EMPLOYMENT TRIBUNALS

Claimant: Mr P Duxbury

Respondents: Dr Sarah Shaw & Dr Rebecca Clark together practising in partnership as Layton Medical Centre

HELD AT: Manchester **ON:** 19, 20 and 21 December 2016.
27 January and
23 February 2017
(in Chambers)

BEFORE: Employment Judge Sherratt
Mr Q Colborn
Mr W Haydock

REPRESENTATION:

Claimant: Litigant in person
Respondents: Mr A Famutimi, Consultant

JUDGMENT

The judgment of the Tribunal is that:

1. The principal reason for the claimant's dismissal was not that he made a protected disclosure. The claimant's claim under section 103A of the Employment Rights Act 1996 is dismissed.

2. The claimant having made protected disclosures was not subjected to any detriment done on the ground that he had made the protected disclosures. The claimant's claim under section 47B of the Employment Rights Act 1996 is dismissed.

REASONS

Introduction

1. The respondents are sisters who practise in partnership at Layton Medical Centre, Blackpool, as General Practitioners. The claimant was employed as their Practice Manager. Perhaps unusually the claimant did not have a background within the NHS prior to taking up his employment with the respondents. He had held various management roles in a number of different industries and so might be

considered as a professional manager applying his generic managerial skills within the respondents' practice.

The Evidence

2. The claimant gave evidence on his own behalf. The respondents both gave evidence and called one of their receptionist team leaders, Dawn Priestley. The bundle of documents contained in the region of 475 pages.

The Issues

3. The claimant alleges that he made one or more protected disclosures and that having done so he was subjected to detriment and that the principal reason for his dismissal was that he had made one or more protected disclosures. The respondents do not admit that the claimant made protected disclosures and say that he was dismissed for other reasons. The claimant did not have sufficient length of service to claim ordinary unfair dismissal. The alleged disclosures and detriments will become apparent below.

The Facts

4. The claimant started to work for the respondents in July 2014. We have been provided with a copy of his letter of offer but not with a statement of the main terms and conditions of his employment. The respondents had an employee handbook which included a section on whistle-blowers. The claimant had a job description for the job title Business/Practice Manager. In summary he was to provide leadership and management skills to enable the Practice to meet its agreed aims and objectives within a profitable, efficient, safe and effective working environment. Amongst the various responsibilities the claimant was to evaluate, organise and oversee staff induction and training and ensure all staff were adequately trained to fulfil their role. He was to develop Practice protocols and procedures, review and update as required. He was to develop and review health and safety policies and procedures and keep abreast of current legislation. He was to ensure service development and delivery was in accordance with local and national guidelines. He was to ensure the Practice complied with all aspects covered by the Care Quality Commission.

5. The claimant believed that the respondents had indicated to him that his status could move from employee to partner. In an email sent to them on 6 January 2016 he referred to how they would get him on board as partner. The claimant anticipated becoming the managing partner with salaried rather than equity sharing status. The respondents' view was that no such offer was made but there was nothing in writing to disabuse the claimant of his belief. The partners seem to have taken a deliberate decision not to put this in writing although their stated intention appears that they did not want to have the claimant as a partner.

6. The claimant attended meetings with other Practice Managers in the Blackpool area. On 20 November 2015 he sent an email to the respondents and to other employees of the respondents providing notes from the Practice Managers' Development Group meeting. The notes were sent to some clinical and some non clinical staff. One of the matters reported on related to the North West Ambulance Service. According to his note:

> "**Please can we not call ambulances to the practice or patients homes 'on red' unless the situation is life-threatening (use green 1 or 2**). E.G. 'life threatening' means the GP should be sat with the patient, helping them, not dealing with their next patient with the person concerned sat in the waiting room."

7. We have not been taken to any response to this email from the claimant to his colleagues but in her cross examination Rebecca Clark accepted that the claimant had been to an NWAAS briefing and had been asked to pass this information on to clinicians. She agreed with the advice in the document but in her view it was not telling them anything. She was not offended or confused by it. The claimant was not making up advice. In his later email he went one step further and started to give his personal opinion.

8. In his capacity as the Practice Manager the claimant received, on a monthly basis, the payslips that were prepared by accountants. The claimant would hand out the payslips to the employees around the time of payment of salary which was towards the end of the month. The December payslips appear to have been received by him on or about 16 December 2015. The claimant did not distribute the payslips on receipt and it would appear that he had put them away somewhere and had forgotten where they had been put. According to Lisa Banks, an employee of the respondents, she emailed the claimant on 15 January 2016 asking for her December payslip. She appears to have been aware that the accountants had posted them to the Practice in December. She, and the other members of staff, received an email from the claimant saying they must have been lost in the post but when she expressed her concern that the matter should be reported to the police/Royal Mail given that payslips contain important personal information she received no reply.

