EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8001815/2025

Held in Aberdeen via Cloud Video Platform (CVP) on 27 May 2026

Employment Judge R King

Mr E Osman	**Claimant** **Represented by:** **Mr R Clarke - Solicitor**
Langstane Housing Association Limited	**Respondent** **Represented by:** **Mr E Stafford - Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that:

1. the claimant has a disability within the meaning of section 6(1) of the Equality Act 2010; and

2. the claimant made a protected disclosure in terms of section 43A of the Employment Rights Act 1996, in his e-mail to Helen Gauld dated 19 March 2025.

REASONS

1. This preliminary hearing was fixed to determine two disputed issues; firstly, whether the claimant has a disability in terms of section 6(1) of the Equality Act 2010 and secondly whether, in an email he sent to Helen Gauld, the respondent's chief executive, on 19 March 2025, he made a qualifying disclosure in terms of section 43A of the Employment Rights Act 1996.

2. At the outset, Mr Clarke explained that the material time in relation to the claimant's asserted disability was between 21 May 2025 and 2 December 2025, which was the period between his having raised a grievance and his dismissal by the respondent.

3. In relation to disability, the respondent took issue only with the claimant's assertion that his condition has a substantial adverse impact on his ability to carry out normal day to day activities.

4. In relation to the asserted protected disclosure, the respondent's position was that the disputed issues were:

    a. whether there was a disclosure of information;

    b. whether the claimant believed that the disclosures were made in the public interest; and

    c. whether the claimant's belief that the disclosure was made in the public interest was reasonably held.

Relevant law

5. The relevant statutory provisions in respect of the disputed issues are as follows:

Disability status

6. The Equality Act 2010 defines a disabled person as a person who has a 'disability'.

7. Section 6(1) states that a person has a disability if they have 'a physical or mental impairment' and that impairment has a 'substantial and long-term adverse effect on their ability to carry out normal day-to-day activities'.

8. The burden of proof is on the Claimant to show that they satisfy this definition. The EAT in the case of ***Goodwin v The Patent Office [1999] IRLR 4*** provided guidance to tribunals faced with making this determination.

9. It stated that the following four questions may be useful:

    1. Does the Claimant have an impairment which is either physical or mental?

    2. Does the impairment affect the Claimant's ability to carry out normal day to day activities?

    3. Is the adverse effect on the Claimant's ability to carry out normal day to day activities substantial; and

    4. Is the adverse effect long term?

10. The requirement that an **adverse** effect on normal day-to-day activities should be a **substantial** one reflects the general understanding of disability as a limitation going beyond the normal differences in ability which may exist among people. A substantial effect is one that is more than a minor or trivial effect - section 212(1).

11. **Substantial** is defined in S.212(1) EqA as meaning 'more than minor or trivial'. That is a relatively low standard, as confirmed in *Vicary v British Telecommunications plc* 1999 IRLR 680, EAT, and in *Leonard v Southern Derbyshire Chamber of Commerce* 2001 IRLR 19, EAT.

12. In Leonard the EAT gave the following guidance –

"The focus should be on what an employee cannot do or can only do with difficulty, and not on what they can do easily

The decision maker should look at the whole picture, but should not attempt to balance what an employee can do against what they cannot do

The statutory Guidance should not be used too literally. Its examples are illustrative only and should not be used a checklist.

The fact that an employee is able to mitigate the effects of an impairment does not prevent there being a disability."

13. In *Ahmed v Metroline Travel Ltd* UKEAT/0400/10, [2011] EqLR 464, [2011] All ER (D) 06 (May): the EAT repeated that *"as a matter of principle it is impermissible for an Employment Tribunal to seek to weigh what a Claimant can do against what he or she cannot do and then determine whether or not the Claimant has a disability by weighing those matters in the balance."* However, Cox J went on to hold that *"where there is a factual dispute as to what a claimant is asserting that he cannot do, findings of fact as to what a claimant can actually do may throw significant light on the disputed question of what he cannot do."*

14. In *Paterson v Commissioner of Police of the Metropolis* 2007 ICR 1522, EAT, Elias P observed that in order to be substantial 'the effect must fall outwith the normal range of effects that one might expect from a cross section of the population', but 'when assessing the effect, the comparison is not with the population at large… what is required is to compare the difference between the way in which the individual in fact carries out the activity in question and how he would carry it out if not impaired.'

15. In *Elliot v Dorset County Council,* 2021 IRLR 880, EAT, the EAT made it clear that tribunals should consider, first and foremost, whether an adverse effect is 'substantial' in the light of the statutory definition: the Equality Act 2010 Guidance or the EHRC Code are strictly supplementary and should only be considered if the statutory definition fails to provide a conclusive answer.

16. In *Elliot,* the EAT (His Honour Judge Auerbach) reiterated the established principle that a tribunal should always consider the effect on the particular individual concerned and, specifically, whether that effect was more than minor or trivial. In making this assessment, the position of fellow workers

doing the same or similar jobs (as opposed to the public at large) can be a relevant consideration. A tribunal may therefore take into account how the degree or extent of differential in the claimant's performance (i.e. between what it would have been without the impairment and what it was as a result of the impairment) compares with the degree of differential or variation in performances that might normally be encountered among workers who carried out the same tasks but were not labouring under the effects of the same impairment.

What is a qualifying disclosure?

17. In terms of section 43A of the Employment Rights Act 1996, a 'protected disclosure' means a qualifying disclosure, as defined by section 43B, which is made in accordance with any of sections 43C to 43H,

18. 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 types of wrongdoing or failure listed in section 43B (1)(a) to (f) of the Employment Rights Act 1996 which provides as follows:

43B Disclosures qualifying for protection.

(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) that a criminal offence has been committed, is being committed or is likely to be committed,

(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) that a miscarriage of justice has occurred, is occurring or is likely to occur,

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

(e) that the environment has been, is being or is likely to be damaged, or

(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

19. In *Williams v Brown* UKEAT/0044/19, in considering the definition of a qualifying disclosure, the EAT noted that:

"9 It is worth restating, as the authorities have done many times, that this definition breaks down into a number of elements. First, there must be a disclosure of information. Secondly, the worker must believe that the disclosure was made in the public interest. Thirdly, if the worker does hold such a belief, it must be reasonably held. Fourthly, the worker must believe that the disclosure tends to show one or more of the matters listed in subparagraphs (A) to (F). Fifthly, if the worker does hold such a belief, it must be reasonably held.

10 Unless all five conditions are satisfied, there will not be a qualifying disclosure. In a given case, any one or more of them may be in dispute, but in every case, it is a good idea for the tribunal to work through all five. That is for two reasons. Firstly, it will identify to the reader unambiguously which, if any, of the five conditions are accepted as having been fulfilled in the given case, and which of them are in dispute. Secondly, it may assist the tribunal to ensure, and to demonstrate, that it has not confused or elided any of the elements, by addressing each in turn, setting out in turn its reasoning and conclusions in relation to those which are in dispute."

Was there a disclosure of information?

