



EMPLOYMENT TRIBUNALS

Claimant: Mr A.T. Lewis

Respondent: TSG Building Services Plc

Heard at: Watford

On: 29, 30 and 31 October 2024

Before: Employment Judge McNeill KC
Mr D. Sutton
Mrs I. Sood

Appearances

For the Claimant: Mr A.T. Lewis, in person

For the Respondent: Mr P. Linstead, Counsel

JUDGMENT

1. The Claimant's claim for detriment on the ground that he had made one or more protected disclosures is dismissed.
2. The remedy hearing listed for 10 February 2025 is vacated.

REASONS requested at the conclusion of the hearing on 31 October 2024

1. The Claimant's claim is that he was subjected to detriment by the Respondent on the ground that he made one or more protected disclosures, contrary to section 47B of the Employment Rights Act 1996 (the ERA).
2. The Claimant worked for the Respondent as a contractor providing services as a gas engineer between 7 and 31 March 2023. The detriment he relied on was the termination of his services.
3. The Respondent conceded that the Claimant was a worker, entitled to the protection of the whistleblowing legislation.

Issues

4. The issues in the case were set out in a List of Issues provided by the Respondent. The Claimant confirmed that the protected disclosures he relied on were those set out in the List of Issues. The protected disclosures relied on are set out chronologically in these Reasons.
5. The first issue for the Tribunal to determine was whether the Claimant had made one or more qualifying disclosures, as defined in section 43B of the ERA. The Claimant relied on the following alleged disclosures, all of which save for (vii), were made to the Respondent and therefore, if they were qualifying disclosures within the meaning of section 43B, were protected disclosures made in accordance with section 43C of the ERA:
 - (i) On 14 March 2023, in relation to a property at 5 Blundell Place, Bedford, the Claimant reported the following: "GAS LEAK...with smell of gas as reported by both mother and daughter in the property. Warning notice issued meter caps in ECV, shortly after received a call from Tom Lyons, not happy with me disconnecting property. Tom sent another engineer Chris Webb to reconnect service." In a WhatsApp message, the Claimant reported to Mr John Harrison in relation to the same property: "failed tightness test with a smell of gas, both mother and daughter reported smelling gas in the kitchen after father disconnected the old gas cooker. Meter disced at ECV with responsible person's permission. Repair engineer required to attend property to track trace and repair."
 - (ii) On 15 March 2023, in relation to a property at 17 Church Lane, Risley the Claimant reported: "faulty gas meter regulator, height standing pressure 39.11, Cadent contacted to replace regulator, boiler disconnected, again Tom Lyons contacted me not happy about the disconnection." In a WhatsApp message to Mr Harrison, the Claimant reported in relation to the same property: "gas meter regulator faulty, high standing pressure 39.11 mb. PDA will not allow accurate reading to be entered, had to enter 0. Incident reported to gas emergency Ref: 3005116366, advised to turn off gas meter, SGN to arrive within 2 hours, responsible person advised, permission given to turn off gas. Warning notice AAA186472 left with responsible person. Unable to close job on PDA, please advise further".
 - (iii) On 21 March 2023, in relation to a property at 11 Austin Canons, Bedford, the Claimant reported: "At risk (AR) gas boiler flue and heat exchanger covered in grease, fire risk, boiler disconnected, warning notice issued. TSG supervisor Tom Lyons contacted me by phone telling me not to disconnect the appliance, I advised him that the boiler was dangerous and had to be disconnected."
 - (iv) On 21 March 2023 in relation to a property at 66 Christie Road, Bedford, the Claimant reported that it "failed CPA analysis test high CO levels".
 - (v) On 23 March 2023, in relation to a property at 25 Chillingham Green the Claimant reported: "faulty gas valve CO2 percent too low, IGEM/G/11 (7.6)". In a WhatsApp message to the TSG Team North, the Claimant reported: "faulty gas valve CO percent, 6.9 high, 6.0 low, will require gas valve adjustment/full strip down service, boiler turned off with responsible person approval, will deliver heaters later".
 - (vi) On 23 March 2023, in relation to a property at 10 Mount Drive, Bedford, the Claimant reported: "Boiler failed CPA analysis high CO PPM

