



# EMPLOYMENT TRIBUNALS

**Claimant:** N Maitre

**Respondents:** London Borough of Richmond upon Thames (1)  
London Borough of Wandsworth (2)

**Heard at:** London South Employment Tribunal, hybrid hearing

On: 9, 10 January and 2 February 2023

**Before:** Employment Judge L Burge  
Ms S Khawaja  
Ms T Bryant

## Appearances

For the Claimant: Ms Alyamani (FRU representative)  
For the Respondents: Ms Gyane, Counsel

# JUDGMENT

It is the Judgment of the Tribunal that:

1. The Claimant made four protected disclosures.

# REASONS

## The hearing

1. The Claimant gave evidence and Maurice Mcleod (Councillor) also gave evidence on her behalf. Clare Dorning (Head of Housing Service (Assessment and Adaption)), Paula Jameson (Customer Service and Housing Options Manager) and Julie Bernadello (Temporary Accommodation Manager) gave

evidence on behalf of the Respondents. Both Ms Alyamani and Ms Gyane gave written and oral closing submissions.

2. A bundle of 208 pages was provided to the Tribunal.
3. At the start of the hearing the Claimant withdrew numerous alleged protected disclosures and set out the following alleged protected disclosures:
  1. On 7 or 8 November 2019 she made a disclosure to Ms Jameson about a breach of duty of care and a breach of a legal obligation in relation to relief duty;
  2. On 18 November she made a disclosure to Ms Jameson about a breach of duty of care and a disclosure about the safety of two elderly brothers and possible endangerment to life;
  3. On 25 or 26 November 2019 she made a disclosure to Ms Jameson about the safety of two elderly brothers and possible endangerment to life;
  4. On 28 November 2019 she made a disclosure to Ms Dorning about a breach of duty of care;
  5. On 2 or 3 December 2019 she made a disclosure to Ms Jameson about the safety of individuals and potential endangerment to life;
  6. On 4 or 5 December 2019 she made a disclosure to Julie Bernadello about the health and safety of the individuals and potential endangerment to life;
  7. On 4 or 5 December 2019 she made a disclosure to Ms Jameson about the health and safety of the individuals and potential endangerment to life;
  8. On 18 December 2019 she raised concerns to Ms Jameson about suicide in similar circumstances and therefore her concerns about her own clients and the potential risk to their lives; and
  9. In early January 2020 she made a disclosure to Ms Jameson about the health and safety of the individuals and a breach of duty of care.
4. The Tribunal allowed the late clarification of the alleged protected disclosures and the Claimant's late supplementary statement. The Tribunal decided that it would not be fair for the Respondents to have to answer disclosures 8 and 9 at this hearing and so they would be dealt with at the start of the final hearing. Having considered its position, the Respondents requested that they also be decided at this hearing and so they were. The Claimant made an application to amend alleged disclosure 4 during closing submissions as she said it had not been correctly described. Given the lateness of the application and the implication being that witnesses would need to be recalled, it was not in accordance with the overriding objective in dealing with the case proportionately and avoiding delay and so the application was refused.

5. Following the hearing the Claimant consented to the Respondents names being amended to London Borough of Richmond upon Thames and London Borough of Wandsworth.

