



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss Karen Macmillan

**Respondent:** Cuerden Developments Limited

**Heard at:** Liverpool

**On:** 3,4,5 November 2025

**Before:** Employment Judge Aspinall

## Representation

Claimant: unrepresented

Respondent: Miss Mather, Counsel

**JUDGMENT** having been given orally on 5 November 2025 and sent to the parties on 2 March 2026 and written reasons having been requested in accordance with Rule 60 (4)(b) of the Employment Tribunals Procedure Rules 2024, the following reasons are provided.

## Background

1. By a Claim Form dated 2 December 2024, having achieved an ACAS Certificate on 26 November 2024 the claimant brought a complaint of public interest disclosure dismissal (whistleblowing). She had only been employed by the respondent care provider for two months when she was dismissed. She said it was because she had complained to the Nursing and Midwifery Council about fire doors being propped open and the respondent said it was because it had had complaints about her from other staff in relation to her nursing practice and medication errors and decided she had failed her probation period. It said Manager Lindsay Green did not know at the time she dismissed the claimant that she was a whistleblower.
2. The matter went to a case management hearing before EJ Ross on 29 April 2025

and a List of Issues was agreed.

### **Adjustments**

3. The claimant had written a witness statement which she described as her Victim Impact Statement. It outlined mental health issues, feeling suicidal, financial and other pressures as a result of her lost employment with the respondent. She did not disclose any disability or neurodiversity. She was asked did she require any adjustments. She required no adjustments other than patience and breaks if she became distressed. In the event none were needed other than regular breaks. The claimant was given short adjournments for time to think before concluding cross-examination of any witness.
4. The Judge supported her as a litigant in person so far as possible to ensure she was on an equal footing with the respondent and in accordance with the Equal Treatment Bench Book generally.
5. The Judge took the claimant to the List of Issues and reminded her of her own case, that she was dismissed on 21 November 2024 because she had reported the respondent to NMC on 17 November 2024.
6. The claimant hardly advanced this case, choosing to use her time with the respondent's witnesses to seek to show that she had not been guilty of the performance issues the respondent raised with her. At the end of cross-examination of each witness, with no objection from the respondent, the Judge took the claimant back to the List of Issues and prompted her to ask questions relevant to the List.
7. With only twenty minutes left in her cross-examination time at 3.40pm on day 2, the claimant had not asked dismissing officer Lindsay Green any questions about reasons for dismissal or challenged her about when the decision to dismiss was made, nor asked about Lindsay Green's state of knowledge of the claimant's disclosure. The Judge called for a short break and invited the claimant to refocus on the List and come back to ask questions about when the decision to dismiss was made, how it was made, what Lindsay knew when she made the decision, what were the sources of that knowledge. There was clear factual dispute about the meeting at which the claimant was dismissed and the Judge encouraged the claimant to put the points of dispute to the witness.
8. The claimant finished her questioning saying that she had asked all that she wanted to ask.

### **Timetable**

9. EJ Ross had set a timetable which was largely adhered to. Extra time was given so that the claimant's evidence ran into the second day. The respondent's witnesses were dealt with in the second day with closing submissions being moved to day three to allow the claimant overnight preparation time.
10. The List of Issues was discussed at the outset of the hearing and regularly referred to during cross-examination, with emphasis placed on the claimant's burden of proof to establish a whistleblowing dismissal, and was as follows:

## List of issues

### Protected disclosure-Section 43B Employment Rights Act 1996

1. Did the claimant make a qualifying disclosure as defined in section 43B of the Employment Rights Act 1996? The Tribunal will decide:
  - (1) What did the claimant say or write? When? To whom? The claimant says she made a disclosure on this occasion:

On 16 November 2024 the claimant reported to Nursing and Midwifery Council by email that registered nurses had wedged open fire doors in the Gardens Unit in breach of Fire Regulations.
  - (2) Did the claimant disclose information?
  - (3) Did the claimant believe the disclosure of information was made in the public interest?
  - (4) Was that belief reasonable?
  - (5) Did the claimant believe it tended to show that:
    - (a) a criminal offence had been, was being or was likely to be committed;
    - (b) a person had failed, was failing or was likely to fail to comply with any legal obligation;
    - (c) the health or safety of any individual had been, was being or was likely to be endangered;
  - (6) Was that belief reasonable?
2. If the claimant made a qualifying disclosure, was it made:
  - (1) to the nursing and midwifery council "NMC"?

If yes, are the provisions of s43F ERA 1996 satisfied namely:
  - (2) Is the NMC a prescribed person/body? See Schedule 1 to the Public Interest Disclosure (Prescribed Persons) Order 2014 for the List.
  - (3) Did the claimant reasonably believe that the relevant failure fell within any description of matters in respect of which that person is so prescribed, and
  - (4) Did the claimant reasonably believes that the information disclosed, and any allegation contained in it, was substantially true.

If so, it was a protected disclosure.

### Dismissal

3. If the claimant made a protected disclosure, what was the reason for dismissal? Having regard to the burden of proof, was the claimant dismissed because she made the protected disclosure? Or was the claimant dismissed for conduct as relied upon by the respondent.

