This is a recent decision of an Adjudication Officer of the Workplace Relations Commission (WRC) under the Protected Disclosures Act 2014 (2014 Act).

In this case, the Complainant was employed by the Respondent from 7 April 2015. The Respondent was an authorised insurance company regulated by the Central Bank and subject to the Central Bank's code of conduct, including the Consumer Protection Code 2012, the Minimum Competency Code 2011 and the Fitness and Probity Standards. It was based in Dublin and part of a named UK Insurance Group which consisted of three insurance distribution businesses in the UK, Bermuda and Dublin.

The Complainant was a certified insurance practitioner and employed as a Business Development Manager. Her duties included selling the Respondent's insurance products, developing an annual sales plan and complying on an ongoing basis with the Central Bank rules. The Complainant alleged penalisation by the Respondent employer, following the making of a protected disclosure, and made a complaint to the WRC on 17 May 2016.

A number of issues arose in respect of the Complainant's relationship with her employer, including a claim that the Financial Controller spoke to her in a belligerent manner at a team meeting on 4 March 2016 and that she later received an apology. She claimed that the Managing Director (MD) had issued her with instructions and had been unhappy when she could not comply with such instructions.

In her complaint form to the WRC, the Complainant made two allegations against the Respondent. The first allegation made by the Complainant was that the Complainant had been instructed to assist with concealing that a UK Insurance company's products were being used by the Respondent as its own products and that this was being done without the agreement of the UK company. The Complainant claimed that she had raised this with the Respondent on a number of occasions. At the WRC hearing, the Complainant also claimed that she raised other matters with the Respondent relating to the revision/constructive rewriting of competitor policies which she believed was contrary to the Fitness and Probity Standards. She stated that she had refused to participate in this and raised her concerns directly with the MD at a meeting on 16 March 2016 claiming that the Respondent had a library full of competitor policies.

The Respondent stated that part of the Complainant's job description was to maintain detailed awareness of competitor activity, products and pricing and to play a lead role in the implementation of a focused and targeted approach to new business. It was claimed that the Complainant also played an active role in developing new products and built up the Respondent's "product library". The Respondent claimed that this involved sourcing specimen policy documents from the Group, which were in the public domain, which were being used for the benefit of the Group and consent had been obtained.

The second allegation made by the Complainant was that the Complainant had been instructed by the Respondent to obtain mandates from customers of the scheme's function within a UK company which was not agreed with the UK company. The Respondent refuted this allegation and stated that the Respondent had an existing agreement with the named UK Insurance company providing them with delegated authority to underwrite property, travel and other business schemes and the Respondent acts as the capacity provider for the business. In turn, the UK company has a binding agreement with the Respondent to manage these schemes in accordance with the terms of the agreement.

The Complainant alleged that she had made a verbal complaint to the MD in respect of the above matters.

The Complainant claimed that at a meeting with the MD on 18 March 2016, she was subjected to abusive behaviour and issued with a warning. This allegedly caused stress for the Complainant and she took certified sick leave from 24 March 2016. It appears from the decision that she remained on sick leave until the date of the hearing but this is not confirmed.

On 7 April 2016, the Complainant's solicitor issued a letter alleging that the meeting and warning issued on 18 March was a form of penalisation following the making of protected disclosures. In this letter the Complainant also made a number of allegations in relation to the MD. The Respondent responded by solicitor's letter on 20 April 2016 and the Complainant was also informed of the Respondent's Whistleblowing Policy.

The Respondent denied that the Complainant raised any issue of concern either with the MD or any other person working in the Respondent. The Respondent claimed that the Complainant was provided with the UK Employee Handbook and policies and procedures including a Whistleblowing Policy and a Grievance Procedure. Following a re-branding and name change, the Respondent issued its own Employee Handbook, which also included a Whistleblowing Policy. This was issued to all employees in March 2016. The Complainant had not raised any concerns in writing under such policies.

The Respondent also argued that the allegations made by the Complainant did not fall within any of the eight categories of relevant wrongdoing contained in Section 5 of the 2014 Act and therefore did not qualify as protected disclosures.

In respect of the meeting on 18 March 2016, the Respondent claimed that meeting was prearranged with the Complainant to review the Complainant's objectives, it was not a disciplinary meeting and no sanction was ever issued to the Complainant. The Respondent stated that it provided feedback to the Complainant in relation to her refusal to attend a meeting of 14 March 2016 and that her failure to carry out a reasonable instruction was a serious matter. The Respondent outlined that this was feedback and when the Complainant asked if this was a disciplinary matter, she was told "no" but that she should take note and there should be no reoccurrence. The Respondent provided written confirmation of the purpose of the meeting in emails dated 18 March and 22 March 2016 and copies were provided to the Adjudication Officer.

The Adjudication Officer noted that there were two issues to be determined in the case:

"Firstly has the Complainant made a Protected Disclosure under the Act and if she has whether she has been penalised by the Respondent and that the penalisation arises for making a protected disclosure."

The Adjudication Officer noted that the Complainant claimed that she had made a number of verbal complaints to the Respondent but failed to produce any evidence of such complaints being made prior to the Complainant's solicitor writing to the Respondent on 7 April 2016. The Adjudication Officer also noted that from 10 August 2015 the Complainant communicated by email with her colleagues, including the MD in relation to work related issues. There was no explanation given by the Complainant as to why she did not make her alleged disclosures in writing during the course of her employment or why she did not utilise the Whistleblowing Policy which was in place.
The Adjudication Officer acknowledged that section 9 of the 2014 Act allows for the making of a disclosure "in the course of obtaining legal advice from a barrister, solicitor, trade union official or official of an excepted body".

However, the Adjudication Officer concluded that the disclosure had not been made to the Respondent until 7 April 2016, the date of the letter from the Complainant's solicitor. As the alleged penalisation was supposed to have taken place in March 2016, prior to the disclosure itself, the Adjudication Officer found that the Complainant had not been subjected to penalisation for having made a protected disclosure. The Complainant's complaint was dismissed on that basis, and the Adjudication Officer did not, therefore, need to comment on whether the disclosure contained relevant information that, in the reasonable belief of the Complainant, tended to show one or more relevant wrongdoings, and came to her attention in connection with her employment (the other significant requirements of the definition of a "protected disclosure" under the 2014 Act).

The decision is a useful reminder of the importance of a whistleblowing policy. That policy should prescribe how, and to whom, disclosures should be made in an organisation and workers should be provided with a copy of the policy. The 2014 Act does not state that disclosures must be made in writing and under a whistleblowing policy to qualify as disclosures made to the employer. However, this case shows that it may be more difficult for a worker to prove that a disclosure was made on a particular date, and the nature of the disclosure, if the disclosure is not made in writing and, where a policy exists in an organisation, it is not made in the manner prescribed in that policy.

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