### Findings of fact

6. The Claimant worked for the Respondents for 16 years, most recently as a Deputy Customer Services and Housing Options Manager. Part of the Claimant's role was to manage a team of officers that received and assessed housing applications under Part VI and VII of the Housing Act 1996 as amended, assessing applications in line with the legal duties owed by the Respondents to those within its Service area with a particular focus on preventing homelessness wherever possible.
7. Two elderly vulnerable brothers (the "Brothers"), were being evicted from their family home of 70 years. The Brothers had always lived together, were in their 80s, one had terminal cancer and the other cared for him. An application was received in relation to the Brothers. On 30 October 2019 the Claimant wrote to Ms Dorning requesting sheltered housing due to the Brothers' imminent homelessness. This was an escalation from the Claimant who would have usually left it to Alex Jones (a member of the Claimant's team) to approach a less senior manager.
8. The Brothers were assessed as a family household but the sheltered accommodation offered to them was two separate units. The Tribunal accepted Ms Dorning's evidence that all social housing is unfurnished. The Brothers accepted the two units in the sheltered accommodation.
9. The Claimant says that on 7 or 8 November 2019 she made a disclosure to Ms Jameson about a breach of duty of care and a breach of a legal obligation in relation to relief duty. However, this is rejected by the Tribunal as the decisions on which duty to apply would rest with Alex Jones (who worked in the Claimant's team), or herself as the manager. Further, there are no documents to indicate that the Claimant thought that the wrong duty was being applied. On 30 October 2019 the Claimant made a request to Ms Dorning that the Brothers be referred to sheltered housing to prevent their homelessness and this is what is then done. The Tribunal finds, on the balance of probabilities, that the information provided to Ms Jameson on 7 or 8 November was an update on the Brothers' case and did not include a concern that there was a breach of duty of care and a breach of a legal obligation in relation to relief duty.
10. Ms Jameson, the Claimant's manager, does not recall the detail of the conversations she had with the Claimant about the Brothers but said that the Claimant would come and speak to her every now and then about this case but that she does not recollect detailed specifics. The Tribunal finds that the Claimant is the more reliable witness on the detail of the conversations. The Tribunal accepts the Claimant's evidence that she spoke to Ms Jameson about the Brothers' vulnerability, what Mr Jones had reported about their presentation, the need to arrange support for the Brothers including help moving homes and the suitability of temporary accommodation. The Claimant alleged that she made

protected disclosures on 18 November and again on 25 or 26 November 2019. However, the Claimant's recollection of the words used was general. She recalled expressing concerns but there was no indication that those concerns were, at the time, said to be because of an alleged or potential breach of duty. On the balance of probabilities, the Tribunal finds that the Claimant raised these concerns not because she thought the Respondents were failing in their legal duty nor that there was a possible endangerment to life, but because she was concerned about the Brothers and was working hard to ensure that the Brothers would have appropriate accommodation, including furniture, once they were homeless.

11. On 27 November 2019 the Brothers were evicted from their home and provided with temporary accommodation in Croydon, out of borough and some distance from the family home they had lived in for 70 years. The Claimant carried on trying to get furniture for the sheltered accommodation that the Brothers would be living in.
12. On 28 November 2019 the Brothers did not attend the sign up for the sheltered accommodation they had accepted but the Claimant and Mr Jones did, and the Claimant arranged for delivery of some furnishings into one of the properties.
13. On 29 November 2019 Mr Jones wrote to social services (copied to the Claimant) informing them that one of the Brothers had gone into a coma and had been taken to hospital by ambulance. Later that day Mr Jones received a phone call from the Brothers' previous neighbour who was concerned that one of the Brothers was having a mental breakdown. The neighbour would arrange for a taxi for the brothers to attend the office.
14. The Tribunal accepts the Claimant's evidence that management refused the purchase of two furniture packs for the clients, normally ordered by the Temporary Accommodations team, which would have enabled the clients to move into the properties reserved for them, and also would have freed up their interim accommodation for another homeless household. This was because the Brothers had savings and so did not qualify for the purchase of furniture packs. The Claimant continued working hard to source furniture for the sheltered accommodation together with Councillor Mcleod.
15. As the Brothers had not taken any action to furnish their accommodation, and given the immediate need to relocate from temporary to settled accommodation, Ms Dorning then agreed to provide the Brothers with essential items including a cooker, fridge and beds.
16. On 2 December 2019 the Brothers again did not attend the appointment to sign for their sheltered properties. On the same day Mr Jones wrote to duty allocations (copied to the Claimant) as he had received a phone call from a friend of the Brothers who said that the police had checked on them and one of the Brothers did not have medication, was not attending hospital appointments and the mental welfare of the other brother was deteriorating and he was reported to be feeling suicidal. Mr Jones asked for daily occupancy checks due to their vulnerability.

