



EMPLOYMENT TRIBUNALS

Claimant: Mr A Annunziata
Respondent: Milton Keynes City Council

Heard at: Watford
On: 24, 25 and 26 September 2025
Before: Employment Judge Dick

Representation

Claimant: In person
Respondent: Miss K Barry (counsel)

JUDGMENT having been sent to the parties on 15 October 2025 and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the following reasons are provided:

REASONS

INTRODUCTION; CLAIM AND ISSUES

1. The claimant began work for the respondent in December 2019 and his employment ended in January 2021. The respondent's case is that the claimant was made redundant as a result of a restructuring process. The claimant's case is that, to the contrary, his employment ended because of "whistleblowing", i.e. because he had brought it to the respondent's attention that building work to the Milton Keynes Library, a listed building for which the respondent was responsible, had been done in breach of the formal consent which had been granted for those works.
2. The claim was presented in time. Since the claimant had not been employed for two years, he was not entitled to bring a claim for "ordinary" unfair dismissal. The claim, as identified at a case management hearing before my colleague Employment Judge ("EJ") Hutchings on 24 April 2024, was for automatically unfair dismissal for making protected disclosures. At the start of the hearing I explained to the parties that the framework for my decision would be the list of issues prepared by EJ Hutchinson, the relevant parts of which are appended to these reasons. One slight qualification to that is that during the course of the case

I confirmed there was no dispute that, in addition to the usual provisions on automatically unfair dismissal for whistleblowing, the respondent accepted that this was also a claim to which section 105(6A) of the Employment Rights Act 1996 ("ERA") applied if I was to find that there was a genuine redundancy situation. So there were three broad questions for me to decide:

- a. Did the claimant make the protected disclosures on the three occasions that are listed in the list of issues?
 - b. If so, was the sole or principal reason for his dismissal that he made one or more of those protected disclosures?
 - c. In the alternative, if there was a genuine redundancy situation, was the reason, or principal reason, for his selection for redundancy that he had made one or more of those protected disclosures?
3. Because the claimant had less than two years' service with the respondent there is no dispute that the burden was on the claimant to prove those things.
4. Because this was not a claim for ordinary unfair dismissal I explained at the outset that the question for me was not "was there a fair redundancy process". If the claimant was not dismissed or selected for redundancy because of the whistleblowing, his claim would fail whether or not there was some other unfairness. Of course, the question of whether there was a genuine redundancy process would be relevant to the issue of whether the claimant was dismissed for whistleblowing or for some other reason.
5. Before the evidence was called I explained to the parties that I would read the witness statements and the particular pages in the agreed bundle they had identified, but they should be sure to refer me to any other documents of relevance in the bundle during the course of the evidence or submissions. I indicated that I would not need to hear evidence about remedy at this stage.
6. After taking time to read the statements, I heard evidence from the witnesses. In each case the usual procedure was adopted, i.e. their written statements stood as their evidence-in-chief and they were then cross-examined. The claimant gave evidence. I agreed that I would treat as a second witness statement a document he had provided in response to an order from my colleague EJ Tynan to provide further information about his claim. The respondent called Miss Bernice Lewis, the respondent's Head of Property and Facilities at the material time, and Mr Stuart Proffitt, the respondent's Director of Environment and Property
7. At the conclusion of the evidence I heard oral submissions from both parties, supplemented by written submissions from both. After taking time to consider the case, I delivered an oral judgment and reasons.
8. One other procedural point I should note is that, by consent, I ordered that the name of the respondent should be amended to Milton Keynes City Council.

FINDINGS OF FACT

9. I find the following facts on the balance of probabilities. I should make clear that I have not made findings on every single fact that was disputed between the claimant and the respondent but I have made factual findings on those points which were necessary for me to decide the issues.

The claimant's work

10. The claimant started work for the respondent City Council in December 2019. In his role as the Built Asset Lead he was in charge of the respondent's Built Assets Team. That team was sub-divided into two teams, the Project Team and the Maintenance Team. The claimant's immediate line manager was Miss Lewis, who had ultimate responsibility for, as she put it, delivery of all non-housing property-related functions which included facilities management and construction.

The vent

11. In 2017, well before the claimant and indeed Ms Lewis, were employed, works were carried out on the Milton Keynes Library, which is a listed building owned by the respondent. Formal consent for those works was given by the Secretary of State rather than by the respondent.
12. In January 2020, the claimant and Mr Janis Stars carried out a visual investigation and a survey into certain aspects of the library building. Mr Stars was a Building Surveyor in the Build Assets Maintenance Team, so he was managed by the claimant. The claimant and Mr Stars noticed that an air vent had been installed on the front façade of the library building in apparent breach of the consent granted by the Secretary of State. Where I refer below to the "vent issue", this is what I mean.
13. On the morning of 4 February 2020 Mr Stars sent an email to Mr Simon Peart, the respondent's Conservation and Archaeology Manager. It was the claimant's evidence, which I accept, that he had asked Mr Stars to send the email. The email asked whether the installation of the vent complied with the Secretary of State's consent. Mr Peart replied the same day confirming that the vent did not have consent, adding "nor would it, given its harmful effect on the primary elevation of the building." Mr Peart suggested that the vent would have to be moved to the approved location, which was round the side of the building. The claimant was cc'd into both of the emails that I have just mentioned.
14. There is no dispute between the parties that Mr Peart's view of the situation was quite correct, as he was to set out in a email sent rather later, on 9 November 2020:

