EMPLOYMENT TRIBUNALS

Claimant: **Mr Mihai Cristian Bunghez**

Respondent: **Destiny Healthcare Private Ltd**

Heard at: **Southampton Employment Tribunal via CVP**

On: **4, 5, and 6 February 2026**

Before: **Employment Judge Hay**

Representation
Claimant: Ms E Margetts - Counsel
Respondent: Ms A Acheampong – Counsel

JUDGMENT having been sent to the parties on 20 February 2026 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction

1. By ET/1 presented on 4 December 2024 Mr Bunghez brought claims of detriment, automatic unfair dismissal, and unauthorised deduction from wages relating to notice pay.

2. He had been employed as a compliance manager / officer by the respondent, a private company providing at home domiciliary care regulated by the Quality Care Commission (CQC). During the claimant's employment he raised some compliance issues with the respondent, which they say they dealt with. Mr Bunghez also made a report to the CQC raising safeguarding concerns, some of which related to his own actions, or actions of other employees he had been authorized by the respondent to address. When the CQC informed the respondent of the report, the relationship between them and the claimant broke down and he was dismissed.

3. The claimant argued his dismissal, and a series of events prior to it which he framed as detriments, was because he had made the report. The respondent says it was happy to support Mr Bunghez in his role ensuring compliance but when he made the report, including about his own

conduct, that was a false and malicious report which fatally undermined the necessary relationship of trust and confidence between them.

Background

4. At the start of the hearing the Judge had a hearing bundle which, as is sadly typical of such proceedings, exceeded the length which the Tribunal had permitted, and for which no permission had been sought. There was also an additional supplemental bundle which the respondent had produced on the morning of the hearing, and simply emailed to the Tribunal, without making clear it was objected to.

5. The claimant did object to the content of the supplementary bundle and valuable time had to be spent determining it's admissibility. The Judge admitted some parts of that new bundle but not all. Specifically the Judge excluded the application form that the claimant had filled in when applying for his role with the respondent, because had this been as important as the respondent sought to argue that it was it should have been included from the outset. Lists of service users were also excluded as irrelevant and potentially a breach of their privacy. Lastly WhatsApp messages detailing reasons for the termination of the claimant's witnesses were excluded as not being sufficiently relevant and because they could be asked about that in cross examination and the Judge could make their own assessment of the answers. It was not appropriate to admit evidence which would distract from the central issues in the case and which was produced late largely because of the respondent's oversight.

6. The Judge having given a decision with reasons for the ruling on admissibility, the respondent immediately sought re-consideration of that decision. That was refused because it was not a proper use of the reconsideration rule to repeatedly try to undo a mistake made by a party in failing to adduce evidence (the application form) where they had had the same fair opportunity to select and present relevant evidence as their opponent.

The evidence.

7. The evidence which was admitted and considered was a bundle of 264 pages, plus witness statement from Mr Bunghez, Rachel McGarvey and Ms Pinder for the claimant, and from Mr Munyangadze and Ms Chitauro for the respondent. The witnesses all gave live evidence and were cross-examined. It was necessary to limit the time for cross examination to complete the hearing in the time listed, and about which neither party had sought an extension nor made any complaint. The Judge trusted counsel to determine which witnesses warranted the greater amount of time to face questions in cross examination. This meant that Ms Margetts only had 20 minutes or so to question Ms Chitauro, although this was after an extensive period spent cross examining Mr Munyangadze, whom the claimant considered the more significant respondent witness.

8. The Judge observed that this was a difficult fact finding exercise because every witness was an unreliable narrator. Although the Judge did not find any of the witnesses dishonest, she concluded that all of them provided an account which was incomplete, inaccurate, or reluctantly given. For example, in his ET/1 the claimant stated he did not work for the respondent, yet his entire claim was based on his employment with them. This was an example of his carelessness with important information. The basis of his claim was treatment he claims to have received because he made a CQC report but in his sworn evidence he was reluctant to accept he had made the report. The Judge found that a bizarre approach for a witness apparently wishing to give accurate, truthful evidence.

9. The claimant called a witness called McGarvey. The Judge gave no weight to her evidence because the witness statement was obviously not written by the witness herself, since the words she used were identical to those of another claimant witness Ms Pinders. Although the Judge considered that might not have been a problem in and of itself Ms McGarvey's reaction when asked about it was to get up from the video screen and walk off, and thereafter claim she wrote the statement herself. That exchange entirely undermined Ms McGarvey's credibility to such an extent that the Judge disregarded her evidence.

10. The respondent's evidence was not immune to difficulty either. The Operations Manager Mr Manyangadze was a helpful witness but was determined to repeatedly present his own narrative. Whilst that was perhaps understandable it made obtaining clear evidence from him challenging and time consuming which appeared to border on deliberate. Again, the Judge considered, if the purpose of his evidence was to give accurate, truthful answers to straightforward questions, why did he make that so difficult?

11. Ms Chitauro was the Registered Manager respondent's second witness, and had been present across all three days of the hearing, and had seen or was at least aware of evidence given by others. She was also aware of the time constraints in giving her evidence, but wasted 2 mins of the 20 minutes that were available looking for her witness statement. The judge found it incredulous that she had not been told to read it and have it available, and formed the clear impression, from that and other delays in her answers, that Ms Chitauro was not really here to assist but because she had to be here, but she actually wanted to say and contribute as little as possible. Whilst that might be understandable it was not helpful.

12. Ms Pinder was the only witness who consistently made sensible concessions, accepted and considered propositions put to her and gave clear answers, but her evidence was of extremely limited relevance to the key issues for the Tribunal.

