

FH Employment Tribunal CQC Query November 2020

Concern

I've been made aware of some evidence from an employment tribunal that concluded in March 2020. Having read through the case, I think it would be helpful to review the latest Freedom to Speak Up report and staff survey. Could I also ask for a copy of the trust's disciplinary procedure and any action taken following a tribunal?

Response

Our Deputy Director of HR and OD thinks the tribunal referred to was heard in January 2020. The claimant brought claims on (1) protected disclosure detriments, (2) automatic unfair dismissal for making a protected disclosure and (3) unfair dismissal. The tribunal dismissed (2) and (3) but upheld 3 of 7 protected disclosure detriment allegations.

In respect of the 3 allegations upheld, this is the actions the Human Resources Business Partner (HRBP) team have/are taking to address them:

1.1.1 Commencing disciplinary proceedings against her in respect of 2 disciplinary allegations.

There were two allegations investigated which the investigating manager found no evidence to support, therefore they were not to be considered at the hearing. At the time of this case the letter inviting the employee to the disciplinary hearing would have been prepared by the HRBP supporting the chair of the panel, they would take the information probably from the suspension letter if the HRBP supporting the investigation wasn't around.

Following discussion, we have agreed that the invite letter should be prepared by the HRBP who has supported the investigation for the HRBP supporting the panel to check and send. This should avoid any repetition of this incident, and does not require a change to the policy, but a change to the admin process undertaken by HR.

1.1.2 Failing to adequately communicate with employee throughout her suspension.

The investigation for this case was not undertaken by the line manager. By placing the investigation with another manager there was insufficient communication between the two as to who was and was not keeping in touch with her. HRBPs undertake a supporting role with investigations so unless there is an issue between the manager and the employee would be unlikely to be the point of communication. We have built into the suspension letter who will keep the employee updated, and at what intervals.

Again, this does not require a policy amendment but an addition to the suspension letter

1.1.3 Not allowing the employee to return to original role.

This would have been a consideration by the chair of the panel, it is well documented that HR can advise on the policy and points of law but should not be decision makers. That said there have been a number of cases in previous years where a move to a different department has formed part of the outcome to the hearing. I understand that at the time the employee agreed that she could not return to her original post, it was later when numerous other roles had been investigated that she decided she had been wrong.

There has also been a question raised about detriment, and the Freedom to Speak Up Guardian (Steven Roots) for the Trust and one of the Freedom to Speak Up Champions (Melanie Walker) have been undertaking a piece of work with people who have raised concerns under FTSU.

The Deputy Director of HR and OD has met with them both as, separately from this request from our CQC Engagement Manager, the FTSU Casework Manager from NHSI/E had suggested that some work was done to define what we meant by “detriment” for those who spoke up, with a view to being able to support and protect people from this in a proactive way.

During FTSU month in October there were various meetings with different groups of staff and all were asked how they would define detriment and to send their views back to FTSU Champion. Whilst this has not resulted (yet) in much feedback, the promotion of FTSU has led to more people stepping forward for champion and advocate roles so this will strengthen the network. It had been suggested that we go back to the staff who had spoken up to ask definitions of detriment but in practice that has not been possible to do (though all receive a feedback form which asks about detriment).

The FTSU Guardian has advised that the local FTSU network has come up with a definition recently which is *“Detriment can be described as any treatment which is disadvantageous and/or demeaning and may include being ostracised, given unfavourable shifts, being overlooked for promotion, moved from a team, etc”*

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