9. Duplicate payslips were received via Royal Mail on 18 January 2016 and were distributed by the Practice Manager on Tuesday 19 January 2016 at lunchtime. Lisa Banks received a message addressed only to her stating that the December payslips and related documentation had been found and destroyed, "clerical error" as they say. A colleague then searched the claimant's confidential waste bin prior to the contents being shredded and found the payslips in there. The following day she asked the claimant in writing to confirm he had found the payslips and he replied saying that they were located and destroyed.

10. The evidence of the claimant was to the effect that in simple terms he had mislaid the December payslips and that when challenged about them he acted as he did because he wanted to "save face".

11. On 20 January 2016 the claimant was scheduled to have his regular weekly meeting with Dawn Priestley, receptionist team leader, and Alison Hannon, the other receptionist team leader. According to Ms Priestley she believed the claimant wondered why she was unsettled and looking out of the window, and she explained to him that she had called for a 999 ambulance for a patient and that the ambulance seemed to be delayed as it was taking far longer to arrive than she expected. According to her the claimant questioned whether she had rung the correct number as the patient was waiting in the reception area with his spouse and perhaps she should have rung a different number for an ambulance to respond within 2-4 hours. According to Ms Priestley she said that this was not the case. She had rung the correct number due to the symptoms that the patient was suffering and as advised to

her by the Practice Nurse. According to Ms Priestley the claimant told her that she had rung an incorrect number in this instance.

12. The claimant followed up this meeting with an email to Dawn Priestley and Alison Hannon under the subject "HCP Emergency Admission Desk Aid". The email reads as follows:

> "This is the guidance I was referring to, about summoning ambulances.
>
> The advice from NWAS is that a Red 1 (8 min response) should only be used where there is an immediate life threatening condition. That means NWAS would expect the patient to be in a sufficiently serious condition that a clinician had to be present with them, right up to the time the ambulance arrived.
>
> Using this morning's example, where the A & E attendance was urgent but not immediately life threatening (and the patient was sat unaccompanied in the waiting room), an ambulance should have been called and advised to come as a Red 2 e.g. 20 minute response. Apparently this makes a real difference to NWAS as meeting their 8 min targets is very, very difficult when they are called to situations where a 20 min arrival time would be ok.
>
> In order to bypass the 999 call handling we should <u>always</u> use the xxxxx number as this gets us straight to NWAS, except of course in the case of an emergency where there is no time to check the number.
>
> Are you happy with that guidance? Do I need to brief the clinicians to remind them too?"

13. After 10 minutes Dawn Priestley responded to say that they did have the document in their ambulance book but "we go off the clinicians request at the time. Yes, the clinicians do need a reminder please of the 8/20 minute guideline".

14. The guidance document the claimant referred to deals with ambulance requests from healthcare professionals and whether they want a response within up to 8 minutes, up to 20 minutes 1-4 hours or more than 4 hours. Different phone numbers are given according to what type of admission is required. The document referred to the information to be provided including the age and gender of the patient and their status in terms of consciousness and breathing. The ambulance call taker was to be informed as to the reason for the admission and in particular if the patient showed one or more of several conditions. Following a flowchart the healthcare professional could determine which type of ambulance call was needed.

15. On 22 January 2016 at 14:36 the claimant sent an email To: AJ (nurse), JS (healthcare assistant), CL (Practice Nurse), Rebecca Clark (GP), Sarah Shaw (GP), PP (GP) and MU (GP). Cc: Alison Hannon and Dawn Priestley (the two receptionist team leaders). The content of the email was as follows:

> "**Subject:** summoning ambulances to the practice and home visits
>
> We had an instance this week where reception called 999 for an ambulance (and by default an 8 minute response), when a call to the NWAS control room for a 20 minute response would perhaps have been more appropriate. It's important we

> request the correct type of response as NWAS find meeting their 8 min target is very, very difficult when they are called unnecessarily to situations where a 20 min arrival time would have been OK.
>
> The advice from NWAS is that a Red 1 (8 min response) should only be used where there is an immediate life threatening condition. That means NWAS will expect the patient to be in a sufficiently serious condition that a clinician has to be present with them, right up to the time the ambulance arrives. If this is not the case and it's still an emergency, then NWAS ask that you use the Red 2 option e.g. 20 minute response. In order to bypass the 999 call handling we should use the xxxxx number if possible as this gets us straight to NWAS, except of course in the case of an emergency where there is no time to check the number.
>
> It's important you apply this guidance when instructing the reception team to summon an ambulance, as they will probably not question what you say if you ask for a "999" and will simply call 999 for an 8 minute response. However if you say "use the 20 minute emergency admission procedure" they will use it and call the NWAS control room.
>
> Many thanks for your help with this."