20. The Act provides a very broad definition of what amounts to a disclosure and 'any disclosure of information' will qualify (ERA 1996 s 43B(1)). It is not only the bringing of information to another's attention for the first time that will be considered as a disclosure for the purposes of the Act. ERA 1996, as section 43L specifically provides that a disclosure of information will also take place where the information is provided to a person who is already aware of that information.

21. However, there must still be the disclosure of information as such. As was pointed out in *Cavendish Munro Professional Risks Management Ltd v Geduld* [2010] IRLR 38, EAT it is not sufficient that the claimant has simply made allegations about the wrongdoer. As Slade J put it in that case:

"… the ordinary meaning of giving "information" is conveying facts. In the course of the hearing before us, a hypothetical was advanced regarding communicating information about the state of a hospital. Communicating "information" would be "The wards have not been cleaned for the past two weeks. Yesterday, sharps were left lying around." Contrasted with that would be a statement that "You are not complying with Health and Safety requirements". In our view this would be an allegation not information."

22. The question was then reviewed by the Court of Appeal in *Kilraine v London Borough of Wandsworth* [2018] EWCA Civ 1436, [2018] IRLR 846 the Court of Appeal who upheld the EAT by finding that *Cavendish Munro* did not establish a bright line divide between 'information' and 'allegation'. Rather there was a spectrum of possibilities and the question, to be determined by the Tribunal, was whether the alleged disclosure contains *sufficient* information in all the circumstances to qualify. Here the Court of Appeal approved of Langstaff J's reasoning in the EAT ([2016] IRLR 422) at paragraph 30 that -

"I would caution some care in the application of the principle arising out of Cavendish Munro. The particular purported disclosure that the Appeal Tribunal had to consider in that case is set out at paragraph 6. It was in a letter from the Claimant's solicitors to her employer. On any fair reading there is nothing in it that could be taken as providing information. The dichotomy between "information" and "allegation" is not one that is made by the statute itself. It would be a pity if Tribunals were too easily seduced into asking whether it was one or the other when reality and experience suggest that very often information and allegation are intertwined. The decision is not decided by whether a given phrase or paragraph is one or rather the other, but is to be determined in the light of the statute itself. The question is simply whether it is a disclosure of information. If it is also an allegation, that is nothing to the point."

Made in the public interest?

23. The leading case on this issue is *Chesterton Global Ltd v Nurmohamed* [2017] EWCA Civ 979, [2017] IRLR 837, [2017] ICR 731, in which the claimant had been dismissed following making three disclosures about alleged financial irregularities at his employer's concern which had an effect on the earnings of himself and about 100 other employees across several branches. The employer resisted this on the basis that the disclosure concerned personal matters which were not sufficient. The tribunal held that on the facts there was a public interest here. They considered the effects on the other managers and also possibly on anyone else wanting to rely on the company accounts (while accepting that the claimant's primary concern was the effect on his own earnings).

24. On appeal to the Court of Appeal, Underhill LJ made it clear that this was not an area susceptible to resolution by creating bright lines.

"The statutory criterion of what is "in the public interest" does not lend itself to absolute rules, still less when the decisive question is not what is in fact in the public interest but what could reasonably be believed to be. I am not prepared to rule out the possibility that the disclosure of a breach of a worker's contract

of the Parkins v Sodexho kind may nevertheless be in the public interest, or reasonably be so regarded, if a sufficiently large number of other employees share the same interest. I would certainly expect employment tribunals to be cautious about reaching such a conclusion, because the broad intent behind the amendment of section 43B(1) is that workers making disclosures in the context of private workplace disputes should not attract the enhanced statutory protection accorded to whistleblowers – even, as I have held, where more than one worker is involved. But I am not prepared to say never. In practice, however, the question may not often arise in that stark form. The larger the number of persons whose interests are engaged by a breach of the contract of employment, the more likely it is that there will be other features of the situation which will engage the public interest."

"Against that background, in my view the correct approach is as follows. In a whistleblower case where the disclosure relates to a breach of the worker's own contract of employment (or some other matter under section 43B(1) where the interest in question is personal in character), there may nevertheless be features of the case that make it reasonable to regard disclosure as being in the public interest as well as in the personal interest of the worker…. The question is one to be answered by the Tribunal on a consideration of all the circumstances of the particular case, but [counsel for the employee's] fourfold classification of relevant factors which I have reproduced … above may be a useful tool. As he says, the number of employees whose interests the matter disclosed affects may be relevant, but that is subject to the strong note of caution which I have sounded in the previous paragraph."

25. The four factors referred to are as follows:

"(a) the numbers in the group whose interests the disclosure served;

(b) the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed – a disclosure of wrongdoing directly affecting a very important interest is more likely to be in the public interest than a disclosure of trivial wrongdoing affecting the same number of people, and all the more so if the effect is marginal or indirect;

(c) the nature of the wrongdoing disclosed – disclosure of deliberate wrongdoing is more likely to be in the public interest than the disclosure of inadvertent wrongdoing affecting the same number of people;

(d) the identity of the alleged wrongdoer – as [counsel for the employee] put it in his skeleton argument, "the larger or more prominent the

> *wrongdoer (in terms of the size of its relevant community, i.e. staff, suppliers and clients), the more obviously should a disclosure about its activities engage the public interest" – though he goes on to say that this should not be taken too far."*

Was C's belief reasonably held?

26. As an initial starting point, it is necessary that the worker making the disclosure has a reasonable belief that the disclosure is in the public interest and tends to show one of the six statutory categories of 'failure' (ERA 1996 s 43B(1)). What is required is only that the worker has a reasonable belief. It is not necessary for the information itself to be actually true.

27. In *Darnton v University of Surrey* [2003] IRLR 133, EAT. the EAT confirmed that the proper test to be applied is whether or not the employee had a reasonable belief at the time of making the relevant allegations.

28. Although it was recognised that the factual accuracy of the allegations may be an important tool in determining whether the employee did have such a reasonable belief the assessment of the individual's state of mind must be based upon the facts as understood by him at the time.

29. It is also important to note that the statutory test is a subjective one because the Act states that there must be a reasonable belief of the worker making the disclosure. It follows that the individual characteristics of the worker need to be considered and the relevant test is not whether a hypothetical reasonable worker could have held such a reasonable belief - *Korashi v Abertawe Bro Morgannwg University Local Health Board* [2012] IRLR 4, EAT.

Findings in fact

30. The Tribunal heard evidence from the claimant and, on behalf of the respondent from Ms Donna Campbell, an HR manager. A joint bundle of documents was also lodged and both parties provided helpful written submissions after the hearing, In his evidence the claimant relied on a disability impact statement, which he had prepared himself, and adopted as part of his evidence.

31. Having heard evidence on the disputed preliminary issues, the Tribunal makes the following findings in fact in relation to those issues. Where there was a dispute, it reached a conclusion on the balance of probabilities. It is not the Tribunal's intention to decide or to make findings in fact on every piece of evidence that it heard, since that would include facts that would ultimately be irrelevant to its conclusion on the disputed issues to be determined.

Background

32. The claimant was formerly employed by the respondent as a governance and corporate assistant between 6 December 2018 and 2 December 2025 when he was dismissed.