## Documents

11. There was an agreed bundle of 167 pages.
12. The claimant had included within her 128 page witness statement screenshots and extracts from documents which the respondent said had not been disclosed. She included within her statement content that she said had been the form of a disclosure to NMC on 10 February 2025, not relied on and made post dismissal.
13. The claimant had sent to the respondent a document “13.06” which was not included in the bundle but the respondent had no objection to the EJ looking at it and attaching such weight as appropriate. It was described as a compilation of whistleblowing reports.
14. The claimant had sent a document to the Tribunal entitled “to send to Judge”, without having sent it to the respondent. It was copied to the respondent at the Judge’s request. The Judge did not look at it until the respondent had confirmed it could be included but that the Judge should attach such weight to it as she saw fit. It contained submissions about the respondent being dishonest and fabricating evidence.
15. The claimant referred to a document which the Tribunal did not see but referred to as “Response to Complaints”, which she had sent to the respondent replying to the complaints that her colleagues NC and JP had put in writing about her prior to dismissal. The claimant said the respondent’s solicitor had refused to include it in the bundle. The claimant said that the majority of it was within her witness statement already. (The statement contained several pages giving detailed responses to the content of the ET3 Grounds of Resistance by reference to the paragraphs therein). The Tribunal gave guidance that the claimant could consult her document to check that its content was included in questions to JP and in her closing submissions. She agreed that was a helpful way forward and she did not need to have the Judge see the whole Response to Complaints document as its content was included elsewhere.
16. The respondent made no objection to the Judge having sight of previously undisclosed content.

### **Oral evidence**

17. The Tribunal heard from the claimant. Her witness statement was 128 pages long and included much non relevant content including; allegations about drug usage by a colleague, sexual harassment by a colleague, inappropriate practice in the administration of medicines by a colleague (none of which were reported at the time) criticisms of colleagues’ performance at work, multiple allegations of poor management (more than twenty separate paragraphs) and specific challenges about the alleged incidents that Lindsay Green said had led to her not passing her probationary period. The claimant was concerned to assert the seniority of her registered status as a nurse and her compliance with proper professional nursing standards in contrast to lower status and non compliance by her colleagues.
18. It was explained to the claimant prior to her giving evidence that the Tribunal focus would be on the List of Issues and the burden of proof in a whistleblowing

dismissal which it had explained. The Tribunal went on to say that it did not need to decide whether the alleged incidents had happened or not, nor to make a finding as to what was the reason for dismissal, only whether or not the reason had been whistleblowing. The claimant said she understood the narrow focus on the List of Issues that the Tribunal must take within the time listed to hear the case.

19. The claimant gave evidence assertively and repeatedly said that the respondent's case was a lie and a fabrication. The claimant said she was outraged and disgusted that she had been asked by the Judge had she brought other whistleblowing complaints. It was explained to her that the respondent had said all along in its Response that she was using whistleblowing to seek to bring a complaint that she was not otherwise eligible to bring, that she had done this before, and that it was therefore relevant to give her the opportunity to refute that argument. She confirmed that she has a live Tribunal case against an employer prior to her employment with this respondent, also for whistleblowing.
20. Mr Peet gave his evidence in a straightforward way. He did not engage with non relevant content including the allegations that the claimant had made about him.
21. Mrs Holmes Wood gave her evidence in a straightforward way. She had been the note taker and had prepared letters to go to the claimant.
22. Miss Green was the dismissing officer. She gave her evidence in a helpful way. She was adamant that she did not know that the claimant had reported the respondent to NMC on 17 November 2024 until after dismissal when these proceedings came to her attention.
23. The claimant said that Lucy Charman was not as senior or as well qualified as she was, that Lucy was RMN and that the respondent saying that Lucy was RGN showed that Lindsay was lying and that this showed Lindsay to be a liar and unreliable witness generally. The Tribunal recalled Lindsay Green who gave oral evidence on oath and confirmed Lucy Charman was RGN. The Tribunal went on to the NMC site and searched and shared the screen with the claimant. It said RGN. The claimant accepted that she was wrong. Lucy Charman had been RGN.

## **The Facts**

24. The claimant was a Registered General Nurse who started working for the respondent on night shifts from 1 October 2024. She had qualified as a nurse on 13 October 2022. She had been employed elsewhere and brought a whistleblowing complaint, ongoing at the time of this hearing, arising out of that employment. She then secured other employment between July and August 2024 in respect of which she did not pass probation. She was taken on by the respondent manager Lindsay Green. Lindsay had been manager at the respondent home for over 6 years. The home had a CQC rating as outstanding.
25. The claimant worked night shifts, twenty hours a week at around £ 23 per hour. The claimant's contract provided for a probationary period. Things did not go well. The claimant perceived herself to be a more senior nurse than Lucy Charman. She thought (wrongly) that Lucy was a newly qualified RMN. The claimant often

asserted her status as a registrant and cited the NMC Code. The claimant threatened to report colleagues to NMC. The staff perceived the claimant to be sitting doing paperwork and not attending incidents as needed.