16. According to Rebecca Clark she was not in the Practice on 20 January and what had happened on that day came to her attention on 21 January when she spoke to Alison Hannon. As Dawn Priestley was not in that day Rebecca Clark arranged to talk to her the following Monday and then, according to her witness statement, "as the claimant then sent a damning email on Friday 22 January to all clinicians and non clinicians before I could sort it out, I had to jump in and send my response". This was an email sent by Rebecca Clark to the claimant on 22 January at 15:05, copied to Sarah Shaw (who was on maternity leave), on the subject of Ambulances:

> "Paul please recall that email re ambulances immediately. I have reviewed the case you're talking about with Dawn. 999 was totally appropriate. It's not your decision to send clinical advice to our staff. We need to talk about your handling of that situation please."

17. Rebecca Clark became aware that the claimant did not recall his email immediately. She called the surgery with a view to talking to him but he had already left by 15:00. As in her view things could not wait and she could not allow the content of his email to be acted upon she instructed Alison Hannon to send an email which she did at 15:13 on 22 January to the claimant and to the other people who had received his email saying:

> "Urgent message from Dr Clark. Please ignore the below email from Paul and continue to order ambulances as per GP or nurse advice. Under no circumstances does a non-clinician decide the urgency or priority of calling an ambulance."

18. On Monday 25 January at 11:47 the claimant emailed Rebecca Clark saying:

> "Remember how you felt when you got Amanda's email about out planning application? Well I feel pretty much the same after receiving these two corkers

and they gave me a pretty rotten end to my weekend! Please could we take some time to chat through this tomorrow – I'm feeling like I've been badly treated here and I'm sure you appreciate I want to get that addressed ASAP."

19. Rebecca Clark's response to this was a message to the claimant:

"We need to talk about the ambulance issue with Sarah as well, Paul, because last Thursday we had major problems with other staff about the whole issue that's needs looking at."

20. On 26 January 2016 at 12:08 an email was sent to various people, including the claimant, on the subject "Practice meeting – 26.1.16". The email informed people that the Practice meeting was postponed until Thursday 28 January as Novatis were in auditing and the room had been double booked. If there was anything that could not wait then Dr Clark should be seen.

21. On 26 January the claimant was working normally and at 14:18 sent an email to Rebecca Clark seeking advice on six matters with the first being an alleged protected disclosure related to Dr N who was at the time engaged as a locum GP:

"Dr N on-call schedule. Dr N struggled to get through his workload when he did on-call last week. He and I were here until 19:30 and Dr N said he felt concerned in case he was missing things in his consultations, which was why he over-ran. Dr N's schedule last Wednesday was the same as Dr P's regular on-call schedule, so arguably he should be able to get through it. However my recommendation would be to be pragmatic and accept Dr N completing a reduced workload, perhaps by removing one of his telephone consultation sessions. What do you think?"

22. Rebecca Clark's response to this at 14:41 was:

"On-call – you can't reduce the number of telephone queries you get by reducing the number of appointments. The volume of work is what it is. If he doesn't feel he can do it, that needs addressing separately but taking appointments away won't change how many people ring on the day!"

23. The claimant responded to that email at 15:07 adding comments of his own underneath Rebecca Clark's text and his response was as follows:

"Hi Rebecca,

Thanks for your responses. I'll action as directed and have a few follow up questions (in bullet points below).

I can't help but notice your modus operandi has in the past week suddenly swung from discussion and consensus to command and control. Am I imagining it or has something changed, and if so why?

- I'm not sure that's true, as if the slots are there the reception team will fill them, and if they're not they will be more likely to deflect the caller.

- If you don't want to reduce the number of telephone queries, do you have any other suggestions that could help Dr N? I think he was unlucky on Wednesday with the number of home visits and a particularly ill patient, but the risk is that if we don't appear to listen to his feedback he may not offer his services as often, or decline to do on-call work."

24. Rebecca Clark answered the claimant at 16:40 saying that his queries could be discussed with her and Sarah Shaw when they sat down. Amongst other things she wrote:

> "I have spoken to you about my concerns last week and with all due respect, our concerns are from a clinical point of view and not up for further discussion."

25. According to Rebecca Clark she asked employees to provide statements purely regarding the ambulance matter to address that formally with the claimant. She received responses which were not simply about the ambulance issue but also about other matters.