- IGEM/G/11 (7.1).” In a WhatsApp message he reported: “another Valiant boiler failing emissions test, high CO ppm, and CO2 per cent, spent time adjusting gas valve but still no improvement, require a full strip down service, tennant vulnerable and would like repair actioned ASAP will leave 2 heaters later as requested by tennant”.
- (vii) On 24 March 2023, on the phone to Sion Woodward, Managing Consultant at the agency through which the Claimant had been recruited by the Respondent, after Mr Woodward told the Claimant that the Respondent had complained that he was shutting down boilers, the Claimant said that it was “because they are unsafe and present a danger to tenants and public if left in operation, that requires time spent on them to make safe, and if I spend that time, say an extra 1.5 to two hours to strip them down, clean them and do the adjustments, I will not earn any money, they are treating me like an employee who can stay on a job as long as required to correct, can you speak with them and ask if I can do the same/invoice for my additional time and work”.
- (viii) On 24 March 2023, in relation to 7 Helen House, Bedford, the Claimant reported: “Boiler failing combustion analysis check, high CO PPM IGEM/G/11 (7.4)”.
- (ix) On 30 March 2023, in relation to a property at 24 Monmouth Close, Bedford the Claimant reported: “Cooker immediately dangerous (ID) IGEM/G/11 (7.4)”. In a WhatsApp message, the Claimant wrote: “cooker I.D. Igem/g/11 (7.4) missing gas control knob for gas grill, responsible person has refused permission to disconnect appliance, and becoming hostile, have performed my dynamic risk assessment and will be removing myself from site to a place of safety. I will place a danger do not use sticker on appliance and close down the job.”
- (x) On 31 March 2023, in relation to a property at 12 Mallard Court, Wixham, the Claimant reported: “faulty gas valve, as confirmed with Alpha on phone Technical Support”. In a WhatsApp message he wrote: “Alpha E-Tec 28 requires a new gas valve unable to adjust gas valve on high fire to M.I. spec 9.7 spoke to Alpha Technician who advise replace gas valve. Please log as a repair, responsible person has requested an electric heater which I have left.”
- (xi) On 31 March 2023, in relation to a property at 15 Mallard Court, Wixham, the Claimant reported: “Boiler faulty PCD, will not allow, high low burner input, to enable combustion analysis test as confirmed by Alpha Technical Support.” In a WhatsApp message, the Claimant wrote: “Alpha E-Tec 28 will not hold input to allow for max chimney sweep mode, went through online diagnostics with Alpha Tec support who confirmed faulty PCB, part number given 1.037031.”
- (xii) On an unknown date or dates, in person and on the phone, and in response to a question from Tom Lyons as to why he was shutting down boilers, the Claimant replied that it was because they were “dangerous to be left in operation.”
6. There was an issue between the parties as to (1) whether these were disclosures of information; (2) if so, whether the Claimant believed that they were in the public interest; (3) if so, whether that belief was reasonable and, if so, whether the Claimant believed that any of the disclosures tended to show that:

- (i) A criminal offence had been, was being or was likely to be committed;
- (ii) A person had failed, was failing or was likely to fail to comply with any legal obligation;
- (iii) The health or safety of any individual had been, was being or was likely to be endangered;
- (iv) The environment had been or was likely to be damaged;

and, if so, whether that belief was reasonable.

- 7. Apart from alleged disclosure (vii), the Respondent accepted that if there were qualifying disclosures they were protected disclosures as they were made to the Respondent. In relation to (vii), whether that was a disclosure qualifying for protection was in dispute as it was made to a third party.
- 8. If the Claimant did make any protected disclosures, the Respondent disputed that the termination of his contract on 31 March 2023 was on the ground that he had made protected disclosures. The Respondent did not dispute that the termination of the Claimant's contract could amount to a detriment.

