



EMPLOYMENT TRIBUNALS

Claimant: Mrs A Kalal

Respondent: Veolia ES (UK) Ltd

Heard at: Liverpool, by video

On: 8 October 2025

Before: Employment Judge Barker

REPRESENTATION:

Claimant: self-represented

Respondent: Mr Mellis, counsel

JUDGMENT

1. The claimant made protected disclosures to the respondent by email on 30 August 2024. Her claim that she was automatically unfairly dismissed for having made protected disclosures may proceed to the final hearing.
2. The respondent's application that the claimant be ordered to pay a deposit was refused.

REASONS

1. The claimant brings a claim of unfair dismissal by reason of having made protected disclosures. At a case management hearing before Employment Judge Johnson on 20 June 2025, the judge set this matter down for a public preliminary hearing to decide whether the disclosures made by the claimant on 30 August 2024 were protected disclosures within the scope of s43B Employment Rights Act 1996.
2. The respondent provided a written application on 4 July 2025 that the Tribunal at this hearing also consider that the claimant be required to pay a deposit to continue with her claim (as per rule 40 Employment Tribunal Rules of Procedure 2024) as the

respondent says she has little prospect of establishing that her dismissal was because of her disclosures.

3. The claimant provided a witness statement to this hearing and the Tribunal had the benefit of a file of documents which was 147 pages long. The claimant was cross-examined by the respondent's counsel and each party made a closing statement before the decision was taken on the protected disclosures issue. In relation to the respondent's application for a deposit order, the Tribunal heard argument from both parties before making a decision.

4. The Tribunal gave the parties a reasoned decision during the hearing for each issue. This is recorded below. Following the decisions, the Tribunal made case management orders which are recorded separately.

Was the claimant's grievance raised on 30 August 2024 in two emails a "protected disclosure" within the meaning of s43B Employment Rights Act 1996?

5. The Tribunal considered the claimant's two emails of 30 August 2024. One was sent at 13.13 and one was sent at 21.59. They contained a number of different disclosures on different subjects, all to do with the behaviour of her manager, Greg McPhee.

6. The claimant categorised these disclosures in her witness statement as:

1. *"Bullying and targeting of colleagues"*
2. *Recruitment of staff without work*
3. *Misuse of company expenses*
4. *CV misrepresentation*
5. *GDPR breach*
6. *Transphobic comments*
7. *Undisclosed relationship with a subordinate*
8. *Alcohol misuse and driving convictions"*

7. The respondent correctly noted that not all of the detailed information was contained in the emails of 30 August 2024. Some were expanded upon or raised for the first time in emails and meetings that followed 30 August. However, as the claimant was invited to a probation review meeting to discuss concerns with her performance, and eventually dismissed, her case was clarified at the case management hearing before Employment Judge Johnson to be that her disclosures on 30 August 2024 were the cause of her failing her probation review and not any disclosures that may have come after that date.

8. Therefore, the focus of the enquiry by the Tribunal has been specifically what was written in the two emails by the claimant on 30 August 2024.

The Law on Protected Disclosures

9. For a disclosure to be found to be a qualifying disclosure (s43B Employment Rights Act 1996, “ERA”), all five of the following elements must be present (from *Williams v Michelle Brown AM UKEAT/0024/19*):

- i) A disclosure of "information";
- ii) The worker must believe that the disclosure is made in the public interest;
- iii) The belief in the disclosure being in the public interest must be reasonably held by the worker;
- iv) The worker must believe the disclosure tends to show one or more of the matters listed in s43B(1)(a)-(f) ERA; and
- v) The belief in the disclosure tending to show matters in s43B(1)(a)-(f) ERA must be reasonably held by the worker.