26. Lisa Banks, pharmacist, said that she was concerned about the amount of time the claimant was spending out of the Practice within working hours. From Wednesday 13 May 2015 she had kept a diary logging his holidays and his time off in lieu and she provided a copy of it. She referred to the missing payslips issue in December 2015 and January 2016. At the end of her email she felt the matters raised demonstrated a level of incompetence and deceit which questioned the integrity of the Practice Manager in his role.

27. Rebecca Clark prepared what she called a "statement on behalf of the partnership re: Paul Duxbury disciplinary". She referred to an incident shortly after the claimant's arrival where he was said to have cancelled a 999 call to the police after a patient threatened violence against a GP. She then referred to Wednesday 20 January 2016 when a patient attended for an urgent ECG presenting with acute shortness of breath. The healthcare assistant, after the ECG had been analysed , brought to the attention of the senior nurse the report that the patient was suffering from second degree heart block and a 999 transfer to hospital was required for immediate pacing. Mrs Jones correctly discussed with another one our locums, who requested that the patient be called an immediate 999 ambulance and referred to A & E. Dawn Priestley phoned the ambulance and apologised for Mr Duxbury being late to their meeting. It was alleged Mr Duxbury had requested Dawn to cancel the ambulance she had called and phone a 20 minute one instead because the patient was sitting comfortably in reception. Mr Duxbury has no clinical training and very limited NHS experience and is not in a position to make any sort of clinical suggestions or decisions."

28. The matter had been raised with Rebecca Clark on Thursday 21 January by the reception supervisors who "highlighted that had he asked a more junior member of staff, they may have followed his request and changed the ambulance response time". She then made reference to the claimant's 22 January email in which "he then went on to offer clinicians the following advice (quoting from his email) as to how it was important to apply the guidance when instructing receptionists". According to the statement, "suggesting that reception may or may not question a GP's clinical actions is dangerous". Having continued her narrative Ms Clark concluded by saying

she was a member of the local Medical Committee that ratified the North West Ambulance Service guideline for use in General Practice and it had been discussed in their Practice Meetings within the last 12 months.

29. Lisa Ashworth, administrator, made a statement on 27 January 2016 on the subject of the wage slips and she confirmed she had checked the shred-it bin in the claimant's office. She found the envelope opened near the top of the waste paper.

30. Andrea Jones, the senior manager of the nursing team, also made a statement on 27 January. She dealt with the claimant's working pattern saying the claimant was rarely in the building before 10.00am, he was missing regularly in the middle of the day and gone before 5.00pm. He claimed to be taking time owed in lieu. She thought he was taking far more annual leave than any other member of staff:

> "Personally I feel that he has blatantly abused the doctor's trust whilst in a responsible position and has deceitfully and fraudulently obtained extra leave and holiday in the most unprofessional behaviour I have had to bear witness to."

31. Ms Jones next dealt with the question of the December 2015 payslips, then she went on to deal with what she headed "dangerous interference in clinical issues". According to her the claimant had interfered in a clinical event very early on in his employment which could have had serious consequences for a number of staff involved. This was the 999 incident. She then went on to say:

> "Last week a patient was diagnosed with a significantly critical condition which required immediate transfer to A & E. As such I directed the receptionist to call 999 for blue light immediate transfer and thus this was undertaken. I am informed later that day the receptionist involved in calling the ambulance was verbally scolded and told by Mr Duxbury that she didn't follow the correct procedure which resulted in the member of staff leaving the building in tears. Following this Mr Duxbury issued an email to all staff citing a protocol we were all to follow when calling ambulances or instructing reception to call, this was rescinded by one of the partner GPs. Mr Duxbury should not have challenged the receptionist as a clinical decision had been made on the emergency needs of the patient. No discussion had taken place with any clinician of the appropriateness of his instructional email on ringing 999 and thus could patient's safety at risk."

32. She then went on to refer to a further incident in the previous week concerning an instruction to a receptionist but this does not appear to have been taken up in the later disciplinary process.

33. The respondents were liaising with employment consultants and a decision was taken to invite the claimant to a disciplinary hearing. A letter was given to the claimant by Rebecca Clark on 28 January requiring him to attend a disciplinary hearing on Friday 29 January at 12 noon to discuss three matters:

- Allegedly acting outside of your role by involving yourself in clinical situations; asking receptionists to give clinical advice/change priorities of ambulances after Doctor has given direct orders.

- Alleged falsification of TOIL records.

- Acting dishonestly with payslips – telling staff they hadn't arrived then them being found in his bin by other staff members.