"As such there is no listed building consent for its current position, technically speaking this is a criminal offence under s9 of the 1990 Planning (Listed Buildings and Conservation Areas) Act."

15. By “technically”, I conclude that what Mr Peart meant here was that a prosecution was unlikely, if for no other reason than, as Mr Proffitt told me in his evidence, it is the respondent who actually has responsibility for bringing prosecutions for planning breaches.
16. In that same November email, Mr Peart set up the three options that the respondent had. The first was to move the vent and “make good”. The second was to apply to the Secretary of State for consent, although that consent could not be backdated. The third was simply to do nothing on the basis that if no one had complained yet there was unlikely to be any further attention; Mr Peart did go on to point out the obvious risks with that third option.

First and second disclosures – 4 February 2020

17. Moving back now to February 2020, the same day that Mr Stars had informed Mr Peart of the vent issue, i.e. the 4th, the claimant informed Miss Lewis about the situation in the course of a conversation. There was no dispute about that. After that conversation, just after 5.30 pm, the claimant forwarded to Miss Lewis Mr Peart’s reply to Mr Stars. The respondent does not dispute that, in doing that, the claimant believed that the information he was passing on tended to show that someone had failed, or was failing, to comply with a legal obligation (i.e. under section 9 of the Act that Mr Peart had identified). Nor was there any dispute about whether that belief was reasonable. To be absolutely precise, it may be that the claimant had not appreciated the potential for a breach of the *criminal* law until Mr Peart’s November email, but there is no dispute that, as early as 4 February, the claimant appreciated that there was a breach of some form of legal obligation.
18. What the respondent does take issue with in this case is whether the claimant reasonably believed that his disclosure was in the public interest. In drawing Miss Lewis’s attention to the issue, the respondent says, the claimant was simply carrying out a normal part of his job. The respondent further points out that the claimant never expressly said that he was making a public interest disclosure. Both of those things are undoubtedly true but neither of those things mean that a public interest disclosure was not made. I may also have detected something of a suggestion made by the respondent that because the issue was a fairly minor one, merely a vent placed on the front of a building when it should have been placed on the side of the building, the claimant cannot really have believed that his disclosure was in the public interest. If that suggestion was indeed made it was undermined by the reality that was set out in Mr Peart’s November email. Whether the breach of the criminal law was technical or not, the respondent was clearly, in my judgment, exposed to a risk that was not insignificant. Even if, as I have said, the claimant was not aware until November that there was at least a theoretical question of a breach of the criminal law, he was aware in February that an unlawful alteration had been made to a listed building. The claimant explained in his evidence that his concern was about both the respondent getting a fine and about reputational damage to the respondent. I accept the claimant considered it to be in the public interest to report the matter to the council in two senses. First, it was in the council’s own interest and it seems to me that as a general proposition it must be in the public interest to inform a public body, such

as a council, about an issue such as this. Second, the claimant considered it to be in the wider public interest that planning law is followed. Both of those are self-evidently reasonable beliefs in my view, even if it might ultimately have been the council's view, having considered the matter, that the issue was not particularly important. I find as a fact that the claimant did genuinely believe that the February disclosures were in the public interest, and I further find that that belief was quite reasonable.

