



EMPLOYMENT TRIBUNALS

Claimant: Ms T Clarke
Respondent NHS England

Heard at London South (by CVP)
On: 18/2/2026
Before: Employment Judge Mr J S Burns

Representation

Claimant: Ms L Caller (Solicitor)
Respondent: Mr L Dilaimi (Counsel)

JUDGMENT

1. The whole claim is struck out
2. The FMH listed for the period 19/10/26 to 27/10/2026 and any outstanding directions are cancelled.

REASONS

1. I was referred to a bundle of 279 pages which contained, amongst other things, two written submissions from each side and a witness statement from the Claimant dealing with her means.
2. The claim is solely that the Claimant has suffered detriments during employment contrary to section 47B Employment Rights Act 1996.
3. The matter has been the subject of previous case management at a PH before EJ Cawthray in October 2025 in which a list of issues was produced which reflected amongst other things the Claimant's case (first pleaded in paragraph 13 of the Particulars of Claim), that the claimed protected disclosure she relied on was as follows:

On 4 August 2021 at 10:00, the Claimant informed David Grantham, Chief People Officer of University Hospitals Sussex NHS Foundation Trust, by email of the concerns relating to the advertised 8B Head of Security role in the Estates and Facilities Team at University Hospitals Sussex (UHS).The Claimant says David Grantham was employed by the Respondent and therefore he formed part of the employer and that the disclosure was made under section 43C(1)(a) of the Employment Rights Act 1996.

4. The parties have proceeded on that basis in their preparation and presentations today.

5. Section 43C(1)(a) ERA 1996 provides that “*a qualifying disclosure is made in accordance with this section if the worker makes the disclosure ... to his employer*”.

6. The Respondent contends that
 - David Grantham was not employed by the Respondent; he was (and is) employed by University Hospitals Sussex NHS Foundation Trust.
 - The Respondent is a separate entity from University Hospitals Sussex NHS Foundation Trust:
 - The Respondent is an executive non-departmental public body of the Department of Health and Social Care and was established as part of the Health and Social Care Act 2012, and
 - The University Hospitals Sussex NHS Foundation Trust is an NHS foundation trust which was established on 1 April 2021 following the merger of Brighton and Sussex University Hospitals NHS Foundation Trust and Western Sussex Hospitals NHS Foundation Trust.

7. The Claimant’s submissions about this are as follows:
 - *The Claimant was explicitly instructed by the Respondent’s own employee, Mr Anthony Jackson, to refer the matter to Mr Grantham;*¹
 - *The whistleblowing legislation (Part IVA ERA 1996) requires a purposive construction. To disqualify a disclosure based on a rigid reading of the recipient, particularly when the Claimant followed the Respondent’s own specific direction, would produce an absurd outcome.*
 - *Whether the Claimant had a reasonable belief that she was making the disclosure to the correct person - or that Mr Grantham was acting on behalf of the Respondent, NHS England, in this specific context - is a matter of fact to be determined at a full hearing.*

Strike out law

8. A claim can only be struck out under r.38(1)(a) of the Employment Tribunal Procedure Rules 2024 if it is scandalous or vexatious or has no reasonable prospect of success. The test for

¹ Only after Mr Dilaimi had completed his oral submissions and during the course of her oral submissions, Ms Caller suggested that she call the Claimant evidence to give oral evidence in support of this point. I refused to allow this, principally for the reason given in paragraph 9 below but also as follows: the Respondent’s case regarding Mr Grantham had been clearly set out, for example in its strike out application served in October 2025. The Claimant served a witness statement about her means in accordance with a previous direction that she should do so before 17/12/2025, but did not produce or serve any witness statement about the Mr Grantham point. The previous directions did not contemplate or provided for any further witness evidence today. If the Claimant wished to apply to adduce further witness evidence at today’s hearing, then acting fairly and in accordance with the overriding objective, she should have given notice about this and served a witness statement of that evidence on the Respondent in good time before the hearing, and not waited until half way through her final oral submissions.

whether a claim has no reasonable prospect of success was set out by Lady Smith in Balls v Downham Market High School & College [2011] IRLR 217, EAT:

“[T]he tribunal must first consider whether, on a careful consideration of all the available material, it can properly conclude that the claim has no reasonable prospects of success. I stress the word “no” because it shows that the test is not whether the claimant’s claim is likely to fail nor is it a matter of asking whether it is possible that his claim will fail. Nor is it a test which can be satisfied by considering what is put forward by the respondent either in the ET3 or in submissions and deciding whether their written or oral assertions regarding disputed matters are likely to be established as facts. It is, in short, a high test. There must be no reasonable prospects.”

Conclusion

9. Even if *“The Claimant was explicitly instructed by the Respondent’s own employee, Mr Anthony Jackson, to refer the matter to Mr Grantham”*, that would not make out the Claimant’s case which is clearly set out in the list of issues namely that *“the Claimant informed David Grantham. The Claimant says David Grantham was employed by the Respondent”*. That is the way in which the Claimant claims that her disclosure was within Section 43C(1)(a). No other way is pleaded or set out in the list of issues.
10. A tribunal cannot adopt a ‘purposive construction’ to the question of who David Grantham’s employer was, if it is simply a fact that David Grantham was employed by University Hospitals Sussex NHS Foundation Trust, and not the Respondent.
11. Whether or not Claimant had a reasonable belief that she was making the disclosure to the correct person cannot assist her because either the disclosure was made to the correct recipient or it was not, and the quality of the Claimant’s belief about this is irrelevant.
12. The Claimant’s case, as confirmed in the list of issues, is not that Mr Grantham in receiving the disclosure was *“acting on behalf of the Respondent”*, ie its agent, but that he was employed by the Respondent and therefore he formed part of the employer and that the disclosure was made under section 43C(1)(a) of the Employment Rights Act 1996 for that reason. That is the case the prospects of which I have to judge.
13. The Claimant’s submissions do not challenge the Respondent’s assertion that Mr Grantham was not employed by the Respondent but rather suggest reasons why this does not matter, none of which reasons I find are valid, given the way the Claimant has put her case.
14. The fact that Mr Grantham was not and is not an employee of the Respondent is not seriously in dispute and in any event, I find that any contention that he was has no reasonable prospect of success. It is not a matter of fact which requires to be determined at a full hearing.

15. Hence an essential averment, (namely that the Claimant's disclosure was made as contemplated by section 43C(1)(a) ERA 1996 because Mr Grantham was an employee of the Respondent), and thus the whole claim itself, has no reasonable prospect of success and must be struck out under Rule 38(1)(a) of the ET Rules.

Approved by:
J S Burns Employment Judge
18/2/2026

Sent to Parties.
25 February 2026