34. The letter went on to refer to documents that were provided which were the statements from Rebecca Clark, Andrea Jones, Lisa Banks and Lisa Ashworth, together with an attached record made by Lisa Banks of the claimant's absences from May 2015 onwards. The claimant was informed that the hearing would be conducted by Dr Sarah Shaw. If the claimant was unable to provide a satisfactory explanation for the matters of concern set out above his employment may be terminated in accordance with the disciplinary procedure. A copy of the disciplinary rules was enclosed and reference was made to them retaining the discretion to take into account the length of service and to vary the procedures accordingly in respect of formal warnings up to and including termination for a first breach of conduct rules. The claimant was told he could be accompanied by a fellow employee and that if he did not attend they would treat his non attendance as a separate issue of misconduct.

35. At 15:48 on 28 January the claimant sent an email to Sarah Shaw saying that he was dumfounded at his brief meeting with Rebecca when she gave him the letter of invitation. He was aware of an unresolved issue about the procedure for calling ambulances and he was anticipating an informal discussion. He was unaware any issue existed in relation to the other two matters. He was surprised they had chosen to take the formal route without first holding an informal fact finding meeting. Had they done so he believed they would have quickly realised there was no substance to any of the matters of concern and the formal process would have been unnecessary. He had taken legal advice as a potential outcome was termination of his employment. This advice was that to prepare thoroughly he needed all of the documentation referred to in the statements, and at least several days more time to prepare properly for the hearing. He had received 12 pages of information including three pages scheduling his arrivals and departures over a period of eight months. He asked for time off to prepare for the meeting. He was confident he could provide satisfactory responses to all matters once he had the documentation and sufficient time. He was at home that afternoon with the permission of Rebecca Clark.

36. According to Sarah Shaw she took advice and was told they were within their rights to proceed with the hearing. The claimant had 24 hours to prepare as he was allowed to go home immediately on receipt of the letter of invitation.

37. We have been provided with notes of the disciplinary meeting to which the claimant has made various amendments. The claimant attended by himself. There was a minute taker in the form of Clare Bradley. Sarah Shaw told the claimant she wanted to go through the statements and have a chat about them, "there is no outcome, just to talk them through with you". The claimant said he had chosen not to invite a colleague as it was a small Practice and he did not wish to risk further damage to his reputation. He wanted an assurance the meeting would remain entirely confidential except for those directly involved. He requested that he be allowed to record the meeting and this permission was given. Sarah Shaw accepted that the claimant had not received all of the documentation and it might be necessary to refer to it during the meeting. She was asked if everything had been included that they were going to rely on as part of the disciplinary, and she did not know. The claimant explained his difficulties in dealing with a hearing with 24 hours' notice,

dealing with documents not enclosed and three pages of movement records made by Lisa Banks. He thought they should use that meeting as a fact finding meeting. The claimant thought if Dr Shaw was happy to have an informal discussion then the information he shared would illustrate there was no basis for the allegations and potentially there was a witch hunt taking place aimed at him. He thought as a result of informal discussion she might want to drop the allegations and take disciplinary action against other people.

38. They agreed to pause and Sarah Shaw would seek advice. They adjourned at 12:47 and resumed at 13:00 on a formal basis with Sarah Shaw asking the claimant to go through each statement discussing matters.

39. The claimant then makes the following statement:

> "Can I explain myself? Before I do I know you have taken legal advice, I have taken legal advice too, I am assuming you know what whistle-blowing means."

40. Sarah Shaw indicated that she did and the claimant said:

> "…And just for clarity, that's if someone is acting in good faith, exposing information they reasonably believe to be in the public interest…so just bear that in mind as I explain the detail of my actions over the past few days."

41. In discussion about the ambulance incident the claimant confirmed that he had not asked for the ambulance to be cancelled. The claimant said:

> "I didn't make anything of it, apart from it increased my concern that the Practice clinicians were not aware of and/or correctly applying the NWAS guidance for summoning ambulances to the Practice. And I felt again there was an issue of public interest I had to consider as it could impact directly on efficiency for the reasons given."

42. He later considered the ambulance issue as something he should prioritise to review on the Friday and decided it was sufficiently serious to raise it on the Friday rather than waiting for the next Practice meeting on the following Tuesday. The guidance had been issued at a previous Practice meeting. He felt a reminder email would be the best approach as it would quickly remind clinicians of what to do if they needed to summon an ambulance. He referred to the information in the email about a specific instance concerning a particular patient. His email raised concern about this incident as well as the wider concern about clinicians not applying the guidance clearly and not giving the reception staff clear instructions about the 8 and 20 minute decisions. He sent the email at 14:30 and left at 15:00 taking time off in lieu to cover his early finish.

