EMPLOYMENT TRIBUNALS

BETWEEN

Claimant **Respondent**

Ms C Bickerstaff -v- The Royal British Legion

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Southampton **ON** 06-10 November 2017

EMPLOYMENT JUDGE PSL Housego
MEMBERS Ms A Sinclair
Mr D Stewart

Representation

For the Claimant: In person
For the Respondent: Ms L Gould, of Counsel, instructed by DAC Beachcroft LLP

JUDGMENT

The unanimous judgment of the tribunal is that:

1. **The claims of the appellant are in time.**

2. **The matters said in the first claim to be public interest disclosures were not public interest disclosures.**

3. **The additional matter raised in the second claim was a public interest disclosure.**

4. **The claimant was subjected to detriment by reason of making that public interest disclosure.**

5. The claimant was constructively unfairly dismissed.

6. **The claim for personal injury resulting from public interest disclosure detriment succeeds.**

REASONS

1. In this case the claimant Ms Bickerstaff claims that she made public interest disclosures, suffered detriment as a result, and not being satisfied with the way a grievance was handled, resigned and has been unfairly constructively dismissed.

2. The respondent contends that the matters said to be public interest disclosure were personal grievances raised by her, not public interest disclosures, that the matters raised were in any event out of time, that the matters complained of were fairly dealt with in a grievance appeal hearing, the result of which was communicated to the claimant shortly before she resigned, so that there was no breach of mutual trust and confidence and so no dismissal.

3. In response the claimant says that the actions related to her team, and were a generic concern about the management of her manager, and given the status of the respondent a matter of public interest, were a series and so there is no time point, but that if there was a time point it was not reasonably practicable for her to lodge her claim sooner, and that she lodged it in a further period that was reasonable.

Evidence

4. We have heard from the claimant, from her former line manager Keith Sked, formerly a Lieutenant-Colonel in the Army, and from her union representative Mark Lonsdale.

5. For the respondent we heard from:

- James France, Area Manager, Dorset Hampshire and Isle of Wight, a former RAF Squadron Leader, line manager to Keith Sked, and in his absence line manager of the claimant.

- Sandra Fruish (Assistant Director of Membership, at the time Area manager South East, who was asked to deal with the return to work of the claimant and with personal issues),

- Gail Walters, Assistant Director of Operations, West Midlands (who conducted the claimant's grievance appeal), and from

- Mandy Heal, Assistant Director of Human Resources and Organisational Development.

6. There was a degree of conflict on the evidence. We have heard the witnesses give their evidence and have observed their demeanour in the witness box. We found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to the factual and legal submissions made by and on behalf of the respective parties.

Facts found

7. The claimant worked for the respondent ("TRBL") first as a temporary employee, then permanent from 03 October 2013, part time, and as a full time Case Officer from January 2015. The claimant was based at home, but came to the office about twice a week. Her role was to ensure that those seeking support from TRBL received an effective service. She completed her probation and received an exemplary report.

8. In the spring and summer of 2015 Mr Sked was away from the office though a recurrent illness which affected him from time to time. At the same time a full time Advice and Information Officer ("AIO") was away on long term sick leave. These absences placed pressure on the claimant and the only other case management officer in the area, Lizzie O'Sullivan.

9. The office in Southampton had on its ground floor a "pop in centre", where people could call in without appointment and enquire about advice or help available. It was manned on a roster basis, and the claimant and Ms O'Sullivan were on that roster.

10. On 15 July 2015 the claimant emailed Mr France at 1:05pm (82) to say that she was under pressure. Mr Sked was off sick. She needed to cover the area queue in the afternoons, for that reason. She was rostered to work an afternoon in the pop in centre. *"Therefore I need some advice as to what can give?"* and *"I'm all for pulling together as a team but this really needs to be looked at."*

11. Mr France's reply (83) was on 15 July 2015 at 1:30pm:

    "Carolyn

    The priority is the opening of the pop-in therefore this is the one that cannot give. Should you choose to give a lesser priority to one of your other tasks you just need to be prepared to justify this should an issue result. Given your comments, I am going to have the ADO shadow you when she visits in August. She has asked to do some "back to the floor" exercises so that she can see for herself the workload imposed on the staff and this sounds like the ideal opportunity for you to put your point across at this level.

    Jim"

12. It is said that this is a supportive response. It is difficult to read it as such. Neither the claimant nor her colleague Lizzie O'Sullivan read it as such. It was a *"get on with it or else"* email. To say that the ADO (Jane Britton, Assistant Divisional Operations manager) would shadow her was more a threat than supportive. The email did not deal with the claimant's concern that she was having to do her own work, deal with the long term sickness absence of a colleague, and the intermittent absence, including at the time the email was sent, of Mr Sked, with all of which she was coping, but then in addition to do an all afternoon shift at the pop-in centre. The claimant said that this was not one of her specified tasks. The Tribunal went through the claimant's job specification with Mr France. The pop-in centre is covered by it, at the last point,17, under *"any other duties assigned to her"*. The statement that she should be prepared to justify anything she did not do should an issue result cannot be read as anything other than a threat. The email in reply was sent in 25 minutes. There is no engagement with the claimant's concern at having more to do than could possibly be done.

13. The claimant passed her probation with flying colours, but this was not until 03 August 2015 (81A). This makes the somewhat brusque email of Mr France the more remarkable.

14. This email is one of the reasons why the Tribunal preferred the evidence of the claimant and of Mr Sked to that of Mr France.

15. The claimant was at something of a loss as to know what to do. She took the sensible step of speaking to Terri Lambert in HR. She then sent Ms Lambert an email on 15 July at 4:08pm on 15 July 2015 (84). She marked this in capital letters CONFIDENTIAL. She set out, in a page, what her concerns were. She expressly stated that she was worried that there would be repercussions for herself given that she had gone above Mr France's head. She did not ask for any particular resolution, but plainly hoped that HR would assist. It was forwarded to Mr France. While human resources has to do something with information given to them forwarding emails in this way is not one of them.

16. Mandy Heal, Assistant Director of Human Resources and Organisational Development since 15 May 2017 said that of all human resources team only Carole Mendoza remained. The rest had now left TRBL. The reason for that was that the department was regarded as not fit for purpose, was dictatorial not impartial and was unhelpful. That was certainly the experience of the claimant. Human resources were making decisions and seemed not to understand the meaning of the word confidentiality. On more than one occasion the claimant emailed HR and they forwarded the document to Mr France even though it was marked confidential. It is noteworthy that when the claimant lodged a grievance with the Director-General on 04 January 2016 (136 et seq) the first thing that he did was to write back (on 05 January 2016, 151) to ask for consent to share this with other people. The Tribunal did not find convincing the explanation that in the grievance was reference to the information Commissioner's office. This is plainly good practice and doubtless that was the reason the Director-General followed that route.