10. Whether there has been a disclosure of “information” or not depends on whether a disclosure has conveyed factual information. This is a matter for the Tribunal to decide in light of all the facts in the case. In order to be a disclosure of information, the disclosure has to have a sufficient factual content and specificity such as is capable of tending to show one of the matters listed in s43B(1) ERA (*Kilraine v London Borough of Wandsworth [2018] ICR 1850*). Two or more communications taken together can amount to a qualifying disclosure even if, taken on their own, each communication would not. (*Norbrook Laboratories (GB) Ltd v Shaw [2014] ICR 540*). Whether two communications are to be read together is a question of fact for the Tribunal (*Simpson v Cantor Fitzgerald Europe [2020] EWCA Civ 1601*).

11. The issue of whether or not the disclosure of information is in the public interest was addressed in *Chesterton Global Ltd (t/a Chestertons) and anor v Nurmohamed (Public Concern at Work intervening) 2018 ICR 731, CA*. Where the disclosure relates to a breach of the worker’s own contract of employment (or some other matter where the interest in question is personal in character), there may nevertheless be features of the case that make it reasonable to regard disclosure as being in the public interest, as well as in the personal interest of the worker.

12. In *Dobbie v Felton t/a Feltons Solicitors 2021 IRLR 679, EAT* the distinction drawn is between disclosures which serve the private or personal interest of the worker making the disclosure and those which serve a wider interest. The Tribunal must consider the identity of the alleged wrongdoer, the nature of the wrongdoing, or the

nature of the relevant interests and the extent to which they were affected by the wrongdoing as well as the numbers in the group whose interests the disclosure served. The more people that are likely to be affected by a disclosure, the more likely it is that there will be a matter of public interest.

Decision – were the disclosures “protected disclosures”?

13. I have first considered the alleged disclosure relating to mismanagement of the team and not giving them any work. In the email at 13.13 on 30 August 2025, the claimant wrote

“The “inner commercial team” used to meet Greg ca. twice a week in the office (rest is remote). In this time they leave at 2pm the very latest and they pretty much don't do any work. They just listen to Greg's rant about his newest arch-nemesis. He always has someone he targets and doesn't concern himself with anything else (like work)....

...His main concern is to reflect off work and he has no intention to support anyone/any BU like BD, Fiona Winters or the client at Lonza who all requested support.....

.... Instead he hired a new QS Assistant into to the “inner commercial team” with the background that the other QS Assistant literally hasn't had a single thing to do since she started 4 months ago. The third member has hardly anything to do and the 4th maybe 30% of her time due only to her proactivity and willingness to help (which at best is tolerated by Greg - he is not interested in anything work related). He brings 2 women to a business trip with one having no role in there and the other not having been given much prior information to actively participate. He sends chat massages to his inner team bragging about the fact that he has been at the hairdressers and is now having brunch on expenses during working hours.”

14. I find that the claimant has disclosed enough specific factual information so that a reader of the email of 30 August 2025 would know that this was the disclosure being made, and that it related to alleged breaches of the respondent's legal obligations. The claimant is clear about the mismanagement, describing team members by their roles (such as QS Assistant) as having very little to do, with only a minority of their working time occupied, of Mr McPhee recruiting new team members despite existing staff having very little to do, time wasting in meetings, and so on. The claimant during her answers to cross-examination questions said *“At the time it was quite extreme how resources were wasted and someone must be interested in that”*. I find that the significance of the scale of the wrongdoing is clear from the claimant's email.

15. It was put to the claimant by the respondent in cross-examination that the management of the company was solely an internal issue for the respondent and could

not be said to be in the public interest. The claimant told me that she is an economist and considers the issue of mismanagement and waste of the respondent's money to be in the public interest, as this causes companies to fail which can consequently be a drain on public funds. She also noted that the respondent has public sector clients such as the NHS, and that the public would have an interest in knowing how their money was being spent. I accept that the claimant believes that this disclosure is made in the public interest and that her belief in the disclosure being in the public interest was reasonably held by her. This meets the test of a disclosure qualifying for protection under s43B ERA.