43. The claimant said that he took very, very seriously the problems if a non clinician got involved in clinical matters, and he could not see why anyone would think he would do that or indeed what evidence there was that he had. He went on to deal with the early 999 call to the police. With regard to the ambulance calling he had not said to anyone that the ambulance should be cancelled. He made no clinical suggestions or decisions. There were shades of grey between clinical and non clinical matters and as a non clinician in a medical environment he inevitably got involved in clinical matters being exposed to them on a daily basis. The partners had

invited and accepted suggestions from him on what he perceived to be clinical matters.

44. With reference to Dr N the claimant said that Dr N mentioned to him that he felt concerned about the workload and he had to take great care to make sure he did not miss anything. The claimant disclosed information about that issue of public interest to the two respondents by email. He asked for advice about modifying Dr N's workload. The claimant remained concerned about patient safety, not being convinced that they would not have another day like that one.

45. In the view of the claimant in summarising his case he did not act outside of his role by involving himself in clinical decisions. He did not ask receptionists to give clinical advice or change priorities for ambulances after a doctor had given orders. What he did was to identify a potentially significant risk to patient's safety, the risk being that patients with immediate life threatening conditions were left unaccompanied whilst waiting for ambulance, or patients were left waiting for ambulances that could not meet their target. The risk was a clear public interest:

> "I investigated it in good faith to the best of my ability. I disclosed information to my clinical colleagues they should have been aware of anyway and I believed that would manage the risk and it would improve patient session [but probably should say 'safety']."

46. The claimant thought Rebecca Clark had formed an ill-judged view of the matter. Her inaccurate and overexcited analysis of the situation will not have helped and he thought she should have mentioned it to him first. His 22 January email was sent to remind clinicians quickly about the guidance. In his view it was not in the public interest for there to be confusion about the correct procedure. That was all he had to say on the topic.

47. The meeting then went on to refer to the TOIL issue and then the question of the missing payslips. In the course of that payslip discussion the claimant said:

> "Shortly after that, and I haven't had time to work out the chronology, I took the file out of my cupboard and the payroll envelope dropped to the floor. You can imagine what happened. I immediately realised what had happened – I forgot about it in the pre Christmas rush. So I safely destroyed it by putting into my shredding bin…then we've Lisa Banks' statement and Lisa says: 'The colleague that was with me searched the Practice Manager's shred-it bin'. Now I would like to know how that could be considered appropriate behaviour. In fact I believe that is a data protection breach that requires further investigation. It is quite likely Lisa would have seen documents that are highly confidential because that is a specific dedicated shredding bin for me…All of my confidential documents go in there including patient identifiable data and payroll data and workforce restructures and other confidential matters…I believe that should be investigated."

48. At the end of the meeting the claimant expressed how much he loved his job which mattered to him very much and he would not let it go lightly. He hoped that they would be done with the allegations and he would be allowed to continue with his work. He accepted there would be a need for reflection on the events and things may have to change and he may have to change, but there was learning for him and for everybody. He would respond positively and work with the team.

49. The outcome letter was dated 3 February 2016. It set out the three matters of concern, then went on to summarise the claimant's explanations in respect of each of the three matters, then Dr Shaw went on to explain why she considered his explanations to be unsatisfactory:

> "(1) NWAS HCP guidelines are designed as an aide memoire for staff clinically trained to interpret them. They are not for strict interpretation by staff not medically trained. Your insistence on informing non clinical staff that the incorrect procedures had been followed and implying that the ambulance service was used inappropriately is unacceptable. To highlight patient safety concerns that you believe have been communicated to your seniors and deliberately ignored, there are clear NHS guidelines for whistle-blowing, none of which have been followed here. Your conduct surrounding emailing staff with advice about the NWAS guidance and meeting with non clinical staff to discuss it prior to discussion with the partners is inappropriate, and suggesting that Dr Clark, who is in a position of authority, should not undermine your own authority is unacceptable.
>
> (2) I accept that you initially misplaced the payslips but that on further questioning by several staff members you chose to lay the blame with the accountants rather than admit your own mistake for fear of losing face in front of other staff. I accept your concern regarding other staff having access to your confidential waste bin and this will be investigated separately with those staff involved.
>
> (3) Your use of HR Online appears to be incomplete and having reviewed it with the allegation that you have awarded yourself additional annual leave that you are not entitled to, it appears that there are inconsistencies with your recordkeeping. It is my conclusion that you have lost the respect of several senior staff members within the practice owing to this behaviour.
>
> Having carefully considered your responses including the fact that you have a short amount of service I have decided that your employment should be terminated. This will take effect immediately and you will be paid four weeks' pay in lieu of notice."

50. The letter went on to give the claimant the right of appeal which he exercised.

51. In the course of her cross examination Sarah Shaw said that it was the email concerning the ambulances that was the primary reason for the dismissal. Not that the email undermined her authority. She had expertise in what constituted a life threatening condition and someone with no medical experience or training should not have sent this email. It was nothing to do with her authority.