26. The claimant was concerned about what she saw as significant failings in the home. For example she was concerned that JP was not recording medicines that had been administered at the time they were given but was waiting till midnight, later in his shift, to write them up. She did not report this on handover sheets at the end of those shifts.
27. There was a notice board in the home clearly displaying Whistleblowing Policy and Procedure and managerial contact points for whistleblowing.
28. Whilst on shift during 14 – 17 November 2024 the claimant took photographs using her mobile phone of fire doors propped open on Gardens Unit. She did the handover sheets and did not report the fire doors as having been propped open in the handover sheets. During the handover on the morning of 16 November after the claimant had worked the night shift it was apparent that P and M had not been given medications. Lucy Charman challenged this saying how important it was to give medications and that there should have been attempts made to wake patients and ensure medications were given at the times prescribed. There was friction between the claimant and Lucy Charman in this exchange. The claimant left the handover and told Nicola Cumberbitch that she had been too busy to give the medications and that she was appalled at Lucy Charman.
29. On the next handover on the morning of 17 November after working the Saturday night shift an altercation took place between the claimant and Lucy Charman. Lucy Charman was challenging the claimant not having given medications. The claimant said she was not going to be belittled by Lucy Charman and the claimant asserted what she believed to be her seniority and her knowledge of the NMC Code. The claimant ignored what Lucy Charman was saying about night time medications and said she would just carry on with her handover. The claimant did not record the altercation; the challenge to her own failure to administer medication, in the morning handover note for 17 November 2024.
30. Elsewhere the claimant reported matters on handover such as

*On 17 November 2024 “pregnant staff X and Y please rota opposite shifts, risk assess needed Health and Safety ?”*

*“issues with call bell system”*

*“staff warned to keep decanted fairy liquid in a locked cupboard”.*
31. On the evening of 17 November 2024 at the start of the shift there was friction between the claimant and Lucy Charman again. The claimant perceived Lucy Charman and others to be unprofessional and said so. Lucy Charman retorted that the claimant could not speak to her like that and said that she did not like the claimant’s attitude. The claimant was working the night shift as usual and used her working time to make notes on the Notes app on her iphone about matters she planned to report to NMC. She then went online to NMC at around 10.50pm and using their portal reported concern about fire doors being wedged open at

the home.

32. She relied on notes to make her online entry one of which timed at 2250 on 17 November 2024 but produced to Tribunal in four screenshots said

*1: situation on Thursday the 14<sup>th</sup> as reported by Nicola Cumberbatch all the doors stopped being held back by magnetic locks against the wall meaning that all sets of doors could not be held back and were closed on the unit called Gardens. Nicola Cumberbatch informed management of the situation on the 14<sup>th</sup>. However, on the 15<sup>th</sup> and the 16<sup>th</sup> and the 17<sup>th</sup> registered professional staff*

*2: took it upon themselves to wedge open every single fire door on that unit despite being informed that it was a legislative requirement not to permanently wedge fire doors open. On coming on duty Karen Macmillan registered nurse stated to everyone in the handover that they could not under any circumstances permanently wedge open fire doors.*

*3: in contrast, when I covered that unit on the 15<sup>th</sup> night shift, I removed all the wedges on the doors placed by the day shift and then change the staffing around and manage the unit without any doors wedged open. I ensured that I repeated the same message to the care staff about the legislative requirements and reminded them of their responsibility quoting the legislation and code and NMC codes. All of them refused to accept what I said. Margaret Wilkinson stated that it was their choice to do what they wanted on their shift. On the night of the 17<sup>th</sup> at handover Karen stated to registered nurse Lucy Charman that you cannot and should not under any circumstances wedge those fire doors open. Lucy responded by shouting and arguing back with Karen in an unprofessional manner, saying I don't like your attitude. I don't like the way you're speaking to me when we're talking about it. I said this is about legislation and the NMC code and she turned round to me and said if you're talking about professionalism, you can't talk to me like this and became very defensive argumentative and shouting at the*

*4: same time. Lucy refused to acknowledge directives as is a requirement of the NMC putting all the residents and other workers such as carers and senior carers in a dangerous compromising situation. Another nurse called Nicola Cumberbatch who was also in the handover coming onto the night shift who was lent over the table curled up in a ball, avoiding acknowledging the legalities and responsibilities of a registered mental health nurse instead of intervening in backing me up. As such she chose to ignore and not respond. I believe that this in itself was a dereliction of duty and protection to the residents with the propped open several double sets of doors Berkely Gardens unit owned by Cuerden Care Group. I feel that four nurses breached NMC code and fire and safety legislation.*

33. The claimant did not retain a copy of exactly what she put on the portal. She retained her notes. She received an acknowledgment of her contact at 11.02pm from NMC by email.
34. She did not tell her colleagues on shift nor any manager that she had made the report on the NMC portal. She worked that shift and on handover sheet the next morning the claimant did not report any issue with fire doors and did not say that

she had reported anything to NMC.