Findings of fact:

13. Mr Beunghez was employed from 20 May 2024 to 4 July 2024. The respondent conceded that he was only paid up until 2nd July which means he is owed 2 days pay.

14. This was Mr Bunghez's first job as a compliance manager. There was no job description in evidence but the Judge drew a reasonable inference that the respondent satisfied itself he had sufficient skills, knowledge, and experience to fulfil that role.

15. The ET/1 is blank about his employment dates because the claimant had ticked the box saying he did not work for the respondent he was claiming against. His particulars state he commenced employment on 1 May, the contract was created on 22 May and the signed version of the contract states 23 May. The claimant's witness statement says he started on the 1 May, but the respondent's witnesses both say it was the 20th, and that was the date put to them by the claimant's legal representative. Applying the balance of probabilities the Judge found that Mr Bunghez's his employment started on 20 May 2024. That date is important because the first complaints or concerns being raised by Mr Bunghez started within days of commencing his employment.

16. The contract included a probation period of 3 months during which time his employment "may be terminated …at any time on one week's prior notice or payment in lieu of notice".

17. It was unchallenged evidence was that the role involved ensuring full compliance with CQC regs and standards, safeguarding practices, and acting as liaison with Social Services and other external professionals. His managers were Operations Manager Robert Manyangadze and Registered Manager, Ms Medea Chitauro. All agreed the claimant raised a number of concerns. He presented these as formal reports of some type whereas the respondent's witnesses considered these to be informal conversations which would be a normal part of their interaction with someone employed specifically to address or ensure compliance.

18. Mr Manyangadze said repeatedly that the conversations he had with Mr Bunghez about issues were exactly the kind of conversations he would expect as his compliance manager let him know what he (the compliance manager) was working on. Mr Munyangadze did not interpret these as "concerns" or anything like Public Interest Disclosures.

19. The company did have a formal reporting policy by which employees could raise concerns. It was available to every employee and was an important potential safeguard for clients which enabled carers to raise concerns with senior management in the event line managers were not sufficiently responsive. The claimant never used it.

20. The claimant says he developed an action plan, which is what Manyangadze expected, but there was no evidence of that action plan ever being produced or finalised in the way anticipated. Mr Bunghez claims in his witness statement that he "formally raised" issued with his managers but he provided no evidence of how he did so, in what circs, and he put nothing in writing. He did send some company wide WhatsApp messages sent as reminders to care workers employed by the respondent, which the respondent's managers initially endorsed and supported, but the Judge did not consider that to be formally raising a

Public Interest Disclosure given the unspecific and company wide forum in which they were sent. That meant the claimant provided no reliable evidence of what he raised or how he raised it.

21. 23 May: the claimant send a company wide WhatsApp message about the use of topical creams and some of them not being recorded on a Medicine Administration Record (MAR) chart. His message told carers "do not apply any creams that are not prescribed by GP" and he stated that not following this was a safeguarding matter. This advice from him was wrong. The CQC guidance does allow use of "over the counter" OTC treatments and creams, so long as recorded accurately and approved by healthcare professional so as to check they won't interact with other medications. That could be seen from the CQC guidance itself which was provided.

22. Unfortunately, the claimant did not accept this guidance: when asked about it he said;

    "Ques: So did not require a prescription –
    Ans: I don't agree with that because OTC medication based on NHS homely remedy guideline must not be given for longer than 48 hours without medical advice – so if no guidance or approval from GP or nurse we are not allowed, and we don't have the label, and must properly record keep, and must have a consent form".

23. He provided no evidence to support his claim that his understanding was correct, and he tried to argue in oral evidence that the guidance he was being referred to did not apply because it related to care homes and the respondent provided domiciliary care in clients homes, not a care home setting. But the claimant was wrong about that. What that evidence does show is that the claimant did not trouble himself to read or understand guidance which was directly relevant to his role as compliance manager.

24. Mr Bunghez says on this same day he again informed management of serious compliance failures, but again did not explain where, how, or what he actually did.

25. The following day, the 24 May, there was a message from Ops Manager Mr Manyangadze, sent in support of claimant's message, but slightly different to it, which read: "Do not apply any creams that aren't on the MAR chart or administer medication not on MAR charts and don't have a label from GP or pharmacy – if has a label but is not on MAR chart please report". This message was in line with CQC guidance. It also aligned with company policy which allowed use of these products as a feature of client choice because some of their clients had been using these products their whole lives and wanted to continue doing so, and there was no reason why they shouldn't provided their use was accurately recorded and safe. The Judge concluded that the message from Mr Manyangadze on 24 May was evidence that respondent's management were willing to actively support the claimant if he had concerns, and the fact that they were willing to do so publicly in a company wide message made it less likely that elsewhere they were willing to ignore concerns being brought to their attention.

26. The reason this message was not identified by the respondent as any sort of disclosure is because the company had a standard practice for identifying and addressing non-compliance. That involved conducting an audit, developing and implementing an action plan, followed up by a review. That meant when concerns were raised by claimant in first few days they were not interpreted as compliance concerns in the way claimant now argues they should have been.

27. Also on 24 May there was discussion. The claimant calls it a "meeting", but the respondent does not. The Judge found this was not as formal as a "meeting" but was really another example of a conversation between colleagues to which no particular significance was attached until the claimant wanted to bring this claim.

28. The claimant says he was "forceful" but the respondent witnesses do not recall it that way. In particular Mr Manyangadze stated he was not unhappy that issues were being raised and the Judge accepted that evidence. This is because the company had hired a compliance manager specifically to do that job. As Mr Munyangadze put it, "*there is no way you are not going to find something that needs to be corrected*" and the Judge decided it was unlikely the respondent would then simply ignore what their compliance manager was saying, or reprimand him for raising it. The Judge concluded that what happened is both parties interpreted that meeting, and other conversations, differently, with the claimant trying to put a more formal slant on them, and the respondent treating them as typical operational conversations and comments which they would expect whilst awaiting a formal audit and action plan, which in fact never came.