Findings of Fact

- 9. The Claimant is a qualified, Gas Safe registered engineer, who at the relevant times operated through his own company, Jan Gas and Electrical Services Ltd. In February 2023 he was seeking work through an agency, Example Recruitment Group Ltd.
- 10. On 21 February 2023, the Claimant was emailed by Mr Sion Woodward, Managing Consultant at the agency. Mr Woodward informed the Claimant that the Claimant had been offered a job with the Respondent.
- 11. The Respondent is a multi-disciplined services company operating in the Local Government and Social Housing marketplace. It provides servicing, maintenance and installation of heating systems, including renewables to residential and commercial units, whole house construction and new build schemes.
- 12. The Respondent employs a permanent staff of 230, including gas engineers. It also engages sub-contractors as and when required. Approximately 70% of the gas engineers working for the Respondent are directly employed and approximately 30% are subcontractors. There are normally more subcontractors used during the winter period.
- 13. The Claimant was told by Mr Woodward that he would be working on properties of Bedford Pilgrims Housing Association (BPHA), a social housing provider, covering MK postcodes. The job was described as "*both servicing and repairs and...help on call out*". The pay rates included £22 per service "*and if parts are needed*" and £25.80 per completed job. The Claimant was asked to confirm that he was happy to start on the contract. The Claimant had a separate contract with the agency in which the terms and conditions of business between him and the agency were set out.

14. The Claimant started work on 7 or 8 March 2023. He was to carry out service engineer services on boilers. He would visit properties; inspect the boiler; and carry out the Landlord's Gas Safety Record (LGSR). If minor repairs or adjustments were required, he would carry those out. If there was a need for a more complex repair, the repair and maintenance team would go out and resolve the issue. A more complex repair could, for example, involve the full strip down of a boiler, which could take up to three hours.
15. The Institute of Gas Engineers and Managers (IGEM) has a procedure, known as the "Gas industry unsafe situations procedure", for dealing with unsafe situations. The procedure has been drawn up in order to assist competent engineers in meeting their legal duties. It identifies the priority for gas engineers when encountering an unsafe situation as being "to safeguard life and property". Gas engineers must be able to identify gas equipment which presents a danger or potential danger "and take prompt corrective actions to eliminate such danger".
16. Engineers who are working on or encounter installations that are unsafe must classify the unsafe situation as ID (immediately dangerous) or AR (at risk) as appropriate. The engineer must be able to justify their rationale based on the situation and the final decision in applying classifications lies with the engineer on site "following their site-specific risk assessment".
17. Under section 5 of the unsafe situation procedure, there is more guidance on situations where an engineer identifies an unsafe situation. In both ID and AR situations, the engineer should endeavour to rectify the situation and make the appliance or installation safe at the time of the visit. Only where this is not possible should the engineer disconnect and seal the gas supply to the appliance or installation, with the gas user's consent. There is provision for what should happen if consent is not given.
18. The Respondent is a company experienced in this area. The Tribunal heard evidence from the Respondent's Gas Operations Manager, Mr John Harrison, who is himself a Gas Safe registered engineer, and from Mr Tom Lyons, a qualified Gas Technician and a Gas Supervisor. Both came across as fully aware of the duties of gas engineers, the importance of gas engineers having the autonomy to make independent judgments on gas safety and the paramount importance of safety when dealing with gas installations and appliances.
19. The Respondent's aim was for gas engineers visiting properties to service boilers as required and fix problems where they could, provided that the boiler could run safely. In that way, tenants at properties could continue to have hot water and heating. If a boiler could not run safely, the Respondent expected the gas engineer to turn the boiler off.
20. The Respondent's system for assigning gas engineers to particular jobs was through its administration. Engineers would be told the addresses to go to. They would report back on the findings on their attendance through something known as a PDA (a Personal Digital Assistant). Every engineer, including sub-contracted engineers, had a PDA. They would receive addresses for their assignments through the PDA. The PDA is a phone-like device that records the

checks carried out by the engineer and takes photographs. If an engineer decides to turn off a boiler, they type this information into the PDA to give warning notices. The engineer signs the job on the PDA. Save where a report was made in a WhatsApp message, the technical matters reported by the Claimant were based on information fed into the PDA.