35. When working a night shift staff have limited access to management as managers work office hours and are not on site during the night shift. There is a manager contact number available to staff on night shift. The claimant did not contact the manager during the night shift with concerns about propped open fire doors.
36. Lindsay Green was in work as the claimant left on the morning of 18 November 2024. The claimant did not bring any fire door issues to Lindsay's attention that morning. Lindsay Green came to work to find two written complaints under her office door. They were from Josh Peet and Nicola Cumberbirch. They were dated 18 November 2024.
37. Mr Peet had written his during the night shift on 17 November 2024. He reported his account of a restraint issue on 19 October 2024 in which he alleged the claimant had said to the resident "I'm stronger than you / bet you didn't know I was this strong". He alleged the claimant had referred to the resident's wife and kids when that was a known trigger for him and that the claimant had told P he was going to hospital which had made things worse. JP also reported that on 25 October 2024 there had been a failed medication issue by the claimant with medication not given to AH until 23.24 when it had been due at 21.00 and a second failed medication issue for resident P with the medication not given at prescribed time. JP reported that on 29 October 2024 the claimant did not respond to an emergency buzzer, she did not go to the incident on the top floor. He reported that on 15 November there was another failure to administer medication to AH and P again. JP reported that the claimant had been reminded about this and had said that she was too busy
38. Miss Cumberbirch reported that on 24 October the claimant failed to attend emergency buzzer at which a staff member was hit in the face. She said the claimant did not attend but asked afterwards so what did I miss ? Miss Cumberbirch reported the failure to administer medications on 25 October 2024 and a respiratory incident for a patient on 25 October 2024 in which the claimant failed to follow the resident's care plan which provided for repositioning, stabilisation, and use of rescue pack medications. Instead the claimant rang 999 and an ambulance was on its way. She said the claimant failed to follow the protocol for that resident. Miss Cumberbirch reported that on 29 October 2024 the claimant failed to attend an emergency buzzer issue. A patient had fallen from bed and the claimant did not attend. Miss Cumberbirch said the claimant was unprofessional in her manners, "does handovers unprofessional and states her opinions rather than facts - she has said negative things about other nurses and residents - described a resident as "vile and disgusting". She reported that on 16 November 2024 on handover P and M had not been given medication on the night shift and that when Lucy Charman challenged this saying how important it was for medications to be given even if a patient was sleeping; that the patient should be woken and medication given, the claimant had said after the handover that she knew she should have given the meds but was too busy and she was appalled at the handover. Miss Cumberbirch reported that on 17 November at handover the claimant was very unprofessional to Lucy Charman saying that she would not be belittled by her in her knowledge of the NMC Code.

39. Lindsay Green spoke to Andrea Holmes Wood about these reports. Andrea said she had had verbal reports from staff including MW, NC, LC and JP and that she had asked the staff to put them in writing and that is what JP and NC had done. Lindsay asked Andrea to investigate the medications issues and to invite the claimant to a probation review meeting. A letter was prepared by Andrea Holmes Wood inviting the claimant to a meeting on 21 November 2024. A letter was signed. Lindsay Green saw the letter and was told by Debbie, that it had been posted to the claimant. A copy of the text that had been printed was retained on the computer but was not signed. Andrea instructed colleague Dean to conduct a medicine review. He provided her with Medicine Sheets showing apparent failures to give medicines as alleged.
40. At some point during 18 November 2024, after leaving her shift and the site, the claimant contacted the Fire Service and reported breaches of Fire Safety at the Home. At around 4 pm on 18 November 2024 the fire brigade attended the Home and informed Lindsay that they had had an anonymous tip off that there were fire breaches on site. Lindsay accompanied the fire officer on an unannounced walk around. The officer did not say who had given the tip off or what it had been about other than breaches. The fire officer left telling Lindsay that he was satisfied with what he had seen, that there were no breaches and that he would send a written report.
41. Lindsay did not know who had tipped off the fire brigade. She was manager of over 200 staff and it was not uncommon for staff to threaten to report one another to NMC or threaten to report the Home. Lindsay was not phased by threats of reports. She had dealt with whistleblowing issues before. She was happy to follow the Whistleblowing Policy and Procedure, to receive reports, support those who made them and ensure they were investigated and acted on. As a nurse she encouraged a climate of reflective practice.
42. On 20 November 2024 the claimant was on duty again. She did not raise fire door issues with any managers and did not report them on a handover sheet. She did not say she had called the Fire Brigade.
43. On 21 November the claimant attended the probation review meeting. She went into the room and found Lindsay and Andrea present. She sat down. It was explained that Andrea was the note taker. Andrea used a lap top to make notes during the meeting. Lindsay told the claimant that this was a probation review and the respondent was concerned that the claimant was not fulfilling her role as a registered nurse. She set out what the complaints from Josh Peet and Nicola Cumberbirch had said and that an investigation revealed that there were medications that had not been given. The claimant said she would not discuss the reasons why this had happened. Lindsay turned to the failures to attend emergency buzzer issues. The claimant did not respond. Lindsay raised concerns about the claimant being seen to be in the wellness room or locked in her office when she was needed on the unit and about threats she had made on numerous occasions to report her colleagues to NMC. Lindsay said that the staff were saying that this made them feel uncomfortable about working with her. Lindsay was concerned that the claimant was not accepting of any of the medication issues. The claimant did not seem to see the problem with not administering medications on time. Lindsay decided during that meeting that the

claimant could not continue in employment and told the claimant that she had not passed her probation and that her employment was terminated.

