

# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs L Grant

**Respondent:** Independent Home Solutions CIC

**Heard at:** London South                      **On:** 29, 30, 31 August 2017  
10 October 2017  
6 October 2017 (Chambers Day)

**Before:** Employment Judge Cheetham

**Members:** Mrs R Bailey  
Mr W Dixon

## Representation

**Claimant:** In person/Mr McIntyre (friend)  
**Respondent:** Mr E McFarlane (Consultant)

# JUDGMENT

The unanimous judgment of the Tribunal is that:-

1. The Claimant's claims for unfair constructive dismissal, detriments by reason of making a protected disclosure and unlawful deductions of wages are dismissed.

# REASONS

1. This is a claim brought by the Claimant, Mrs Leah Grant, in which she claimed that she was unfairly constructively dismissed and that she suffered detriments by reason of being a whistle blower, as well as unlawful deductions of wages.
2. The Claimant represented herself on the first day. On the second and third days, she was represented by a friend and lay representative, Mr Donal McIntyre. On the fourth day of the Hearing, she was again representing herself, but with her husband's assistance. Both the Claimant and Mr McFarlane for the Respondent provided written submissions.
3. The Tribunal heard evidence from the Claimant and from Ms Alison Goodall,

the Respondent's Managing Director.

4. There was an agreed bundle of 875 pages. Employment Judge Elliott had previously ordered specific disclosure of further documents, which Order the Respondent had tried to comply with, but it had only succeeded in part. The Claimant served on the Respondent a further 420 pages of documents two working days before the Hearing. In the end the Tribunal was taken to very few documents. A lot of time was wasted on agreeing or disagreeing the inclusion of documents that were never relied upon.

### The issues

5. The Tribunal also spent a great deal of time trying to understand the issues (despite three previous Preliminary Hearings). The Claimant was extremely vague about dates and what was actually said or done, preferring generalised assertions. In the end, the Tribunal drew up the grid of disclosures and detriments (which is set out at Annex A), which the Claimant agreed contained the issues in the case.
6. This process of working out what the Claimant was actually claiming was not helped by the Claimant's preparation for the case and her representation. Her papers were in a state of disorder throughout, so that she had great trouble finding the documents she needed. In addition, she required a lot of time during the course of the Hearing to get organised and to work out what it was she needed to ask witnesses and what exactly the issues in her case were.
7. Further, on the first day, when the issues were agreed, her representative Mr McIntyre did not attend. When he did attend on days two and three, he seemed oblivious to the agreed issues. On day four, he was again not present. The Claimant took over the questioning of Ms Goodall. However this questioning was largely unrelated to the issues and, after the Tribunal's repeated interventions, the Claimant's husband took over with much more success.
8. Therefore, despite the issues being agreed and written down by the Tribunal on the first day, only Mr Grant on behalf of the Claimant and Mr McFarlane seemed constrained by those issues. The Claimant and Mr McIntyre will no doubt feel they were repeatedly and unfairly interrupted by the Tribunal. Indeed, this was a hearing where the Tribunal was constantly reminding them not only what was in issue, but of the Tribunal's role. They seemed to view the Tribunal as a forum for a broad attack on the Respondent and its practices, rather than one for resolving the Claimant's employment dispute. Inevitably, they will be disappointed by the scope of this decision, which is limited to the issues.

### The Law

9. The relevant definitions under the **Employment Rights Act 1996** are as follows:

*s43B.— 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) ...*

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

*(e) ...*

*(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.*

10. The words “*in the public interest*” were inserted into the section and took effect from 25 June 2013. There is no statutory definition of ‘public interest’ anywhere in the ERA, and nor has any statutory or non-statutory guidance been published. However, the term is widely used elsewhere in the law. For instance, in **British Steel Corporation v Granada Television Ltd [1981] AC 1096**, the House of Lords stated that “*there is a wide difference between what is interesting to the public and what it is in the public interest to make known*”.

11. Under **s.43C**:

*(1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure [...]*

*(a) to his employer*

12. Under s. **47B**:

*(1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.*

13. There is no statutory definition of ‘detriment’. In **Ministry of Defence v Jeremiah [1980] ICR 13**, Brandon LJ said that ‘detriment’ meant simply “*putting under a disadvantage*”, while Brightman LJ stated that a detriment “*exists if a reasonable worker would or might take the view that [the action of the employer] was in all the circumstances to his detriment*” (approved in **Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337**).

