted a reference to a prospective employer of the Claimant's which contained inaccurate and false statements regarding the Claimant's conduct and performance which resulted in the Claimant's prospective offer of employment being withdrawn.

(II) By doing so, did it subject the Claimant to a detriment? (III) If so, was it done on the ground the Claimant made a protected disclosure?

Evidence

12. The Tribunal considered the claimant's witness statement and heard the claimant's evidence under oath. The Tribunal also considered the respondent's witness statements and heard from the following witnesses who also gave evidence under oath and affirmation. Miranda Gittos- Director of Specialist Services and Commissioning (Children's Services), Rakhee Rollinson- Consultant Social worker, Grete Lund- a Service Manager in Children's Services.

13. The Tribunal was also provided with a bundle of documents and a supplementary bundle comprising 708 pages.

14. Both counsels assisted the Tribunal by providing written closing arguments and also made oral submissions.

Findings of Fact

15. On 3 May 2022, the claimant commenced employment for Hertfordshire County Council as a locum supervising social worker based in the Respondent's Adoption and Fostering services. The appointment was to cover a vacant post. The claimant was engaged through an agency arrangement.
16. The Job description was provided within the bundle; the main areas of responsibility were recruitment, preparation, assessment, training, supervision of foster carers and supporting them to ensure best practice to improve outcomes for children and young people. Safeguarding children and young people understanding child protection processes and safer caring models for foster carers. Maintaining appropriate records and working to the departmental policies and procedures. There are other areas of responsibility, but these were the headlines.
17. During her employment with the respondent the claimant was approached by a prospective employer, Aim High Fostering Services who on 28 May 2022, offered the claimant a permanent position which the claimant accepted with a start date of 27 June 2022.
18. On 6 June 2022 the claimant wrote to her manager Ms Rakhee Rollinson, who was her supervising social worker, by email informing her of her intention to terminate her employment. The claimant gave two weeks' notice, indicating that her last day of employment with the respondent would be 24 June 2022.
19. The Tribunal has been assisted by a chronology of events, however some of the events are disputed by the parties, as such the Tribunal has done its best to resolve the material dispute, by determining what occurred, where it is necessary to make our findings on a balance of probabilities. Where nothing turns on the dispute the Tribunal has not found it necessary to resolve the disputed issue.
20. The claimant's role involved visiting foster carers to offer them advice and support and to ensure that they were complying with their obligations, however she was not the allocated social worker for the children or child who was placed with the foster carers. On the day that she handed in her resignation she had visited foster carers who had been allocated the care of two young siblings, one of who was a baby of 4 months and the other a young child of 2 years old. Her visit took place on 6 June 2022, the same day she resigned. It was the claimant's case that she telephoned and spoke

- with Ms. Rollinson and discussed concerns about the welfare of the children.
21. This was denied by Ms. Rollinson. She accepted that a discussion had taken place, however she stated that this had been at a supervision session held a few days later, on the 8 June 2022. The claimant denies that a supervision meeting took place, setting out that there had been no use of the template for such a supervision and that she had not been invited to sign the notes or provide her own feedback, she further claimed that the note had not been seen by her during the course of her employment or until the bundle was provided as part of the tribunal proceedings.
 22. The Tribunal was satisfied that there was a discussion which then led to the email dated 9 June 2022 and that there was agreement that the claimant had outlined her concerns at some stage between 6 and 8 June 2022, given this the Tribunal has not found it necessary to resolve when the discussion took place and whether it was by telephone or by a video TEAMS meeting.
 23. The Tribunal was satisfied that the claimant had communicated her concerns to Ms. Rollinson, and that it was apparent that Ms. Rollinson took a different view of the factors which gave rise to the concerns, and that the claimant wrote the email, and in addition to sending the email to Ms. Rollinson and the children's social worker, she went further by also sending the email to Mr. Tom Hughes the LADO and John Hasler, who was the Independent Reviewing Officer.
 24. The duty of the independent reviewing officer is to have oversight over the work of the Children's Service and as such every local authority has a legal requirement to appoint an Independent Reviewing Officer under the Adoption and Children Act 2002. The IRO's role includes monitoring the local authority's performance of its functions in relation to 'looked after children and care leavers.
 25. The LADO, the Local Authority Designated Officer is responsible for managing allegations against adults who work with children. Their role is to coordinate the safeguarding and investigative process in response to allegations made against people working with children.
 26. As such both Mr. Hughes and Mr. Hasler were not within the claimant's normal chain of management.