17. On 16 July 2015 the claimant emailed Terri Lambert in HR to add some further details. Plainly she had had a sleepless night thinking about how unfair she (understandably) perceived Mr France's email. It seemed particularly unfair to her because she felt there was favouritism in the treatment of staff who reported directly to him. Those members of the area office no longer assisted with the manning of the pop-in. The pop-in is at street floor level, the offices being above them. She stated that her concern was not just about her own workload. It was about the principle there was a requirement for her and her colleague Lizzie O'Sullivan to man the pop-in because Mr France had removed members of the area team from the rota. Nor did it seem fair to her that she and the colleague had to drop out of the Second Sea Lord's Garden Party, long regarded as a welcome thank you for the hard work that they did, just by reason of routine workload. Nothing happened as a result of this.

18. On 15 August 2015 the claimant raised this directly with Mr France in a long email (90-91). She said that the two who had been removed from the rota spent a lot of time on Facebook, came in late and left early, and were frequently leaving the office for coffee shops and the like. It caused bad feeling throughout the team. She had raised it with the ADO on Friday, but it had not been considered seriously, so she felt she had to express this to Mr France to ask him to address it.

19. Mr France wanted to speak to the claimant about this. She did not want to see him on her own, and she asked Mr Sked to accompany her, as a colleague rather than as a line manager.

20. Mr France sought assistance from HR. In the appeal process, Terri Lambert of HR told Gail Walters in an email of 18 November 2016 (338C) that she told him to make sure he covered everything that had been raised, and in detail, in order to find a resolution. He should try to gain a full understanding of the reasons which might perhaps be something else like an unresolved historical issue. Mr France said that he was told by human

resources to conduct the meeting as he did. This evidence from human resources does not support that evidence.

21. That meeting took place on 01 September 2015. The claimant and Mr Sked said that Mr France was very confrontational, to the point of being aggressive, loud to the point of shouting, and read from a preprepared document without brooking any interruption and stated that he was the senior member of staff, she was junior and she should never impugn his authority in this way again. Mr France said that he took advice from HR that he should set out his position clearly in this way, forcefully, and then have a discussion. The one point that is agreed upon is that after Mr France had done this there was a second part of the meeting where he was less confrontational. However that was not what human resources had said (388C).

22. The Tribunal has no difficulty in accepting the claimant's and Mr Sked's version of events. Mr France's evidence throughout was tailored to his later account. His stated reason for dealing with meeting in this way was not backed up by the human resources account some months later. In his own witness statement at paragraph 23 he said that he had considered matters carefully after receiving the email of 15 July 2015. In order to clarify his thoughts he spoke to Jane Britton, Assistant Director of Operations, and chatted with other area managers to *"sense check"* his position and *"therefore"* he emailed the claimant as he did. In cross-examination he accepted that he did not do any of those things before emailing her in reply less than ½ hour later. The witness statement is designed to shed the best possible light on Mr France's own actions. Another example is at paragraph 37, with reference to the pop-in centre, Mr France stated that the claimant and Lizzie O'Sullivan had only done 3 lunch covers at 1.5 hours per session. That was true at one prior point, but at the time of the claimant's email he had rota'd the claimant and Lizzie O'Sullivan each for half a day a week.

23. Mr France produced an undated document (113) that he said in oral evidence was notes of this meeting prepared more or less contemporaneously, but could not be as it referred to emails *"over the next few weeks"*.

24. Mr France had received a complaint from the claimant that two colleagues, Hannah and Stephanie, did not work proper hours and spent too much time on Facebook, which was favouritism and made their removal from the pop-in rota even more unfair. The extent of his investigation was to ask them whether it was true, and accept their word that it was not. Mr France accepted that it was entirely possible for him to get a printout of their entry and exit times by reference to their key fobs, necessary to enter the building and to leave it. He could have asked IT to give him a breakdown of how much time they had each spent on Facebook. The obvious way of dealing with this concern of the claimant was to obtain that information, and if it showed nothing untoward to explain to the claimant that she had a misapprehension. If there was something in it then he could say that he was investigating and would deal with it. As it was, Mr France simply took the word of the two people who reported directly to him, and did not take seriously the concerns of the claimant. Since the claimant's complaint was that these two were being favoured, above others, this was simply to confirm to her that her concerns were correct.

25. Mr Sked has no reason to make up his account of that meeting. It was suggested that he was in some way jealous of Mr France's position as they both applied for the same role. Mr Sked's evidence was characterised by its directness and candidness, and the Tribunal entirely accepted it. He said that there were a lot of people in the competition for that job. He was eliminated at one point, and then expressed the wish to his colleague, Mr France, that he hoped that he, Mr France, would get the job rather than an outsider. This was not challenged by Mr France.

26. Mr Sked sent an email (111) on 04 September 2015 to Ms Lambert of human resources, where he does not set out matters as directly as he does now. He was being diplomatic. He did refer to Mr France being *"very confrontational"* and that the claimant was being *""spoken to" without the opportunity to respond"*.

27. The Tribunal noted also that when Gail Walters investigated this, at some length, her view was that the meeting had been greatly mishandled by Mr France. Her view was that this did not constitute bullying, because in her view bullying has to be intentional. Her view was that Mr France had genuinely intended the meeting to have a positive outcome, but had mishandled it.

28. The Tribunal's view is that while bullying may have an intentional and mental element it is entirely possible to bully people simply by the way one behaves. The critical part is how the bullied person feels. Otherwise a person with no moral sensitivity could never be a bully. That he may not have intended to do so at the beginning of the meeting is not to the point. However the Tribunal finds that Mr France intended to approach the meeting by having at its commencement a *"laying down the law"* session, where he comprehensively denied the concerns of the claimant before trying to have a more constructive discussion. The prospect of there being a constructive discussion after that start was considerably reduced, for that reason. The Tribunal finds as a fact that the conduct of this meeting by Mr France was bullying behaviour.

29. Mr France referred to whistleblowing. Mr France had been told by Terri Lambert of human resources on 17 August 2015 that the claimant had mentioned whistleblowing. In the meeting Mr France said he said only that this was not public interest disclosure. The claimant and Mr Sked are clear that Mr France said that to raise public interest disclosure like this was a sackable offence, and the Tribunal so finds.

30. On 30 September 2016 the claimant went off on sick leave. She thought she had a severe chest infection: it turned out to be a heart condition that required a lot of management and she was off work until 05 January 2016 by reason of it.

31. Human resources asked her on several occasions whether she was to raise a grievance or not. She said she intended to do so. She also said that she did not want Mr France to deal with her return to work. Mr France was told this, and that he was not to do so. Human resources then wrote to the claimant by email on 23 December 2015 at 16:23 to say in the absence of a grievance it would be *"business as usual"*. On the same day, 23 December 2015, at 22:52 the claimant replied by email (128) to Terri Lambert of Human resources that she would submit her grievance prior to her return to work.