14. Causation under **S.47B** has two elements:

(i) was the worker subjected to the detriment by the employer, other worker or agent?

(ii) was the worker subjected to that detriment because he or she had made a protected disclosure?

15. Under s.**48**:

*(1) ...*

*(1ZA) A worker may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of section 45A.*

*(1A) A worker may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of section 47B.*

*(2) On a complaint under subsection (1), 1ZA), (1A) or (1B)it is for the employer to show the ground on which any act, or deliberate failure to act, was done.*

## Findings of fact

16. The Tribunal made the following findings of fact on the balance of probabilities. According to her contract of employment, the Claimant's employment commenced on 19 November 2007. The claim form states that her employment ended on 27 July 2016, but she resigned with immediate effect on 28 July 2016.
17. The Respondent is a home improvement agency, helping tenants adapt and repair their homes, particularly those who are elderly, disabled or otherwise vulnerable. It is a Community Interest Company, working with local authorities, who provide the funding. The Claimant's original employment was with the Anchor Trust, but there was a transfer of undertaking on 24 February 2011 to the Respondent, which took over its functions.
18. The Claimant was initially employed as a case worker. In February 2010 she became Deputy Manager, although she also continued to have case worker responsibilities. Her line manager was Ms Goodall. As a manager, the Claimant's role included having an overview of the process followed by the Respondent (described below) and raising any concerns that she might have with Ms Goodall if appropriate or dealing with those herself. This last point needs emphasising: it was her job to raise any concerns.
19. Ms Goodall concentrated on development and planning of the company and the Claimant concentrated on operations, such as the day-to-day management of case loads. On two and a half days a week, Ms Goodall worked at the local council's offices and the Claimant deputised during her absence.
20. The process was as follows. A tenant would inform the case worker that, for example, the bathroom needed to be altered because of the tenant's disability. One of the Respondent's technical officers would then assess the work and be responsible for obtaining tenders from companies on the Respondent's list of fourteen or fifteen approved companies. One such company was ADW (AD Wibden Builders Ltd), a sole trader ("ADW"). The technical officer involved with most of the issues before this Tribunal was Mr Paul Cresswell.
21. The Tribunal had great difficulty in establishing when many of the relevant events occurred. The Claimant's evidence on this was imprecise and variable. So, for example, her first alleged disclosure related to service user LF and the conduct of ADW. She said she raised this complaint with Ms Goodall at the end of 2014 or early 2015 in an email, which was not in the bundle. She referred the Tribunal to her own report of 5 July 2015, but that did not mention LF. She also referred to Ms Goodall's subsequent report, but that also did not appear to refer to LF. Ms Goodall had no direct recollection of their conversation.
22. However in her oral evidence, Ms Goodall referred to seeing LF in May 2015. Whatever the Claimant had said to her, Ms Goodall took active steps to deal with that service user's problems. Doing the best it could, the Tribunal found that the Claimant told Ms Goodall about LF's concerns some time before Ms Goodall visited that lady in May 2015.
23. In or about July or August 2015, the Claimant had a concern about the service user Mrs W, which she told Ms Goodall about verbally. The concern was about the builder's (again ADW) behaviour on site and that they had invoiced the client directly. The Claimant was also concerned about the relationship