29. On 29 and 30 May the claimant sent more company wide warning WhatsApps which now included reference to the care delivery report. Again Mr Bunghez says he "raised this" with managers but does not say where, how, what he raised, or what he actually said, so the only clear evidence of what he did was sending this WhatsApp.

30. The claimant went on to say (in his witness statement) "*despite continued risks we proceeded in accordance with the action plan"* but no action plan has ever been produced. The Judge found this a good example of a disconnect between what claimant asserts (he drafted an implemented an action plan which identified risks but which was seemingly ignored) and what contemporaneous documents show (that there was no action plan).

31. The respondent treated these massages as general reminders to carers rather than specific compliance concerns and in the absence of any detailed evidence from the claimant regarding the making of these "reports" the Judge felt that was reasonable.

32. On 4 June the claimant sent further WhatsApp messages but the tone was slightly different; "*I tried to be friendly and approachable but it doesn't work with you guys"*. This was obviously aimed at the carers and not the managers. The claimant included a reference to "our duty" being one of completeness and accuracy, he made a threat of non-payment of wages, noted carers were still using creams without following MAR chart, and instructed them "*If you don't know ASK*". The message also referred to

taking "*all legal steps until dismissal*", presumably to ensure compliance with the content of the message.

33. Mr Bunghez's representative tried to argue this message demonstrated that the claimant was reinforcing the importance of complying with legal requirements to provide care, and the respondents witnesses appeared to agree with that. But what the claimant's representative was actually trying to do was get the witnesses to fill a gap in claimant's pleadings and evidence. This was because the claimant, Mr Bunghez, had failed, in breach of a direction, to identify the "legal obligation" he had claimed to have reported. His representative, perhaps understandably, tried to use this message and its words "all legal steps until dismissal" to fill that gap and suggest it was obvious what legal obligations were that he was complaining had not been met. But the Judge did not agree, and that argument or assertion was rejected because the use of words "all legal steps until dismissal" was referring to the carers' relationship with the employer, not carers being at risk of failing in a legal obligation which the claimant has been unable to articulate or evidence.

34. On 10 June the claimant sent "a quick reminder" regarding client consent forms which was further evidence that WhatsApp was used for general communications and reminders and not as a platform for formally raising compliance concerns. A good example was found at page 97, where at the end of a message the claimant referred to symptoms which might require immediate medical attention, which illustrates how this platform was used.

35. Mr Bunghez also says there was a meeting on this day in which roles were allocated across the team, but no one else remembers this "meeting". The respondent's witnesses don't and significantly Ms Pinder doesn't. The Judge concluded that if there was a conversation that day it was not as formal as the claimant wished to present it as. His witness statement again says he continued working "in accordance with the action plan" (which did not exist), and again that he raised concerns re MAR charts and Care Delivery reports, but yet again he doesn't say what he raised, or what he said. He goes on to state that no action was taken by the respondent "*other than sending of further reminder messages via WhatsApp group*". But that is what he himself had been doing. The Judge did not accept that using WhatsApp in this way can it be some sort of safeguarding alert to managers when Mr Bunghez does it, but are only reminders when the respondent's witnesses do it. The fact that all three managers, the claimant, Mr Manyangadze, and Ms Chitauro were all doing the same thing undermines his claim that they were disinterested or took no action. If the claimant felt at this time that these concerns were so serious that they warranted more than these reminder messages he should have communicated that to the respondents in some more formal way than in office conversations, but by doing the same thing himself – sending reminder messages via WhatsApp – he has impliedly agreed with and adopted that approach.

36. This is significant because the company does have a whistleblowing policy and a specific application for reporting concerns. If he felt he was not being listened to and his raising of issues in these conversations, whether

formal meetings or otherwise, were not being acknowledged as being as serious as he felt they were then there was a mechanism for him to raise them either in writing or via a report. He did not do that. Instead he chose to continue sending "reminders" as illustrated by his witness statement where he says: "*I felt it necessary to send a further reminder on 12 June due to my ongoing concern staff were still not consistently following the required standards*".

37. It was therefore easy to understand how company did not recognise what he was saying were intended to be safeguarding concerns as opposed to operational reminders. The Judge concluded that this is what the respondent company, through its managers Mr Munyangadze and Ms Chitauro thought these were.

38. The claimant discovered that on 13 June a carer had attended an appointment late. He was authorised by the managers Mr Munyangadze and Ms Chitauro to deal with it and he did by raising it with the individual carer, and warning it must not happen again. Mr Bunghez now says he felt this warranted a safeguarding referral but did not say to whom. Ms Chitauro said it did not warrant such a referral and in the limited time available she was not asked about it. However the contemporaneous evidence shows carer was not 1 hour 40 mins late as the claimant suggested, and also that when the respondent became aware of this single incident the managers addressed it directly with the service user and their family by sending a letter of apology. The claimant was apparently unaware of this and the Judge found it surprising that he did not follow up with his managers to understand the final outcome given claimant himself conducted the investigation into the event. The Judge concluded that meant either that the claimant did not know the outcome, or he didn't bother to find out, either of which is inconsistent with his role and purpose as a compliance manager in which one would expect him to want to know what the outcome was of an issue he had identified and investigated. This also means that Mr Bunghez did not know whether the single incident of apparent lateness he dealt with actually presented a safeguarding concern, for the client involved or other clients more generally. This undermined his claim that his actions were motivated by public interest concerns about a breach of any generalized duty of care or of any unspecified legal requirement.