21. Although Mr Lyons is a supervisor, he does not exercise day-to-day control over the work on site done by individual engineers. They are autonomous and rely on their own knowledge and expertise. Mr Lyons is, however, available for technical support. Any gas engineer can, for example, seek advice from Mr Lyons to see if there are alternatives to disconnecting a boiler. Sometimes an engineer may not have come across a particular type of boiler before and Mr Lyons can help the engineer with the benefit of his own knowledge.
22. When the Claimant started working for the Respondent, he was given a PDA. Mr Lyons went out with the Claimant on a couple of occasions to show him how to use it.
23. Mr Lyons first became aware that there might be an issue concerning the Claimant's work on about 22 March 2023 when he was notified by a member of the administration (Lorraine) that the Claimant had shut off multiple boilers.
24. Mr Lyons visited two sites where boilers had been shut down, 11 Austin Cannon and 7 Helen House.
25. The Claimant said that Mr Lyons called him each day to question why he had disconnected an unsafe boiler. We did not accept this. This contention was not supported by call logs, which showed eight calls between Mr Lyons and the Claimant over the 19 days the Claimant was employed, four of which were for one or two seconds. Only one call was longer than a minute. On the longest call, on Wednesday 22 March 2023, there was some conversation about boilers that had been turned off, when Mr Lyons asked the Claimant what he had tried before turning the boiler off. Mr Lyons did not tell the Claimant not to turn any boiler off and did not tell the Claimant to turn a boiler back on. He recognised that this was the engineer's call. When phone calls did take place with the Claimant, the Claimant had already left site.
26. The protected disclosures relied on by the Claimant, as set out above relate to ten specific jobs. There is also an alleged protected disclosure relating to an unknown date or dates and an alleged protected disclosure relating to a conversation the Claimant is said to have had with Mr Woodward on 23 March 2023
27. The first relevant job was at 5 Blundell Place, Bedford.
28. The Claimant attended that job on 14 March 2023. He sent a WhatsApp message to Janet Harvey, one of the administrators, at 13.14 on that date. He said: "failed tightness test, with a smell of gas, both mother and daughter reported smelling gas in the kitchen after father disconnected the old gas cooker. Meter disced at ECV with responsible person's permission. Repair engineer required to attend property to track trace and repair". He later cut and pasted that message to Mr Harrison who asked the Claimant if he had left any warning notices. The Claimant did not reply.

29. In his ET1, the Claimant set out his alleged disclosure as: "GAS LEAK, Failed tightness test, with smell of gas reported by both mother and daughter in the property. Warning notice issued meter capped in ECV, shortly after received a call from Tom Lyons, not happy with me disconnecting property. Tom sent another engineer, Chris Webb, to reconnect service. Tenant reported gas to leak to BPHA, which should be on the record". This related to a smell of gas following the disconnection of the cooker, which the Claimant reported as he says.
30. Cadent (gas emergency operatives) were contacted in relation to this job. Another engineer, Mr Webb, visited the property after the Claimant to assess the boiler. He carried out an LGSR, disconnected the boiler and attached an ID notice.
31. Mr Lyons did not say that he was not happy with the Claimant disconnecting the property.
32. The next relevant job was on 15 March 2023 at 17 Church Lane, Risley. The Claimant sets out the alleged disclosure in his ET1: "faulty gas metre regulator, height standing pressure 39.11, Cadent contacted to replace regulator, boiler disconnected, again Tom Lyons contacted me not happy about the disconnection". There is also a WhatsApp to Mr Harrison, in which the Claimant said that the PDA would not allow an accurate reading to be entered. He said a warning notice had been left and he was unable to close the job on the PDA.
33. The Claimant started that job at 10.30 and finished at 11.22. He reported the fault and that he had disconnected the boiler. Mr Lyons did not call the Claimant. The phone records do not support this. When phone calls were made between the Claimant and Mr Lyons it was on their work phones. The Claimant called Mr Lyons after 5pm on this day and the call lasted for one minute. Mr Lyons did not tell the Claimant that he was not happy with the disconnection.
34. The Claimant's report was a routine entry following on from a fault with the gas meter regulator (not the boiler), which led a Southern Gas Network (SGN) operative to be called out. He also reported a problem he was encountering with the PDA. The Claimant did not say or suggest that anyone's health and safety was being endangered.
35. On 21 March 2023, the Claimant carried out a job at 11 Austin Canons, Bedford. The alleged disclosure is that the Claimant told the Respondent: "at risk (AR) gas boiler flue and heat exchanger covered in grease, fire risk, boiler disconnected, warning notice issued. TSG supervisor Tom Lyons contacted me by phone telling me not to disconnect the appliance. I advised him that the boiler was dangerous and had to be disconnected". The Claimant had put an AR notice on the boiler.
36. On that date and following the Claimant's report, Mr Lyons was told by the office that the Claimant had shut a boiler off because of grease. There was some conversation between the Claimant and Mr Lyons about the grease on the boiler. Mr Lyons questioned whether the grease could be cleaned off,

which might reduce the risk of turning off the boiler, and the Claimant explained that the grease was the worst he had seen in his life and the boiler was dangerous and had to be disconnected. Mr Lyons did not tell the Claimant not to disconnect. Mr Lyons saw the photos on the PDA and agreed that the amount of grease was excessive and that it did look as though the boiler needed to be turned off. Mr Lyons later visited the property on 24 March and issued an ID warning notice.