 27. The Tribunal accepted Ms. Rollinson's evidence that it was her expectation that the memorandum of her concerns would be sent to Ms. Rollinson as her supervisor, and the social worker for the children only.
 28. The email concerned details of her unannounced visit which the claimant had made on the 6 June 2022. This unannounced visit followed the

announced visit which had taken place earlier on the same day and was because of concerns that she had about the care of the two siblings, who were aged 4 months and 2 years old. The announced visit took place at 9.00am and the unannounced at 12pm.

29. She set out that on her first visit the 2-month-old child appeared to be struggling to breathe, and that his nostrils were encrusted. She also set out her concerns that at her unannounced visit three hours later, the younger child had been left in his pram in the garden, and that the older child did not have any sock or slippers, and that her enquiries about what the child had eaten for breakfast, received different responses from both foster carers. Her email set out that she had raised a concern with the foster carers that the two-year-old was not talking and that although she suggested that they might benefit from attending a nursery both foster carers appeared reluctant to engage with the idea. She also referred to the being concerned about underneath clothes being on the stairs
30. In her conclusion she wrote:- "... I am not happy with the level of care given to these children and I have escalated my concerns to the child's social worker, my manager, Fostering Services Manager and Independent Reviewing Officer in this email." The claimant was concerned that once she left the organization this matter would not be followed up by her manager. This email was relied upon by the claimant as being a protected disclosure.
31. The Tribunal were assisted by the chronology provided:-
32. The claimant handed in her Notice on 6.06.2022
33. 08.06.2022- Ms. Rollinson emails the claimant giving her one week's notice, which meant that her date of termination was moved forward to the 15.06.2022.
34. 09.06.2022- the claimant sends her email setting out her concerns about the children
35. 09.06.2022- Aim High Employment Agency emails Grete Lund requesting reference for the claimant.
36. 14.06.2022- Ms. Lund emails HR asking for guidance on providing the reference
37. 15.06.2022 -claimant's assignment ends
38. 15.06.2022 - The foster family were visited following the claimant's concerns.
39. 16.06.2022- A Professionals' Meeting was held to discuss the concerns and the claimant's concerns were not found
40. 29.06.2022- Ms. Lund emails employment reference on Guidant Proforma to Guidant Global, this reference provided a competency assessment with ratings of excellent, good, satisfactory and unsatisfactory. The claimant was scored as good in respect of attendance. She was scored as satisfactory for

verbal and written communication, ability to distinguish between confidentiality and disclosure, ability to work as part of a team, knowledge of legislation relevant to the work, working with other professionals and organizations, ability to work under pressure and maintain judgement, duty experience and punctuality.

41. However, she was scored as unsatisfactory for IT Skills, ability to deal with situations appropriately with regards to confidentiality, ability to maintain appropriate professional boundaries, ability to set appropriate boundaries with service users, ability to manage a large caseload, ability to adhere to professional codes of conduct/practice, and ability to take appropriate action in cases of abuse. In the additional comments Ms Lund had written as follows:- “Unfortunately, in the 6 weeks that Elaine worked in Hertfordshire, we received 4 complaints from foster carers about Elaine’s conduct, including abrupt verbal communication and unprofessionalism which has caused a lot of upset with the foster carers. In the whole time that she was with us, she was not proactive in getting on to the IT system (despite support offered), which meant that she was unable to do any recordings and do background research on each of the fostering households she supported. Following one supervision visit (and the first time she visited the foster carers), Elaine escalated concerns to LADO, IROs and social work teams without consulting with management and following procedure and requested that the children be removed from the fostering household, despite the concerns not being of a safeguarding nature (as agreed with our safeguarding colleagues). Elaine handed in her notice, and due to the above complaints/concerns, we decided to end her contract earlier than her initial leaving date. These issues were all raised with Elaine whilst she was with us, and we suggest that she reflect on this feedback.”
42. In her evidence, Ms. Lund informed the Tribunal that when she wrote the reference, she was in consultation with Ms. Rollinson.
43. 29.06.2022- Aim High withdraw the offer of employment to the claimant
44. 07.07.2022- The claimant sent an email of complaint concerning the employment reference to Jo Fisher.
45. 07.07.2022- Ms. Gittos emailed the claimant confirming receipt of the complaint
46. 12.07.2022- Ms. Gittos emails the claimant to confirm that Ms. Lund employment reference would be rescinded, and that a basic factual employment reference will be provided as requested.
47. 01.08.2022- Ms. Gittos emails Global Guidance and Aim High rescinding the initial employment reference proforma and providing the agreed factual reference. 02.08.2022- Aim High emails the claimant to confirm receipt of

amended reference and that they would have continued with the recruitment process if they had received it in the first instance.