16. In relation to the allegations of bullying, I find that the claimant has disclosed enough specific factual information so that a reader of the email of 30 August 2025 would know that this was the disclosure being made and know that it tends to show alleged breaches of the respondent's legal obligations relating also to health and safety matters. Her email contained specific information about the names of employees who were said to have left as a result of Mr McPhee's bullying of them ("*The "inner commercial team" ...just listen to Greg's rant about his newest arch-nemesis. He always has someone he targets.... Three months ago it was Damian (left), then it was John Panter (left) and now it is Stuart Egan.... he acts in sharp contrast to Veolia values...*"). I accept that the claimant believes that this disclosure is made in the public interest (of the management of a large and well-known company and its treatment of its staff) and that her belief in the disclosure being in the public interest was reasonably held by her. This meets the test of a disclosure qualifying for protection under s43B ERA.

17. In relation to the allegations regarding the claimant's transwoman colleague, she wrote on 30 August 2024 "*He points at and talks disrespectfully about a trans woman in the office*". I find that the claimant has disclosed sufficiently specific detailed information about the nature of the wrongdoing and the identity of wrongdoer, as well as the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed. No dates or times have been specified but enough has been said to disclose where and what was done, which is self-evidently tends to show behaviour contrary to the Equality Act, so the breach of a legal obligation and potentially a breach of obligations related to health and safety if it had the purpose or effect of creating a hostile environment in the office. The behaviour need not be directed at the transwoman herself to be harassment. I accept that the claimant believes that this disclosure is made in the public interest and that her belief in the disclosure being in the public interest was reasonably held by her. It is contrary to the public interest in the safeguarding of minorities in the workplace. This meets the test of a disclosure qualifying for protection under s43B ERA.

18. In relation to the potential breaches of GDPR the claimant said "*He sent an email requesting phones for two new employees revealing their private home address*

to all 3 people in the email." This is the disclosure of information that tends to show the breach of a legal obligation. I find that the claimant believed her disclosure of this to be in the public interest. However, I do not consider that this belief was reasonably held. Only two people were affected, and their interests were not affected to a large extent; their home addresses were disclosed to each other and a third employee of the respondent. It was seemingly also a one-off incident. This does not therefore meet the test of a disclosure qualifying for protection under s43B ERA.

19. In relation to the issue of alcohol abuse and/or driving licence issues, I do not find that the disclosure of information was specific enough to suggest that Mr McPhee had done anything wrong regarding work or breached any legal obligation to the respondent. The claimant's disclosure was that *"he lost his licence for a while"*, but she did not say when this was or whether it affected his employment at the respondent. This does not therefore meet the test of a disclosure qualifying for protection under s43B ERA.

20. In relation to the issue of Mr McPhee's alleged sexual relationship with colleagues she said *"I also think he has had a sexual relationship with the QS Assistant, which is not illegal but maybe a concern when it's a relationship between a superior and their employee"*. The claimant did not provide enough information about how this was a breach of one of the matters in s43B ERA. Furthermore, I do not find that the claimant reasonably believed this to be a matter of public interest. Two adults who work together having a relationship is not of itself a matter of public interest. This does not therefore meet the test of a disclosure qualifying for protection under s43B ERA.

21. When giving judgment to the parties, I said that the disclosure regarding Mr McPhee's CV being "a work of fiction" was not in the original grievance email, and so not part of the disclosure. On drafting these written reasons, I have found the disclosure in the email. I noted while giving oral judgment that if the disclosure was in the original email, it had been referred to so obliquely that I had not been able to locate it. However, it is within a long paragraph about other matters. The claimant wrote *"He said his CV is a complete work of fiction."* Having reconsidered the judgment in the light of locating this sentence, the decision about this stands; I do not find that the disclosure of was a disclosure of information nor was specific enough to convey whether or how Mr McPhee breached any legal obligation to the respondent. The disclosure about the CV would have required more specific information to be presented to the respondent; for example, if he had made fraudulent claims as to his skills and experience, what were they? In conclusion this does not therefore meet the test of a disclosure qualifying for protection under s43B ERA.