37. There were other occasions on dates which were not specified when Mr Lyons raised a general concern with the Claimant about shutting down boilers and when the Claimant responded that they were dangerous to be left in operation.
38. On 21 March 2023, the Claimant attended at 66 Christie Road, Bedford. The disclosure relied on is that the Claimant said: "failed CPA analysis test high CO levels".
39. On that occasion, the Claimant had attended at the premises. He found that the boiler was unsafe to use and issued an ID notice saying that there was a high CO reading and the boiler required a full strip down service. The following day he spent 45 minutes at the property working on the boiler, at the end of which the boiler was safe.
40. It did not appear that he had done a full strip down service on this second occasion, when he was at the property for less time than on the first occasion.
41. The Claimant's report was a routine entry in the PDA where the Claimant returned to the property to carry out further work the following day.
42. On 22 March 2023, the Claimant made his first visit to 25 Chillingham Green, Bedford. The disclosure relied on (which the Claimant dates as taking place on 23 March) was: "Faulty gas valve CO2 percent too low, IGEM/G/11". In a WhatsApp message to the team the Claimant stated the same. He said a gas valve adjustment was required or a full strip down service. The boiler had been turned off with responsible person approval. The Claimant would deliver heaters later. The Claimant had disconnected and capped the boiler and attached an AR notice. He returned to the property and remedied the problem on 23 March, spending nearly an hour at the property.
43. In a WhatsApp message from Lorraine in administration, Lorraine said "Tom is going to call don't close job down, thank". That was at 10.14. Mr Lyons called the Claimant at 10.13 and the call lasted seven minutes. In this call, Mr Lyons spoke to the Claimant about turning off the boilers and asked him what he had tried, to see if there was an alternative to turning off the boiler. He did not tell the Claimant not to turn boilers off.
44. On 22 March 2023, the Claimant visited 10 Mount Drive, Bedford. The disclosure relied on was that he had stated, in a routine report about the boiler: "Boiler failed CPA analysis high CO Ppm IGEM/G/11 (7.1)". The Claimant said in a WhatsApp message that he had spent time adjusting the gas valve but there was no improvement. The tenant was vulnerable and wanted a repair to be actioned as soon as possible. The Claimant had left heaters at the property. The Claimant returned the next day (23 March) and carried out repairs. He was at the property on the second day for over an hour and a half.

45. On 24 March 2023, Mr Sion Woodward reported to the Claimant that the Respondent had complained that he was shutting down boilers. The Claimant answered that this was because they were unsafe and presented a danger to the tenants and public if left in operation. Time was required to make them safe, and if he spent that time “say an extra 1.5 to two hours to strip them down, clean them and do the adjustments” he would not earn any money. He complained that the Respondent was treating him like an employee, who could stay on the job as long as required to make the boilers safe. The Claimant asked Mr Woodward to speak to the Respondent and ask if he could do the same and invoice for his additional time and work.
46. The Claimant confirmed in cross-examination that his response to Mr Woodward was financially-motivated, because he needed to be paid for what he did. If he spent the time that was required for some repairs or stripping down a boiler, he would be paid less than the minimum wage. He was not being paid enough for the extra time he was working.
47. On 24 March 2023, the Claimant visited 7 Helen House, Bedford. He reported: “boiler failing combustion analysis check, high CO PPM IGEM/G/11 (7.4)”
48. This is another example of C finding high CO/CO₂ readings and disconnecting and capping the boiler as a result.
49. By 24 March 2023, the Respondent had significant concerns about the number of boilers that the Claimant was shutting down. Mr Harrison wrote to Mr Woodward on that date. He said that the Claimant was causing some issues. He referred to “shutting off a lot of boilers” and specifically to the boiler where there was grease on the boiler flue. He referred to Mr Lyons speaking to the Claimant on a number of occasions and warned that the Claimant would have to be removed from the Respondent’s contracts if this continued.
50. Having spoken to the Claimant, Mr Woodward responded that the Claimant had only “shut the boiler down when it was immediately dangerous”. Mr Woodward asked whether in such circumstances the Claimant could fix the boiler and make safe “claiming another job”. Mr Woodward responded that they were going to “one recall every day” where the boiler was classified as At Risk and it was not warranted. This was not supported by the evidence we saw and was an exaggeration. Mr Harrison expressed the view that there would hopefully be an improvement the following week.
51. There was then further discussion between Mr Woodward and Mr Harrison about payment to the Claimant if there was a repair to do on a job. Mr Harrison said that there could be payment but cleaning an injector was part of the service and took around three minutes. Mr Woodward said in that eventuality (apparently referring to more major repairs) it needed to be approved by his supervisor.
52. On the same date (24 March), the Claimant sent a message to Mr Harrison asking what he should do when he encountered a boiler that was AR or ID. Should he just leave a warning note and move on or should he close the job, stay on site, contact the office and ask them to raise a repair/strip down service? He pointed out that if he remained on site, he would only be earning