39. There was agreed evidence which showed that on 18 June the claimant's car was not working and at 8.13am he sent a message to Mr Manyangadze asking to work from home. At 8.31 Ms Chitauro sent the claimant a message instructing him to update an MAR chart, and he did that. At 9.28 he got a reply from Mr Manyangadze telling the claimant to take day off (rather than work from home) which the claimant immediately queried at 9.30. But WhatsApp messages with Ms Chitaurao show he continued working and was changing MAR charts (pg 260) as late as 13.26 after he had been told to log off. When he got no reply to his 9.28am query about why he could not work from home Mr Bunghez sent an additional message with the single word "discrimination" at 12.51. The "discrimination" message was responded to mins later with a "?" from Mr Munyangadze to which the claimant replied with laughing face emojis. The Judge accepted that the claimant did work on that day because the

records show he was logged in and he did log out, although she could not know what time he logged out because log in only shows a start time.

40. The Judge did not that think that was a dishonest "time theft" by Mr Bunghez. Although it was not in compliance with contract which required him to work in the office and only to work from home with prior agreement, the Judge did not think it was "dishonest" when he had been upfront about his non-attendance at the office, and was doing work as directed by one of his two managers (Ms Chitauro) although she did not seem aware that he had been told by the other manager (Mr Munyangadze) to log off. The Judge concluded that Mr Bunghez did so at the risk that respondent might not pay him because it was work done in a manner which was not authorized. Although it was not unreasonable to do something your manager (Ms Chitauro) tasked you with doing whilst waiting to hear if your request to work from home was approved, it was perhaps foolish to keep working after his manager Mr Munyangadze said not to. The claimant should have replied to Ms Chitauro to say he could not make the updates she had requested because he was not working. The Judge concluded the respondent was entitled not to pay him, but rejected the suggestion the claimant had acted dishonestly.

41. Another curious feature of WhatsApp interaction that day was Mr Bunghez's response to Mr Munyangadze of "discrimination" which was wholly unexplained by the claimant. Mr Munyangadze went on to say that the claimant could have made alternative arrangements to get to work which the claimant considered wholly unreasonable, but the Judge did not agree. It was perfectly reasonable of the respondent to expect someone in any position, especially a management position, to make some effort to attend work even when unexpected circumstances arise. The Judge felt the claimant's evidence "*well I have never taken public transport and would not know how to"* was bizarre, and that to reply to an employer pointing out an employee could have made alternative arrangements to get to work with "*I hope you are joking*?" was unprofessional. Those comments are relevant because they illustrate the claimant's belief that he is always right. Mr Munyangadze had not been unreasonable in refusing a work from home request, made late and not in accordance with company policy, and in pointing out that the claimant could have nevertheless got to work which is only a few miles away. That the claimant's reaction was to treat that as unreasonable and to ignore a specific "take the day off" instruction and keep working shows how inflexible he is.

42. It was agreed evidence that on 20 June there was a report made about the respondent company to the CQC. Eventually the claimant agreed that he made it. It was in the following terms:

"*Person making report Unnamed*
0 victims 0 abusers
Additional relevant information:
Actual complaints:

"1.CEO and registered manager trying to hide sensitive info about MAR charts, care delivery reports, creams application without MAR or GP consent
2.MAR charts build after pharmacy prescription
3.Administer medication without MAR chart
4.Late visits (plural)
5.Carers completing care delivery charts after visits – I changed that setting and managers. Changed it back
6.No carers signed off with moving, handling, or catheter care
7.No personal files for service users in their property
8.Carers not allowed to text on whatsapp group to inform office – but allowed to contact oncall number
9.There are many other problems which I think put in danger health and safety of service user"

43. The Judge concluded there was no evidence to support allegations 6, 7, 8, and that 9 was too vague to be meaningful. In relation to the others the Judge found that:

44. Re 1: the claimant provided no explanation how they are trying to hide it. The claimant's evidence was he raised it and they sent out messages reminding staff to include info on MAR charts. The claimant failed to articulate or evidence what he says the respondent was trying to hide.

45. Re 2: it was accepted that respondent would put medication on MAR chart once it was received from pharmacy and so the MAR was "built from pharmacy prescription" but evidence from the managers was that they did so to avoid any delay in prescribed medications being administered, and that GP approval and client consents were then obtained if not already in place. Considering that a prescription filled by a pharmacy comes from a GP or authorised medical prescriber the Judge concluded that GP approval is implicit in fact of the prescription being issued, and so it was not "wrong" or a risk to health or safety of service users to take this approach.

46. Re 3: administering meds without MAR chart was agreed by claimant as a reference to something that he did, and although undated he accepted he had made mistakes on the MAR charts and that this was what he was referring to. The evidence he accepted was that he was the person doing this, and that he had been pulled up about it by Ms Chitaurao. Therefore although on one view this "allegation" is factually correct, it was disingenuous of him to suggest to CQC that this was an ongoing problem with respondent company or that the managers there were not doing anything about it.

47. Re 4: late visits – there was only evidence of ONE late visit so not accurate for him to report visits in the plural, and doing so created a false impression about the level of care being provided.

48. Re 5: correct that carers were able to do complete care delivery charts after the visits had ended, and also agreed that the settings on the application used to do this were altered and then changed back. The respondent's wits accepted this but they also explained, extensively, why

that was necessary; because their largely rural client base often has problems with connectivity. There was no suggestion later additions to client records did not reflect the care they had received or that this function was being used to falsify records.

49. The Judge's conclusion therefore was that the report to the CQC was not an accurate reflection of the respondent's practices re complaints 1-5, and that complaints 6-9 have not been substantiated by the claimant.