Disability

33. The claimant suffers from symptoms associated with a diagnosis of autism and is currently awaiting an autism assessment via the NHS pathway. The claimant has exhibited neurodivergence in his social and communicative behaviour for his whole life.

34. The claimant's condition affects many features of his daily life. For example, he has difficulty selecting clothing, to the extent that he feels *'paralysed'* when faced with a wardrobe of clothes. However, he overcomes that by, for example, buying multiple pairs of trousers that are the same but in different colours. In common with other aspects of his daily life, he chooses his clothes by references to a set of rules that enable him to get through his day.

Work

35. The claimant believed working in the respondent's governance team was ideal for him because the work there mainly involved following clear procedures. Those made sense to him, and he carried out tasks with precision.

36. In the absence of a clear procedure, however he needs to seek guidance from more senior colleagues or refer to relevant organisational documents to establish a procedure to follow. Reliance on clear procedures, is essential for him as it provides him with a coping mechanism and a sense of structure that is crucial for his performance and well-being.

37. On the other hand, a lack of clarity creates confusion for him and impedes his ability to function optimally. For example, when there is a change in his routine or a change in a procedure, particularly one which he believes makes a process less effective, he is unable to cope with that task as he does not then know what is expected of him. The more he thinks about it, the more difficult it becomes to overcome his inability, and he feels like he is going *''down a rabbit hole"*.

38. Therefore, while he considers he is excellent at carrying out tasks he can only do so by following step-by-step processes that he is provided with or that he creates himself. In the absence of such a process or in the event of a change in process he experiences uncertainty and stress and his confidence is undermined.

39. Sudden disruptions to his work routine are challenging for the claimant and cause him distress, particularly if his schedule is disrupted or if he is asked to attend meetings without prior notice, which leaves him unprepared and therefore overwhelmed - in turn affecting his performance and well-being.

40. Another source of stress for the claimant is receiving persistent communication, such as having instructions repeated over several hours or days, which overwhelms him and cause him to freeze or stall, disrupting his ability to process what he should focus on and leading to heightened anxiety, indecision and panic attacks.

Trade Union activities

41. The claimant's strong sense of justice and equality of treatment led to his being a trade union representative within the respondent's organisation. That would require him to attend meetings with management, often at short notice. To cope with such meetings, he would prepare as much as possible for them in relation to matters he anticipated would be covered to manage any discomfort that being in such situations would cause him.

Communications

42. The claimant has difficulty in understanding unspoken social cues or the emotions of others, which are not in tune with his own, more direct, communication style. That can therefore lead to misunderstandings with colleagues, which cause him stress.

43. Face to face meetings with more senior colleagues are particularly challenging and stressful for him, as he needs more time to process questions and answers, inhibiting his ability to engage effectively in communications. That inability with immediate communication can therefore inhibit his ability to engage effectively in such discussions.

Social situations

44. The claimant finds social situations challenging and overstimulating. Crowded and noisy environments are difficult for him to cope with due to heightened sensory sensitivities and social anxiety. He finds it difficult to be in situations such as crowded pubs because he experiences sensory overload and stress.

45. In such situations he also has trouble understanding what is being said in conversations because he struggles to filter out other conversations out and feels like "like running away". At one stage these difficulties led him to have his hearing tested but it was found to be normal.

46. When overstimulated in a crowded public space, he can feel overwhelmed and will often have to take himself away from that situation, unless there is an important purpose for him to stay in, or if it would be weird for him to leave, which case he will *'grin and bear it',* putting up with the discomfort.

47. The claimant also finds certain social interactions anxiety inducing. He can cope with pre-planned social interactions, but finds it difficult to deal with unscripted "small talk" which he feels ashamed about being unable to participate in.

48. He also finds communication more stressful if there are differences in hierarchy or status within the group, which heightens his anxiety levels. In situations where he must remove himself as he has been unable to cope it can take him a while to wind down. He may then have an anxiety attack after the event, which disrupts his sleep, and his appetite.

49. In certain social situations he copes by copying how other people interact. He describes this as being like learning a language and replicating enough of that language to mask the awkwardness. All of that however takes conscious effort and is tiring for him.

50. He finds it difficult to make eye contact and accepts that may seem odd to people. He also finds such situations difficult because he is unable to find the moment to speak in a conversation. He feels like he like someone with no sense of rhythm trying to play along with a tune. He therefore often feels that he is interrupting or speaking at the wrong time, which embarrasses him and affects his self-esteem. As a result, he feels less able to engage in social activities because he can be overwhelmed by them, thus heightening his feelings of anxiety and isolation.

51. Having normal conversations can also be difficult because it is common for people to use figurative language, such as idioms, which he often does not understand and needs explained to him. In such situations he will often keep quiet so as not to make a fool of himself.

52. The claimant also has difficulty forming new relationships because he does not know how to interact with people without feeling awkward. As a result, he has no friends at work. He feels compelled to keep his head down because he feels that is what he is employed to do. When he sees people engaging in small talk, he recognises that is how relationships are formed but he feels as though he would be doing something wrong if he joined in.

<u>Using the telephone</u>

53. While having telephone conversations can present difficulties because they are generally unscripted and unpredictable, he manages them through masking behaviours and prior preparation, such as adherence to a script if that is practicable.

54. However, the stress of anticipating unexpected questions causes him anxiety, and he often requires additional time to process what is being asked. He may therefore struggle to respond in real time if he is asked a question he is not prepared to answer.

Tiredness

55. The effort that it takes the claimant to adopt the strategies he requires to cope during the day leaves him very tired. He is exhausted at night and goes to bed *'far too early'* at 9pm, which is before his children's bedtime, and he feels is not normal for a man of his age. His sleep is also disrupted by panic attacks, and he takes anti-depressant medicine prescribed by his GP to manage it.

56. His tiredness is particularly difficult for him because he needs to be alert during the day to navigate his life and he needs clarity of mind to be able to focus on work.

Taking part in demonstrations

57. Although the claimant's condition affects his work and social interactions, he can take part in public demonstrations organised by certain protest groups. As an autistic person he has a heightened sense of justice and feels strongly about injustice in the world to the extent that he feels compelled to take part in such demonstrations. He compares himself to high-profile campaigners such as Greta Thunberg and Chris Packham who also suffer from autism and sees no contradiction in his taking part in such demonstrations.

58. The claimant's day to day activities were affected in all the respects described by him at the relevant time, that is between 21 May 2025 and 1 December 2025.

Whistleblowing

59. In his governance role for the respondent, the claimant was daily concerned with data protection, which was central to his role. One of his main responsibilities was looking after the personal data of the people whose data was stored by the respondent for various purposes. His understanding was that the respondent held personal date on multiple tens of thousands of individuals who used or had applied to use the respondent's services.

60. That included multiple occupants of its properties, those on waiting lists, staff, prospective staff and members of the public who corresponded with the

respondent. In an allocation of housing situation, relevant personal data would often include information about individuals' mental health, medication or domestic abuse.

61. He felt very strongly that the management of personal data was an extremely serious matter for him and for the respondent. However, the claimant believed that the respondent had not provided proper training for its frontline staff who are the first point of contact for the respondent's service users and tenants.