48. The respondent denied that their employee Ms Lund provided the claimant with a poor reference which was not factually accurate which resulted in her offer of employment being rescinded, the respondent submitted that the reference was accurate.
49. The respondent further denied that the email dated 9.06.22 amounted to a protected disclosure was made and set out that the respondent had brought the claimant's notice forward as her work was unsatisfactory. In support of this the respondent relied upon three complaints and the claimant's failure to access the fact that she had not written up certain reports. The respondent also claimed that Ms Lund had reported the matters to the claimant on 8.06.2022 and that Ms Lund had informed the claimant of the concerns about her performance and that this amounted to a supervision session. The claimant gave notice that her last date of service would be on 24.06.22. However, the respondent stated that her leaving date was brought forward because it was the claimant's case that her performance was unsatisfactory. The Respondent's claim is that the report on 9 June 2022, was a report in the course of her normal employment and was not a protected disclosure.

The relevant law

Protection against detrimental treatment, for "Whistleblowing"

50. To succeed in claiming detrimental treatment for whistleblowing, an employee must show that he or she made a disclosure falling within section 43A of the ERA 1996. That means a disclosure falling within section 43B of the Act that is made in accordance with sections 43C-43H of that Act. A disclosure made by an employee directly to his or her employer falls within section 43C.
51. Section 43B provides so far as relevant: '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 likely to occur
- ...
- (d) that the health or safety of any individual has been, is being or is likely to be endangered’.
- (f) that information tending to show any matter falling within any preceding paragraph has been, is being or is likely to be deliberately

- 52. In a claim made under section 47B of the ERA 1996 of detrimental treatment for making a protected disclosure within the meaning of section 43A of that Act, which is made under section 48 of that Act, it is for the employer to prove the reason for the conduct which it is claimed was detrimental. That is the effect of section 48(2), which provides that “it is for the employer to show the ground on which any act, or deliberate failure to act, was done”.
- 53. The parties also referred the tribunal to the following case law
- 54. **Our conclusions on the claimant’s claims**
- 55. In the light of the above findings of fact, the Tribunal came to the following conclusions on the claimant’s claims.

The claim of whistleblowing detriment

56. The Tribunal considered each of the issues and made finding as follows:-

Did the Claimant make a qualifying disclosure as defined in Section 43B of the Employment Rights Act 1996?

- 57. The Tribunal finds that the claimant made a qualifying disclosure, she believed that the foster carer was failing to comply with a legal obligation in relation to the standard of care provided. She believed that the fact that the child’s nose was encrusted or dirty and that he was struggling to breath was an indication that the foster carer was not caring for the child as required. In her evidence she set out that the child who she considered to have a cold was left in the garden for a period of time. In her response to Ms Rollinson, she stated that she was concerned about the possibility that the child could be mauled by a fox or cat. The claimant was also concerned that the mixed message about what the two-year-old child had had for breakfast may indicate that they had not had breakfast. This also qualified as a disclosure on the grounds that the health and safety of an individual was likely to be endangered, namely the foster children.
- 58. **Did the Claimant disclose information?**
- 59. The Tribunal finds that the claimant disclosed this information to both the IRO and the LADO, who had significant statutory reviewing functions which was outside of the normal scope of her duty to record and report to her manager and as required to the children’s social worker.
- 60. **Did the Claimant believe the disclosure of information was made in the public interest?**
- 61. The Tribunal finds that the claimant believed that this disclosure was in the public interest. In her email she wrote “...I am not happy with the level of care given to these children and I have escalated my concerns to the Child’s Social

Worker, my manager, fostering services manager and the independent reviewing officer.”

62. The claimant had wanted to attend the professionals meeting which was due to be held after her date of termination on 16 June 2022, and had asked to extend her employment to be permitted to attend the meeting this request was refused. The claimant on 14 June 2022, in an email set out that she considered her role to be as the “voice of the child/children who could not speak for themselves”. The Tribunal is satisfied that the claimant believed her disclosure to be in the public interest as she had a genuinely held belief that there were signs that could signify neglect.

Was the Claimant’s belief reasonable?