£22 while PAYE Employees could stay on a job all day and get paid the same amount. There was no direct response to this message.

53. On 30 March 2023, the Claimant visited 24 Monmouth Close, Bedford. He reported: "Cooker immediately dangerous (ID) IGEM/G/11 (7.4). In a WhatsApp message he reported that the responsible person on this occasion had refused permission for the disconnection of an appliance where there was a missing gas control knob for the gas grill. The person was also hostile. The Claimant had placed a "danger do not use" sticker on the appliance and closed down the job.
54. The Respondent did not make any criticism of the Claimant for shutting off the gas supply or withdrawing because of difficulties with the tenant.
55. On 31 March 2023, the Claimant visited 12 Mallard Court, Wixham. He reported: "faulty gas valve, as confirmed with Alpha on phone Technical Support". In a WhatsApp message he said that the Alpha Technician had advised to replace the gas valve. He asked to log this as a repair and confirmed that he had left an electric heater.
56. Lorraine replied that he should close the job so she could raise, test and reconnect.
57. Also on 31 March 2023, the Claimant visited 15 Mallard Court, Wixham. He reported: "Boiler faulty PCD, will not allow, high low burner input to enable combustion analysis test as confirmed by Alpha Technical support". WhatsApp [102] "was not allowing for max chimney sweep mode". This did not mean there was anything wrong with the readings, it referred to part of the functionality of the boiler. There was no evidence that this boiler had been turned off.
58. On 31 March 2023 at 11.12 am, Mr Harrison told Mr Woodward that the Claimant's services were no longer needed. At 11.16, Mr Woodward responded that he would let the Claimant know. At 11.25, Mr Woodward informed the Claimant that the Respondent had informed him that this would be the Claimant's last day and he should return any kit to the Bedford Office.
59. At 12.45 pm, the Claimant notified Mr Harrison that he had raised a whistleblowing complaint with the Respondent's head office "against TSG Supervisor, Tom Lyons". He referred to Mr Lyon's "actions of not allowing qualified gas engineers to disconnect unsafe boilers, in breach of GSIUR 1998 and IGEM/G/11 legislation, which may be a criminal act, as it places the lives of tenants and innocent members of the public at risk". He said that he would also be making BPHA, Gas Safe and the HSE aware of his concerns. While the question of whether a disclosure is true or false is not a key question for the Tribunal, the Tribunal did not find on the evidence adduced before it that Mr Lyons prevented gas engineers from disconnecting unsafe boilers.
60. Also on the same day, the Claimant informed one of the Respondent's major clients that the Respondent was forcing operatives, including the Claimant, into unsafe practices, leaving their tenants in danger.