17. Mr Jones then, still on 2 December 2019, made two safeguarding referrals, one to Wandsworth and one to Croydon:

*"They require urgent assistance with social care, and this will include assistance in arranging transportation for medical appointments, housing appointments, and support with managing their personal wellbeing and care at home.*

*Unfortunately, the housing department is very restricted on the social support we can provide, so it is really quite urgent that there is an intervention for social care to ensure the safety and wellbeing of the clients."*

18. Ms Bashford emailed requesting daily welfare checks and to assist the Claimant with access for her visits.

19. On 3 December 2019 the Claimant emailed Ms Dorning and Ms Jameson (copying in Ms Bashford and Julie Bernadello) providing an update and setting out her concern for the Brothers' welfare:

*"...I have been very concerned about the clients welfare since this case came to my attention and I would like to listen to what...would like in term of housing and see how we can best assist them, should ...come through.*

*In light of their circumstances ie they have always lived together...has been looking after his brother who attend regularly hospital for his cancer treatment for years. Hence, I do not think that the two sheltered properties identified in ... are suitable for the clients as to separate them as this difficult time of their life may just be too much for them to deal with.*

*Also, as you are aware we have arranged for the transport of some furniture last Friday on behalf of the clients due to their age, and the agreement was that... would pay for the removal. ...*

*FYI, Cllr Mcleod called me today, he advised that he has been able to source all the furniture required for the clients and I have asked him to hold on to these until we know how we are moving forward with this case.*

*A safeguarding referral has been made both in Wandsworth..."*

20. On 4 December 2019 the Claimant visited the Brother who was at the temporary accommodation and found him unkempt. He reported to her that they had not had any solid or hot food since moving into the temporary accommodation. The Claimant bought food for the Brothers. She found the temporary accommodation unsuitable as there were workmen coming in and out of the front entry door and constant construction noise. A social worker visited during this visit also. The Brother had questions about the sheltered accommodation and Mr Jones then followed up with various queries on flooring and utilities for the properties.

21. Both safeguarding referrals for help with social care for the Brothers were declined, Croydon because the Brothers' ordinary residence was Wandsworth, and Wandsworth because they were living out of borough. On 6 December 2019 Mr Jones provided photos of the previous poor living conditions of the Brothers to Wandsworth requesting that they revisit their decision to drop the safeguarding referral.
22. The Tribunal accepts that the Claimant raised her concerns about the suitability of the temporary accommodation and the risk/fear that the Brothers' lives were in danger if their mental and physical health continued to deteriorate in these conditions. While she did not specifically say it was a breach of a legal obligation the context of the Respondents having a legal obligation towards the Brothers makes it implicit. The Tribunal finds that the Claimant raised these concerns to both Ms Jameson and Julie Bernadello. Ms Bernadello then contacted the hospital to ask that if they had spare food whether they could feed the other Brother while he was visiting his Brother.
23. On around 20 December 2019 the Brother was discharged from hospital, the Claimant wrote to Councillor Mcleod that they had gone back to their temporary accommodation in Croydon and that they were due to move to the separate sheltered housing at the beginning of January. The Claimant said that one Brother expressed a lot of concerns and worried about the prospect of living in separate accommodation, in light of [the other Brother's] health deterioration.
24. The Tribunal accepts the Claimant's evidence that at the end of December a colleague told the Claimant that one of her elderly clients who had been placed in similar circumstances in interim accommodation had committed suicide. The Tribunal accepts and finds that she told Ms Jameson about this and her concern that the Brothers' lives were also at risk.
25. The Respondent's evidence is accepted that there had been two deaths but the second was late December and was only known about in January.
26. The Tribunal further accepts the Claimant's evidence that in January 2020 the Claimant raised concerns that there had been two suicides of elderly clients and that the Respondents were failing in their duty with regards to all elderly clients and requested that an investigation be carried out and that the matter be reported to the Director.