The respondent's actions following the disclosure

19. Once the vent issue had been drawn to her attention in February 2020, I accept Miss Lewis's evidence as follows. She tasked Ms Jill Dewick, an employee on the Project Team who also came under the claimant's line management, to contact the contractors and consultants who had been responsible for doing the work to the library, to see whether there was an explanation for what had happened. Ms Dewick had been responsible for the project in the first place so she was the logical choice. I further accept Miss Lewis's evidence that she was not expecting a quick resolution to the situation. Because the works had been completed a few years ago beforehand, records were not readily available. The contractors and the consultants acknowledged the requests, Miss Lewis told me, but did not provide any timescale for when they might provide a substantive response.
20. It is highly significant, of course, that in March 2020 the country entered lockdown in response to the worldwide Covid-19 pandemic. I accept that the concern about the vent, important as the claimant considered it to be, was very much not seen as a priority by the respondent and, in particular, by Miss Lewis. In short, Miss Lewis thought it would be a long process but had no concern that the matter would not eventually be properly dealt with.
21. As the claimant was right to say, it does appear that little, if any, progress was made on the matter until November 2020, or indeed some time after that. It was the claimant's case that Ms Dewick was concentrating on seeking or finding a record of permission granted by Mr Peart when, as the claimant says, even if Mr Peart had given permission, that would not have solved the difficulty. In light of what I have read in the audit report, which I refer to later in more detail, I accept all of that. What progress there was in November in fact came in the form of the email from Mr Peart which I have already set out, in other words the email setting out the three options that the respondent had.
22. It was not clear to me, nor indeed was it clear to Miss Lewis when she was asked about it in her oral evidence, why Mr Peart could not have given that advice any sooner. On its face it does not appear to have been based on, for example, any responses that the respondent had been waiting for from the contractors or the consultants. In saying all of this, I should make it clear that I did not hear evidence from Mr Peart and I have no reason to conclude that he was in any way at fault. I do accept the claimant's evidence that the November email came about following a casual conversation he had with Mr Peart (which must have been in October) in which he, the claimant, mentioned the lack of progress. That conversation was followed by an email from the claimant on 16 October 2020 in

which he asked Mr Peart to confirm the next step since he had not received any update from the contractor and the other people involved. I have not been provided with an explanation as to why it took Mr Peart three weeks to reply to the claimant but it seems to me a reasonable inference that Mr Peart took a similar view on the lack of urgency as had Miss Lewis.

23. Moving forward almost a year, the required consent was in fact granted on 6 September 2021. That grant was “in accordance with an application valid on 14 May 2021.” Note that the “application valid” date is not the date the application was made. As Miss Lewis explained to me in her evidence, the application was followed by a validation process which usually takes some weeks and it was only after that process that the application was, on 14 May 2021, considered valid.
24. The claimant suggested that the process for gaining consent was only initiated following receipt of an internal audit memo which was sent to Mr Proffitt on 29 March 2021. That memo was prepared following a whistleblowing complaint which was made to the respondent’s Internal Audit Department. Although Miss Lewis said in her evidence that the memo had not prompted the respondent to seek the retrospective permission, on the face of it that assertion is somewhat undermined by the content of the memo itself. To quote it:

“There was no evidence to indicate that any options to rectify the breach had been explored by the Service, and although options for a way forward had been suggested in November 2020 by the Conservation and Archaeology Manager, an options evaluation had not been undertaken to establish possible costs and consequences for the council.”

25. Further, one of the report’s recommendations reads as follows:

“The Property Team undertakes an urgent financial and a risk appraisal to determine which of the three options provided by the Conservation and Archaeology Manager for consideration should be progressed.”

26. However, I also note that in emails sent from 7 to 21 January 2021 which were in the bundle, which were sent some months before that memo was finished, Ms Dewick and Miss Lewis had already concluded, that is by 21 January, that option 2 (getting consent) would be pursued, having already considered whether they should wait for the audit report which by then clearly they knew was coming. Ultimately, it may be that the involvement of the Audit Department spurred things along somewhat. But, in my judgment, the real relevance of all of this is that it establishes that even up to early 2021, and most importantly around November 2020, Miss Lewis, as she said in her evidence, simply did not see the vent issue as a major concern for the respondent, particularly given all those other things that were happening around that time, with the pandemic in full force.

The claimant’s actions after the first disclosure

27. Moving back now to early 2020, as I have already said, the claimant first raised his concerns about the vent in February of that year. There is no dispute that he continued to raise those concerns after that, although there is some difference in recollection as to some of the precise circumstances, so I deal with all of that now.

28. During the course of the hearing I was shown records of various one-to-one meetings between the claimant and Miss Lewis. Some of those records were prepared by the claimant and some were prepared by Miss Lewis. In each case, the person who prepared the record emailed it to the other person. In some instances that other person was able to, and did in fact, add their own corrections. In other instances, as I understand it, the software being used did not make that possible but, equally clearly, the other person could have added any of their own corrections in a separate email if need be. For those reasons I accept that the records that I was shown are broadly accurate and I conclude the following from those records and, of course, from the witnesses' evidence.
29. The claimant and Miss Lewis discussed the vent issue at one-to-one meetings in February, April, May and June of 2020. It was not the only topic of conversation in any of those meetings; far from it in fact. The topic was not discussed, I find, at the claimant's one-to-one in July 2020. There is no record of it having been discussed, and indeed, the claimant accepted in evidence that he could not remember if it had been.
30. Miss Lewis also told me about a conversation ("the conversation") that took place between her and the claimant in early August 2020. It was not a formal or scheduled one-to-one meeting. Although Miss Lewis said she thought she would have made a note of it, no note was provided in evidence. Miss Lewis told me that the meeting had been to discuss concerns that some of the claimant's colleagues had raised about him. I was shown two emails about this. One, dated 30 July 2020, in which one of the claimant's colleagues set out concerns; a second, dated 5 August 2020, in which Miss Lewis told that person that she had spoken to the claimant and had agreed an action plan to deal with the concerns. Now, although Miss Lewis initially recalled her conversation with the claimant as having taken place on a totally different day, when she was shown those emails, she accepted that she must have made a mistake about the date. Given the contemporaneous email in which she refers to the conversation having taken place, I accept her evidence about the conversation notwithstanding the mistake she made about the date. In the context of the emails, the conversation must clearly have happened some time between 30 July and 5 August. I did not consider I needed to make any findings about what was said in that conversation, save for that I accept that there must have been some reference to the vent issue. This is because one of the people who had made the complaints about the claimant was Jill Dewick and all agreed that the only dealings the claimant was having with Ms Dewick at that time were about the vent issue. So it seems to me a reasonable inference that, even if it was only tangentially referred, to the vent issue must have been discussed.

