

# Boots in court after losing whistle blowing case

**An Employment Tribunal recently considered a claim by a PDA Union member who was forced to resign after raising patient safety issues that Boots failed to take seriously. The Tribunal identified a catalogue of failures and heavily criticised senior managers. Names have been changed for the purposes of this article.**

## The facts

Boots wanted to pilot a sponsored OTC healthcare initiative in one of its flagship pharmacies. The GPhC registration details of the store pharmacist were required to confirm the training had been completed by staff. Debbie, the non-pharmacist manager was under pressure from her Regional Manager to meet a deadline for the training. Peter, the store pharmacist was supporting the training but unaware of any deadlines to meet; in addition there were staff shortages.

After one Regional meeting, Debbie rang Peter at home to ask for his GPhC registration number so that the staff declaration could be completed. Peter refused and made it clear to Debbie that the staff were not yet competent to provide the service. Peter later found out from the staff that Debbie had asked a locum for his registration number which was then used to accredit their training.

Soon after Debbie told Peter that he was "not performing" and one reason was that he had not supported her in signing off the training; it was his duty to support her at all times. Debbie then placed him on a Performance Improvement Plan (PIP). Only a few months earlier Peter's previous manager has awarded him "performing" status, so he decided to

express his concerns in an email to the clinical governance team.

Peter heard nothing more from Boots after his complaint and found the working relationship with Debbie strained. Further meetings took place during which his job security was threatened and he was subjected to an unwarranted character assassination. This behaviour culminated with an invitation to a disciplinary meeting on performance grounds. At this stage Peter took advice from the PDAU who helped him draft a grievance and recommended that the meeting should be postponed until the grievance was concluded. On hearing this Debbie took HR advice and then made threats to Peter about gross misconduct if he did not attend.

## The staff statements revealed that Debbie had lied and the evidence did not support the conclusions reached by the PDDM.

The PDA Union assisted Peter to lodge his grievance directly with the pharmacy superintendent, as his complaint related to patient safety. The task of arranging the grievance was then delegated to a Regional HR manager who initially chose one of Debbie's close friends as the investigating manager. After a complaint was raised about a lack of impartiality, a Pharmacist Development and Deployment Manager (PDDM) was appointed.

Peter attended the grievance with a PDAU representative who set out the case and raised a number of key issues that needed to be investigated. It took the PDDM four weeks to reach a conclusion which Peter felt was wholly unsatisfactory and it appeared to be a muck raking exercise mainly to find information to discredit him. The main substance of his complaint about being put onto a PIP after refusing to allow his registration number to be used was never dealt with properly.

The PDAU representative insisted that Peter was provided with all the evidence that the PDDM used to reach his conclusion. Staff statements directly contradicted Debbie's position and did not support the conclusions reached. At this point the PDAU wrote to the HR Director of Boots to flag up serious concerns; the Director assured the Union that the grievance was being investigated correctly.

Peter appealed and the PDAU representative carefully explained that the outcome reached by the PDDM was unsustainable and Debbie was not being honest. As the initial investigation was of poor quality, the union representative suggested how the independent appeal manager should conduct his investigation in order to get to the truth.

Both Peter and the Union expressed the view that there had been a cover up.

Shortly after the appeal, Peter felt that for specific operational reasons the pharmacy presented a risk to patient safety and decided to temporarily close the pharmacy to resolve them. Debbie did not like this and expressed her dissatisfaction after she found out that he had emailed the Clinical Governance team about the closure. Peter could take no more and was signed off with work related stress; he resigned shortly after receiving the appeal decision in which the area manager suggested his complaint could be dealt with informally by meeting with Debbie. Assisted by the PDA Union, Peter lodged a claim for suffering a detriment as a result of whistle blowing and unfair constructive dismissal.

## Tribunal hearing

Debbie did not attend the hearing and her absence was described as "unusual" by the court. No explanation was given; the PDA Union believe the company knew how damaging she would be to its case and decided not to call her as a witness.

The judge concluded that healthcare staff had been pressurised by Debbie to falsify company records by using the locum's registration number. The tribunal were scathing about a key conclusion reached by the PDDM concerning the reasons for Peter being placed on a PIP.

## With the assistance of the PDA Union Peter lodged a claim for whistle blowing and unfair constructive dismissal.

Debbie's actions in pressuring the staff to falsify company records were described as "inherently dishonest" by the judge and he expressed reservations about the company sign off process used to confirm staff competence.

The threats to Peter's job security and the language used by Debbie to besmirch his character were found to be "entirely inappropriate" and "unacceptable". Two members of the panel felt there may have been some justification to start a PIP process; however the judge disagreed and felt there was "an undue haste to place the claimant on the PIP and a lack of process...." The Tribunal found Peter had whistle blown and suffered a detriment after Debbie criticised him for emailing the Clinical Governance team after closing the pharmacy,

The Tribunal also concluded that the company investigations should have progressed far more speedily and Peter's complaint was treated with a lack of seriousness. Investigations contained "glaring omissions" and did not deal properly with fundamental issues. The appeal manager was "not fully engaged" with the allegations that Debbie was dishonest and did not challenge her about key points. The Tribunal felt his suggestion to resolve his complaint informally was "insensitive" and "inappropriate".

Peter won his case and the Tribunal concluded that he had been unfairly dismissed after the behaviour of both Debbie and Boots had destroyed the employment relationship. They agreed that Peter had suffered a detriment because he blew the whistle after closing the pharmacy on patient safety grounds.

## Implications

The findings of the Tribunal shine a spotlight on the difficulties that pharmacists can face when reporting serious patient safety concerns. It is rare for a Tribunal to articulate criticism in such forthright terms and clear from the judgement that the panel were unhappy with the conduct of senior managers and the application of company processes. The PDAU is also aware of a case in Scotland where a pharmacy staff member was singled out by several company managers and put through a sham reprofiling exercise as a result of blowing the whistle. Again the Tribunal were scathing about the conduct of senior managers and misapplication of company processes. In response to one whistle blowing incident, a manager deliberately placed sensitive and personal medical information about the whistleblower on the pharmacy notice board for all to see.

It is clear from the judgement that the panel were unhappy with the conduct of senior managers and the application of company processes

## Conclusion

The judgement shines a spotlight on the difficulties that pharmacists can face when reporting serious patient safety concerns. Pharmacists should be aware that it is rare for a Tribunal to articulate criticism in such forthright terms; it is clear the panel were unhappy with the conduct of senior managers and the application of company processes.

Boots tried to portray Peter as a pharmacist about whom it had genuine performance concerns and that his complaint was merely a reaction to these. The Tribunal saw through that argument and found he was a genuine whistle blower and a capable pharmacist who had resigned as a result of the poor treatment he was subjected to by both the manager and the company.

Peter's success was down to following carefully the advice of PDA Union lawyers, expert representation and good record keeping; this case was a textbook example of how a Union can secure the right outcome for a pharmacy whistle blower in a tricky area of law.

**Our member is currently waiting for his financial compensation to be decided by the court.**

**See page 7 for further developments relevant to this case.**