44. The claimant left the meeting thanking management for the opportunity she had had. Notes were not provided to her to sign at that time. They were on Andrea's laptop.
45. The Fire Service sent a report to Lindsay giving the home a clean bill of health following its visit.
46. The claimant went to ACAS on 26 November 2024 and did not take the time for conciliation but asked for a certificate that same day and was given one. She brought her complaint on 2 December 2024.

### **Relevant Law**

47. Section 103A of the Employment Rights Act 1996 deals with protected disclosures and reads as follows:-

**"an employee who is dismissed shall be regarded for the purposes of this Part 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".**

48. In *Abernethy v Mott, Hay and Anderson* [1974] ICR 323, Cairns LJ said,

**"A reason for the dismissal of an employee is a set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee."**

49. In a case within section 103A the Tribunal has jurisdiction over the claim even though the employee has not been employed continuously for two years: section 108(3). However, in such cases it is for the claimant to establish that the Tribunal has jurisdiction, so the claimant bears the burden of showing that the sole or principal reason for dismissal was the protected disclosure: *Jackson v ICS Group Ltd* UKEAT/499/97.

50. A protected disclosure is governed by Part IVA of the Employment Rights Act 1996 ("the Act") of which the relevant sections are as follows:-

**"s43A: in this Act a "protected disclosure" means a qualifying disclosure (as defined by Section 43B which is made by a worker in accordance with any of Sections 43C to 43H.**

**s43B(1): in this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure is made in the public interest and tends to show one or more of the following:**

**(a) ...**

**(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject...**

**(c) ...**

**(d) that the health or safety of any individual has been, is being or is likely to be endangered..."**

51. The Employment Appeal Tribunal (HHJ Eady QC) summarised the case law on

section 43B(1) as follows in *Parsons v Airplus International Ltd* UKEAT/0111/17, a decision of 13 October 2017:

“23. As to whether or not a disclosure is a protected disclosure, the following points can be made:

23.1. This is a matter to be determined objectively; see paragraph 80, *Beatt v Croydon Health Services NHS Trust* [2017] IRLR 748 CA.

23.2. More than one communication might need to be considered together to answer the question whether a protected disclosure has been made; *Norbrook Laboratories (GB) Ltd v Shaw* [2014] ICR 540 EAT.

23.3. The disclosure has to be of information, not simply the making of an accusation or statement of opinion; *Cavendish Munro Professional Risks Management Ltd v Geduld* [2010] IRLR 38 EAT. That said, an accusation or statement of opinion may include or be made alongside a disclosure of information: the answer will be fact sensitive but the question for the ET is clear: has there been a disclosure of information?; *Kilraine v London Borough of Wandsworth* [2016] IRLR 422 EAT.”

52. The decision of the EAT in *Kilraine* was subsequently upheld by the Court of Appeal at [2018] EWCA Civ 1436. The concept of “information” used in section 43B(1) is capable of covering statements which might also be characterised as allegations.

53. The worker need only have a reasonable belief that the information tends to show the matter required by Section 43B(1) and that the disclosure is made in the public interest. A subjective belief may be objectively reasonable even if it is wrong, or formed for the wrong reasons. In *Chesterton Global Ltd and anor v Nurmohamed* [2017] IRLR 837 the Court of Appeal approved a suggestion from Counsel as to the factors normally relevant to the question of whether there was a reasonable belief that the disclosure was made in the public interest.

54. In *Chesterton Underhill LJ* addressed the question of the motivation for the disclosure in paragraph 30, saying that:

“... while the worker must have a genuine (and reasonable) belief that the disclosure is in the public interest, that does not have to be his or her predominant motive in making it: otherwise, as pointed out at paragraph 17 above, the new ss.49(6A) and 103(6A) would have no role. I am inclined to think that the belief does not in fact have to form any part of the worker's motivation - the phrase 'in the belief' is not the same as 'motivated by the belief'; but it is hard to see that the point will arise in practice, since where a worker believes that a disclosure is in the public interest it would be odd if that did not form at least some part of their motivation in making it.”

55. Sections 43C – 43G address the identity of the person to whom the disclosure was made.

56. Section 43F addresses disclosures to prescribed person. A qualifying disclosure is made in accordance with this section if the worker—

(a) makes the disclosure ... to a person prescribed by an order made by the Secretary of State for the purposes of this section, and

(b) reasonably believes—

(i) that the relevant failure falls within any description of matters in respect of which that person is so prescribed, and

(ii) that the information disclosed, and any allegation contained in it, are substantially true.

(2) An order prescribing persons for the purposes of this section may specify persons or descriptions of persons, and shall specify the descriptions of matters in respect of which each person, or persons of each description, is or are prescribed.

57. The Public Interest Disclosure (Prescribed Persons) Order 2014, SI 2014/2418 in its Schedule names the Nursing and Midwifery Council as a prescribed person for the purposes of the Act. The description of matters in respect of which the person is so prescribed is matters relating to—

(a) the registration and fitness to practise of a member of a profession regulated by the Council; and

(b) any activities not covered by (a) in relation to which the Council has functions.