Further disclosures and related points

31. It was also the claimant's case that he had made a disclosure to Miss Lewis about the vent issue in a one-to-one meeting in the first part of September. That is the date in the list of issues. The claimant's statement has it as 3 September, and says that he raised verbally the concern that his instruction to rectify the breach of the listed building consent had been ignored since February 2020 and that there was no collaboration from Ms Dewick. I accept the respondent's

submission that the claimant must be wrong about that. The records for the one-to-one meeting on 3 September do not record the vent issue as being discussed. I do accept that the record is accurate when it says, "Allesandro has been asked to focus mainly on the Maintenance Team". As Miss Lewis told me, she had decided to ask the claimant to focus his management efforts on the Maintenance Team. The claimant's recollection was that she had told him to focus *only* on the Maintenance Team and to pay no attention to the Projects Team. Although I do not consider that very much turns on it, I prefer Miss Lewis' evidence on this point given that it reflects the record she made of 3 September meeting. In other words, the claimant was not told to work *only* on the Maintenance Team, but *mainly*. The reasons for that were, as Miss Lewis explained to me, that she felt that the majority of management support was required by the Built Assets Team and that this would aid the claimant's workload and relieve some of the pressure he was under.

32. It is also evident that in 2020 there was a dispute between the claimant and Miss Lewis about how to deal with the vent issue. In particular, it was the claimant's view that the respondent's Legal Team, Procurement Team and Internal Audit Team should all be informed of the situation early. In contrast, Miss Lewis' view and, indeed, Ms Dewick's view, was that that was premature because the respondent was still seeking information from the contractors and the consultants. There was no real dispute about the fact that Miss Lewis effectively overruled the claimant on this point and told him not to inform those teams.
33. It was also the claimant's case that Miss Lewis strongly implied, at some point in 2020, that a disciplinary or performance meeting with HR would be arranged. In cross-examination, the claimant agreed that Miss Lewis had never explicitly said that. In my judgment, the claimant somewhat jumped to a conclusion based on the discussion which is as recorded in the meeting notes of 3 December, during which Miss Lewis told him that the team had complained about his communication with them. I accept Miss Lewis' evidence that this is all that was said about that point and that there was no threat, express or implied, of disciplinary action. I reject the claimant's suggestion that Miss Lewis said that there was no longer any trust between herself and the claimant at that point.
34. The claimant asserted in his witness statement that there was a further protected disclosure on 10 November 2020. He said that within his alternative written proposal for the restructure which he provided to Miss Lewis as part of the redundancy consultation, of which I say more later, he again mentioned the vent issue. Although it was not contained in the list of issues that there was a protected disclosure on 10 November, Miss Barrow, for the respondent, pragmatically conceded that I could properly take account of the evidence on this point. In reality, there was no factual dispute about it. The claimant did mention the vent issue in that documentation on 10 November. In essence, the claimant was repeating the disclosure he had made in February and the real issue was whether that had any influence on Miss Lewis' decision to dismiss him and/or to select him for redundancy.
41. On a similar point, the claimant also asserted in his statement that he had made two other protected disclosures, which again were not in the list of issues. The first was in the course of his contact with Mr Peart in October which, as I have

already explained, resulted in Mr Peart's November email. The second was said to have been in a phonecall with a Ms Jacinta Fru, the respondent's Head of Internal Audit, late in 2020. There was no evidence that the decision maker in this case, Miss Lewis, was ever told about that first conversation. Regarding the second, it is clear that Miss Lewis drew her own conclusion, whether that was right or wrong, that it was the claimant who was the ultimate source, or cause, of the audit (see para 24 above). However, Miss Lewis' evidence was that she became aware of the audit in November or December and, in fact, I note that an email in the bundle (at page 224) suggests she was contacted by Internal Audit on 7 December 2020. It was not suggested to her that she was aware of the audit at the time she made any of the relevant decisions in this case and, in the absence of any other evidence on the point, I am not satisfied that, on the balance of probabilities, she was aware of the audit by the time she made any of the relevant decisions in this case.