32. Mr France telephoned the claimant on 31 December 2015 and emailed her on that day (131). He emailed her again on 05 January 2016. This was not in compliance with the human resources direction that he should not do so. He said the *"business as usual"* email meant that he should just carry on, which was to ignore the response from the claimant, the same day, to say that a grievance would go in before she returned to work (and it did, on 04 January 2016). Mr France could not have acted on the *"business as usual"* email before the claimant's reply, because the email was sent to the claimant at 16:23, and the reply from her came in that evening.

33. The claimant's grievance was sent to the Director General on 04 January 2016 (136 et seq). It expressly states that the claimant was *"accused"* of whistleblowing and states that she had not had that intention. It says that she was accused of breaching TRBL's IT policy by sending in her concerns from her personal email. The use of the word *"accused"* is significant. In her oral evidence it became clear that the claimant thought that she was at risk of her job. This was because the respondent was saying that this was not public interest disclosure. She thought it was public interest disclosure, but did not

want to say so for fear of losing her job. Therefore she complained about being threatened with dismissal. In case she might be dismissed, she denied what she thought; that it was public interest disclosure. She had union advice at this time. The claimant was seeking a resolution of the problem at this time, not an Employment Tribunal claim. She did not want to lose her job. The Tribunal accepts her evidence on this point.

34. On 06 January 2016 Sandra Fruish was appointed temporary line manager. On 17 February 2016 Lizzie O'Sullivan was appointed her manager (185).

35. There were then attempts to arrange a meeting. For various reasons which do not attract blame this did not happen until 09 March 2016.

36. There was to be a staff meeting on 03 March 2016. The claimant would normally have attended, as would Mr France. On 05 February 2016 Sandra Fruish emailed the claimant (174) to say *"if you are unable to attend the team meeting…",* so that clearly it was expected that the claimant would be there. On 12 February 2016 she was notified of it by Carole Mendoza of human resources (176). The claimant replied on 16 February 2016 (180) asking *"Am I allowed to attend this meeting?"*. She was later told she was not allowed to attend, for the reasons that follow.

37. In the meantime another issue arose.There had been a practice of keeping signed blank cheques in the office. In July 2015 Mr Sked had issued an instruction that this was not to continue, and that if it did it would be a disciplinary matter. In Mr Sked's absence through illness the claimant came across 4 signed blank cheques, signed by Lizzie O'Sullivan and in a drawer of an unlocked desk. She destroyed them. She pondered what to do. She did not feel able to take this up with Lizzie O'Sullivan. She did not wish to go to Mr France about it. Mr Sked was away ill. She emailed Sandra Fruish at 10:39 am on 18 February 2016 (188). She said she could not turn a blind eye to it, given what Keith Sked had said in July 2015. She said she had to make someone aware so she brought it to the attention of Sandra Fruish as acting line manager. At 2:06pm on 18 February (186) Sandra Fruish replied this was not within her jurisdiction because it was an operational matter and she had no authority in that area. She said it was not related to personnel line management, for which she was responsible for the claimant.

38. The claimant's evidence about the instruction from their line manager Mr Sked is demonstrably correct. On 28 September 2015 Ms O'Sullivan emailed (123) the claimant and Alison Hunt *"Keith found the signed cheques in the drawer – I got into trouble! I said they were left over from when I went away in case you needed to make an emergency payment which is true… I asked him to get clarification about the cheque signing process and getting Carolyn authorised so watch this space… But for now I will not sign any more!!!! Thanks."* The claimant was not authorised to sign cheques, and that order was never altered or rescinded. Accordingly the signing of the blank cheques by Ms O'Sullivan was in breach of a clear instruction not to do so. The justification offered for signing the cheques is exactly the same as that in this email. The claimant was entirely correct in her view of the signed blank cheques, and in her view that it would be wrong to ignore them.

39. Ms Fruish told the claimant to take the matter up with Lizzie O'Sullivan herself, and copied the claimant's email to Lizzie O'Sullivan and to James France (188). Sandra Fruish said this was a matter for Ms O'Sullivan as AITL. This was to make the person who had written the blank cheques in charge of dealing with the issue, which is plainly not right.

40. The next day, 19 February 2016 at 09:59 the claimant emailed Carol Mendoza and Natasha O'Brien, both in human resources, saying that she did not think it was right that she was told to address the issue with Lizzie, when it was Lizzie who left the blank signed

cheques in the desk area where they sat. She did not know what she was expected to say.

41. At 3:52 on 19 February 2016 Natasha O'Brien emailed the claimant to say she had drawn the attention of management to it. That was Mr France, who had already been copied the original email by Ms Fruish.

42. On 23 February 2016 Mr France emailed the claimant and Lizzie O'Sullivan (193), and copied Carol Mendoza and Natasha O'Brien from HR and Jane Britton, Assistant Divisional Officer. He stated that there was no rule breach. He said that it was a perfectly sensible and logical decision of Lizzie as AITL (advice and information team leader) to have some blank signed cheques available to the team should there be an emergency. *"By doing so, and by putting appropriate measures in place, she demonstrated a degree of trust in the individuals in the team, thereby giving them the flexibility and the opportunity to complete their roles with some measure of independence."* He continued *"I am surprised that an internal, operational and nonemergency situation was referred to an outside manager and even more surprised that, having received appropriate and sensible advice from that area manager, the decision was taken to escalate the matter to an entirely different department. This matter is now closed."*

43. This is a further piece of evidence which indicates Mr France's attitude to the claimant was hostile. There was no need for such a public rebuke, for that is what it was. It is even more surprising that there is no hint of criticism in respect of the blank signed cheques. It appears that TRBL has no policy about signed blank cheques which, while surprising, is nevertheless a finding of fact. Mr France said that he did not know that Mr Sked had prohibited the signing of blank cheques and would have countermanded it had he known of it. If there were blank cheques everyone understood that the cheques should be in a locked box, which box should be kept in a locked cupboard. These cheques were simply on or in a desk. Mr France excuses this by saying that to gain access to the desk where the cheques were it was necessary to use a key fob to get into the building and then through a simplex lock into the room in question. However he accepted that the cleaner had free access to all parts of the building, that there were numerous volunteers who attended, and that there were other visitors who came to the building. Everyone knows that blank cheques are an accident waiting to happen, and it was common ground that if there are such cheques they must be locked away. When the claimant was pointed at mediation with Mr France it is no surprise that she did not embrace that prospect. She did not trust him, and had good reason not to do so.

44. On 22 February 2016 Lizzie O'Sullivan emailed (195) Sandra Fruish and the claimant to say that she regretted that the claimant did not speak to her directly and that she had told Mr France why she made the decision to make signed cheques available.