61. The Claimant's services were terminated because there were concerns about his competence, in circumstances where engineers should try and effect repairs to a boiler where possible, before shutting the boiler down. These concerns arose from the Claimant's exceptionally high number of boiler shutdowns. Typically, the Respondent would see about 19 appliances a month having ID or AR notices applied from a team of 21 engineers. The Claimant had issued 10 IDs or ARs over a period of three and a half weeks.
62. On 1 May 2023, the Claimant reported the Respondent to Gas Safe, saying that the Respondent was a danger to the public and would get innocent people killed. Although this is a matter for Gas Safe to investigate as it considers appropriate, none of the evidence adduced before the Tribunal supported those accusations.

Law

63. In a detailed written submission, the Respondent set out the legal principles for the Tribunal to apply, which were not contentious.
64. By section 43A of the ERA, the meaning of a "protected disclosure" is a qualifying disclosure as defined by section 43B of the ERA that is made in accordance with any of sections 43C to 43H of the ERA.
65. Pursuant to section 43B, there must be a disclosure of information which, in the reasonable belief of the worker tends to show one or more of the circumstances listed at section 43B(1), insofar as relevant to this case that:
- (i) A criminal offence had been, was being or was likely to be committed;
 - (ii) A person had failed, was failing or was likely to fail to comply with any legal obligation; or
 - (iii) The health or safety of any individual had been, was being or was likely to be endangered.
66. A disclosure of information means the conveying of facts, rather than simply stating a point of view or statement of position: **Cavendish Munro v Geduld** [2010] IRLR 38. A disclosure of information may also be an allegation, but it must not be "so general and devoid of specific factual content" that it could not be said to be a disclosure of information: **J Kilraine v London Borough of Wandsworth** [2018] IRLR 846 CA.
67. When considering whether a worker holds a reasonable belief, it is the belief of the worker that is important but the belief should be objectively reasonable: **Babula v Waltham Forest College** [2007] ICR 1026. In order for a belief to be reasonable, the worker should have some information to show that specific malpractice occurred: **Darnton v University of Surrey** [2003] ICR 615.
68. Where a worker alleges that information tends to show the actual or potential commission of criminal offences, a failure to comply with legal obligations or endangering health or safety, those matters should be specifically identified.
69. A worker must further demonstrate a reasonable belief that his disclosures (or any of them) were made in the public interest. Belief that the disclosure was in

the public interest must be objectively reasonable: **Chesterton Global v Nurmohamed** [2017] ICR 920.

70. By section 47B of the ERA: *“a worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure”*. The Respondent accepted that the termination of the Claimant’s services could amount to a detriment.
71. The employer must prove on the balance of probabilities that the act complained of was not on the grounds that the employee had done the protected act, in the sense that the protected act did not have a material influence on the employer’s treatment of the worker: **Fecitt v. NHS Manchester** [2012] ICR 372.
72. Eleven out of twelve of the disclosures relied on by the Claimant were allegedly made to the Respondent as the Claimant’s employer and, if the provisions of section 43B are made out, they will qualify for protection. In relation to the disclosure made to Mr Woodward, the issue is whether the disclosure was made in accordance with section 43G of the ERA. Disclosures made to third parties, who are not expressly referred to in the legislation, may be qualifying disclosures but not if the disclosure is made for purposes of personal gain. The worker must also satisfy a condition that he reasonably believes that he will be subjected to a detriment by his employer if he makes a disclosure to his employer or that he has previously made a disclosure of substantially the same information to his employer.

Conclusions

73. In considering the alleged protected disclosures, the Tribunal confined itself to the 12 alleged disclosures set out in the list of issues. At one point in his evidence, in answer to a question from the Tribunal, the Claimant said that he was not alleging that the reporting of a defect such as a gas leak was a protected disclosure. The protected disclosure was his saying that the Respondent was trying to prevent him from shutting down boilers, which was a dangerous practice. This made sense. However, in closing submissions the Claimant said that he relied on all the alleged disclosures set out in the List of Issues, further contending that gas engineers were threatened with disciplinary and dismissal if they shut down boilers (something that was not made out as a matter of fact).
74. Given that the Claimant did not have legal representation and that it was not clear whether or not the Claimant was conceding that some of the matters reported by him did not constitute protected disclosures, the Tribunal concluded that the proper course was to consider all the alleged disclosures set out in the list of issues.
75. In the main, the Claimant’s reports (all save those in para. 5(vii) and (xii) above) specifically referred to particular problems with boilers or other gas equipment at particular properties. On other occasions (para. 5(vii) and (xii)), they referred to boilers being dangerous if left in operation. The Tribunal concluded that all the reports relied on by the Claimant were sufficiently specific to be properly

characterised as disclosures of information within the meaning of section 43B of the ERA.

