



# EMPLOYMENT TRIBUNALS

## Claimant

Mr M Consitt

## Respondent

v

Bristol Street Fourth Investments  
Limited

**Heard at:** Norwich (by CVP)

**On:** 18 March 2025

**Before:** Employment Judge Postle (sitting alone)

## Appearances

**For the Claimant:** In person

**For the Respondent:** Mr R Allen, Counsel

## JUDGMENT on PRELIMINARY HEARING

The Claimant's claims brought under the whistle blowing provisions pursuant to the Employment Rights Act 1996 are dismissed as having no reasonable prospects of success.

## REASONS

### Background

1. This was a Public Preliminary Hearing listed by Employment Judge Tynan following a Case Management Hearing on 4 February 2025, to determine:
  - 1.1. Whether the Claimant's claim should be struck out because the disclosures were not qualifying protected disclosures for the purposes of s.43B and s.43C of the Employment Rights Act 1996 ("ERA"), particularly whether it was made in the public interest;
  - 1.2. Whether any of the complaints and particularly the detriments and complaints at paragraph 2.1.1 of the List of Issues be struck out; and
  - 1.3. Whether any of the complaints should be subject to a Deposit Order.

2. At the previous Case Management Hearing before Employment Judge Tynan, he clearly gave certain guidance to the Claimant as to what the Claimant would need to address at today's Hearing and we see that at paragraph 13 of the Case Management Summary. Unfortunately, much of the guidance given to the Claimant has not been addressed by the Claimant in his Witness Statement.

### **Evidence for Today's Hearing**

3. In this Tribunal we have had the benefit of a Bundle of documents consisting of 106 pages, along side the original List of Issues, Witness Statements from: the Claimant, Mr Matthew Green, Mr Toby Yeomans and Mr Phil Gideon, all of which have been read prior to the two days Hearing.
4. The Tribunal have also had the benefit of oral submissions from both the Claimant and Mr Allen Counsel for the Respondent, together with Counsel's written submissions for which I am grateful for.

### **The Law**

5. The Tribunal's power to strike out a claim that has no reasonable prospect of success arises pursuant to Rule 38(1)(a) of the Employment Tribunal Rules of Procedure 2024.
6. The Tribunal is minded that to strike out a claim is a draconian act and the Tribunal should therefore take the claim at its highest, particularly where there are factual disputes. However, even when taken at its highest, if it has no reasonable prospect of success it is right to strike the claim out.

### **Public Interest Protected Disclosures**

7. In order for the Claimant to succeed he must establish that he has some – more than little – prospect that the Tribunal will find at a Final Hearing that:-
  - 7.1. He made a disclosure;
  - 7.2. He believed that disclosure tended to show one or more of the matters listed in s.43B(1) of the Employment Rights Act 1996;
  - 7.3. That the belief was reasonable;
  - 7.4. That the disclosures were made in the public interest; and
  - 7.5. That the detriments were on the grounds of the disclosure / disclosures being the sole or principal cause of dismissal (given the Claimant has less than two years' continuous service), the burden is on the Claimant to prove the causal link between the disclosure and dismissal.
8. In relation to protected disclosures, they must be made to the employer or another responsible person.

9. Section 43C(1)(b) ERA 1996 only permits disclosure to a third party where the worker reasonably believes that the party is solely or mainly responsible for the relevant failure.
10. In relation to public interest, the employee's view of their belief that the disclosure was made in the public interest must be reasonable, that is an objective test.
11. In the case of Chesterton Global Limited (t/a: Chestertons) & Anr. v Nurmohamed (Public Concern at Work Intervening) [2018] ICR 731, we see there that the following factors were relevant to whether a disclosure was reasonably made in the public interest:
  - 11.1. The number in the group whose interest the disclosures served;
  - 11.2. The nature of the interests affected and the extent to which they are affected by the wrongdoing disclosure;
  - 11.3. The nature of the wrongdoing disclosure; and
  - 11.4. The identity of the alleged wrongdoer.