45. On 23 February 2016 at 11:17 (193) the claimant clicked *"reply to all"* and added her union rep to say that she was acting on strict instructions about blank cheques and had reported to her line manager, because since she returned to work in January she had not been told the procedure had changed. She asked that all contact from Mr France should be via a third party. She was unjustifiably criticised for so doing.

46. On Friday 26 February 2016 Carole Mendoza wrote to Mr France and to Ms Lambert by email to tell them of the grievance lodged by the claimant about their actions (199 and 201).

47. On Friday 26 February 2016 at 11:19 Lizzie O'Sullivan emailed the claimant (203) *"I am writing to request that until your grievance has been resolved you refrain from coming into the office to work or attend the team meeting next week. I appreciate that you will be*

disappointed, but this decision has been taken in consultation with Line Management and Human Resources. It has taken much longer than anticipated to conclude your grievance and this delay has caused anxiety for the people you have named in this. As you will appreciate we have a duty of care towards the health and safety of all the staff involved in the process so have had to make this decision in light of that duty."

48. It had been previously agreed that the claimant and Mr France would not attend the office on the same day, and that was not difficult to organise. It had worked up until then. This was plainly Lizzie O'Sullivan reacting to the claimant's reporting of the blank cheques issue, and the line manager, Mr France - who the email indicates was consulted - reacting to the grievance lodged against him.

49. Blank cheques are inherently risky – hence the common expression about giving a blank cheque – and these cheques were, everyone agrees, not locked away but on a desk, even if in an office through which access was obtained through doors for which a key fob then a simplex lock was needed. The potential for abuse of British Legion funds is obvious, and this reporting of blank cheques by the claimant to Sandra Fruish is plainly a public interest disclosure. Exclusion from the office, which extended for the 11 weeks before the claimant went off sick, is a detriment directly resulting from that disclosure. It was the person about whom the disclosure was made who excluded the claimant from the workplace. The reason given is spurious.

50. At the beginning of May 2016 the claimant was signed off with work related stress, and did not to return to work. She received her grievance outcome on 19 May 2016 (266-272), appealed it on 18 July 2016 (282-283) and got that outcome on 07 December 2016 (299-305), and resigned (306-308) on 16 December 2016, commencing her letter that no resolution had been put forward to enable her to return to her position and to continue to work for the respondent.

51. The Acas early conciliation period was 04 April 2016 - 18 May 2016, and the public interest disclosure claim was filed on 17 June 2016.

52. The grievance outcome found no point in favour of the claimant. The decision-maker suggested a voluntary process of mediation. The grievance was conducted by Mr Watkins, Chief Information Officer. He was an appropriate person to conduct the grievance because he had no other connection with any of the individuals. The grievance appeal was taken by Ms Walters, who had no connection with any of the individuals or events, because she joined the respondent in June 2016. She was an appropriate person to take the grievance appeal.

53. Her grievance appeal outcome letter (299 et seq) upheld many of the points that the claimant made. Perhaps the matter which vexed the claimant most was the meeting of 01 September 2015. Ms Walters found that meeting was conducted inappropriately, but did not find it to be bullying. Her reason for so concluding was that she thought that Mr France mishandled the meeting, but did not intend to bully the claimant. She felt that it could not be categorised as bullying because he had no intention, in her mind, so to do. The Tribunal's view of this is at paragraph 28 above.

54. The grievance appeal outcome did not deal with the matter of the cheques. While this features in the resignation letter, it did not loom large in the very large amount of material for Ms Walters to deal with. It is in the written response of the claimant (256), but not in the formal grievance letter (which predated the cheques issue), or the grievance appeal (282 *et seq*). That Ms Walters did not deal with it in the outcome letter was understandable.

55. The grievance outcome decision found no evidence that there had been any breach of confidentiality. Ms Walters was told by human resources that they had asked IT to search for evidence that Ms Lambert had shared the claimant's emails with Mr France (93 and 196), and that none had been found.

56. On 02 August 2017 the respondent accepted (4) that this was incorrect and that the claimant was correct in this regard. The breaches of confidentiality were not properly addressed by the respondent. Ms Walters did not have the advantage of dealing direct with IT. It was human resources who did that, and who conveyed the information to Ms Walters that there had been no breach of confidentiality. Since it was they who were said to have breached confidentiality this was not ideal.

57. The grievance appeal outcome letter concluded with three recommendations. First that the claimant would be welcome back to work, and as already recommended in the original grievance outcome, Ms Walters recommended that the claimant and Mr France attend mediation by an external party. This was a voluntary process and the claimant was requested to let Ms Walters know by 19 December 2016 whether she would be prepared to participate.

58. The outcome letter also stated that *"Appropriate management action will be taken against Mr France in relation to his conduct at your meeting with him on 01 September 2015. Due to data protection legislation details of this action will remain confidential between JF and his line manager".*

59. The third point addressed was that there were concerns about the standard of the grievance outcome letter (she was sent a draft not the final version intended) and omissions in sending notes of grievance meeting. Both the employees involved in that had now left the respondent. The issues would be brought to the attention of the Director of Human Resources to ensure that improvements were made.

60. The Tribunal made enquiry of Mandy Heal as to who in the human resources team was still present. Only Carole Mendoza remained. The rest had gone. This was because it had been considered that the Human Resources department was "*not fit for purpose"* - her words - and was not impartial and was dictatorial. It is through this lens that the entirety of the actions of the respondent towards the claimant have to be seen.

61. The claimant resigned by letter of 16 December 2016 (306-308) a few days after receiving that outcome letter. While a lot of detail follows, the headline paragraph stated *"You have put forward no resolution to encourage me to put behind me what I had been subject to at work to enable me to return to my position and to continue to work for the Royal British Legion."*

62. The Tribunal does not agree with Counsel's submission that the claimant would have resigned unless the grievance appeal had upheld her grievance in full. Her problem was not in looking back at what had happened, but in seeing it to be impossible to contemplate return.

63. The second, unfair dismissal, claim had an Acas period of 06 January 2017 - 06 February 2017, and the second claim was filed on 12 April 2017. It repeated all the claims in the first claim, and added further asserted detriment subsequent to the date of the first claim, and added that the resignation was a constructive unfair dismissal, the reason being an alleged breach of mutual trust and confidence. It is not said that the unfair dismissal claim is out of time.

64. The second claim includes a claim for holiday pay. The claimant was not paid for holiday accrued but not taken. She was overpaid for the month of October 2016. She received

full pay not the half pay to which she agrees she was entitled. She asserts that the calculation is incorrect, and that she was underpaid. The difference may be to do with gross pay and net pay and the impact of tax and national insurance on the overpayment. However it is for the claimant to prove her claim and there is no evidence before the Tribunal on which it could find that the calculations made by the respondent are incorrect.