62. In the claimant's view, it was a fundamental requirement for the respondent to have a data protection officer in place and secondly that the data protection officer's priority should be data protection.

63. He was therefore concerned when the respondent had no data protection officer at all for 11 months and thereafter when its director of housing, Judith Sutherland, was appointed to the position on an interim basis on 21 May 2025. In the claimant's view this amounted to a de-prioritisation of the data protection officer role that was not consistent with the respondent's legal obligations. This coincided with a period when there had been an increase in data protection breaches and related appeals. In his view the public were being failed.

64. As he saw it, the role of the data protection officer was to ensure that the respondent kept personal data for as short as time as possible, only used that data for the reasons for which it was obtained and limited the number of people with access to it.

65. On the other hand, his understanding of the director of housing role was that they would want to keep as much personal information as possible for as long as possible to make the strategic and operational decisions within their remit.

66. One of his main concerns related to the fact that director of housing is ultimately responsible for disputes with tenants, including evictions. In such situations the claimant's belief was that the director of housing would have a different view on how those tenants' personal information should be used, compared to the way the data protection officer would feel that it should be used.

67. He therefore concluded there was a potential conflict between those two roles and was therefore concerned that the same person should be appointed to them.

68. As a result, on 19 March 2025, the claimant sent an email to Helen Gauld, the respondent's chief executive of the respondent. The timing of this e-mail

coincided with the time when Judith Sutherland was about to step down from her director of housing role.

69. The claimant was anxious to ensure that the conflict he believed existed would not continue and the incoming director of housing would not again be appointed data protection officer, which he understood was still a possibility.

70. He also believed that his e-mail would help inform the improvements that he believed were required in the data protection officer role, which in his opinion had been de-prioritised for the past two years. In his belief those improvements would benefit both the respondent's organisation, which is a third sector body. In the claimant's view the respondent's aims were not to drive profit but to improve the lives of the public.

71. He had also timed his email in this way because he did not wish to send it during Judith Sutherland's tenure and get into difficulty by suggesting that she step down from her role during their tenure, more so because he had to work closely with her in his role. In his view the transition period when it was already known that Judith Sutherland was stepping down was therefore the appropriate time to seek to ensure that the incoming director of housing would not also be appointed as data protection officer.

72. The claimant's principal interest in the data protection officer role was as described in his e-mail to Helen Gauld. Although, had the role been advertised internally, he would have likely applied for it he did not consider he would be the favourite for the role in that case. In any event his e-mail was not sent out of self interest to attempt to progress his own career.

73. The claimant's email of 19 March to Helen Gauld was in the following terms:

"Dear Helen,

I am contacting you, Langstane Housing Association's Data Controller, in line with the Association's whistleblowing policy to report that I believe that the organisation is failing to comply with its legal obligations under Article 38 (6) of UK GDPR.

In accordance with the Data Protection Act 2018 Section 7(1b) Langstane Housing Association is defined as a Scottish public authority for the purposes of UK GDPR, and is such as UK GDPR Article 37 (1a) required to have a designated Data Protection Officer.

According to its Privacy Policy Langstane Housing Association's Data Protection Officer for the period between 21 May 2024 and the present day has been its Director of Housing, Judith Sutherland.

While an organisation's Data Protection Officer may fulfil other tasks and duties within an organisation alongside the role, under Article 38(6) of UK GDPR any such tasks and duties must not result in a conflict of interests with the Data Protection Officer's primary tasks. The Information Commissioner's Office explains what is meant by this as follows: "this means the DPO cannot hold a position within your organisation that leads him or her to determine the purposes and the means of the processing of personal data." Since the Director of Housing holds a position within the Association that leads them to determine the purposes and means of the processing of personal data at the same time as holding the position of the Association's Data Protection Officer I believe that the Association is not compliant with Article 38 (6).

Furthermore the Information Commissioner's Office states that "at the same time, the DPO shouldn't be expected to manage competing objectives that could result in data protection taking a secondary role to business interests." Since the Director of Housing's primary responsibility is for the effective delivery of the Association's housing and housing support objectives, there exists the potential that data protection could take a secondary role to business interests in some instances. Again this means that the Association cannot, I believe, be considered compliant with Article 38(6).

The Director of Housing is a member of the Association's Leadership Team, and plays a key role in the leadership, vision and strategic direction of the Association. They are tasked with helping develop strategic objectives and identifying opportunities for growth and development, providing advice to the board on innovative approaches to improve service delivery, maximising income generation through effective housing management policy and practice, and overseeing the effective and efficient delivery of tenancy management (including rent management, allocations, anti social behaviour and void management), tenancy sustainment and support and customer engagement services. These accountabilities can involve the post holder making decisions either individually or as part of the Leadership Team which determine the purposes and means of the processing of personal data. They can also balancing a multitude of competing interests, such as balancing business interests relating to the organisation's strategic objectives against the interests, rights and freedoms of individuals whose data the organisation collects and processes.

The Director of Housing is additionally tasked, as part of the Leadership Team, with reviewing the business plan and other strategies and policies, and assisting in the development of new business and partnership opportunities as a means of driving the Association forward. Commitments made within the business plan include the use of data insights to personalise the Association's services, and the delivery of continuous digital and data transformation with *the purpose of increasing efficiency, unlocking new value for customers, and allowing predictive data to be used for decision-making. This is reinforced within the organisation's Mission, Vision and Values, which commits to prioritising at a high level within its internal management plan the delivery of continuous digital and data transformation that brings increased efficiency and greater business agility, unlocking new value for its customers. All are examples of organisational interests and priorities involving personal data collection and usage that need to be balanced against the interests, rights and freedoms of individuals whose data the organisation collects and processes.*

The point can be illustrated by focussing in on a particular area of operation – for instance allocations. The Director of Housing is jointly responsible for reviewing the plans, strategies and policies used to determine the Association's key objectives in this area of operation. In the case of the allocations policy for instance, the Association's key aims and objectives are:

- *to allocate properties to those in greatest housing need*
- *to make the best use of available stock*
- *to create and maintain balanced and stable communities*
- *to work with the local authorities and other partners towards reducing homelessness*
- *to ensure tenants have access to support that will help sustain their tenancy.*

The fulfilment of each of these aims is dependent on the collection, storage and processing of the personal data of prospective tenants. And the amount of data collected, where and how it is stored, who is able to access it, how it is processed, and what is done with it after it has been processed is determined through balancing two major priorities – the effective and efficient deliver of the Association's operations in this area, and its obligations to comply with the UK GDPR and other data protection laws. As allocation points can be awarded based on factors relating to for example health, which is classed as special category data (the most sensitive and therefore most highly protected type of personal data) this can potentially be an area of heightened risk.