### Applying the Law

58. The Tribunal read the claimant's Impact Statement and is sorry to hear of the effect that losing her employment has had on the claimant. As a registered professional nurse she will no doubt continue to seek support from her GP and others to manage her mental well-being, recover good health and return to work. It has mattered very much to her to seek to use these proceedings to clear her name of the performance and conduct concerns that the respondent had about her. That has not been the purpose of these proceedings. That has not been the focus of the application of the law in this case.

59. The List of Issues, working backwards through it, at question 3 asked

If the claimant made a protected disclosure, what was the reason for dismissal? Having regard to the burden of proof, was the claimant dismissed because she made the protected disclosure? Or was the claimant dismissed for conduct as relied upon by the respondent.

60. Lindsay Green was the decision making officer. The Tribunal addresses first the issue of knowledge of disclosure. The Tribunal accepts Lindsay's evidence that she did not know of the disclosure on the NMC Portal or any disclosure until the Tribunal claim came to her attention, long after her decision to terminate employment made on 21 November 2024. Lindsay was a compelling witness on this point. She described her experience as a manager, that there is a notice board in reception at the home setting out the Whistleblowing Policy and Procedure, that she is experienced in, and not phased by, handling whistleblowing issues. She explained how she manages over 200 staff and that it is not uncommon for staff to threaten to report one another to NMC and elsewhere. The Tribunal accepts her evidence that she did not know about the disclosure relied on and that even if she had, it would not have made a difference to her decision to terminate employment.

61. The absence of communication from the claimant to managers at the time corroborated Lindsay's position that she did not know of the disclosure. The Tribunal observed how the claimant changed her position and sought to introduce new evidence, making new assertions when she understood that Lindsay would

have to have had knowledge of whistleblowing prior to dismissal. The claimant started out asserting just the fact of her disclosure on 17th and the proof of that disclosure by the NMC acknowledgment. Then, when it was explained about burden of proof and that the disclosure had to be the reason or principal reason for dismissal so that the dismissing officer would have had to know about the disclosure at the time, the claimant said that the respondent must have known because

- a. she had reprimanded Josh and Nicola about wedged open fire doors.
  - b. she had reminded other nurses about wedged open fire doors between 14 and 19 November 2024 and been told to mind her own business.
  - c. she had told nurses plural and staff plural about the wedged open fire doors on numerous unspecified occasions between 14 and 19 November 2024.
  - d. she had told a health care worker whose name she could not remember not to disturb her on the night shift on 17 November “while she put a report in to NMC”
62. None of those accounts were credible because (i) there was no contemporaneous written evidence of them. The claimant had put other matters in the handover sheets but there was nothing at all about fire doors in the handover sheets the Tribunal saw. The claimant sought to deflect this by saying that the respondent had not disclosed the handovers, she went so far as to say that they had deliberately withheld handover sheets that contained her relevant comments about fire doors. She appeared to have forgotten at the point that she made this assertion that she had previously accepted in oral evidence that she had not put concerns about wedged open fire doors in writing in any handovers.
63. The Tribunal finds her response in cross examination that there were no notes of fire door issues in handover notes the more credible answer because, if the claimant had been mistaken and had known all along that she had made notes in the handover forms and they had been withheld from her, she would have called for their disclosure. When this was put to her she said she was confused and that she could not remember without seeing all 50 of the handover sheets for all 5 units, two per day, over the relevant 5 day period 14 – 19 November 2024. The claimant had not made a specific disclosure application despite being someone who communicated frequently with the Tribunal during the litigation and made applications frequently, including applications to strike out the Response. The Tribunal file showed her to be an able litigant in person who had made multiple applications (12 were recorded on the Tribunal file prior to hearing and there are 41 as at the date of preparation of Reasons)
64. The claimant was also not credible on the point about knowledge of disclosures because (ii) the claimant accepted in cross-examination she had not raised concerns about fire doors with Andrea or Lindsay. On the night of 17 November when she contacted NMC she had not contacted the manager using the emergency contact. She had not invoked the Whistleblowing Policy internally. She didn't for example send her photographs of the wedged open doors to the

managers. In the handover sheet for the night of 17 November to 18 November when the claimant had disclosed, there was no entry about the doors. This was a helpful contemporaneous document as it showed that the claimant had not recorded either the altercation with Lucy or the fire doors reprimands she alleged she gave to all staff nor the online disclosure to NMC. On the morning of 18 November she had not gone to Lindsay to report her concerns. The clocking off sheet was a helpful contemporaneous document as it showed, alongside Lindsay's oral evidence, the claimant was on site at the same time as Lindsay.

65. The claimant was asked why she did not go to managers and she said that she did not report it as she believed that another staff member, Nicola, had reported it. The Tribunal finds this is a disingenuous answer and is not credible because the claimant accepted that what Nicola had said she had reported was the fire door magnetic locks not working. The claimant did not say that Nicola had told her that she Nicola had reported fire doors being propped open and that this was a safety issue.
66. The assertions at a) to d) above were also not credible because (iii) the Tribunal observed the claimant to be an unreliable witness on the point of who she told that she had whistleblown and when. The Tribunal observed her evidence to shift in response to her perception of the requirements of her case.
67. The Tribunal finds that at the probation review meeting at which she was dismissed she did not say, this is because of my complaints about the fire doors, she did not say, the staff knew, it is in my handover documents, check them, she did not say – this is because I reported to NMC on 17 November. The Tribunal finds that if she had told staff, if she had thought at the time that Lindsay knew or must know, if she had thought she was being dismissed for whistleblowing, she would have said that.
68. The Tribunal concludes Lindsay Green did not know when she dismissed the claimant that the claimant had “blown the whistle” to NMC on 17 November 2024.