65. The finding of facts was greatly facilitated by the composed and measured - and skilful - way the claimant presented her claim and in the way she cross examined the respondent's witnesses. This was of help also to Counsel for the respondent, as very often a litigant in person will present a case in a way that makes the task of Counsel for the respondent very difficult.

Law

66. Having established the above facts, we now apply the law.

Public Interest Disclosure

67. Claims must, by S48 be made within 3 months:

(3) An employment tribunal shall not consider a complaint under this section unless it is presented—

(a)before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(4) For the purposes of subsection (3)—

(a) where an act extends over a period, the "date of the act" means the last day of that period, and

(b) a deliberate failure to act shall be treated as done when it was decided on; and, in the absence of evidence establishing the contrary, an employer, a temporary work agency or a hirer shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done."

68. The statutory provisions as to public interest disclosure are in the Employment Rights Act 1996:

"43A
Meaning of "protected disclosure".

In this Act a " protected disclosure " means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H.

43B
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, (and it is this subsection upon which the claimant relies)

(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.

43C
Disclosure to employer or other responsible person.

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

(a) to his employer, or

(b) where the worker reasonably believes that the relevant failure relates solely or mainly to—
(i) the conduct of a person other than his employer, or
(ii) any other matter for which a person other than his employer has legal responsibility,
to that other person."

69. An employee has a right not to be subject to detriment for having made a public interest disclosure:

"47B
Protected disclosures.

(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.

(1A) A worker ("W") has the right not to be subjected to any detriment by any act, or any deliberate failure to act, done—

(a) by another worker of W's employer in the course of that other worker's employment, or

(b) by an agent of W's employer with the employer's authority,

on the ground that W has made a protected disclosure.

(1B) Where a worker is subjected to detriment by anything done as mentioned in subsection (1A), that thing is treated as also done by the worker's employer.
(1C) For the purposes of subsection (1B), it is immaterial whether the thing is done with the knowledge or approval of the worker's employer."

70. The law on public interest disclosure, subsequent to Parkins v Sodexho [2001] UKEAT 1239_00_2206, [2002] IRLR 109 and the amendment of S43B, is clearly and recently explained in Chesterton Global Ltd & Anor v Nurmohamed & Anor (Rev 1) [2017] EWCA Civ 979.

"PRELIMINARIES

26. The issue in this appeal turns on the meaning, and the proper application to the facts, of the phrase "in the public interest". But before I get to that question I would like to make four points about the nature of the exercise required by section 43B (1).

27. First, and at the risk of stating the obvious, the words added by the 2013 Act fit into the structure of section 43B as expounded in Babula (see para. 8 above). The tribunal thus has to ask (a) whether the worker believed, at the time that he was making it, that the disclosure was in the public interest and (b) whether, if so, that belief was reasonable.

28. Second, and hardly moving much further from the obvious, element (b) in that exercise requires the tribunal to recognise, as in the case of any other reasonableness review, that there may be more than one reasonable view as to whether a particular disclosure was in the public interest; and that is perhaps particularly so given that that question is of its nature so broad-textured. The parties in their oral submissions referred both to the "range of reasonable responses" approach applied in considering whether a dismissal is unfair under Part X of the 1996 Act and to "the Wednesbury approach" employed in (some) public law cases. Of course we are in essentially the same territory, but I do not believe that resort to tests formulated in different contexts is helpful. All that matters is that the Tribunal should be careful not to substitute its own view of whether the disclosure was in the public interest for that of the worker. That does not mean that it is illegitimate for the tribunal to form its own view on that question, as part of its thinking – that is indeed often difficult to avoid – but only that that view is not as such determinative.

29. Third, the necessary belief is simply that the disclosure is in the public interest. The particular reasons why the worker believes that to be so are not of the essence. That means that a disclosure does not cease to qualify simply because the worker seeks, as not uncommonly happens, to justify it after the event by reference to specific matters which the tribunal finds were not in his head at the time he made it. Of course, if he cannot give credible reasons for why he thought at the time that the disclosure was in the public interest, that may cast doubt on whether he really thought so at all; but the significance is evidential not substantive. Likewise, in principle a tribunal might find that the particular reasons why the worker believed the disclosure to be in the public interest did not reasonably justify his belief, but nevertheless find it to have been reasonable for different reasons which he had not articulated to himself at the time: all that matters is that his (subjective) belief was (objectively) reasonable.

30. Fourth, while the worker must have a genuine (and reasonable) belief that the disclosure is in the public interest, that does not have to be his or her predominant motive in making it: otherwise, as pointed out at para. 17 above, the new sections 49 (6A) and 103 (6A) would have no role. I am inclined to think that the belief does not in fact have to form any part of the worker's motivation – the phrase "in the belief" is not the same as "motivated by the belief"; but it is hard to see that the point will arise in

practice, since where a worker believes that a disclosure is in the public interest it would be odd if that did not form at least some part of their motivation in making it.

31. Finally by way of preliminary, although this appeal gives rise to a particular question which I address below, ***I do not think there is much value in trying to provide any general gloss on the phrase "in the public interest". Parliament has chosen not to define it, and the intention must have been to leave it to employment tribunals to apply it as a matter of educated impression****. …"*

71. The correct approach as to whether a matter is in the public interest is at paragraph 37:-

"37. Against that background, in my view the correct approach is as follows. In a whistleblower case where the disclosure relates to a breach of the worker's own contract of employment (or some other matter under section 43B (1) where the interest in question is personal in character), there may nevertheless be features of the case that make it reasonable to regard disclosure as being in the public interest as well as in the personal interest of the worker. Mr Reade's example of doctors' hours is particularly obvious, but there may be many other kinds of case where it may reasonably be thought that such a disclosure was in the public interest. The question is one to be answered by the Tribunal on a consideration of all the circumstances of the particular case, but Mr Laddie's fourfold classification of relevant factors which I have reproduced at para. 34 above may be a useful tool. As he says, the number of employees whose interests the matter disclosed affects may be relevant, but that is subject to the strong note of caution which I have sounded in the previous paragraph."

72. The four fold classification on paragraph 34 is:

"(a) the numbers in the group whose interests the disclosure served – see above;

(b) the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed – a disclosure of wrongdoing directly affecting a very important interest is more likely to be in the public interest than a disclosure of trivial wrongdoing affecting the same number of people, and all the more so if the effect is marginal or indirect;

(c) the nature of the wrongdoing disclosed – disclosure of deliberate wrongdoing is more likely to be in the public interest than the disclosure of inadvertent wrongdoing affecting the same number of people;

(d) the identity of the alleged wrongdoer – as Mr Laddie put it in his skeleton argument, "the larger or more prominent the wrongdoer (in terms of the size of its relevant community, i.e. staff, suppliers and clients), the more obviously should a disclosure about its activities engage the public interest" – though he goes on to say that this should not be taken too far."