52. The claimant put in a written appeal against the decision to terminate his employment dated 5 February 2016. He said it was on two grounds, firstly that the allegations were all untrue and that Sarah Shaw had been incorrect in deciding otherwise; and secondly that his dismissal was because he made protected disclosures about patient safety issues, therefore automatically giving him the right to claim unfair dismissal despite his short service. He referred to an invitation in November 2015 to become a partner, yet from 22 January 2016 he had become a pariah, finding himself facing a disciplinary procedure for allegations which were in

his opinion unfounded and amounted to victimisation. He was baffled at how things had changed in such a short space of time. Having thought about it, it was clear to him that the only thing that changed was him making protected disclosures about two patient safety issues that are of public interest – the risk to the safety of a patient through the incorrect application of guidelines for summoning an ambulance to the Practice on 20 January, and the risk to patient safety due to workload issues experienced by Dr N also on 20 January. He could only conclude that the hasty move to a formal disciplinary hearing without a fact finding meeting and with an apparently pre-determined outcome was motivated by the partners' wish to quickly remove him as he had become an unexpected and unwanted source of embarrassment and inconvenience because he was in good faith disclosing information about patient safety issues they did not want to be known to staff. He assumed they feared this would bring into question their joint ability to safely operate the Practice. The claimant also produced a 1½ page document setting out the grounds for stating Dr Shaw was incorrect in deciding that the allegations against him were correct.

53. The respondents appointed an independent third party, employed by an organisation connected with their employment advisers, to hear the claimant's appeal against dismissal, on Monday 7 March at a neutral venue. Ms Clare Bradley took the notes for the appeal hearing as well. Notes of the meeting have been provided and the claimant appears to have had the opportunity to state his case to its full extent.

54. At the start of the hearing the appointed person, Andrew McCabe, said that he would be providing a report.

55. Following the appeal hearing a ten page report was produced concluding with a recommendation to the respondents that the claimant be informed that the appeal be dismissed, and it was for the respondent to decide whether or not to follow this recommendation. With regard to the ambulance calling issue, the report said:

> "Mr Duxbury did involve himself in clinical matters, he did question the order of the doctor given to Dawn regarding the ambulance, and did suggest a change to the company's procedures which falls outside his role as Practice Manager."

56. Mr McCabe then went on to deal with protected disclosures and took the view that no disclosure appeared to have been made to any individual and not prior to 20 January 2016.

57. The respondents considered the report and wrote to the claimant on 28 March relying upon the recommendation to dismiss the appeal. The letter made reference to the report's findings.

58. In his witness statement the claimant deals with some of the alleged detriments following the making of protected disclosures under the heading "Changes to the way I was treated pre and post making protected disclosures". Prior to 20 January he had a very close working relationship with the partners involving decision making and confidential matters, but after 20 January the situation changed dramatically with no explanation or apparent reason.

59. There was an email telling people that the fortnightly Practice Meeting due to be held on 26 January was postponed. The claimant was normally responsible for this meeting

60. The claimant felt that Rebecca Clark's tone in her 26 January email, referred to above, was directive and closed.

61. The claimant was excluded from job interviews.

62. The witness statements against him included misleading evidence and/or unsupported allegations yet the partners were happy to use them as the basis for the disciplinary meeting.

63. The claimant usually met with two of his colleagues, Lisa Banks, Pharmacist, and Andrea Jones, Practice Nurse, in the staffroom during the morning tea break and at lunchtime. On 1 February 2016 both individuals were working at the Practice but did not attend tea break or lunch in the staffroom nor were they present for lunch on 2 February despite both being at work. Neither Lisa Banks nor Andrea Jones gave evidence to the Tribunal. On 3 February the claimant met with two members of staff and one of them shared news of her resignation with the other, and was surprised the claimant was not aware. He made enquiries of the partners and Rebecca Clark said she had known about it since 2 February.

64. In cross examination the claimant said that colleagues avoided him because he had raised a protected disclosure. It had a significant impact on him when he was avoided at lunchtime.

The Relevant Law

65. The law on protected disclosures is to be found in the Employment Rights Act 1996 starting at section 43A and going on, for the purposes of this case, to 43C. The provisions are as follows:-

> **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,

(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, or is likely to be deliberately concealed.

(2) For the purposes of subsection (1), it is immaterial whether the relevant failure occurred, occurs or would occur in the United Kingdom or elsewhere, and whether the law applying to it is that of the United Kingdom or of any other country or territory.

(3) A disclosure of information is not a qualifying disclosure if the person making the disclosure commits an offence by making it.