76. The Tribunal considered whether the Claimant could reasonably believe that any of the disclosures tended to show that a criminal offence had been or was likely to be committed. No criminal offence was identified by the Claimant. He attended premises as an engineer, identified problems and shut down boilers when he considered them to be unsafe. He told the Respondent what he had done. If the Claimant did believe that a criminal offence had been committed, he did not say so.
77. The same analysis applied to any possible legal obligation. No legal obligation was identified in the disclosures.
78. The Tribunal then considered whether any disclosure in the Claimant's reasonable belief tended to show that the health or safety of any individual had been, was being or was likely to be endangered.
79. Where disclosures of information were simply records of findings through the PDA system (on occasion supported by WhatsApp messages), the Claimant could not reasonably believe that those disclosures tended to show any danger to health and safety. The Claimant had shut down boilers in order to make them safe. He did not say that anyone's health and safety had been endangered before he attended the premises.
80. There were some limited exceptions to this when the Claimant did reasonably believe that health and safety had been or was being endangered. That was the case in the 11 Austin Canons disclosure, where the Claimant reported to Mr Lyons that the boiler was dangerous and had to be disconnected. It was also the case in relation to the disclosure in relation to 5 Blundell Place, where the Claimant did have a reasonable belief that the health and safety of a person had been endangered. Also in relation to 24 Monmouth Close, the Respondent accepted that the Claimant may have had a reasonable belief that his own health and safety had been endangered.
81. The Tribunal considered whether the Claimant reasonably believed that any of the matters disclosed were in the public interest. The Claimant in his evidence contended that it was in the public interest to reveal every gas appliance that is unsafe, although he then said that a report of a gas leak or of the application of an AR or ID notice was not a protected disclosure.
82. The Tribunal accepted the Respondent's submission that it cannot be right that every time an engineer informs their employer that a warning notice has been issued that amounts to a public interest whistleblowing disclosure. The Claimant did not believe that his PDA entries and WhatsApp messages were being disclosed "in the public interest" and, if he did, that was not a reasonable belief. The disclosures were actions taken relevant to the particular properties concerned which would enable the Respondent and BPHA to ensure that repairs were carried out.
83. Where the Claimant made a more general disclosure that he had shut down boilers because they were dangerous and, in his view, presented a danger to

the tenants and public if left in operation, these were statements of information in answer to questions, based upon his assessment of the boilers. There was no evidence indicating that he was giving these answers because he reasonably believed that it was in the public interest to do so.

84. The first time the Claimant referred to a whistleblowing complaint was after the termination of his services on 31 March 2023 when he reported that Mr Lyons was not allowing gas engineers to disconnect unsafe gas boilers, a complaint that was not relied on as a disclosure in these proceedings and was not supported by evidence adduced in these proceedings.
85. As already noted, all disclosures relied on by the Claimant, save for the disclosure to Mr Woodward, were to the Respondent as the Claimant's employer. In relation to Mr Woodward, the Tribunal concluded that the disclosure did not fall within section 43G(1) of the ERA as the disclosure was made for purposes of personal gain.
86. For all these reasons, the Tribunal concluded that the Claimant did not make out his case that he had made protected disclosures.
87. The Tribunal went on to consider, in the alternative, whether, if any protected disclosures were made out, the termination of the Claimant's services was on the grounds of one or more of those protected disclosures.
88. The Tribunal's conclusion, as referred to in the findings of fact above, was that the termination of the Claimant's services was because of the exceptionally high number of reports of boilers that had been shut down, which raised questions about the Claimant's competence in circumstances where engineers should seek to make boilers safe by carrying out repairs as and when they can. Therefore even if any protected disclosures had been made out, the Claimant's claim would have been dismissed because the termination of his services was not materially influenced by any disclosures made but rather by the extraordinarily high number of boilers shut down which raised questions about his competence.
89. For the above reasons, the Claimant's claim is dismissed.

Employment Judge McNeill KC

Dated: 14 November 2024

Sent to the parties on:
9 December 2024

For the Tribunal Office:
T Cadman

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