73. Under section 95(1)(c) of the Employment Rights Act 1996 ("the Act"), an employee is dismissed if he terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.

74. If the claimant's resignation can be construed to be a dismissal then the issue of the fairness or otherwise of that dismissal is governed by section 98 (4) of the Act which provides "…. the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) – (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient

reason for dismissing the employee, and – (b) shall be determined in accordance with equity and the substantial merits of the case".

75. We have considered the cases of Western Excavating (ECC) Limited v Sharp [1978] IRLR 27 CA; Malik v Bank of Credit and Commerce International SA [1997] IRLR 462 HL; Omilaju v Waltham Forest London Borough Council [2005] IRLR 35 CA; Woods v WM Car Services (Peterborough) Ltd [1981] ICR 666 CA; Buckland v Bournemouth University Higher Education Corporation [2010] IRLR 445 CA; Claridge v Daler Rowney [2008] IRLR 672; Sainsbury' Supermarkets Limited v Hitt [2003] IRLR 23 CA; Lewis v Motorworld Garages Ltd [1985] IRLR 465. [implied term health and safety/stress] Marshall Specialist Vehicles Ltd v Osborne [2003] IRLR 672 EAT and Sutherland v Hatton [2002] IRLR 263 CA.

76. We have also considered section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992, and in particular section 207A(2), (referred to as "s. 207A(2)") and the ACAS Code of Practice 1 on Disciplinary and Grievance Procedures 2009 ("the ACAS Code").

77. The best known summary of the applicable test for a claim of constructive unfair dismissal was provided by Lord Denning MR in Western Excavating (ECC) Limited v Sharp [1978] IRLR 27: *"If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment; or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract; then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of his employer's conduct. He is constructively dismissed. The employee is entitled in these circumstances to leave at the instant without giving any notice at all or, alternatively, he may give notice and say he is leaving at the end of notice. But the conduct must in either case be sufficiently serious to entitle him to leave at once. Moreover, he must make up his mind soon after the conduct of which he complains: for, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged. He will be regarded as having elected to affirm the contract."*

78. With regard to trust and confidence cases, Dyson LJ summarised the position thus in Omilaju v Waltham Forest London Borough Council [2005] IRLR 35 CA: The following basic propositions of law can be derived from the authorities: 1. The test for constructive dismissal is whether the employer's actions or conduct amounted to a repudiatory breach of the contract of employment: Western Excavating (ECC) Limited v Sharp [1978] 1 QB 761. 2. It is an implied term of any contract of employment that the employer shall not without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee: see, for example Malik v Bank of Credit and Commerce International SA [1998] AC 20, 34H – 35D (Lord Nicholls) and 45C – 46E (Lord Steyn). I shall refer to this as *"the implied term of trust and confidence"*. 3. Any breach of the implied term of trust and confidence will amount to a repudiation of the contract, see, for example, per Browne-Wilkinson J in Woods v WM Car Services (Peterborough) Ltd [1981] ICR 666 CA, at 672A; the very essence of the breach of the implied term is that it is calculated or likely to destroy or seriously damage the relationship. 4. The test of whether there has been a breach of the implied term of trust and confidence is objective. As Lord Nicholls said in Malik at page 35C, the conduct relied on as constituting the breach must: *"impinge on the relationship in the sense that, looked at objectively, it is likely to destroy or seriously damage the degree of trust and confidence the employee is reasonably entitled to have in his employer*".

79. In Buckland v Bournemouth University Higher Education Corporation [2010] IRLR 445 CA, in which the applicable test was explained as: (i) in determining whether or not the

employer is in fundamental breach of the implied term of trust and confidence the unvarnished Malik test should be applied; (ii) If, applying Sharp principles, acceptance of that breach entitled the employee to leave, he has been constructively dismissed; (iii) It is open to the employer to show that such dismissal was for a potentially fair reason; (iv) If he does so, it will the be for the employment tribunal to decide whether the dismissal for that reason, both substantively and procedurally (see Sainsbury's Supermarkets Ltd v Hitt [2003] IRLR 23 CA) fell within the range of reasonable responses and was fair."

80. The same authorities also repeat that unreasonable conduct alone is not enough to amount to a constructive dismissal (Claridge v Daler Rowney [2008] IRLR 672); and that if an employee is relying on a series of acts then the tribunal must be satisfied that the series of acts taken together cumulatively amount to a breach of the implied term (Lewis v Motorworld Garages Ltd [1985] IRLR 465). In addition, if relying on a series of acts the claimant must point to the final act which must be shown to have contributed or added something to the earlier series of acts which is said, taken as a whole, to have broken the contract of employment (Omilaju v Waltham Forest London Borough Council [2005] IRLR 35 CA).

Submissions

81. The claimant provided written submissions, but did not feel well enough to attend the hearing on the day submissions were to be given. Counsel for the respondent had provided written submissions running to 37 pages, largely dealing with the law, and was intending to speak to them. The Tribunal acceded to Counsel's sensible suggestion that the Tribunal spend the day considering its findings of fact, that she would prepare a written note of what she had intended to say, which she would ensure was emailed to the Tribunal by 9:00 on the next and last day of the hearing, and that the Tribunal should then be able to consider all the submissions and come to final conclusions. Because it would have been the claimant to speak last, Counsel did not have a copy of the claimant's submissions. Those further submissions, of 16 pages, were received in the morning of day 5 of the hearing, and the Tribunal spent the day in Chambers considering the case and in making this decision. This decision does not record all the submissions made, as they are all in writing, but they were considered carefully and the issues addressed in them have formed part of the fact finding process in the making of the decision of the Tribunal.

Decision

82. The issues the Tribunal has to determine were set out in the case management hearing on 16 October 2016. Slightly corrected for syntax they were:

83. Public interest disclosure claims:

83.1. What did the claimant say or write?

83.1.1. The claimant alleges that she made her "first disclosure" which concerned alleged favouritism within her team and comprised the following:

83.1.1.1. an email on 15 July 2015 to Ms Lambert (regional HR manager);

83.1.1.2. an oral complaint to Ms Britton on 06 August 2015;

83.1.1.3. emails to Mr Sked on 11 and 14 August 2015.

83.1.2. The claimant alleges that she made a "second disclosure" by email on 18 February 2016 to Ms Fruish which concerned her alleged discovery of blank, signed cheques.

83.2. In any or all of these, was information disclosed which in the claimant's reasonable belief tended to show that;

83.2.1. In the case of the first disclosure, that the alleged favouritism which had been shown was the breach of a legal obligation (the implied term of mutual trust and confidence as in Douglas v Birmingham City Council UKAEA T/518/02/ILB);

83.2.2. In the case of the second disclosure, that there was a potential breach of a legal obligation, the potential misuse of the respondent's funds.