- between Mr Cresswell and ADW and possible failures to follow proper tendering procedures.
24. On 5 August 2015, Ms Goodall suspended ADW from the list of contractors because of this and a catalogue of problems with ADW previously. The Claimant and Ms Goodall went to visit the service user together on 15 August.
  25. Subsequently on 29 September 2015, ADW's solicitors wrote to the Respondent claiming that their client had been defamed. This apparently arose from an email that the Claimant had sent to another service user. In any event this threat of legal action meant that Ms Goodall was then preoccupied with the potential proceedings, which also meant (on advice) she was unwilling to take any steps regarding Mr Cresswell's relationship with ADW until the proceedings had resolved.
  26. To the Tribunal that seemed a reasonable step to take. Whether or not disciplining Mr Cresswell then might have prejudiced the Respondent's defence to the proceedings, ADW was no longer on the approved list of contractors. The one thing Mr Cresswell could not do in the meantime was have any further involvement with that company.
  27. Going back to the time around April/May 2015, Ms Goodall said, and the Tribunal accepted, she and the Claimant had been compiling their concerns about ADW together. It did appear that Mr Cresswell had been favouring ADW over other contractors. This is important, because it shows that Ms Goodall and the Claimant were of one mind.
  28. It also shows that, although the Claimant told the Tribunal that in August 2015, she complained to Ms Goodall about ADW and Mr Cresswell's excessive allocation of work to them, Ms Goodall was already well aware of that by then and had acted upon it. Many of the concerns about ADW came from sources other than the Claimant, such as a local authority officer and from the clients themselves.
  29. On 17 December 2015, the Claimant emailed Ms Goodall regarding service user AW. She raised issues about Mr Cresswell's involvement, where only one builder had been approached for a quote and the scope of the work was unreasonable. She said that she wished Mr Cresswell should know the inconvenience he had caused to AW, which related to his alleged mismanagement of the work.
  30. On 21 December 2015, the Claimant emailed Ms Goodall with a lengthy summary of previously raised concerns, including reference to an undated visit to service user AN. That lady's contractor had allegedly billed the local authority for items that were not completed.
  31. The final complaint allegedly made by the Claimant was in December 2015 or January 2016 regarding child R. The Claimant said she had made this complaint in emails which were not in the bundle and orally. She apparently told Ms Goodall about unlawful allocation of work, but there was no specific evidence about this and the Tribunal was unable to find that this occurred.
  32. Meanwhile in December 2015 Ms Goodall had begun investigating Mr Cresswell. She had delayed it until then because of the possible issue with the defamation claims, but these had now abated (and she had new legal advisors). She met with Mr Cresswell and subsequently gave him a written

- warning, although she did not commence any disciplinary process. The Claimant in any event was not involved in this.
33. Continuing the narrative of events, what followed was what the Claimant described as amounting to a series of detriments, where the Tribunal had the same difficulty in establishing dates and evidence.
  34. The first of those events is an example of this. It is that the Claimant became aware in about December 2015 that the Respondent caused other employees to complain about her. However none of the documents the Tribunal was taken to shows this occurring. The Claimant said in evidence that she had no evidence of this.
  35. The next event was that “most days” Mr Cresswell ignored the Claimant at work. The Claimant’s oral evidence was that he ignored her because he knew she was investigating his builder friend and was about to stumble on the fact that the builder was being aided by Mr Cresswell, but there was no detail about this allegation at all.
  36. In around February 2016, there was an incident involving the Claimant and Mr Wayne Antaw, the IT Administrator. There was a dispute over the Claimant’s laptop, but the Claimant did not give the Tribunal a coherent account of this. Ms Goodall was not present at the time of the incident.
  37. Next, on 11 March 2016, Ms Goodall emailed the Claimant. She said “I’m not part of this any more”, and referred to a letter to a co-director that a technician had shared with the Claimant and an administrator. Ms Goodall said, “I see this as a vote of no confidence”. The Claimant construed this letter as Ms Goodall blaming her for her decision to leave. However that is not what the letter says. Ms Goodall had not decided to leave and was not blaming the Claimant for anything.
  38. The Claimant went off on sick leave in April 2016 and complained that, while she was absent, the Respondent sought information from her and blamed her for a member of staff leaving. Because the Claimant kept some files at home, understandably Ms Goodall asked for these during her absence. The second part of that allegation relates to an exit interview with an employee called Charley McCarthy on 29 April 2016. Ms McCarthy was indeed critical of the Claimant, for example describing her as contradictory all of the time, long and rambling in her advice in emails and incomprehensible in her file notes. The Tribunal found that Ms Goodall did not blame the Claimant for Ms McCarthy leaving although Ms McCarthy herself did so.
  39. The Claimant’s next allegation was also in April 2016 and was that the Respondent divulged details and confidential information made by one team member against another and blamed the Claimant for the outcome. She took the Tribunal to a letter of 29 February 2016 (despite saying that this allegation occurred in April 2016) which referred to Mr Antaw, although not directly by name, but made no mention of the Claimant at all.
  40. The next allegations concerned a childcare voucher account, which was a salary sacrifice scheme. The Claimant alleged that on 20 June 2016 the Respondent deducted salary sacrifice payments, which she had not authorised. However, the Claimant agreed to participate in the Scheme; when the Respondent subsequently made errors in her favour, it had then rectified them. This was undisputedly what the evidence showed. In the Tribunal’s view, the