Miss Lewis's knowledge etc. at the relevant time

- 42 At this point I will summarise what the situation was in September 2020, in other words just before Miss Lewis made any of the relevant decisions in this case. Miss Lewis was plainly aware that the claimant had made what I have found amounted to protected disclosures in February, even if the claimant had not used the words 'protected disclosures', and of course she was aware that he had repeatedly raised the point in the months since. However, I do accept Miss Lewis' evidence that the point was not uppermost in her mind. It was one of very many issues that were discussed at their numerous meetings and, to put it bluntly, she did not consider it to be a big deal.
- 43 Also in September, the claimant was perturbed that Miss Lewis had told him to concentrate on the Maintenance Team and also of course he knew that colleagues had complained about him and he believed, incorrectly, that he had been threatened with disciplinary action. He had also been overruled on the issue of whether the stage had yet come to consult the legal and the other teams on the vent issue. I accept the claimant had a genuine feeling that he was being undermined and was genuinely frustrated at the slow progress on the vent issue. I further accept that in the claimant's view, his relationship with Miss Lewis had, if not broken down, was approaching that point. But I do not accept that Miss Lewis had come to that view herself. On all of these issues, in my judgment, Miss Lewis was making management decisions which seem to me to have been well within the bounds of what was reasonable.

The restructure and the redundancy

- 44 It was in all of this context that on 28 September 2020 Miss Lewis formally proposed a reorganisation. (28 September is the date on the document prepared by Miss Lewis headed "Restructure Business Case" at page 117 of the bundle. I was not told precisely when Miss Lewis first considered the idea but, clearly, it would have been some time before 28 September.) I accept, indeed there is no dispute, that a formal month-long consultation then took place involving, amongst others, the trade unions of those affected, although the claimant was not a trade

union member himself.

- 45 The proposal was to “delete” six roles including the claimant’s. The others were: Asset Maintenance Manager; Mail and Document Management Team Leader; one of four of the Mailroom/Document Management roles; Asset Officer and Helpdesk Team Leader. One of those other roles, the Asset Maintenance Manager, had recently become vacant following the incumbent’s retirement and there is no dispute that, following that retirement, the claimant had been covering that role as well as doing his own role. I accept Miss Lewis’ evidence that it was, in fact, that retirement which was the catalyst for her proposed reorganisation.
- 46 The purpose of that restructure, and again I accept Miss Lewis’ evidence on this point, was to remove a layer of management to free up funds to employ a second surveyor, which was a role one layer below the claimant’s in the hierarchy. Quite simply, Miss Lewis was of the view that the respondent needed more surveyors and fewer managers. The proposal was that with the deletion of those posts, three new posts would be created. One of those, the Ops Team Leader, would simply be a “slot-in” for the person in the old position of Mail and Document Management Team Leader. Another of those three roles would have been a second building surveyor. Of most relevance to this case was the third role, of the Asset Maintenance Lead. It is clear from the charts that I have been shown (at pages 122 and 123 of the bundle) that the changes did in fact remove a layer of management while increasing the number of building surveyors from one to two. The claimant was the only person in his team to be put at risk of redundancy. But, as I say, the purpose of the restructure was to remove a layer of management and the claimant was, of course, the only manager of his team.
- 47 A consultation meeting about the claimant being at risk took place between the claimant and Miss Lewis on 26 October 2020. During the course of that meeting, there is no dispute that one of the things that the claimant raised was the vent issue. Another consultation meeting took place on 12 November, during which the claimant suggested that the new role of Asset Maintenance Lead matched his role and that therefore he should be slotted into that role. The respondent’s position (and Miss Lewis’s position) was that a slot-in would only occur when there was an 80% match between the responsibilities of the claimant’s role and the new role. Ultimately, I accept Miss Lewis’ evidence that that was not the case here. The new role, she said, was more hands on and operational; it would involve generating and implementing the maintenance plan. The new post also required greater management of the maintenance site. Although, as I have said, the claimant had been covering that area after the Asset Maintenance Manager retired, that does not, of course, mean that his role involved those responsibilities.
- 48 Having considered a table provided in evidence by the claimant, which compared the responsibilities of his role and the new role, I cannot see that Miss Lewis’s conclusion about slotting in, however much the claimant may disagree with it, was wrong. I also note the respondent’s undisputed evidence that the new role was actually at a lower grade than the claimant’s role had been. I have no doubt that, during the consultation process, the claimant engaged in good faith and provided detailed proposals which he believed could be an alternative to redundancy. Equally, and contrary to the claimant’s position, I accept that his

proposals were treated in good faith by Miss Lewis and that she decided, as she was entitled to, that it was nevertheless appropriate for her proposals to proceed. Having so decided, the decision to dismiss the claimant clearly was also made by Miss Lewis.