The Data Protection Officer's key priority within this area of operation would be to take into account the risk association with the processing the Association is undertaking, provide risk-based advice to the organisation (such as in this case to the Director of Housing) about the activities it is undertaking within this area, and conduct internal auditing work. Their primary *objective as Data Protection Officer would be for the organisation to achieve/maintain compliance with the UK GDPR and other data protection laws.*

For the Director of Housing who, as lead for the department, is tasked with overseeing the Association's allocations activities, the key objective would be the Association's effective and efficient delivery of its activities within this area. They would achieve this objective through balancing competing demands and requirements (including a variety of non-data protection related strategic and legislative consideration), and by receiving advice from (among other sources) the Association's Data Protection Officer and documenting (for the purposes of accountability) the reasons for any decisions not to follow advice given by the Data Protection Officer.

Though data protection considerations are of course a priority for the Director of Housing within this area of operation, they are one among a number of competing objectives they would be expected to manage. And as department lead the Director of Housing would be expected to be involved in making decisions that determine the reasons for requiring such data, as week as the ways in which it would be processed by employees within their department. Holding the Data Protection Officer role and Director of Housing role together as a dual role is therefore inconsistent with the requirements of with Article 38(6), which as explained by the Information Commissioner's Office, are that "the DPO cannot hold a position within your organisation that leads him or her to determine the purposes and the means of the processing of personal data. At the same time, the DPO shouldn't be expected to manage competing objectives that could result in data protection taking a secondary role to business interests." This example illustrates the issue in just one of the areas overseen by the Director of Housing role, but similar principles apply to other areas of operation overseen by the role.

The Director of Housing role is a senior position within the organisation which has responsibilities which lead them to individually, and/or as part of the Leadership Team, determine the purposes and the means of the processing of personal data. Additionally the Director of Housing's position as head of the Association's Housing department means that the business interest that have prime responsible for is the Association's housing and housing and housing support activities, both of which involve the processing of personal data. The primary objective of the Director of Housing role is to ensure the effective and efficient delivery of performance and continuous improvement of the Association's housing and housing support activities, including in the area of customer service, customer engagement, tenancy management, rent management, tenancy sustainment and specialist housing support. This *makes it incompatible with the independence requirement of the Data Protection Officer role.*

I am proud to be an employee of Langstane Housing Association, enjoy working for an organisation that provides homes and services that make a positive difference to people's lives, and acknowledge and appreciate the Association's commitment to striving for continuous improvement. I hope by highlighting this issue I am helping in some small way to advance that commitment to continuous organisational improvement."

74. The level of detail in his email was explained by the attention to detail which is a feature of his condition, but also his wish to be crystal clear and accurate, and therefore to avoid any recriminations from colleagues.

Helen Gauld's reply

75. On 9 May 2025, Helen Gauld sent an email to the claimant in the following terms:

"Following your email received 27 March 2025, regarding the director of housing undertaking the Data Protection Officer (DPO) role, I can now confirm Langstane Housing Association's investigations are complete. Following legal advice, I confirm:

- *The director of housing would likely have a conflict given the responsibilities of that role and the enquires that may be received; and*
- *All DPO decisions made by the director of housing have been reviewed and no inappropriate decision-making or interference with established processes found. Therefore I can provide assurance no actual conflict arose.*

I spoke with the Information Commissioner's Office (ICO). I advised them of the whistleblowing allegation and the legal advice received. I also discussed the Association's options. You will know that RSLs are deemed to be a public authority for the purposes of data protection law and are under an obligation to have a DPO. This may be an externally or an internally appointed person.

It was never the intention for the director of housing role to automatically fill this role (as was evidenced with this not being part of the role profile), as we wanted to ensure the right person was appointed. However, following the legal advice received, the Association took swift action to ensure responsibility for this task was held by someone without any potential conflict. Given the team leader – executive office and communication met the criteria and legal advice is that the role holds no conflict, their appointment, supported by your role, will *see Langstane's commitment to continuous organisational improvement and the provision of an excellent service delivered.*

I wish to take this opportunity to thank you for highlighting this potential conflict to the Association and can confirm that my investigations are now concluded."

76. The claimant's reading of Helan Gauld's reply was that it acknowledged that the director of housing role was not consistent with the data protection officer role and that the concern he had expressed had been legitimate.

Submissions

Claimant's submissions

Disability status

77. On the claimant's behalf Mr Clarke invited the Tribunal to find that the Claimant gave his evidence in a calm, measured and reasonable way. He did not seek to embellish his evidence. He gave a truthful and honest account of how autism affects him and his day-to-day activities, and his evidence should be accepted in its entirety.

78. In his submission, the evidence of Donna Campbell as to her observations of the claimant at work was of little, if any, relevance. Her evidence amounted to no more than subjective speculation. Her evidence was opinion evidence only and she could not assist the tribunal with any direct factual evidence relating to the matters in dispute. As she is not a medical specialist and is not qualified to offer an opinion or the Claimant's medical condition her evidence should be disregarded in its entirety

79. Mr Clarke invited the Tribunal to find that at the relevant time the Claimant had disability status for the following reasons:

    a. The claimant's condition is a life-long condition.

    b. The evidence of the Claimant in the impact statement, as supplemented by oral evidence, plainly shows that he has substantial problems with day-to-day activities.

    c. The effects on the Claimant of his disability are plainly more than minor or trivial.

    d. The effects have lasted more than 12 months.

    e. The tribunal must focus on what the Claimant cannot do, rather than what he can do

f. An employer's knowledge of disability, actual or constructive, is not a relevant factor in determining whether a person is disabled under the EqA

80. The Claimant contends he is disabled by reason of autism (more properly put, autism spectrum disorder) which is a neurodevelopmental condition and thus, a mental impairment in terms of the EqA. The Claimant has set out at length in his impact statement how this impairment affects him on a day-to-day basis. It is submitted that the Claimant is plainly disabled in terms of s.6EqA and the relevant case law.

81. The statutory test is functional rather than diagnostic. The issue is whether the Claimant has an impairment producing the requisite adverse effects. The tribunal must examine the effect of the impairment upon day-to-day activities rather than the mere existence of a diagnostic label – ***J v DLA Piper UKEAT 0263/09.***

82. The absence of a formal diagnosis is not determinative. Neurodevelopmental conditions such as autism frequently remain undiagnosed for substantial periods of adulthood, particularly where individuals have developed coping or masking strategies.

83. The Claimant's evidence shows that there have been longstanding autistic characteristics including significant difficulties with social interaction; sensory sensitivities; difficulty coping with changes in routine; heightened anxiety in social and workplace situations; difficulty interpreting social cues and workplace dynamics; rigid or repetitive thinking patterns; and episodes of overwhelm and shutdown affecting functioning. The Claimant submits that the effects of his condition are substantial.

84. The relevant effects as outlined in the impact statement include:

a. difficulty engaging in ordinary workplace interaction;

b. impaired ability to cope with change and unpredictability;

c. communication difficulties affecting meetings, instructions and interpersonal dealings; and

d. sensory overload in ordinary working environments, exhaustion and distress from sustained masking behaviours; significant anxiety affecting concentration, social functioning and workplace participation.