50. On 21 June that complaint was shared by CQC with respondent. It was received by them on 21 June whilst Mr Munyangadze, the claimant, and Ms Pinders at least were in office. From the language used it was immediately apparent it was claimant who had sent it and so it was natural that respondent's managers would ask him. If the claimant's anonymity was not protected that was down to the CQC but in fairness to them from the information he provided they could not know that sharing it with the company which was the subject of the report would reveal who the informant was. The Judge accepted that there was an uncomfortable discussion in the office that day in which both the claimant and Mr Munyangadze were obviously upset, with both having to leave the office as a result. The Judge accepted it was more likely than not that Mr Bunghez was shouted at, or at least that Mr Munyangadze raised his voice. It was entirely understandable that he would do so, in disbelief or frustration if nothing else, plus the Judge was persuaded by Ms Pinder's evidence that "*I felt uncomfortable and concerned due to the aggressive tone and way RM (Mr Munyangadze) addressed Christian"*. This evidence was understated, was not directed at her, and was an accurate reflection of what happened.

51. It was agreed Mr Bunghez attended the office again on 24 June and was sent home, before a meeting the following day. The respondent says this was an "investigation meeting", but the claimant says it was not because he was given no notice of that, no opportunity to have representation with him, to know what was being investigated, or to present evidence or information. The respondent has no record of any invite to an investigation meeting setting out its aims and the claimant's options, yet elsewhere in his evidence Mr Munyangadze stated that if something was not in writing "it didn't happen". Applying his own logic to this potentially important event, there is no evidence that Mr Bunghez was ever "invited" to this meeting or told what it was about and so the Judge concluded that this was treated by the respondent as an investigation meeting but was not presented to Mr Bunghez as such and so he had no fair opportunity to prepare for or fully participate in that meeting. Following that he was suspended.

52. At some point the respondent provided a reply to the CQC addressing each of the concerns raised in the report made to them. The CQC accepted this was an adequate explanation and the CQC closed that report with no further action being taken, although that exchange is undated.

53. The claimant was then invited to disciplinary hearing. This was initially on 2 July but respondent witnesses agree it was changed to 4 July. In fact

that meeting was unnecessary because the terms of contract meant that respondent could simply have dismissed claimant by giving him a weeks notice. They didn't do that because Mr Munyangadze felt it was fairer to treat this as a disciplinary issue. The Judge accepted that must be true because why else would the respondent put themselves to the effort? However, the disciplinary process conducted by the respondent was flawed: it was not conducted by anyone independent, the minutes not presented to the claimant to verify or amend, and there were 2 sets of notes which cannot both have been produced contemporaneously and it is unclear which is which. However, a subsequent appeal was conducted thoroughly by an outside agency and corrected any flaws which arose in the original process,

54. At end of disciplinary meeting on 4 July the claimant was dismissed. The Judge looked carefully at Mr Bunghez's witness statement and he does not state he was not dismissed at this meeting. Although he purports to address this meeting the Judge would have expected him to say what happened at the conclusion of the meeting but he does not. He says the notes were not accurate but does not say how they are inaccurate nor specifically that an inaccuracy is that he was dismissed when he wasn't. If his comment "*I received a termination letter*" was intended to imply that the subsequent letter was the first he knew of his dismissal he failed to make that clear.

55. It is unsurprising that the outcome of that disciplinary was dismissal given the respondent obvious frustration with the claimant, and also his apparent declining to answer questions during it. When asked why claimant had included the late visit when this was something he himself had dealt with, the notes record "*he had no answer to this*". In relation to the "time theft" the notes show that when it was pointed out to the claimant that his work from home request was denied, and he was asked why he worked anyway and again he had no answer. It was also a fact the claimant had no documentary evidence to present at the meeting, but relied instead on "verbal" reports he said he made, again with no specific details included.

56. The Judge concluded that dismissal was a fair outcome, even though the means by which it was achieved were imperfect, because by that time any necessary trust and confidence the respondent might have had in the claimant had been completely eroded. This was not just by his own actions whereby he had failed to comply with company policies, eg his own errors on the MAR charts, and his misunderstanding of the CQC guidance on OTC remedies, but also by his making the report which included matters which inaccurately portrayed a situation as worse than it was and about which he was unable or refused to answer questions in the disciplinary. The employment relationship was also damaged by his own actions on 18 June when despite the clear instruction not to work from home on he went ahead and did so anyway, and when challenged provided no explanation why. The reason for dismissal was the breakdown of trust and confidence caused by claimant's actions.

57. The claimant also presented a claim for unpaid wages amounting to 1.5 days of work, but has presented no evidence that he worked on any specific day, either documentary or in his witness statements which simply

says “I had worked overtime amounting to 1.5 days of work” but not when, or what he did, and he made no reference to his “wages” in his oral evidence. His representative suggested to the respondent witnesses that there was a verbal agreement that he work overtime on Monday 27 May, but they deny this, and the questions from the representative are not themselves evidence. In addition, the respondent says that Monday 27 May was a Bank Holiday and office staff don’t work on bank holidays because office is closed. The Judge therefore concluded there was no evidence to show the claimant has worked overtime hours for which he is owed payment.