## Relevant law

27. A qualifying disclosure is defined by s.43B:

*(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.”*

28. In *Williams v Michelle Brown* AM, UKEAT/0044/19/OO at paragraph 9, HHJ Auerbach identified five issues, which a Tribunal is required to decide in relation to whether something amounts to a qualifying disclosure:

*“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 is 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.”*

29. The disclosure must be of “information”. In *Kilraine v London Borough of Wandsworth* [2018] ICR 1850 Sales LJ said that allegations could amount to disclosures of information depending on their content and on the surrounding context. He set out the following test for determining whether the information threshold had been met so as to potentially amount to a qualifying disclosure: the disclosure has to have “sufficient factual content and specificity such as is capable of tending to show” one of the five wrongdoings or deliberate concealment of the same. “Whether an identified statement or disclosure in any particular case does meet that standard will be a matter for evaluative judgment by a Tribunal in the light of all the facts of the case” (paragraphs 35 and 36).
30. The Tribunal needs to assess whether, given the factual context, it is appropriate to analyse a particular communication in isolation or in connection with others. In *Norbrook Laboratories (GB) Ltd v Shaw* [2014] ICR 540 (EAT), Slade J (at para 22) said that “an earlier communication can be read together with a later one as embedded in it, rendering the later communication a protected disclosure, even if taken on their own they would not fall within Section 43B(1)(d)”. Whether or not it is correct to do so is a question of fact.
31. The disclosure may still be a qualifying disclosure even if the information is incorrect, in that a belief may be a reasonable belief even if it is wrong: *Babula v Waltham Forest College* [2007] ICR 1026.
32. Unless the legal obligation is obvious, Tribunals must specify the particular obligation that the Claimant believes has been breached, the source of the obligation should be identified and capable of verification by reference to statute or regulation (*Blackbay Ventures Ltd (t/a Chemistree) v Gahir* [2014] ICR 747 (EAT), paragraph 98). It is what the worker reasonably believed that information

tended to show, not the employer, and it is not necessary that the disclosure identifies the specific legal obligation that is said to have been breached (*Twist DX Limited v Armes* (UKEAT/0030/20, paragraph 84).

33. The Court of Appeal considered the 'public interest' test in *Chesterton Global Ltd v Nurmohamed* [2018] ICR 731 and said that a disclosure could be in the public interest even if the motivation for the disclosure was to advance the worker's own interests - motive was irrelevant. What was required was that the worker reasonably believed disclosure was in the public interest in addition to their own personal interest.
34. A qualifying disclosure is a protected disclosure if it is made to the claimant's employer (sections 43A and 43C Employment Rights Act 1996). In this case, all of the alleged disclosures were made to those working in the Respondents. Therefore, if the alleged disclosures were qualifying disclosures, they were also protected disclosures.

### **Discussion and conclusions**

35. The Claimant's team had statutory duties to prevent homelessness wherever possible. They worked with vulnerable members of the public who were often in desperate need. The Claimant's alleged disclosures were in relation to two particularly vulnerable clients for whom the Respondents had assumed a responsibility. There is no doubt that there is a public interest in the Respondents meeting their legal obligations towards vulnerable individuals. It was reasonable for the Claimant to have a belief that there was.
36. The Tribunal has found that the information provided to Ms Jameson on 7 or 8 November (alleged disclosure 1) was an update on the Brothers' case and did not include a concern that there was a breach of duty of care and a breach of a legal obligation in relation to relief duty. The Tribunal has also found that the Claimant raised concerns on 18 and 25/26 November 2019 (alleged disclosures 2 and 3) not because she believed that the Respondents were failing in their legal duty nor that there was a possible endangerment to life, but because she was concerned about the Brothers and was working hard to ensure that they would have appropriate accommodation, including furniture, once they were homeless. This was the provision of "information", it was reasonably believed to be in the public interest but it did not tend to show that a person has failed, is failing or is likely to fail to comply with any legal obligation to which they are subject, or that the health or safety of any individual has been, is being or is likely to be endangered, nor was that reasonably believed by the Claimant at the time. The Claimant herself could have questioned the duty that had been applied to the Brothers but she did not do so. She made a request to Ms Dorning that they be provided sheltered accommodation and they were. She did raise her concerns about the provision of two flats rather than one, but not in the context that there was any wrongdoing by the Respondents, and in any event the Brothers had accepted two sheltered accommodations at that stage. Alleged disclosures 1 - 3 are therefore not qualifying disclosures.