- Claimant simply did not understand how the Scheme worked in terms of the flow of money.
41. On 28 July 2016, the Claimant resigned. In the weeks before that the Claimant had been moving towards leaving. On 19 May, while still on sick leave, she had written to say that she was not sure if coming back was either tenable or a good idea and she offered to volunteer for redundancy. On 26 May Ms Goodall said the post was not redundant so that might not be the way to go.
  42. After this the Claimant brought a grievance (which curiously the Tribunal never saw), which it was told she had submitted on 1 June. On 2 June (therefore the day after the grievance) the Claimant wrote to say that coming back to work was no longer a viable outcome. Ms Goodall said in evidence that she wanted to discuss these matters with the Claimant and tried to make contact. In fact the Claimant complained Ms Goodall was “hounding her” to retrieve the files but at the same time complained that Ms Goodall did not try to contact her. As it was apparent to Ms Goodall that the Claimant was keen to go, they met for a discussion.
  43. This led the parties into settlement discussions, which they were happy to tell the Tribunal about. A written offer was made to the Claimant on 22 June 2016 by the Respondent, which she did not accept.
  44. The resignation letter followed and complained that the Respondent failed to support the Claimant and had undermined her in her role as Operations Manager. Tellingly, it made no mention of whistle blowing.
  45. The Claimant’s final complaints were that the Respondent (a) failed to pay her final salary and (b) withdrew occupational sick pay. The former reflects the Claimant’s misunderstanding of how the salary sacrifice scheme worked and also the calculation of annual leave (which were the two matters at issue). During the Hearing she accepted that she was not owed any annual leave and that it had in fact been overpaid. As to occupational sick pay, it was a discretionary payment and the Respondent had stopped paying it at the point where it reasonably understood the Claimant was not coming back to work.

## **Conclusions**

46. Based upon these findings of fact the Tribunal drew the following conclusions. First, did the Claimant make any protected disclosures? Taking each of the six alleged disclosures:
  - i) There was no evidence of this first disclosure being made in the way originally described. The Claimant told Ms Goodall about LF’s concerns some time before Ms Goodall visited that lady in May 2015. The Claimant was therefore doing what she was employed to do.
  - ii) The Claimant did voice her concerns about Mrs W and the builders to Ms Goodall, but (putting aside uncertainties over timing) Ms Goodall was already aware of the concerns about ADW and acting upon them. The Tribunal again noted that telling Ms Goodall her concerns about what was happening was what the Claimant was employed to do.
  - iii) This alleged disclosure was already being considered long before August 2015. Even if the date was wrong, the Claimant was simply

reporting her concerns, which is what she was employed to do.