83.3. If so, did the claimant reasonably believe that the disclosure was made in the public interest? The claimant relies upon the following as going to show the reasonable belief:

83.3.1. In relation to the first disclosure, that other members of her team (6) might been affected;

83.3.2. That beneficiaries and/or trustees would have wanted to have known about the potential loss to the respondent.

83.4. If so was that disclosure made to her employer? The respondent does not dispute that the disclosures were made to the employer.

83.5. If protected disclosures are proved, was the claimant, on the ground of any protected disclosure found, subject to detriment by the employer or another worker in that;

83.5.1. The incidents contained within paragraphs 17 – 22, 24, 26, 27, 29, 30, 33, 34, 42 and/or 43 of the claim form occurred as a result of the first disclosure and were perpetrated by Mr France and/or Ms Lambert;

83.5.2. The incidents complained of are contained within paragraphs 48, 52, 54, 55, 57, 59 and/or 61 – 62 of the claim form occurred as a result of the first disclosure and were said to be perpetrated by Mr France, Ms Fruish, Ms O'Sullivan, Ms Mendoza and Mr Watkins.

84. Time/limitation issues

84.1. The claim form was presented on 17 June 2016. Accordingly, any act or omission which took place more than three months before that date (allowing for any extension under the early conciliation provisions) is potentially out of time, so that the Tribunal may not have jurisdiction.

84.2. Can the claimant prove that there were a series of similar acts or omissions which are to be treated as done at the end of that period? Is such conduct accordingly in time?

84.3. If not was it:

84.3.1. not reasonably practicable for the claim to have been presented in time?

84.3.2. presented within such further time as was reasonable?

85. The case management hearing stated at paragraph 10 *"The claimant has suggested that she may be seeking damages for personal injury and has served a medical report on the respondent. If the respondent considers that any further such evidence is required no doubt the appropriate application will be made."* No such application was made, and the medical report of the claimant was contained in the bundle prepared by the respondent. The respondent provided R10 as to quantum for such a claim. Although there has been no other direction or application, the parties expected this to be a claim to be resolved by the Tribunal, and it was so stated at the start of the hearing. The Tribunal records that there is a personal injury claim in these proceedings. The defence to it is that if there was the claim is out of time, there was no public interest disclosure, and there was no detriment.

86. The Tribunal determines those issues as follows. First the question of whether the public interest disclosure claims are in time. If they are a series of actions then they are in time, provided the last in that series was no later than 3 months plus the Acas conciliation period before the date of issue, which was 17 June 2016. The Acas period was 04 April 2016 - 18 May 2016, which is 51 days. The claim was issued 30 days after the Acas certificate. That is one month. If the date of the last is 2 months before the Acas period started the claim is out of time. That date is 04 February 2016. The cheques matter was after that. It was a different disclosure, unrelated to the earlier disclosures. Those earlier disclosures were made in February 2015, and were the subject of the grievance made on 04 January 2016.

87. Accordingly the claim is in time if there was a series of matters. A series of matters does not have to be a series of similar matters. There is a link between all the matters set out in the narration of facts. To separate them would be artificial. The claim is therefore in time. The cheques issue was a different matter, but the reaction of the respondent was clearly conditioned by what had happened before and was a detriment. There is a link between the treatments received. The claims are all in time.

88. Were the matters of favouritism public interest disclosures? The Tribunal has considered the case law above. There was a small number of people involved, 6. The other person primarily involved was Lizzie O'Sullivan. Her response to the email of 15 July 2015 (83), sent to her by the claimant was on the same day (87). It said *"Reading between the lines I guess we just have to get on with it"* and *"our figures show that we are busy but not completely overstretched"*. The claimant stresses the very public and national nature of the Royal British Legion, and says that this is the breach of a legal obligation (the duty of mutual trust and confidence) and so is a matter of public interest. This is also a large employer. The Tribunal sees the force of this, but if it were so it would be a return to *Parkins v Sodexho* for any employer who is of public interest. There is a vast swathe of those in such employment - including soldiers, teachers, everyone in the health service and the fire brigades and police. It is an employment issue, and not, in the Tribunal's judgment, a public interest disclosure.

89. In addition the grievance is largely claimant focussed. That makes it no less a grievance, and the grievance does not have to be solely or even mainly about the public interest for it to be so. There does have to be more than incidental connection with the public interest, and here there is not.

90. Accordingly the Tribunal decided that the first set of disclosures, while meeting all the other tests, and in time, do not qualify as *"in the public interest"*. They are internal employment matters.

91. The email to Sandra Fruish of 18 February 2016 (188), was clearly a public interest disclosure, applying the same tests. Blank cheques are an accident waiting to happen. The public provides the money that the Royal British Legion has, and is to use in looking after those for whom it provides support. This is very different to an issue of employment relations. There is a public interest element to a disclosure that relates to the possibility of abuse or loss of the respondent's funds. The email is clearly in time, as a stand alone disclosure, for it would have had to have been before 04 February 2016 to be out of time.

92. The next question is whether the claimant suffered detriment as a result. The claimant did suffer detriment. She was excluded from the workplace as a direct consequence of this disclosure, by the email sent to her by Ms O'Sullivan on 26 February 2016 (203). She was barred from a team meeting to be held on 03 March 2016, and not allowed to enter the office until her grievance procedure was ended. That was not until 07 December 2016 (299). That the claimant was away from work with work related stress from June 2016 is not to the point. The claimant would still have been excluded. She was ostracised by those with whom she worked by reason of that disclosure and that was a detriment.

93. The claimant makes a claim for personal injury on the *Sheriff v Klyne Tugs* principle. It is asserted that a consequence of the detriment was mental health problems, and she has provided a psychiatric report that states (377) that the claimant has an adjustment disorder *"fully related to the work situation"*. This was not challenged by the respondent, which has not sought its own medical report. Accordingly the Tribunal so finds. It is entirely possible that the other earlier matters not found to be public interest disclosure are part of this causation. BAE Systems (Operations) Ltd v Konczak, Court of Appeal, 2017 IRLR 893 indicates that this may not be relevant to the assessment of loss. The remedy hearing will need to address this.

94. Was there a constructive unfair dismissal? The claimant asserts a breach of mutual trust and confidence by the respondent. The *"last straw"* does not have to be a breach of contract. The last straw in this case was the grievance appeal outcome.

95. The whole course of the history of the employment of the claimant is, viewed as a totality, a breach of mutual trust and confidence. This includes the meeting of 01 September 2015, the threat of dismissal for raising a public interest disclosure, the contacting of the claimant by Mr France about return to work at the end of 2015, the way the cheques issue was mishandled, the exclusion of the claimant from work, the breaches of confidentiality, the poor outcome to the first grievance hearing, and the lack of any possibility of structuring a return to work. If there were problems about the reaction of colleagues in the office about the (proper) way the claimant had handled the cheques issue, that can only be as other employees told colleagues when they should not have done. The claimant did not speak about it to others. The witness statement provided for the original grievance hearing were not provided for months. When they were provided that of Ms Britton was not provided to the claimant. The respondent has no excuse or reason for this delay and omission.