37. In relation to disclosure 4, the Tribunal concludes that there was no disclosure to Ms Dorning about a breach of duty of care. The provision of furniture packs had been refused due to the Brothers having their own means to purchase them. Ms Dorning had subsequently agreed to the provision of beds and white goods. The Claimant worked very hard making enquiries and arranging furniture for the Brothers.
28. Disclosure 5 concerns an alleged disclosure made on 2 or 3 December 2019 to Ms Jameson about the safety of individuals and potential endangerment to life. However, an email on 3 December 2019 from the Claimant to Ms Dorning, Ms Jameson, Ms Bashford and Ms Bernadello provides an update on the Brothers' situation. She says that she is very concerned about their welfare and she would like to listen to them to hear what they would like in terms of housing. She said that she did not think two sheltered properties were suitable as they had always lived together, that she had arranged for the transport of some furniture for them and that Councillor Mcleod had source all the furniture required. Given the date of the email, the Tribunal concludes that a verbal disclosure is likely to have been in the same terms. The Tribunal concludes at this stage the Claimant was providing an update, it is the provision of information, but it does not tend to show that a person has failed, is failing or is likely to fail to comply with any legal obligation to which they are subject, or that the health or safety of any individual has been, is being or is likely to be endangered and so it is not a protected disclosure.
29. In relation to disclosures 6 and 7, the Claimant visits the Brother at the out of borough temporary accommodation and finds him unkempt and without appropriate food, the other Brother having been taken to hospital. She finds the temporary accommodation in a building site with noise and workman entering and leaving by the Brothers' front door. The Claimant's concerns further escalate when the safeguarding referrals result in neither Croydon nor Wandsworth providing social support for the Brothers. The Claimant became extremely concerned about their wellbeing, their health appeared to be deteriorating and she reasonably believed that the Council was failing to abide by its legal obligations to these individuals. The Tribunal concludes that she raised information to both Ms Jameson and Ms Bernadello that tended to show that a person has failed, is failing or is likely to fail to comply with any legal obligation to which they are subject, and that the health or safety of any individual has been, is being or is likely to be endangered. It was reasonable for the Claimant to have that belief. This disclosure is undoubtedly in the public interest given the Respondent's responsibility for housing and providing social support for vulnerable adults and it is reasonable for the Claimant to have had that belief.
38. In the context of having made disclosures 6 and 7, the Tribunal concludes that disclosures 8 and 9 were also protected disclosures. The Claimant had a reasonable belief that there had been two suicides as she had been told this by colleagues and that the Respondents were failing in their duty with regards to all elderly clients and requested that an investigation be carried out and that the matter be reported to the Director. She provided this information to Ms Jameson. It tended to show that a person has failed, is failing or is likely to fail to comply with any legal obligation to which they are subject, and that the health or safety

of any individual has been, is being or is likely to be endangered. It was reasonable for her to have that belief. These disclosures are undoubtedly in the public interest given the Respondent's responsibility for housing and providing social support for vulnerable adults and it is reasonable for the Claimant to have had that belief.

39. The Tribunal concludes that the Claimant therefore made 4 protected disclosures.

40. Having heard submissions from the parties on the subject, the final hearing currently listed for 3 – 7 July 2023 is reduced to 4 days to take place on 4, 5, 6 and 7 July 2023.

Employment Judge L Burge

8 February 2023

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