- 49 The claimant was given formal notice of redundancy on 23 November 2020 and he served out his three months' notice. That was Miss Lewis' final involvement as a decision maker in the case although, as I will explain later, she was later involved in presenting the management case at the claimant's appeal.

Claimant's application for new role

- 50 On 18 November 2020 the claimant submitted an expression of interest for the new role of Asset Maintenance Lead. Because he was at risk in the redundancy process, he was automatically given an interview. None of the others at risk had submitted an expression of interest so the claimant was the only person interviewed at that stage. He was interviewed by Miss Lewis, and also by Miss Cook, the respondent's Head of Health and Safety. Miss Lewis and Miss Cook had prepared model answers in advance of the interview which they then used to compare the claimant's answers against. I did not hear from Miss Cook but I do accept Miss Lewis' evidence that both women came to the conclusion that the claimant was not a good match for the role. They felt that the claimant was more suited to a project delivery role rather than one which involved managing the maintenance side. The claimant's answers were scored by both women, who in fact reached the same total score of 17 out of 40. Each answer was rewarded a score between 1 and 4 and the claimant scored mostly ones or twos whereas the expectations for the role were threes or fours. Both women recorded detailed reasons for coming to each individual score and I was shown those reasons. In view of his low total score, the claimant was not offered the role. Having considered the evidence, I am satisfied on the balance of probabilities that both women approached their task in good faith. Nothing in the evidence presented to me leads me to the conclusion that, even if Miss Cook did know about the vent issue, it had any bearing upon her decision. Nor do I find that it affected Miss Lewis's decision.

- 51 As a result of this, the role was then advertised externally. The respondent received applications from both external and internal candidates. I was not provided with scoring for any of those other candidates but I do not accept the claimant's suggestion in the circumstances that this should lead me to the conclusion that the respondent's actions towards him were motivated by his protected disclosure. The role, in fact, eventually went to Mr Stars, who I have already mentioned. The respondent points to Mr Stars' involvement in the vent issue, and suggests that that shows the respondent was not retaliating against the claimant as a whistleblower, otherwise surely it would have also retaliated against Mr Stars. I do not in fact think that that does lend support to the conclusion that the respondent invites, given Mr Stars' fairly peripheral role in the vent issue in comparison to the claimant's. As will already be clear however, I have reached the conclusion that the respondent invites me to reach for different reasons. In other words, I have reached the conclusion that the claimant's dismissal and selection for redundancy did not have anything to do with his

protected disclosures. I am simply saying I have not been assisted in coming to that conclusion by the respondent's point about Mr Stars getting the job ultimately.

Redundancy appeal

- 52 The claimant lodged a written appeal against the redundancy decision on 4 December 2020. In the application he set out detailed reasons why he disagreed with the respondent's decision. He suggested that the respondent's need for the work he had been carrying out had not ceased or diminished. He suggested that the Capital Projects Manager should also have been included in the pool for redundancy and suggested that he, the claimant, had been wrongly included in the pool. He suggested that the new role was so similar to his old role that redundancy was not justified and he criticised the respondent's business case, suggesting there was not sufficient evidence to support it. He also complained that the consultation process was inadequate. The claimant provided detailed written proposals of his own for avoiding redundancy and it is right to say that within those proposals one of the things the claimant mentioned was the vent issue. It is equally right to say that at no point in any of the written documentation about the appeal did the claimant suggest that his selection for redundancy had anything to do with his involvement in the vent issue.
- 53 The claimant's appeal was heard by Mr Proffitt, who I have already mentioned. Mr Proffitt is the Director of Environment and Property for the respondent and was Miss Lewis's boss. The claimant and Miss Lewis both made their respective cases to Mr Proffitt during the course of the hearing. The claimant makes a number of criticisms relating to the fairness of the appeal process but, as I have already explained, this case is not about whether there was a fair process, but simply about whether the decisions to select for redundancy and to dismiss were because of the protected disclosures. I therefore consider the appeal process in that context.
- 54 In short, there is no evidence, in my view, to support the conclusion that Mr Proffitt's decision not to uphold the appeal had anything to do with the claimant's disclosures. While the written decision is fairly short and certainly does not address each and every point which the claimant had raised in writing, I accept Mr Proffitt's evidence that the written decision did address the two points which the claimant identified during the course of the hearing as being two points that formed the broad thrust of his appeal. Firstly, his criticisms of the business case, and secondly his suggestion that he could be slotted into the new role. Like Miss Lewis, Mr Proffitt had come to his own conclusion that the claimant had been the cause of the audit investigation but I accept Mr Proffitt's evidence that he only arrived at that conclusion around the time he received the report which was, of course, after the time he made the decisions about the appeal. Mr Proffitt was aware from the appeal documents that the claimant, amongst many other points in that document, had raised concerns about the vent issue. But at no point during the appeal hearing did the claimant suggest that his dismissal or selection for redundancy had anything to do with his involvement with the vent issue. Ultimately, I accept Mr Proffitt's evidence that the vent issue had no bearing whatsoever upon his decision.