63. The claimant was an experienced social worker who formed her own professional opinion, however, the Tribunal noted that in their evidence, neither Ms Rollinson nor Ms Lund agreed that her belief was reasonable. Ms Rollinson and Ms Lund referred to the fact that the foster carers were experienced, and that they were long- term foster carers who were known to the respondent. Whereas the claimant was a relatively new member of the team, albeit that she had previously worked for the respondent. Nevertheless, despite the difference in opinion, the Tribunal accepts that part of the claimant’s role was to bring professional curiosity to what she was doing. The Claimant’s Job Description provided, that she should-: “Safeguard children and young people understanding child protection processes and safer caring models for foster carers.”
64. The Tribunal accepts that she had visited with the family and had witnessed what she thought were concerning signs which could indicate neglect. The Tribunal find that this was a matter for her professional judgement which she was entitled to make. However, both Ms Rollinson and Ms Lund considered the history that the respondent had with the foster carers, and the foster carers account. Give this they were prepared to give them the benefit of the doubt. However, the Tribunal finds that it was for the claimant to satisfy herself, and any doubt that she might have had, in accordance with her role was to be resolved in favour of the child. Accordingly, the foster parents were unknown to her and both visits had caused concerns.
65. In a follow up email written to John Hasler the IRO dated the 14 June 2022, the claimant wrote as follows-: “I have raised these concerns because I would be wrong to ignore what I saw and not reported. I was safeguarding the children's best interests. These children cannot speak for themselves, so I am the voice of the child. Maybe I have saved this child from being stung by a bee, mauled by a fox, or even being killed. It is dangerous practice to leave a four-month-old baby unsupervised in a garden. The foster carer appears to be complacent, and I was surprised by the lack of judgement. If I wrote in my notes that a four-month baby was left alone in the garden and a fox came along and mauled the baby? The first thing everyone would ask, was, when the social worker last visited, and my notes would be scrutinised by senior management and others. “
66. The Tribunal accepted the claimant’s evidence that she was exercising her professional judgement, and although in doing so, her opinion differed from

that of her manager, her belief was reasoned and did not appear to the unreasonable or fanciful. She had a concern about the level of care and as such set out her concern which was reasoned, so that it would be subject to further investigation.

67. Accordingly, the Tribunal finds that her belief was reasonable.
68. The Tribunal finds that the claimant believed that "A person had failed, was failing or was likely to fail to comply with any legal obligation to which they were subject (the Claimant claims the relevant legal obligation was the foster parents' duty of care to Child A and Child I); in and that or b. That the health or safety of any individual had been, was being or was likely to be endangered. In accordance with accordance with Section 43 B (b) and (d) of the Employment Rights Act 1996.

Did the Respondent do the following things:

69. a. *On or around 29 June 2022, Grete Lund, Fostering Service Manager, submitted a reference to a prospective employer of the Claimant's which contained inaccurate and false statements regarding the Claimant's conduct and performance which resulted in the Claimant's prospective offer of employment being withdrawn.*
70. The Tribunal finds that the reference was the reason for the employment being withdrawn, although we have found that Ms Lund and Ms Rollinson were not motivated by malice, The overall additional statements were inaccurate, as they set out that the claimant had after one visit recommended that the children be removed from the foster carer. This was not her recommendation. The additional comments noted that "...Following one visit Elaine... requested that the children be removed from the fostering household..." This was not correct, as there had been a visit with another social worker and two visits in quick succession, an announced and another unannounced visit. The Tribunal further noted that her first recommendation was that the foster carer's receive monthly unannounced visits and or the children should be removed. Given this, the Tribunal finds that the reference was inaccurate as it misrepresented the claimant's position.

By doing so, did it subject the Claimant to a detriment?

71. The Tribunal finds that Aim Higher withdrew the job offer, and later confirmed that they would not have withdrawn the offer of employment had they received the basic reference. Accordingly, the Tribunal finds that the reason that the job offer was withdrawn was because of the reference, as such the claimant was subjected to a detriment.

If so, was it done on the ground the Claimant made a protected disclosure?

72. The Tribunal by a majority consider that this was done on the grounds of a protected disclosure
73. The tribunal in reaching its decision were assisted by both counsel, in particular the Tribunal considered the cases of **Kong v Gulf International Bank UK Ltd [2022] EWCA Civ 941, (paragraph 59)**"The statutory question to be determined in these cases is what motivated a particular decision-maker; in other words, what reason did he or she have for dismissing or treating the complainant in an adverse way. This factual question is easy to state; but it can be and frequently is difficult to decide because human

motivation can be complex, difficult to discern, and subtle distinctions might have to be considered. In a proper case, even where the conduct of the whistle-blower is found not to be unreasonable, a tribunal may be entitled to conclude that there is a separate feature of the claimant's conduct that is distinct from the protected disclosure and is the real reason for impugned treatment. “