The Law

58. To qualify for protection as a *“**whistleblower**”* the ***worker*** concerned (this includes employees) is required to make a *“**protected disclosure**”* [1]**.** A “qualifying disclosure” will be a “protected disclosure*”* if it falls within various conditions set out in ss.43C to 43H Employment Rights Act 1996 (as amended) (ERA) [2]. In order to be protected the disclosure must be a "***qualifying disclosure***", namely:-

“… 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 [what I will refer to for ease as “states of affairs”] …” [3]

the present case the relevant states of affairs are those set out in s.43B(1) ERA:-

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

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

Disclosures

59. This requires facts (information) to relayed, as opposed to merely making an allegation [4], an expression of opinion or a state of mind [5] or statement of position for the purpose of negotiation [6] . Thus, the words, ***"The wards have not been cleaned for the past two weeks. Yesterday, sharps were left lying around"*** relay information whereas ***“You are not***

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[1] Beatt v Croydon Health Services NHS Trust *[2017] EWCA Civ 401 at [24] following.*
[2] *For disclosures made prior to 25 June 2013 it was a requirement of both s. 43C and 43G that the disclosure should have been made in “**good faith**". That requirement was removed by s. 24(6) Enterprise and Regulatory Reform Act 2013, but the definition of "qualifying disclosure" in s. 43B was amended to include that the disclosure should be made "in the public interest". The question of good faith remains relevant to remedy.*
[3] *s. 43B(1) ERA – the underlined words relate only to disclosures made with effect from 25 June 2013.*
[4] Cavendish Munro v Geduld *[2010] IRLR 38 UKEAT/0195/09 [24]*
[5] Goode v Marks and Spencer *UKEAT/442/09 [36]*
[6] *see Cavendish Munro. This approach was also applied in Goode, Norbrook Laboratories v Shaw UKEAT/0150/13 and Millbank Financial Services v Crawford [2014] IRLR 18 EAT.*

complying with health and safety requirements" is the making of an allegation and is not relaying information [7].

60. The difference between "***information***" and "***allegation***" is not one that is made by the statute itself. They are very often intertwined. The decision is to be determined in the light of the statute itself. The question is simply whether it is a disclosure of information. It may also be an allegation [8]. It is also irrelevant if the recipient was already aware of the information [9]. The question is whether the statement or disclosure in question has ***"a sufficient factual content and specificity such as is capable of tending to show one of the matters listed in the subsection"*** [10]. That is ***"a matter for evaluative judgment by a tribunal in the light of all the facts of the case"*** [11]. A bare statement such as a wholly unparticularised assertion that the employer has infringed health and safety law will plainly not suffice; by contrast, one which also explains the basis for this assertion is likely to do so [12].

61. If a breach of a legal obligation is asserted, save in obvious cases the source of the obligation the claimant believed the Respondent to be in breach of should be identified and capable of verification by reference for example to statute or regulation [13]. Each of the complaints should be looked at individually rather than collectively to see whether it identifies (not necessarily in strict legal language) the breach of obligation on which the employee relies. [14]

"Public interest"

62. This is not defined but in a recent case [15] the Court of Appeal stated that where the disclosure relates to a breach of the worker's own contract of employment (or some other where the interest in question is personal in character) there may be features of the case that make it reasonable to regard disclosure as being in the public interest as well as in the personal interest of the worker. The CA cited as an example of this, doctors' hours.

63. This case does not relate to a breach of Mr Bunghez's own employment contract but his assertions that he was making protected disclosures about the treatment and care of others. It was not argued that making of disclosures such as the ones in the present case, if genuine, would not be in the public interest. It is therefore unnecessary and disproportionate to engage the "public interest" test as set out in the case of Chesterton in this judgment.

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[7] *see Lady Slade in Cavendish Munro where she explains the rationale for this and contrasts the statutory words in Part IVA ERA and the provisions in the Sex Discrimination Act 1975 and Race Relations Act 1976*
[8] *Per Langstaff P* Kilraine v London Borough of Wandsworth *UKEAT/0260/15 [30]*
[9] *Cavendish Munro [27]*
[10] *Sales LJ in Kilraine v London Borough of Wandsworth* [2018] EWCA Civ 1436*; [2019] ICR 1850 [35]*
[11] *Kilraine [36]*
[12] Jesudason v Alder Hey Children's NHS Foundation Trust *[2020] EWCA Civ 73 [20]*
[13] Blackbay Ventures v Gahir *[2014] ICR 747 (EAT) [98] &* Eiger Securities v Korshunova *[2017] IRLR 115 (EAT)*
[14] *Fincham v HM Prison Service UKEAT/0991/01*
[15] Chesterton Global Ltd v Nurmohamed*[2017] EWCA Civ 314 per Underhill LJ [37]*

Alleged failures

64. As to any of the alleged failures, the burden is upon the claimant to establish upon the balance of probabilities the employer was in fact and as a matter of law, under a legal (or other relevant) obligation and the information disclosed tends to show that that a person has failed, is failing or is likely to fail to comply with that obligation [16].

65. A necessary statutory ingredient of a "qualifying disclosure" is that a Claimant has a reasonable belief that a person has failed to comply with a legal obligation, as contrasted with another type of obligation. The Claimant should enable the Employment Tribunal to identify any legal obligation, as opposed to guidance, of which the Claimant believed the Respondent to be in breach. [17]

66. An earlier communication can be read together with a later one as "embedded" in it, so that the two taken together, can amount to a protected disclosure even if taken on their own they would not fall within section 43B(1)(d)[18] . Whether they do is a question of fact[19].

67. It is irrelevant whether or not the recipient was already aware of the information[20].

68. The facts must "tend[s] to show" that the respondent was or was likely to be in breach of one of the provisions of s.43B(1)[21]. Each of the complaints should be looked at individually rather than collectively to see whether it identifies (not necessarily in strict legal language) the breach of obligation on which the employee relies[22].

Reasonable belief of the worker

69. The tribunal thus has to ask (a) whether the worker believed, at the time that he was making it, that the disclosure was in the public interest and (b) whether, if so, that belief was reasonable [23].