#### Causal Link

12. Dealing with the causal link (i.e. knowledge of the employer) the employee can only show they suffered unlawful detriment on an automatic unfair dismissal if the employer was aware of the protected disclosure. If he was not, the Claimant cannot show a causal link between the alleged detriment having been done by reason of the disclosure.

#### Burden of Proof

13. The burden lies on the Claimant to show that a ground or reason that is more than trivial for the detriment or treatment to which he or she is subject, is a protected disclosure they actually made.

### **Conclusions**

#### The Disclosure

14. Clearly the disclosure was not made to the Claimant's employer, or another responsible person. The Claimant's case is that he disclosed information to Mr Gideon of Nissan UK, it is therefore founded upon the responsible person within s.43C ERA 1996.
15. However, it does not appear to be the Claimant's case that Mr Gideon was not responsible for the relevant failure under s.43C(1)(b) ERA 1996. Rather, the Claimant's case is that he brought to Mr Gideon's attention a breach on the Respondent's part, therefore that fails the test in s.43C ERA 1996 as it does not equal blowing the whistle.

Public Interest

16. Was the claim made in the public interest?
17. Clearly the Claimant has not demonstrated how his email of 7 March 2024 relates to a public interest disclosure, it is clearly self-serving about a private matter between two commercial parties. It gets nowhere near being in the public interest. It is therefore highly unlikely that the Claimant could establish the motivation was in the public interest.

Causal Link

18. As to causal link between the detriments and dismissal, even if the Tribunal were wrong on the above conclusion, the Claimant would not be able to establish the necessary connection between the public disclosure made on 7 March 2024 and the alleged detriments and dismissal.
19. It is correct there is a fundamental problem in that Allegation 2.1.1.1 of the List of Issues suggested a solution by the Claimant to Mr Yeomans on 6 March 2024 which pre-dates the disclosure. On that basis alone, it is unclear how that can amount to a detriment because it cannot arise from the disclosure if it was made the day before.
20. Indeed, Allegation 2.1.1.2 of the List of Issues is undermined by the previous Allegation, i.e. that if the Claimant was refused on 6 March 2024 (prior to the disclosure) then the Claimant was equally refused on 7 March 2024 for the same reason. That cannot be as a result of making a protected disclosure.
21. Furthermore, Mr Yeomans denies the confrontation ever took place as the Claimant alleges, see paragraph 7 of his Witness Statement.
22. In relation, finally, to Allegation 2.1.2 namely that the Claimant was invited to a Probationary Review Meeting as a result of making a protected disclosure, that clearly is contrary to the evidence. Mr Green's Witness Statement at paragraphs 3 – 10, makes it clear the reasons why the Claimant was invited to a Review Meeting and had nothing to do with any alleged public interest disclosure. Mr Green quite clearly had already on 5 March 2024, taken steps to have the Review Meeting before any alleged public interest disclosure. Furthermore, Mr Green clearly had no knowledge of any protected disclosure as set out in his Witness Statement at paragraph 19.

Dismissal

23. As to the Claimant's dismissal, there is no causal link between the reason for the Claimant's dismissal and any public interest disclosure. The reason for the dismissal is clearly detailed in the Outcome Letter following the Review Meeting dated 14 March 2024 at page 95. Clearly any objective reading of that letter shows the reasons for dismissal were quite different from any alleged public interest disclosure and were quite clearly

discussed and set out in the Review Meeting as noted in the detailed Minutes of that meeting on 11 March 2024 (page 81 onwards of the Bundle).

24. Given all the above, the Claimant's claims brought under the Employment Rights Act 1996 for public interest disclosure have no reasonable prospect of success and are therefore dismissed.

**Approved by:**

Employment Judge Postle

Date: 8 April 2025

Sent to the parties on: 15 April 2025

For the Tribunal Office.

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