74. In paragraph 61 of the same Judgement the court stated “The legislation confers a high level of protection on whistle-blowers for sound reasons, and the distinction should not be allowed to undermine that important protection or deprive individuals of protection merely because their behaviour is challenging, unwelcome or resisted by colleagues...”
75. In considering this question we also were assisted by the cases of **Harrow London Borough and Knight and [2003] IRLR 140 EAT and Fecitt v- NHS Manchester [2011]** in these cases, the suggested approach to be adopted by the tribunal was that it should determine the reason why Ms Lund and Ms Rollinson gave the reference that they did.
76. Ms Hudson, in her cross examination of Ms Lund took her though each aspect of the unsatisfactory ticks on the reference, it was clear that although Ms Lund was concerned about the claimant's failure to access the case management system, and that there had been complaints from foster carers. The Tribunal finds by a majority that these complaints were not fully investigated in that the claimant was not asked to provide a response to them.
77. Ms Lund set out that the claimant's practices were unsatisfactory in relation to her ability to deal with situations appropriately regarding confidentiality, ability to maintain and set appropriate professional boundaries with service users.
78. However, the Tribunal was not provided with any evidence concerning this, it was aware of the allegations that the claimant had combed/ brushed a child's hair without the consent of the child or the permission of the foster carer the claimant did not accept that this occurred.
79. The Tribunal noted that there was some disagreement about the claimant's approach to managing foster carers, however, there was no evidence that these allegations was put to her during her employment or that she was given the opportunity to provide a response. Ms Rollinson noted that she had sent a video link to the foster carer about hair care which was appropriate to the child's ethnicity.
80. The Tribunal also noted that the claimant was not asked to about her ability to adhere to professional practice and report and take appropriate action in respect of suspected child abuse and adhere to professional codes of practice all appear to flow from the report that the claimant made to the LADO.
81. The Tribunal heard from Ms Lund that although no action was taken by Ms Rollinson and Ms Lund, they were concerned that there was a potential to lose foster carers. Although the Tribunal acknowledged that this was in part the reason for the poor reference, it appeared to the Tribunal by a majority that the respondent's negative opinion arose because of the protected disclosure, that is that the claimant had in her email copied the IRO and the

LADO into her concerns, the Tribunal by a majority finds this to be a substantial reason why the reference was given.

82. The Tribunal found that the claimant wrote to the respondent making a complaint about the reference and that the matter was referred to Ms Gitos on 19 July 2022, Ms Gitos wrote as follows- : “Regarding your reference, I would be very happy to rescind the reference written by Grete Lund to Guidant Global and to arrange for you to receive a standard Hertfordshire Human Resources (HR) reference. The standard HR reference confirms dates of employment, last position held and reason for leaving, which I understand in your case was to take on a new position. Just for clarity, Grete sent the reference she wrote to your agency Guidant Global only, not to your prospective employer. I am happy to write to Guidant Global and rescind Grete’s reference and copy you in.”
83. In her evidence Ms Gitos said that the claimant exploited her generosity of spirit and that in her opinion the reference was justified and did not go far enough. However, the Tribunal finds that Ms Gitos is a senior manager, she told the Tribunal that she had been wrongly advised that the respondent did not provide references for temporary workers, however she has subsequently been told, that there is a protocol for providing references for locum social workers, so that locum social workers with poor practice cannot transfer from authority to authority via agencies.
84. However, the Tribunal was satisfied that Ms Gitos withdrew the reference after careful investigation of all the issues surrounding the reference. As such the Tribunal finds by a majority that the claimant had suffered a detriment because of a protected disclosure.

The minority opinion

85. The minority opinion was that although it was accepted by Tribunal Member Hough that the claimant had by reason of the reference suffered a detriment, he did not accept that this detriment was because of the claimant having made a protected disclose. He considered that the poor reference was because of four aspects of the claimant’s performance that is the claimant’s failure to complete the logging on case management system so that she could complete her reports on the system. The comments and complaints of four foster carers, including the foster carers who were the subject of the email dated 9 June 2022, the overall work undertaken by the claimant, and her failure to appropriately escalate her concerns.
86. He did not accept that Ms Lund and Ms Rollinson had the email dated 9 June 2022 in the forefront of their mind when they wrote the reference which was emailed to Global Guidant on 29 June 2022.
87. The Decision of the Majority of the Tribunal (Mr Hough dissenting)
88. The claimant’s claim that she suffered a detriment on account of making a protected disclosure succeeds.

Case Number: 3312641/2022

Remedy hearing

At the conclusion of the hearing on 15 February 2024, the Tribunal agreed to proceed to a remedy hearing.

Employment Judge Daley

Date: 12 April 2024

JUDGMENT SENT TO THE PARTIES ON
1 MAY 2024

FOR THE TRIBUNAL OFFICE