Protected disclosure

85. Mr Clarke also invited the Tribunal to find that the email sent by the Claimant to Helen Gauld was a protected disclosure as defined in section 43A ERA. In his submission -

(1) The tribunal should guard against treating "information" and "allegations" as rigidly separate categories – **Kilraine, para 30.**

(2) In order for a statement or disclosure to be a qualifying disclosure it must have a sufficient factual content and specificity such as is capable of tending to show one of the matters listed in subsection (1) – **Kilraine, para 35.**

(3) Whether an identified statement or disclosure in any case does meet that standard will be a matter for evaluative judgment by a tribunal in light of all the facts of the case- **Kilraine, para 36.**

(4) If a worker subjectively believes that the information he discloses does tend to show one of the listed matters and the statement or disclosure he makes has a sufficient factual content and specificity such that it is capable of tending to show that listed matter, it is likely that his belief will be a reasonable belief – **Kilraine, at para 36.**

(5) The tribunal must ask whether the worker believed, at the time that he was making the disclosure that the disclosure was in the public interest and if so whether that belief was reasonable – **Chesterton, para 27.**

(6) The necessary belief is simply that the disclosure is in the public interest. The reasons why the worker believes that to be so are not of the essence – **Chesterton, para 29.**

(7) All that matters is that the claimant's subjective belief was objectively reasonable- **Chesterton, para 29.**

(8) The belief does not have to form any part of the worker's motivation – **Chesterton, para 30.**

(9) The essential distinction is between disclosures that serve the private or personal interest of the worker making the disclosure and those that serve a wider interest.

86. In Mr Clarke's submission the Claimant when giving evidence was very clear that the reason why he made the disclosure was because of his concerns that the Respondent was in breach of its legal obligations and that this could potentially affect many thousands of the residents that the Respondent served.

87. He invited the Tribunal to accept the Claimant’s evidence that he made the disclosure in the public interest and not for any personal or private reasons. In any event the Claimant’s motivation for making the disclosure was unlikely to be relevant (**Chesterton, para 30**).

88. In Mr Clarke’s submission the information provided in the email sent to Helen Gauld was replete with information (not allegations) and provided Ms Gauld with an enormous amount of information relating to the Respondent’s data protection obligations and how those obligations might be breached.

89. That email runs to 14 paragraphs, and each paragraph save for the opening paragraph and concluding paragraph contains information tending to show that the Respondent was breaching its legal obligations.

90. This was not a case where the disclosure was nebulous and unclear. It would be rare for a tribunal to have to consider such an elegant and well written email.

91. The email clearly meets the relevant legal tests i.e.

    (1) It contains sufficient factual content and specificity which tended to show that the Respondent was in breach of its obligations.

    (2) the Claimant subjectively believed that the disclosure was in the public interest.

    (3) That belief was objectively justified.

92. In Mr Clarke’s submission the Respondent also accepted following the Claimant’s email that there was a data protection issue and wrote to the Claimant on 9 May 2025 to inform him that following investigation and legal advice the Respondent had taken steps to remedy the problem.

93. Having regard to that submission, Mr Clarke invited the Tribunal to find that the email sent to Ms Gauld was a protected disclosure.

Respondent’s submission

Submissions – disability status

94. On the respondent’s behalf, Mr Stafford submitted that the claimant had failed to prove the disputed issue, namely that the adverse effect on his ability to carry out normal day to day activities was substantial.

95. In Mr Stafford’s submission the Claimant had made various statements within his Disability Impact Statement about:

    - Sleep;

- Going out;
- Use of telephone;
- Carrying out work tasks and following instructions;
- Taking part is social activities inside and outside of work; and
- Having a conversation.

96. In his evidence the Claimant had given details about his condition and his coping strategies. He mentioned he suffered from a sensory overload, social anxiety and being overstimulated. Yet, there was a direct contradiction between what was stated in his Disability Impact Statement and the evidence of his partaking in protests.

97. Further, only the Claimant spoke to his discomfort and there was no corroboration as the only medical document was the Occupational Health report. He invited the Tribunal to give weight to Donna Campbell's evidence that she had never seen the Claimant struggle with interactions with staff.

98. In relation to telephone use, the Claimant had stated that he developed mimicking behaviours and copied interactions. He said that he found it tiring. However, that was contrary to his job application form in which he stated that he provided *"exceptional service over the phone, by email and face to face",* There was no mention there of the difficulties he faced. From Donna Campbell's perspective she never observed the Claimant have any issue with using the phone.

99. The Claimant had also stated that his "forte" was following instructions but if there was a change in process, he would feel a physical "visceral" reaction. This was contradicted by Donna Campbell who told the tribunal that it had been found that there were issues with filing and evidence that there was a lack of detail in the Claimant's work. In addition, the view of Donna Campbell was that the Claimant's actions were not a step in trying to gain clarity but rather more about what the Claimant did and did not want to do.

100. In his Disability Impact Statement, the Claimant had referred to strained relationships and his inquiries being a challenge to authority. The evidence from Donna Campbell was that the Claimant would happily meet with staff when issues were not about him personally. The Claimant was a union rep and that he freely took part in pay negotiation meetings with no formal notice or advance agenda.

101. While the Claimant stated that he had difficulty in understanding social queues, this was contradicted by Donna Campbell's observations. In her observations of the Claimant, she stated that he did not appear to have

difficulty in understanding social queues and contributed meaningfully. In her evidence the Claimant was quick to respond in meetings and was very articulate. She explained that in meetings with the Claimant she had to bring her "A Game".

102. In his Disability Impact Statement, the Claimant stated that he found disruptions to his routine distressing. Donna Campbell's evidence was that anyone would. His position was incompatible with his being a union rep where matters would be required to be dealt with on an "ad hoc" basis.

103. In Mr Stafford's submission there were significant inconsistencies between what has been said by the Claimant and what was observed of him. He invited the Tribunal to prefer the evidence of the Donna Campbell and find that that the Claimant had not discharged the burden of proof.

Issue 2 – protected disclosure

104. The Respondent does not accept that the claimant's e-mail to Helen Gauld was a protected disclosure. Whereas it was accepted that the Respondent accepted several of the points made by its letter dated 9 May 2025 (212), that was irrelevant in answering the question of whether or not a protected disclosure was made.

105. In that respect the Respondent does not accept that the email either

1) disclosed information

2) was in the public interest or

3) that the Claimant reasonably believed that the email was in the public interest.

106. Taking each of those points in turn, he contended that disclosure of information in the context of a protected disclosure refers to the communication of facts, rather than mere opinions, concerns, or allegations.

107. For a disclosure to qualify as a protected disclosure under the Employment Rights Act 1996 (ERA 1996), it must convey sufficient factual content and specificity capable of tending to show one of the

108. Referring to the principles established in ***Cavendish*** and ***Kilraine*** he submitted that in this case we had an opinion from a member of staff that there has been a potential for a conflict of interest. The Claimant simply suggests that in relation to allocations the Director has responsibility for various elements. Whereas there may be responsibility it does not mean that the Director was involved in the day-to-day decision making. There are no

concrete examples, and it is based upon supposition. For that reason, there had been no qualifying disclosure.

In the public interest?

109. Having regard to the principles established in ***Chesterton***, Mr Stafford submitted that Claimant's position was that the disclosure was in the interests of all those individuals of whom the Respondent holds their personal data. The Claimant in examination in chief stated that this would be in the tens of thousands, but Donna Campbell's evidence was that this would be in the thousands, but she would need access to the IT system to confirm. In his submission therefore the number could not be agreed but that the group truly affected would be relatively modest and not concrete.