LAW

Protected disclosures

- 55 The law provides certain protections for people, commonly described as whistle-blowers, who make “protected disclosures”. By s 43A ERA, a protected disclosure means a qualifying disclosure made by a worker (which includes an employee) in accordance with any of sections 43C to 43H. A qualifying disclosure is made in accordance with sections 43C to 43H if made, amongst other ways, to an employer (s 43C(1)(a)). There was no dispute here that, if the claimant made a disclosure, it was made to his employer.
- 56 By s 43B, a qualifying disclosure means any disclosure of information which, in the reasonable belief of the person making the disclosure, is made in the public interest and tends to show one or more of a number of things. One of those things (s43B(a)) is that a criminal offence has been committed, is being committed or is likely to be committed. Another (s 43B(b)) is that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject (and of course “person” here includes a legal person such as the respondent).
- 57 In the case of a disclosure directly to an employer, the Tribunal will consider the following. First, was there a disclosure of information? There was no dispute that information was disclosed here. Second, did the claimant reasonably believe two things: (i) that the information tended to show the relevant wrongdoing and (ii) that the disclosure was in the public interest. So far as both beliefs (i) and (ii) are concerned, it is the claimant’s belief at the time of making the disclosure (not any later) that is relevant, and the belief must be a genuine, subjective belief.
- 58 So far as (i) is concerned, the reasonableness of the belief may depend on the claimant’s status (i.e. layperson or expert – *Korashi v Abertawe Bro Morgannwg Local Health Board* 2012 IRLR 3). There must be a belief not just that there was wrongdoing, but that the information tends to show it (*Soh v Imperial College of Science, Technology and Medicine* EAT 0350/14).
- 59 So far as (ii) is concerned, there is no requirement that the information is provided in good faith. There is a distinction between belief (which is relevant) and motive (which is not) (*Virgin Active Ltd v Hughes* 2023 EAT 130). In deciding whether it was reasonable for the claimant to believe that disclosure was in the public interest, relevant factors to be weighed include: the size of the group affected by the wrongdoing, the nature of their interests and the extent to which those interests were affected, the nature of the wrongdoing and the identity of the wrongdoer *Chesterton Global Limited v Nurmohamed* [2018] ICR 731.

Automatically unfair dismissal for making a protected disclosure

- 60 S 94 of the Employment Rights Act 1996 (“ERA”) confers on employees the right not to be unfairly dismissed. Enforcement of the right is by way of complaint to the Tribunal under section 111. The employee must show that they were dismissed

by the employer (see s 95 ERA), but in this case the respondent admits that it dismissed the claimant.

- 61 S 103A ERA provides that an employee who is dismissed shall be regarded as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure. In such circumstances the employee is said to be subject to an automatically unfair dismissal, i.e. there is no need for the Tribunal to consider generally whether the dismissal was fair – it is deemed not to be. Where there are multiple protected disclosures, the Tribunal is required to ask itself whether, taken as a whole, the disclosures were the principal reason for the dismissal: *El-Megrissi v Azad University* EAT 0448/08.

Burden of proof and other evidential points

- 62 In a case where the claimant has less than two years' service, they will bear the burden of showing, on the balance of probabilities, that the reason for dismissal was an automatically unfair reason (*Ross v Eddie Stobart Ltd* EAT 0068/13, in the particular context of whistleblowing).
- 63 The Tribunal will consider both the conscious and unconscious motivation of the decision maker. It may be appropriate to draw inferences as to the reason for the dismissal.

Redundancy and protected disclosures

- 64 An employee who is dismissed for redundancy (i.e. in a genuine redundancy situation) may be regarded as automatically unfairly dismissed in certain circumstances where the reason or principal reason they were selected for redundancy was that they had made a protected disclosure. This applies where the following three conditions are satisfied (s 105(1) and (6A) ERA):
- (i) That the principal reason for dismissal was redundancy (i.e. there was a genuine redundancy situation).
 - (ii) The redundancy situation must have applied equally to one or more other employees who held a similar position as the complainant in the same undertaking but who were not dismissed, and
 - (iii) The reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was that specified in section 103A [i.e. whistleblowing].
- 65 The same provisions as regards the burden of proof as are set out above at para 62 will apply.
- 66 A redundancy situation exists in the circumstances set out in s 139(1) ERA:

[A]n employee who is dismissed shall be taken to be dismissed by reason of

redundancy if the dismissal is wholly or mainly attributable to —

(a) [...]

(b) the fact that the requirements of that business —

(i) for employees to carry out work of a particular kind, or

(ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer, have ceased or diminished or are expected to cease or diminish.