70. As to (b) the CA cautioned there may be more than one reasonable view as to whether a particular disclosure was in the public interest.

71. The necessary belief is simply that the disclosure is in the public interest. The particular reasons why the worker believes that to be so are less relevant. That means that a disclosure does not cease to qualify simply because the worker seeks, as not uncommonly happens, to justify it after the event by reference to specific matters which the tribunal finds were not

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[16] Korashi *at [24]*
[17] Eiger Securities LLP v Korshunova *[2016] UKEAT 0149/16 per Lady Slade*
[18] Goode v Marks and Spencer *UKEAT/442/09 [para 37]*

[19] *(Everett Financial Management Limited v Murrell* EAT/552-3/02 and 952/02 *paragraphs 46 and 47) (see also Norbrook Laboratories (GB) Ltd v Shaw* UKEAT/0150/13 *at paragraph 22)*
[20] *See Cavendish – para 27*
[21] *See Goode, para 37*
[22] *Pursuant to Fincham v HM Prison Service UKEAT/0991/01*
[23] Chesterton *[27] and* Ibrahim v HCA International Ltd *[2019] EWCA Civ 2007*

in his head at the time he made it. Of course, if he cannot give credible reasons for why he thought at the time that the disclosure was in the public interest, that may cast doubt on whether he really thought so at all; but the significance is evidential not substantive. Likewise, in principle a tribunal might find that the particular reasons why the worker believed the disclosure to be in the public interest did not reasonably justify his belief, but nevertheless find it to have been reasonable for different reasons which he had not articulated to himself at the time: all that matters is that his (subjective) belief was (objectively) reasonable. [24]

72. 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….the new sections 49 (6A) and 103 (6A) would have no role.

73. It is not necessary that the matters the worker relies on show that a criminal offence has been committed or the breach of a legal obligation; it is only necessary that the claimant should reasonably believe the facts that form the basis of the belief or as to the legal analysis. That is reinforced by the use of the words "*tend to show" (see Wall LJ in Babula) and* thus it is not necessary that s/he believes that the matters relied on definitely show the relevant state of affairs, provided he believes that they "*tend to show"* that state of affairs existed (*Darnton*). However the factual accuracy of the allegation may be an important tool in determining whether the worker held the necessary reasonable belief. Thus it will be extremely difficult for a worker to show s/he reasonably the information tended to show a failure where s/he knew or believed the factual basis to be false. An honest mistake could be one such exception (see *Darnton* paras. 28-29).

74. While *"belief"* alone requires a subjective consideration of what was in the mind of the discloser, *"reasonable belief"* involves an objective standard, and its application to the personal circumstances of the discloser, which are likely to include his knowledge of the employer's organisation as a well-informed insider and having regard to his/her qualifications, thus the reasonable belief of an experienced surgeon may be entirely different view to that of a layperson (*Korashi v Abertawe Bro Morgannwg University Local Health Board [2012] IRLR 4 EAT)*.

75. The use of the word *"and"* and the way the amendment to s.43B(1) is made by the ERR in our judgment requires the worker to reasonably believe the disclosure is in the public interest and to reasonably believe the disclosure tends to show one of the criteria in (a)-(f). The ordinary and natural interpretation of the new provision requires in our judgment the public interest test to be made subject to the reasonable belief test. The second element, *"tends to show"* was previously subject to the test of reasonable belief and the use of the additional word *"and"* in our judgment suggest that parliament intended that would remain subject to the reasonable belief test.

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[24] *This is reinforced in the context of s.43G in* Jesudason v Alder Hey Children's NHS Foundation Trust *[2020] EWCA Civ 73 [48] "The question of reasonableness must be assessed as at the time the complaint or concern is raised, not with hindsight after the complaint has been examined. If the appellant did reasonably believe that the facts on which he relied were substantially true, this might in principle have justified the disclosure …"*

76. It is not necessary that the matters the worker relies on show that a criminal offence has been committed or the breach of a legal obligation; it is only necessary that the claimant should reasonably believe the facts that form the basis of the belief or as to the legal analysis. That is reinforced by the use of the words "*tend to show" (see Wall LJ in Babula) and* thus it is not necessary that s/he believes that the matters relied on definitely show the relevant state of affairs, provided he believes that they "*tend to show"* that state of affairs existed (*Darnton*). However the factual accuracy of the allegation may be an important tool in determining whether the worker held the necessary reasonable belief. Thus it will be extremely difficult for a worker to show s/he reasonably the information tended to show a failure where s/he knew or believed the factual basis to be false. An honest mistake could be one such exception (see *Darnton* paras. 28-29).

77. One such instance was *Babula*, a case involving a disclosure relating to the breach of a non existent legal obligation but in which the worker claimed that he reasonably believed that there was such an obligation. There the Court of Appeal approved *Darnton* reminded us that the policy of the legislation is to encourage responsible whistle-blowing, and it would work against that policy to require employees to have a detailed knowledge of the criminal law. Wall LJ, gave the following guidance:-

"82. In this context, in my judgment, the word "belief" in section 43B(1) is plainly subjective. It is the particular belief held by the particular worker. Equally, however, the "belief" must be "reasonable". That is an objective test. Furthermore, like the EAT in Darnton*, I find it difficult to see how a worker can reasonably believe that an allegation tends to show that there has been a relevant failure if he knows or believes that the factual basis for the belief is false. In any event, these are all matters for the Employment Tribunal to determine on the facts."*

78. While *"belief"* alone requires a subjective consideration of what was in the mind of the discloser, *"reasonable belief"* involves an objective standard, and its application to the personal circumstances of the discloser, which are likely to include his knowledge of the employer's organisation as a well-informed insider and having regard to his/her qualifications, thus the reasonable belief of an experienced surgeon may be entirely different view to that of a layperson (*Korashi v Abertawe Bro Morgannwg University Local Health Board [2012] IRLR 4 EAT)*.