22. I find therefore that the claimant made three protected disclosures in her email of 13.13 on 30 August 2024 –

- a. relating to mismanagement of staff and workloads and recruitment;
- b. bullying; and
- c. transphobic comments and behaviour.

23. Her claim for automatic unfair dismissal (s103A ERA) may proceed to the final hearing.

The respondent's application for a deposit order

24. The respondent applied for a deposit order (rule 40 ET Procedure Rules 2024) on the basis that the claimant has little reasonable prospect of being able to show at the final hearing that her probation review invitation which was sent on 30 August 2024 was sent because of her grievance email on 30 August 2024. Although the respondent accepts that the probation review letter was sent after the grievance email was received, the respondent will say that the claimant will not be able to establish that Mr McPhee was told about the grievance and notified HR quickly enough to demand that they start the process of a probation review for the claimant that same day. The respondent will say that although the claimant was given a very positive 3-month probation review in mid-August 2024, she made a catastrophic error on 20 August 2024 by downloading client information to her personal Gmail account, amongst other performance issues. The decision to start a probation review had been taken before her grievance email was received.

25. The claimant will say that she accepted that she made an error on 20 August 2024 and reported it immediately herself. She said that access to her work account was only frozen after 30 August 2024 and not after 20 August 2024. She noted that if she was a serious security concern, why was she not frozen out straight away and why was she reinstated before her performance review meeting? She also has, she will say, evidence that Mr McPhee told colleagues that he had been told about the claimant's grievance sooner than he was supposed to have been told. She will also say that the reasons given for her performance review and subsequent dismissal were flimsy and were not sufficient reasons for dismissal.

26. Rule 40(1) of the Employment Tribunals Rules of Procedure 2024 permits the Tribunal to require a party to pay a deposit not exceeding £1,000 as a condition of continuing to advance an allegation or argument in proceedings before the Tribunal where it considers that any such allegation or argument has little reasonable prospect of success. In ***van Rensburg v Royal Borough of Kingston-upon-Thames & Others UKEAT/0096/07*** the Employment Appeal Tribunal concluded that a Deposit Order can consider the prospects of success on factual matters as well as purely legal matters.

27. It is the view of the Tribunal that the claimant has more than little reasonable prospects of being able to establish that the respondent's decision to invite her to a probation review was for the sole or main reason that she raised a grievance against Mr McPhee, taking her case at its highest. Although the two incidents happened on the same day, the claimant's arguments regarding the reasons for the probation review have some merit, in that they would not appear to be reasons which on the face of it justify dismissal. I note that two of the three reasons given in the respondent's letter of 30 August relate to the same matter. The other reason, because of the alleged improper downloading of confidential information, appears only to have been treated with seriousness by the respondent after the grievance was raised.

28. The matter is also the subject of disputed factual information, in that it will be for the respondent to provide evidence in support of its assertion that the probation review was a matter being considered by them before the grievance was received. It is to be expected that the respondent will be able to disclose emails or other messages, or provide witness evidence, as to the communications before 30 August 2024 between Mr McPhee and HR over the matter. An absence of such evidence may well result in the Tribunal deciding in favour of the claimant. In any event, tribunals are told to be wary of making an assessment of the strength of a party's case from a review of the documentary evidence where key facts are in dispute.

29. To make a deposit order, the Tribunal must have a proper basis for doubting the likelihood of the party being able to establish the facts essential to the claim or response (*Jansen Van Rensburg v Royal Borough of Kingston-upon-Thames and ors EAT 0096/07*). As matters currently stand, the Tribunal has no such proper basis for doubting the claimant's ability to establish the facts essential to the claim. Therefore, I have refused the respondent's application.

**Approved by
Employment Judge Barker
9 October 2025**

Judgment sent to the parties on:

28 November 2025

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For the Tribunal:

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<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>