**The claim fails at this point because if the dismissing officer did not know that the claimant was a whistleblower then whistleblowing cannot have been the reason or principal reason for dismissal**

69. However, the Tribunal considered a position that the claimant did not advance explicitly but was apparent as her case shifted. What if, this was a Jhuti type case in which the claimant, as her evolving case alleged, told others about her whistleblowing, and those others influenced Lindsay to dismiss. She raised for the first time in completing her cross-examination of Lindsay Green that she had told a health care worker whose name she could not remember that she was not to be disturbed as she was going online to report to NMC. The Tribunal finds her account incredible. The Tribunal finds as a fact that she did not tell an unnamed health care worker that she was reporting anything at all to NMC on the night of 17 November 2024. Even if she had said such a thing there was no suggestion that that unnamed health care worker had between that time and early morning on 18th when Lindsay decided to investigate the claimant's performance and review her probationary period, had any contact with Lindsay or in any way herself influence or influenced anyone else to influence Lindsay to dismiss. There

was no suggestion that this health care worker had spoken to Josh or to Nicola who had written up their complaints. The claimant did not suggest that she had told Josh or Nicola herself that she had whistle blown to NMC.

70. Further, the Tribunal considered, but rejected any argument implicit in the claimant's case that others, Josh, Nicola, Margaret, Lucy or any of the others that the claimant says she reprimanded about fire doors, had influenced Lindsay to dismiss. Lindsay's evidence was compelling. She dismissed because of the medicine failures. She made her own decision based on the evidence of the Medicine Sheets. She dismissed because she saw no accountability from the claimant in relation to those failures at the 21 November 2024 meeting. She spoke to Andrea and the claimant. She looked at MAR documents showing missed medication. Even if, which was not the claimant's case, the reports of Josh and Nicola had been fabricated to create a clean reason for dismissal, Lindsay Green's evidence was that she relied on the Medicine Sheets and claimant's lack of response as reasons for dismissal.
71. Further in the alternative, If Lindsay Green had had knowledge of the whistleblowing then the Tribunal would have considered whether or not it was the main or principal reason for dismissal. The Tribunal accepts Lindsay's evidence that the reason for dismissal was not whistleblowing.
72. Lindsay was a compelling witness because she set out what had happened in chronological order in her thinking from 18 – 21 November 2024. Lindsay had returned from annual leave to written complaints from JP and NC. Those complaints detailed the medication errors. Andrea had had Dean investigate. Andrea had seen the MAR sheets. Lindsay decided on the morning of 18 November 2024 to call the claimant to a probation review meeting intending to discuss those errors. She asked Andrea to draft an invitation letter and she asked Debbie to post it to the claimant.
73. At the meeting on 21 November 2024 Lindsay put the performance concerns to the claimant. The Tribunal accepts her evidence that she believed the claimant had made those medication errors and that the claimant had not taken any accountability or reflected on them. The Tribunal accepts Lindsay's evidence that the medication errors and the claimant's response to them being raised was the main or principal reason for dismissal. It accepts Lindsay's evidence that even if she had known about whistleblowing it would have made no material difference to her decision as it was not a factor in her decision to dismiss at all. She is trained and experienced in supporting whistleblowers. She would not have allowed that to influence her decision making on a dismissal.
74. It is not necessary for the Tribunal to consider whether there was a protected disclosure or not because the claim has failed but the Tribunal has gone on to consider questions 2 and 1 of the List.
75. The Tribunal addresses to whom the disclosure was made. The list of issues at 2 asked

If the claimant made a qualifying disclosure, was it made: to the nursing and midwifery council "NMC"?

If yes, are the provisions of s43F ERA 1996 satisfied namely:

Is the NMC a prescribed person/body? See Schedule 1 to the Public Interest Disclosure (Prescribed Persons) Order 2014 for the List.

76. The respondent accepted that something had been said to the NMC in writing through its portal on 17 November 2024. It accepted and the Tribunal finds that the NMC is a prescribed person within the 2014 Order. The List of Issues continued;

Did the claimant reasonably believe that the relevant failure fell within any description of matters in respect of which that person is so prescribed