Detriment and dismissal

79. Section 47B of the Employment Rights Act 1996 protects a worker from being subjected to any detriment done on the ground that he has made a protected disclosure. S48 (1A) of the same Act allows workers to present a complaint to an employment tribunal that s/he has been subjected to such a detriment.

80. A dismissal is not a detriment: s47B 9(2) (b), but an employee who is dismissed because they made a protected disclosure, or where the making of a protected disclosure is the principal reason for the dismissal, shall be regarded as having been unfairly dismissed: s103A Employment Rights Act 1996.

The Decision

81. The claimant has failed to prove all the alleged disclosures he pleaded. In relation to the matters he brought to the respondent's attention, applying the balance of probabilities he has shown that on the 22nd of May he told the respondent that employees were applying creams and administering medication without noting it on the MAR chart, on the 24th of May he told the managers these actions were unlawful, and on the 10th of June he raised this issue again. However these were not disclosures of information which "tended to show" a breach of any legal obligation or any risk to health and safety because they were lacking in specifics; rather they were expressions of his opinion that things were not being done as he thought they should be done.

82. The judge accepted the claimant believed the sharing of this information was in the public interest because that was his role. However it was unclear why he ignored the company mechanism for doing so when it must have been clear to him that his casual comments were not having what he said was the effect he desired.

83. The judge did not consider his belief to be objectively reasonable. This is because it ignored the company policies which provided explanations for some of the things he complained about; for example carers entering data after they had left a visit for which there were sound operational reasons which he was either incapable of understanding or he ignored.

84. The claimant has not shown he believed the information tended to show a failure to comply with a legal obligation because he has been unable to identify any specific legal obligation which he says was being breached. His representative's generalised duty of care arguments was not sufficiently particularised to enable an analysis of the evidence against any alleged failure. The claimant has not identified any CQC guidance or regulation which is not being complied with and the only one he did attempt to identify, the use of topical creams, he was wrong about.

85. Neither has he shown that the health and safety of any individual had been was being or was likely to be endangered. Despite repeatedly saying his own motivation was the care of clients his evidence did not identify any particular aspects of their health and safety which was potentially being put at risk. His generalised assertion is not sufficient.

86. Even if the claimants believe the information he shared tended to show those things the judge does not consider such a belief was reasonable. This is because the respondent was supporting the claimant when he raised issues with the care staff and the respondent did nothing to stop him raising such issues. In addition the respondent had policies which specifically applied to some of the scenarios about which he raised concerns but the claimant was ignorant of these policies despite it being his role to know these and to ensure staff complied with them. There was

no evidence he ever said that the policies posed any risk or amount to any breach.

87. Turning to the report to the CQC specifically, these were disclosures of information and he did believe they were in the public interest. However it was not reasonable to think that because there was no evidence of some of the things he said were happening, specifically the matters he listed at 6,7,8 and 9 in his report. Further that report was made in ignorance of or ignoring company policies which addressed some of the things he was raising, for example the late completion of visit notes. The report also ignored the response of the managers who were supporting his advice to the carers including about the use of creams and maintaining accurate records on the MAR. It also failed to acknowledge his own understanding of CQC guidance was inaccurate, for example his comment about the use of over the counter remedies which the CQC guidance does allow and for which the respondent had good reason. His ignorance of relevant CQC guidance when he was employed as a compliance manager was unreasonable and so it was not reasonable of him to make these disclosures of information in the public interest when in fact there was no evidence or suggestion of any wrongdoing or risk posed by the respondent. All there was, was evidence of his incompetence as a compliance manager.

88. That means he has not made a protected disclosure.

89. Turning to section 103A and the question of automatic unfair dismissal, the principle reason for the claimant's dismissal was the breakdown of trust and confidence in him as an employee. It was not a retaliation for his CQC report but that report was part of the evidence which demonstrated he did not understand his role, that he would not use the respondents own reporting policies, and that he would not answer direct questions put to him by his employer. The making of the report sets the context for the investigation meeting (which really was no such thing) and the disciplinary meetings including his appeal, but it was not the reason for them. Those meetings were necessary was because by his actions he had made clear he did not have the knowledge, skill, or experience to undertake the role for which he was employed. Instead of acknowledging that and seeking to use the respondents own processes to address those deficiencies and to accept the support the respondent had showed it was willing to give him he chose to make an anonymous report about his employer. It was unreasonable of him to do that where the respondents had supported him when he raised concerns, and where their own reporting policies afforded him a method of whistleblowing if he felt his concerns were not acted upon sufficiently, which he had ignored.

90. More fundamentally the way he presented the content of the report to the CQC was not transparent and was therefore capable of being misleading. It was that action which undermined his employers trust and confidence in him and which lead to his dismissal. That being so he has failed to demonstrate that he has been automatically unfairly dismissed.

91. Although there were some deficiencies in the disciplinary process which resulted in the claimant's dismissal, because he has less than two years service he cannot bring a claim of ordinary unfair dismissal and so these deficiencies have no legal consequence.

92. Turning to the issue of unauthorised deductions from wages; the claimant has produced no evidence that any money is owing for overtime. In relation to his final pay, it was agreed evidence that he was dismissed on 4 July and not 2 July which was the date up until which he was paid. That means he had two days pay owed on termination, which the respondent has been ordered to pay.

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Employment Judge T Hay
Date: 17 March 2026

REASONS SENT TO THE PARTIES
ON 31 MARCH 2026

Jade Lobb
FOR THE TRIBUNAL OFFICE