96. The grievance appeal was conducted in a way that was as fair as was possible, and we do not criticise Ms Walters for her handling of it, although it has observations about the recommendations it contained. The Tribunal did not agree with Ms Walters' conclusions about the actions of Mr France on 01 September 2015, but did not doubt that this was her genuine, if erroneous, view, and an attempt to square the circle of two divergent views of that meeting.

97. The first recommendation was the suggestion of mediation. This is, of course, a very sensible suggestion where there is a difficulty in relationships between colleagues, particularly where the difficulties are between manager and subordinate. The difficulty, explored in the hearing with Ms Walters, was that the claimant had no confidence that Mr France would approach this positively. Mr France had said in an email to Ms Walters of 15 November 2016 (338A) that at the meeting on 01 September 2015 they had *"discussed in full her original complaint and she accepted my apology for, as she put it, not taking her initial comments seriously."* The Tribunal did not find this to be correct - he did not apologise - and in any event this email was not sent to the claimant.

98. What the claimant had seen, and she refers to it in her resignation letter (308) was Mr France's comment in his witness statement to Ms Walters, sent to the claimant on 27 October 2016. It was *"You do not have to like everyone you work with and when she returns, I will work with what I have been given. She has created a level of distrust with the team after the issue with the cheque. It will be difficult to reintegrate"*.

99. When the claimant was sent these minutes she typed comments upon them and returned them for Ms Walters to consider, and Ms Walters said that she had considered them. The claimant's comment upon this statement (257) is as follows *"This is a despicable hostile comment from someone in his position. He should be completely professional and nonjudgmental. It just confirms that he dislikes me as a result of as he said in his words "questioning his management"*. There is then a further page of analysis including the observation that she continued to work with the team as normal, with no problems, until she became ill at the beginning of May. She set out that she had had a detailed discussion with Ms O'Sullivan, subsequent to the cheque issue and as far as she was concerned there was no difficulty in that relationship. It seemed to her that this was solely a matter of Mr France's attitude to her. She raised the salient point that there was no reason for anyone else in the office apart from Mr France and Ms O'Sullivan to know about the cheques matter, and she had not said anything to anyone about it. Never before had it been said to her that there were trust issues with her relationship with the team. These are all valid points for her to make.

100. It can readily be seen why the claimant did not feel confidence in mediation. Ms Walters was critical of the handling of the meeting by Mr France. The only way mediation could have stood a chance was if Mr France had been given prior notification of the outcome, tendered an apology and indicated a willingness to try to resolve matters through mediation. Given Mr France's comment, and the claimant's understandable reaction to it, Ms Walters suggestion of mediation was never going to be successful, or acceptable to the claimant.

101. The second matter relates to the recommendation that appropriate management action would be taken concerning the handling of the 01 September 2015 meeting. The claimant accepted that she would not be told, but would have liked to have known. The respondent says that is a confidential matter between employer and employee and that no other employee is entitled to know what has happened. The Tribunal respectfully disagrees. Where the resolution of a grievance that has been upheld includes action against another employee – the one who caused the grievance to be raised in the first place – transparency would indicate that at the very least consideration should have been given to setting out exactly what action was to be taken, and with what outcome. The recommendation did not say it was to be disciplinary action; it might only have been a mild rebuke, or the sending of Mr France on a management course. Further, it related only to the meeting of 01 September 2015 and not anything else.

102. Thirdly, and as confirmed by Ms Heal, the whole process had been very badly handled by human resources. It is through the lens of this mismanagement that the claimant, and

the Tribunal, have to assess whether there was a breach of mutual trust and confidence by the respondent.

103. Receipt of the grievance appeal outcome was the *"last straw"*. The Tribunal finds that there was such a breach of mutual trust and confidence, and that the appellant resigned in consequence of it and in good time. There was, as she stated at the beginning of her resignation letter, no way she could see that she could return to work. The matters set out in her grievance, largely upheld by Ms Walters (and the confidentiality breaches were not upheld but are now accepted to have occurred) are the matters that are breach of mutual trust and confidence, and as identified above. The Tribunal does not accept that the sending of emails marked "Confidential" to those to whom the claimant did not want them sent was "clumsy". It was, as Mandy Heal and Gail Walters accepted, cutting corners, and in breach of confidence. That others need to know of the contents requires the intermediate step - exemplified by the Director-General - of asking permission to divulge the content of the email in question.

104. The respondent asserts that if there was a breach of mutual trust and confidence the appellant cannot rely on it as she affirmed the contract by delay. The length of time and the use of a grievance procedure is argued by the respondent to be affirmation in this case. If that were right someone subject to a detriment by reason of a public interest disclosure could not lodge a grievance but would have to make an ET claim. That cannot be so. Both employee and employer would be deprived of the opportunity to rectify matters which a grievance affords. The length of time does not make this an affirmation. The claimant was always intending to raise a grievance, and made that intention known. The heart condition from which she suffered understandably took precedence.

105. There is no Polkey or contribution argument raised.

106. Accordingly the Tribunal finds:

106.1. All the claims are in time.

106.2. The matters raised in the first claim were not public interest disclosures.

106.3. The matters raised in the second claim are public interest disclosure.

106.4. The claimant was subject to detriments by reason of that disclosure:

106.4.1. Instruction from Mr France that the claimant deal direct with Ms O'Sullivan over the cheques.

106.4.2. The email of 23 February 2016 (193-194) in which Mr France humiliated the claimant.

106.4.3. Being required to stay away from the office by Ms O'Sullivan in the email of 26 February 2016 (203) until the resolution of her grievance (which was not until 07 December 2016 (299 et seq).

106.4.4. Being excluded from team meetings after that date.

106.4.5. The human resources department did not handle the grievance appropriately, including sending copies of documents marked confidential to the persons whom the claimant did not wish to see them.

106.4.6. Mr Watkins failing adequately to deal with the grievance.

106.4.7. In connection with the grievance appeal, failure to send in good time or at all the witness statements provided to Mr Watkins (paragraph 52).

106.4.8. Failing adequately to search for, and failing to locate, emails that were later admitted to have been sent to or by Mr France.

106.5. The claimant was unfairly constructively dismissed by reason of breach of the implied duty of mutual trust and confidence (S95(1)(c) of the Employment Rights Act 1996).

106.6. The claimant's claim for personal injury succeeds.

106.7. The claim for holiday pay is dismissed.

107. The claim is to be re listed for a remedy hearing.

_____
Employment Judge PSL Housego

Dated 15 November 2017

Judgment sent to Parties on

_____

_____