- iv) With regard to the fourth disclosure, the Claimant did not tell Ms Goodall that Mr Cresswell was about to act unlawfully.
  - v) She did say, however, that additional works were being carried out unlawfully for Mrs F, but again it was her role to do so (if that is what she reasonably thought). Ms Goodall was responsive to this complaint and acted upon it.
  - vi) There is no evidence in respect of this final protected disclosure, but even so it would face the same problem as previous ones, in that it was simply relaying information as part of the Claimant's job.
47. In terms, the Claimant failed to show that on these six occasions (or any other) she made a disclosure of information which, in her reasonably held belief, was made in the public interest and tended to show a failure to comply with a legal obligation and so on.
48. The Tribunal did not conclude that the Claimant had a reasonably held belief that she was making these disclosures in the public interest (such as were actually made). What she believed was hard to discern and tended to change, but it does not appear that she considered that she was making disclosures, either at the time of the alleged disclosures or at any time before bringing her claim to the employment tribunal. At the time, the Tribunal concluded, the Claimant was simply sharing her concerns with her manager (who largely shared the same concerns). In any event, it was not reasonable for her to believe that she was making protected disclosures.
49. Even if she was telling Ms Goodall about a failure to follow proper procedures and even if that failure amounted to a regulatory or some other failing, the Claimant was not "whistle-blowing". It would be an absurdity if every time someone who was employed to relay concerns to her manager as part of her job was able to claim she was making protected disclosures when she did so. That is not the purpose of the legislation.
50. In case the Tribunal was wrong and any of the six alleged disclosures were in fact qualifying disclosures, it went on to consider the detriments. With regard to the detriments 1, 2, 4, 6-10, based on the Tribunal's findings of fact, they simply either did not occur or - if they did - were not in any way detrimental.
51. With regard to the third detriment (regarding Wayne Antaw), it is probably right that he was verbally and physically aggressive towards the Claimant; as she told the Tribunal, unfortunately he was allegedly the same with other women. With regard to the fifth detriment (seeking information from the Claimant) the Respondent did ask the Claimant while she was on sick leave to return her files. It had to do so, because she had the files and the Respondent needed them.
52. Of those two detriments which factually occurred, it is completely clear that they had no connection whatsoever with what the Claimant describes as protected disclosures. There was simply no evidence at all of any causal link. Mr Antaw, if he was aggressive to the Claimant, was probably aggressive because of the falling out over her laptop. There was no evidence that Mr Antaw had any knowledge that the Claimant was allegedly whistle blowing. As to seeking the return of files, it was obviously a reasonable thing for the Respondent to do,



- since it needed the files and the Claimant had them.
53. That leaves the claim for constructive unfair dismissal. However on its findings of fact, it is clear to the Tribunal that the Claimant had decided to leave in about May 2016. She tried to reach a settlement, but resigned on 28 July when the settlement discussions failed to resolve the issue. There was no breach of contract, fundamental or otherwise, and the Claimant had made it clear long before she resigned that she intended to go.
54. The annual leave claim was withdrawn and there were no other claims for deductions. In the circumstances, all of the claims are dismissed.

---

Employment Judge Cheetham

Date 11 November 2017

**Disclosures**

|   | <b>Re:</b>                | <b>When?</b>           | <b>How</b>                        | <b>To whom?</b> | <b>Disclosure</b>   |
|---|---------------------------|------------------------|-----------------------------------|-----------------|---|
| 1 | Service user LF           | End of 2014/early 2015 | Email (not in bundle)             | Ms Goodall      | C told Ms Goodall about LF's complaint; see also reports at pp. 294-5 & 296-306 |
| 2 | Mrs W                     | August 2015            | Verbally (by phone)               | Ms Goodall      | C told Ms Goodall about criminal offence and breaches of safeguarding           |
| 3 | Allocation of work to ADW | August 2015            | Verbally                          | Ms Goodall      | C told Ms Goodall about Mr Cresswell's excessive allocation of work to ADW      |
| 4 | AW                        | Late 2015              | Email (page 402)                  | Ms Goodall      | C told Ms Goodall that Mr Cresswell was about to act unlawfully                 |
| 5 | Mrs F                     | 21.12.15?              | Email (pages 458, 476)            | Ms Goodall      | C told Ms Goodall that additional works were being carried out unlawfully       |
| 6 | Child R                   | Dec 2015/Jan 2016      | Emails (not in bundle) & verbally | Ms Goodall      | C told Ms Goodall about the unlawful allocation of work                         |

**Detriments**

|    | <b>Date</b>             | <b>Detriment</b>  |
|----|-------------------------|---|
| 1  | C became aware Dec 2015 | R caused other employees to complain about C  |
| 2  | "Most days"             | Mr Cresswell ignored C at work  |
| 3  | February 2016           | Wayne Antaw (IT administrator) was verbally and physically aggressive towards C                                   |
| 4  | 29.2.16                 | R blamed C for Ms Goodall's decision to leave employment (p. 612)   |
| 5  | April 2016              | While C was on sick leave, R sought information from C and blamed her for a member of staff leaving               |
| 6  | April 2016              | R divulged details of confidential complaint made by one team member against another and blamed C for the outcome |
| 7  | 20.6.16                 | R deducted salary sacrifice payments  |
| 8  | 20.6.16                 | R made inaccurate statements about these payments in an email to C  |
| 9  | After C resigned        | R failed to pay final salary  |
| 10 | Around 22.6.16          | R withdrew occupational sick pay  |