77. The claimant made her disclosures at around 10:50 PM on 17 November 2024. They were made in writing through a portal entry to NMC. She had not retained, nor obtained, the content of those disclosures. The claimant produced on the first morning of the hearing, notes which she says formed the basis of the disclosures made. She gave oral evidence as to the content of the disclosures made.
78. The Tribunal finds that the claimant has failed to meet her burden of proof to establish that she made protected qualifying disclosure. The Tribunal attaches little weight if any to the notes that she produced on the first morning. The Tribunal has no way of knowing when those notes were made or whether the content of those notes was replicated to a greater or lesser extent or at all in the entry made on the online portal. The claimant fails to establish on this document or her oral evidence that any disclosure was made at all. The claim would fail here if it had not already failed.
79. The Tribunal has gone on to consider, if the claimant entered onto the portal the same content that was in her notes then that would have been insufficient to amount to qualifying protected disclosure for the following reasons. The disclosure was not of a "relevant matter". The Order requires that at the time of disclosure the claimant reasonably believed that the relevant failure falls within any description of matters in respect of which that person is so prescribed. The Tribunal had regard to the Schedule to the Order which sets out that the NMC is a prescribed person in relation to fitness to practice matters. The matter in relation to which the claimant discloses is about fire doors not being closed. Taken at its highest and viewed objectively the content of the claimant's alleged disclosures above is not about a fitness to practice matter.
80. If the Tribunal is wrong about that, and allegations of propping open fire doors against unnamed individuals amount to a fitness to practice matter, then the alleged disclosure would fail because it does not contain sufficient information to amount to a protected disclosure. The claimant has failed to name an NMC registrant who she says propped open a fire door. She failed to identify the date, time and location of that act. Reading the notes closely (assuming that the written text on the portal replicates the notes) and giving it its plain English meaning, the claimant is objecting about the altercations with Lucy and Nicola and with Margaret Wilkinson. She does not say any of them propped open a fire door. There is an allegation that four nurses breached NMC Code and fire safety legislation but it is not clear who the four nurses are and how they breached the

Code. It would appear, and could be read, that the breach is in relation to their challenges to her in the altercations that she alleged took place.

81. The list of issues continues:

Did the claimant reasonably believes that the information disclosed, and any allegation contained in it, was substantially true.

82. The allegation made was that fire doors were being wedged open by unnamed persons. The Employment Tribunal would have found that on balance the claimant did believe that to be substantially true. She believed the doors were being propped open when they should not have been but it is surprising to the point where there was a fine balance as to credibility on this point, that she did not record it in handover notes, did not tell managers, did not report this internally whether through whistleblowing or more generally. The Employment Tribunal is concerned that the photographs produced were not shared at the time and may have been taken by the claimant before or on the night of 17th, in the face of fear of action from Lucy and or Nicola and or Josh.

If so, it was a protected disclosure.

83. The Tribunal finds that the alleged disclosure lacks sufficiency and content on a relevant matters for the reasons set out above. The disclosure would not have been a qualifying protected public interest disclosure under 43F so that the claim would have failed.

84. What if the disclosure qualified under 43B. The List of Issues at 1 looked at 43B ERA 96.

Did the claimant make a qualifying disclosure as defined in section 43B of the Employment Rights Act 1996? The Tribunal will decide:

What did the claimant say or write? When? To whom? The claimant says she made a disclosure on this occasion:

85. The Tribunal repeats its reasoning above as to the claimant's oral evidence of a note of what was disclosed. The Tribunal did not have sight of the written disclosure. The claimant failed to show she had made a disclosure. The disclosure would fail here for lack of sufficiency.

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

86. The Tribunal had regard to the timing of disclosure and identity to whom the claimant says she disclosed. The claimant says she disclosed during the night shift, after altercations about medication failures and about her not attending buzzers. She knew that staff were not happy with her. The Tribunal finds that the claimant, in so far as she made any disclosure to NMC on 17 November 2024, made it in her own interest. The Tribunal finds it was done protectively to head off allegations that her colleagues were making about her. That is not sufficient to defeat the disclosure. It is permissible in law that she was motivated to protect herself and to bring to the attention of the person to whom she disclosed a breach of health and safety. If the disclosure was made and was sufficient, it would not have failed on public interest.

87. The list of issues continued,

Did the claimant believe it tended to show that:

a criminal offence had been, was being or was likely to be committed;

a person had failed, was failing or was likely to fail to comply with any legal obligation;

the health or safety of any individual had been, was being or was likely to be endangered;

88. If the disclosure was made and was sufficient, and had related to fire doors being propped open, and if it had been made in the public interest the Tribunal would have accepted that the claimant reasonably believed it tended to show a breach of legal obligation and a health and safety issue.

## Conclusion

89. The burden of proof was the claimant's to establish that whistleblowing was the reason or principal reason for dismissal. The claimant could not show what she had disclosed. She relied on oral evidence that the content of notes replicated what had been disclosed. If that was the case then the notes lacked the necessary sufficiency to amount to a disclosure of information and allegation. **The Tribunal accepted Lindsay Green's oral evidence that she did not know about the disclosure when she dismissed and (ii) even if she had known the disclosures would not have been the reason or principal reason for dismissal because (iii) the reason for dismissal (which the Tribunal did not need to find) was the medication errors and claimant's lack of ownership of them.** For this reason, even if the Tribunal has been wrong about other matters, the claim cannot succeed.
90. The respondent has indicated a costs application. The claimant seeks reconsideration.

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Employment Judge Aspinall

Date: 17 March 2026

RESERVED JUDGMENT & REASONS  
SENT TO THE PARTIES ON

17 March 2026

FOR EMPLOYMENT TRIBUNALS

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