110. In respect of the nature of the interest impacted, whereas the Claimant appeared to argue that this is a key failing, that was denied by the respondent. The Director of Housing did not have day to day control of the operational aspects and instead had a strategic role. If there was a failing it was of a technical nature and arose because of a staff member leaving and a DPO having to be appointed.

111. The nature of the alleged wrongdoing (i.e. there being a conflict of interest) was entirely inadvertent and corrected once the respondent recognised it had appointed someone with a potential conflict.

112. In those circumstances he submitted that the disclosure was not in the public interest.

Was the belief reasonably held?

113. Whilst the worker must have a reasonable belief for the disclosure being in the public interest, this does not have to be their predominant, or, indeed, any part of the motive for making the disclosure (*Ibrahim v HCA International Ltd* [2019] IRLR 690).

114. The Claimant accepted that he did not raise an issue as they did not want to make matters awkward with a colleague. He denied that he sought to benefit by making the complaint. He was not clear on why the disclosure was made when it was but one can assume that he knew the then Director of Housing was coming up to retirement and as such there was an opportunity for him to potentially benefit.

115. The reasons why a worker believes a disclosure is in the public interest are not of the essence (*Chesterton*). Therefore, a disclosure does not fail to be in the public interest, simply because the worker seeks to justify the disclosure after the event, based on matters that were not those he was thinking about at the time of disclosure. In turn, it is possible for a tribunal to find that the

particular reasons put forward by the worker for the disclosure being in the public interest did not justify the worker's reasonable belief but still find that it was reasonable for different reasons not put forward by the worker at the time.

116. There may be more than one reasonable view as to whether a given disclosure is in the public interest, and the court should be careful 'not to substitute its own view of whether the disclosure was in the public interest for that of the worker' (see *Chesterton*).

Discussion and decision

Disability

117. Based on the evidence presented the Tribunal finds that the claimant suffers from a mental impairment and that it causes his ability to carry out normal day to day activities to be substantially adversely affected in the following areas.

<u>Work</u>

118. In the absence of a clear procedure for carrying out a task, the claimant needs to seek guidance to establish a procedure to follow. Reliance on clear procedures is essential for him as it provides him with the sense of structure and the coping mechanism that is essential for his performance and well-being.

119. A lack of clarity of instruction or procedure creates confusion for him and impedes his ability to function optimally, as he does not know what is expected of him. In the absence of a clear process or in the event of a change in process he experiences uncertainty and stress and his confidence is undermined.

120. Sudden disruptions to the claimant’s work routine are challenging for him and cause him distress, which leaves him unprepared and overwhelmed - in turn affecting his performance and well-being.

121. Persistent communication, such as having instructions repeated over several hours or days, overwhelms him and cause him to freeze or stall, disrupting his ability to process what he should focus on and leading to heightened anxiety, indecision and panic attacks.

122. In these respects, the effects of his impairment have a significant impact on his ability to cope with his working day. They are clearly substantial compared to how he would be able to cope at work without the impairment.

Communications

123. The claimant has difficulty in understanding unspoken social cues or the emotions of others, which are not in tune with his own, more direct, communication style. That can therefore lead to misunderstandings with colleagues, which cause him stress.

124. Face to face meetings with more senior colleagues are particularly challenging and stressful for him, as he needs more time to process questions and answers, inhibiting his ability to engage effectively in communications. That inability with immediate communication affects his ability to engage effectively in such discussions.

125. In these respects, the effects of his impairment have a significant impact on his ability to cope with communications. They are clearly substantial compared to how he would be able to cope with communications without the impairment.

Social situations

126. The claimant finds social situations challenging and overstimulating. Crowded and noisy environments are difficult for him to cope with due to heightened sensory sensitivities and social anxiety. He finds it difficult to be in such places as crowded pubs because he experiences sensory overload and stress.

127. When overstimulated in a crowded public space, he can feel overwhelmed and will often have to take himself away from that situation. In social group situations he has trouble understanding what is being said by another individual because he struggles to filter out other conversations.

128. He finds it difficult to deal with unscripted “small talk” which he feels ashamed about being unable to participate in. He also finds communication more stressful if there are differences in hierarchy or status within the group, which heightens his anxiety levels.

129. To an extent he has learned to cope with his anxiety in social settings by copying how other people interact. He describes this as being like learning a language and replicating enough of that language to mask the awkwardness. All of that however takes conscious effort and is tiring for him.

130. In situations where he has felt compelled to remove himself from social situations it can take him some time to wind down. He may then have an anxiety attack, which disrupts his sleep, and his appetite.

131. He also finds social situations difficult because he is unable to make eye contact or find the moment to speak in a conversation. He struggles to understand figurative language. As a result, he feels less able to engage in social activities because he can be overwhelmed by them, inhibiting his ability to form new relationships, and heightening his feelings of anxiety and isolation.

132. In these respects, the effects of his impairment have a significant impact on his ability to cope with social situations. They are clearly substantial compared to how he would be able to cope with communications without the impairment.

<u>Using the telephone</u>

133. Having telephone conversations can present difficulties because they are generally unscripted and unpredictable. However, he manages them through prior preparation, such as adherence to a script if that is practicable, albeit unexpected questions cause him anxiety, and he often requires additional time to process what is being asked and struggles to respond in real time.

134. The effects of his impairment have a significant impact on his ability to cope with telephone conversations, which are a daily feature of life. They are clearly substantial compared to how he would be able to cope with communications without the impairment.

<u>Tiredness</u>

135. The effort that it takes the claimant to adopt the strategies he requires to cope during the day leaves him very tired. In everyday conversations and social interactions, the claimant struggles to cope. He is only able to do so by adopting strategies that make such situations bearable for him. That is tiring is tiring for him however and leaves him so exhausted that he goes to bed at 9 p.m. His sleep is also disrupted by panic attacks, and he takes anti-depressant medicine prescribed by his GP to manage it. His tiredness is particularly difficult for him because he needs to be alert during the day and have clarity of mind to be able to focus on the work.

136. In this respect the effects of his impairment and the effort he must make to mitigate its impact have a significant impact on him as he is left exhausted. Thise effects are clearly substantial compared to how he would be able to cope with communications without the impairment.

<u>Conclusion on disability</u>

137. While he can mitigate the mitigate the effects of his impairment, by using the coping strategies he described, there is no doubt that when making the comparison between the claimant as he is and hypothetically would be without the impairment that the effect of his impairment is substantial.

138. In relation to the claimant's participation in trade union activities and his attendance at protest group demonstrations, the Tribunal concluded that such activities involved social interactions that were analogous to other activities that he could only do with difficulty and by applying the techniques he has had to adopt to take part in his working life.

139. The Tribunal therefore found no difference between the claimant's ability to attend protest group demonstrations or his ability to take part in trade union activities and his ability to attend work and perform his duties there.