CONCLUSIONS

- 67 For the reasons set out from para 17 above, I accept that the claimant made the protected disclosures, as set out in the list of issues at 3.1.1.1 and 3.1.1.2, on 4 February. The claimant disclosed information to his employer, i.e. to Miss Lewis, which he reasonably believed was in the public interest and which he reasonably believed showed that the respondent had failed to comply with its legal obligations relating to listed building consent.
- 68 For the reasons set out from para 31 above, I do not accept that the claimant made a protected disclosure as pleaded in September 2020 (issue 3.1.1.3). That is really rather by the bye though, given that he was regularly reminding the respondent, and in particular Miss Lewis, about the February protected disclosures up until the point where the relevant decisions were made, even if he had not done so quite as set out in the list of issues. For the same reason, and as I have already explained, it is immaterial whether the claimant made other protected disclosures after February which were not identified in the list of issues but which concerned precisely the same issue as the February disclosures. It is plainly appropriate for me to consider the cumulative effect of his reminders, rather than considering the February disclosures in isolation, and I do so.
- 69 I accept that the claimant genuinely believes now that his dismissal was connected with the protected disclosures and I reject the respondent's suggestion that the claimant has feigned that belief because he realised it was his only way of bringing a claim without two years' service. I do not accept the respondent's suggestion that the claimant's use of the word "sensed" in the claim form suggests that he was not sure about the nature of his own case. I also reject the respondent's suggestion that the claimant only raised his disclosures to protect himself from redundancy. He raised the vent issue repeatedly and consistently before he was aware of any question of redundancy.
- 70 On the basis of my findings at para 44 above, I do accept the respondent's contention that this was a genuine redundancy situation. In other words, the need for the sort of work that the claimant was doing had diminished. It follows that I do not accept what must be the implication of the claimant's case, that the restructuring and redundancy situation were a sham.
- 71 I find that that the claimant was not selected for redundancy or dismissed because of the protected disclosures. I accept, as I have said, that Miss Lewis

was still aware of the protected disclosures when she made the relevant decisions, but I have nevertheless found that they did not influence her decisions, given her view of what a relatively minor issue the vent issue was. The protected disclosures, taken together and with the claimant's later reminders, were not the sole or principal reasons for her decisions.

- 72 In coming to those views, I have taken account of all the claimant's arguments. In particular, the claimant is right to say that, ultimately, of all of those who were put at risk, he was the only one who ended up without a job, of course with the exception of the man who retired. I have also taken account of the claimant's suggestion that I should draw inferences from the timings of all of this. But, having considered all of that, I ultimately conclude that the claimant has not proven, on the balance of probabilities, that the reason, or the principal reason, for his dismissal was that he made a protected disclosure or disclosures. Nor do I find that the claimant has proved, on the balance of probabilities, that the reason, or principal reason, for his selection for redundancy was that he had made a protected disclosure or disclosures.
- 73 For those reasons the claim for automatically unfair dismissal is not well founded.

APPENDIX

Extracts from List of Issues prepared by EJ Hutchings following preliminary hearing of 24 April 2024

1. Automatic unfair dismissal

1.1 Was the claimant dismissed?

1.2 Was the reason or principal reason for dismissal that the claimant made a protected disclosure?

If so, the claimant will be regarded as unfairly dismissed.

1.3 The respondent says the claimant was dismissed by reason of redundancy.

2. Remedy for unfair dismissal

[...]

3. Protected disclosure

3.1 Did the claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996? The Tribunal will decide:

3.1.1 What did the claimant say or write? When? To whom? The claimant says he made disclosures on these occasions:

3.1.1.1 On 4 February 2020 in a one-to-one meeting with Ms Bee Lewis, the claimant told Ms Lewis that the vent at the front of the Milton Keynes library building failed to comply with Listed Building Consent (decision notice 17/00150/LBC);

3.1.1.2 On 4 February 2020 the claimant emailed Ms Lewis informing her that vent at the front of the Milton Keynes library building failed to comply with Listed Building Consent; and

3.1.1.3 In the first part of September 2020 in a one-to one meeting with Ms Lewis the claimant raised his concerns about the listed building issues, specifically that there was lack of progress to resolve the planning issue and there was no cooperation from Ms Jill Dewick. Ms Lewis told him he should ignore the project team and focus on the maintenance team only.

3.1.2 Did he disclose information?

3.1.3 Did he believe the disclosure of information was made in the public interest?

3.1.4 Was that belief reasonable?

3.1.5 Did he believe it tended to show that a person had failed, was failing or was likely to fail to comply with any legal obligation under S9 of the 1990 Planning (Listed Buildings and Conservation Areas);

3.1.6 Was that belief reasonable?

3.2 If the claimant made a qualifying disclosure, it was a protected disclosure because it was made to the claimant's employer.

If so, it was a protected disclosure.

...

Approved by:

Employment Judge Dick

21 December 2025

SENT TO THE PARTIES ON

22 December 2025

.....
FOR THE TRIBUNAL OFFICE

Notes

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here:

www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/