140. In all the circumstances, focussing on what the claimant cannot do or can only do with difficulty the Tribunal is satisfied that the impact of his condition is such that his condition has a substantial adverse impact on his ability to carry out normal day to day activities, he has a disability in terms of the definition in section 6(1) of the Equality Act 2010.

141. Further, in relation to these proceedings he had that disability at the material time between 21 May 2025 and 1 December 2025.

Did the claimant make a protected disclosure?

142. In relation to the asserted protected disclosure, the respondent's position was that the disputed issues were as follows:

    a. whether there was a disclosure of information;

    b. whether the claimant believed that the disclosures were made in the public interest; and

    c. whether the claimant's belief that the disclosure was made in the public interest was reasonably held.

Was there a disclosure of Information?

143. The Tribunal was satisfied that the claimant's e-mail to Helen Gauld dated 19 March 2025 contained a disclosure of information in support of his concern that the respondent was failing to comply with its legal obligations under Article 38(6) of the UK GDPR.

144. It is worthwhile setting out that article, which provides as follows –

"The data protection officer may fulfil other tasks and duties. The controller or processer shall ensure that any such tasks and duties do not result in a conflict of interests."

145. That provision therefore seeks to protect the independence of the data protection officer, ensuring that they can enforce data protection compliance without being influenced by operational concerns that could compromise their objectivity.

146. In the claimant's email to Helen Gauld, he sets out a substantial amount of information about the role and responsibilities of the director of housing, including their joint responsibility for achieving the respondent's key aims objectives, all of which are dependent on the collection, storage and processing of the personal data of prospective tenants.

147. He goes on to describe the data protection officer's key priority within that area of operation, which is to *"take into account the risk associated with the processing the Association is undertaking, provide risk-based advice to the organisation (such as in this case to the Director of Housing) about the activities it is undertaking within this area, and conduct internal auditing work."*

148. He then describes the director of housing's key objective as *"the Association's effective and efficient delivery of its activities within this area. They would achieve this objective through balancing competing demands and requirements (including a variety of non-data protection related strategic and legislative consideration), and by receiving advice from (among other sources) the Association's Data Protection Officer and documenting (for the purposes of accountability) the reasons for any decisions not to follow advice given by the Data Protection Officer."*

Though data protection considerations are of course a priority for the Director of Housing within this area of operation, they are one among a number of competing objectives they would be expected to manage. And as department lead the Director of Housing would be expected to be involved in making decisions that determine the reasons for requiring such data, as week as the ways in which it would be processed by employees within their department. Holding the Data Protection Officer role and Director of Housing role together as a dual role is therefore inconsistent with the requirements of with Article 38(6), which as explained by the Information Commissioner's Office, are that "the DPO cannot hold a position within your organisation that leads him or her to determine the purposes and the means of the processing of personal data. At the same time, the DPO shouldn't be expected to manage competing objectives that could result in data protection taking a secondary role to business interests." This example illustrates the issue in just one of the areas *overseen by the Director of Housing role, but similar principles apply to other areas of operation overseen by the role.''*

149. As was stated in Cavendish the ordinary meaning of giving 'information' is conveying facts. The Tribunal had no doubt that the claimant was conveying facts in his e-mail to Helen Gauld about the role and responsibilities of the director of housing, including their joint responsibility for achieving the respondent's key aims and objectives, all of which are dependent on the collection, storage and processing of the personal data of prospective tenants. In so doing he highlighted his concerns that against that factual background the respondent may be in breach of its legal obligations if that position was also held by the data protection officer.

150. Furthermore, the respondent did not deny that the contents of his e-mail were factually correct. Rather, it accepted that he had in his e-mail highlighted a potential conflict between the priorities of the director of housing and the data protection officer and taken 'swift action' to ensure the data protection officer role was held by someone without any potential conflict.

151. In all the circumstances there was a disclosure of information in the claimant's e-mail sufficient to meet the test in section 43B(1).

Was the disclosure made in the public interest?

152. In *Chesterton* it was established that a useful tool for Tribunals in determining whether a disclosure was made in the public interest was to consider the following factors -

   a. the numbers in the group whose interests the disclosure served;

   b. the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed – a disclosure of wrongdoing directly affecting a very important interest is more likely to be in the public interest than a disclosure of trivial wrongdoing affecting the same number of people, and all the more so if the effect is marginal or indirect;

   c. the nature of the wrongdoing disclosed – disclosure of deliberate wrongdoing is more likely to be in the public interest than the disclosure of inadvertent wrongdoing affecting the same number of people;

   d. the identity of the alleged wrongdoer – as [counsel for the employee] put it in his skeleton argument, *"the larger or more prominent the wrongdoer (in terms of the size of its relevant community, i.e. staff,*

> *suppliers and clients), the more obviously should a disclosure about its activities engage the public interest" – though he goes on to say that this should not be taken too far."*

153. The Tribunal accepted that the claimant's disclosure was made by him in circumstances where he was genuinely concerned that there was a conflict between the respective roles of data protection officer and director of housing and a real risk that the legal rights of the respondent's tenants, employees and other members of the public who shared their personal information with it would be affected because of that conflict.

154. While there was no agreement on the precise number there was no dispute that the number of individuals potentially affected was in the thousands, and therefore undeniably a significant number.

155. Nor was there any dispute that the information held was to be used in certain cases to determine the allocation of housing and that in such cases the information held would fall into the category of sensitive personal data. For any individual, particularly those in need of housing, there are fewer more important interests than finding safe and secure accommodation. The nature of the interests affected by the potential conflict was therefore extremely important and would doubtless be viewed as such by the public.

156. Similarly, the identity of the alleged wrongdoer in this case, a registered social landlord and a charitable organisation whose purpose is to provide affordable accommodation is also a factor that undoubtedly engages the public interest.

157. In relation to the nature of the wrongdoing, the claimant's concern was that it was another feature of the respondent's de-prioritisation of data protection over a period of around two years, which had resulted in an increased number of data breaches and appeals.

158. The Tribunal accepts that in the area within which the respondent operates and having regard to its charitable status and the needs of the community of people that it serves, a de-prioritisation of data protection would engage the public interest.

159. In the circumstances the Tribunal finds the information in the claimant's e-mail to Helen Gauld was disclosed in the public interest.

Was the claimant's belief that his disclosure was made in the public interest reasonably held?

160. The claimant's daily role was in data protection. He is highly experienced in this area with a high degree of technical knowledge and understanding of the relevant issues, as set out in his e-mail to Helen Gauld.

161. Over a two-year period, he witnessed at close hand the impact of what he believed to be a de-prioritisation of data protection and, as a result, a breach of the respondent’s legal obligations, which had resulted in an increased number of data breaches and appeals. He felt particular concern about personal data held in relation to allocation of housing.

162. Having regard to his working in the field about which he raised his concerns, his experience of the numbers of data breaches and appeals having risen, the respondent’s acceptance of the truth of those concerns and its decision to address them, the Tribunal had no doubt that the claimant’s belief that his disclosure was made in the public interest was reasonably held.

Further procedure

163. A case management preliminary hearing should now be fixed to fix a date for the final hearing and make directions.

Date sent to parties 19 August 2026