(4) A disclosure of information in respect of which a claim to legal professional privilege (or, in Scotland, to confidentiality as between client and professional legal adviser) could be maintained in legal proceedings is not a qualifying disclosure if it is made by a person to whom the information had been disclosed in the course of obtaining legal advice.

(5) In this Part "the relevant failure", in relation to a qualifying disclosure, means the matter falling within paragraphs (a) to (f) of subsection (1).

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 in good faith –

(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.

(2) A worker who, in accordance with a procedure whose use by him is authorised by his employer, makes a qualifying disclosure to a person other than his employer, is to be treated for the purposes of this Part as making the qualifying disclosure to his employer."

66. Section 47B provides that:

"(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."

67. Subsection 1A provides:

"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."

68. Subsection 1B provides:

"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."

69. Subsection 1C provides:

"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. Section 48(2) provides:

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

71. Section 103A of the Employment Rights Act 1996 provides that:

"An employee who is dismissed shall be regarded for the purposes of this part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure."

Discussion and Conclusions

72. Did the claimant make one or more protected disclosures? We shall look at each alleged disclosure in turn.

73. For the purposes of section 43A the claimant was an employee of the respondents thus bringing him within the definition of "a worker".

74. Did the claimant disclose information? The Employment Appeal Tribunal in **Cavendish Munro Professional Risks Management Limited v Geduld [2010] ICR 325** expressed the view that the ordinary meaning of giving information involves conveying facts. An example was given: "Communicating information would be that the wards have not been cleaned for the past two weeks. Yesterday sharps were left lying around". Contrasted with that would be a statement that, "You are not complying with health and safety requirements", which in the view of the EAT would be an allegation rather than information. In simple terms, therefore, a disclosure must convey facts.

75. Analysing the content of the claimant's 22 January email it starts with the first fact that "this week … reception called 999 for an ambulance (and by default an 8 minute response)" followed by the claimant's opinion that a call to the NWAS control room for a 20 minute ambulance would perhaps have been more appropriate. His opinion continues with a reference to the importance of requesting the correct type of response followed by the second fact that "NWAS find meeting their 8 minute target very, very difficult when they are called unnecessarily to situations where a 20 arrival time would have been OK".

76. The second paragraph starts with the third fact which is the advice from the NWAS that a Red1 call should only be used where there is an immediate life threatening condition and then the NWAS expectation that a clinician should be present with the patient until the ambulance arrives.

77. The next sentence starts with "If this is not the case and it's still an emergency…" then goes on to state the fourth fact that NWAS ask you to use the Red 2 option for a 20 minute response and how to bypass the 999 call handling by using the different number and still get through directly to NWAS. The second paragraph concludes with the claimant's opinion "except of course in the case of an emergency where there is no time to check the number."

78. The third paragraph of the 22 January email contains the claimant's instruction to the recipients as to the importance of applying the guidance when instructing the reception team to summon an ambulance as they will probably not question what is said and call 999 for a an 8 minute response. The claimant concludes with if you say use the 20 minute emergency admission procedure they will use it and call the NWAS control room.

79. We find that the claimant has conveyed four facts and given his opinion and his instruction to the recipients of that email which included the two respondents who together constitute the employer. In submissions made on behalf of the respondents Mr Famutimi did not seek to suggest that the claimant had not conveyed facts.

80. Was the disclosure made in the public interest? Again Mr Famutimi in his submissions did not seek to argue that the disclosure was not made in the public interest. We take the view that it is in the public interest that the resources of the North West Ambulance Service are used in accordance with their guidelines which should prevent unnecessary calls for Red 1 ambulances.

81. Did the claimant have a reasonable belief that the disclosure tended to show one or more of the matters set out at 43B(a)-(f)? When the claimant sent his 22 January email he did not set out which of the matters appearing from section 43B (1) (a) to (f) the facts that he was disclosing tended to show. The statute refers to the reasonable belief of the worker making the disclosure, thus requiring us to look at what the worker in question believed. Mr Famutimi submits that the claimant did not have a reasonable belief.

82. Having read the claimant's disclosure made on 22 January and also taking into account his earlier email to the two receptionist team leaders on 20 January, and his email from the meeting of the Practice Managers on 20 November 2015, we conclude that the claimant did have a reasonable belief in what he was saying, and that it tended to show that the health or safety of an individual had been, or was

likely to have been, endangered. The individual referred to here is the individual patient concerned on 20 January, and/or other potential users of the service provided by NWAS.

83. The disclosure was to the employer for the purposes of section 43C.

84. We conclude that the claimant did make a protected disclosure on 22 January 2016 in his 14:36 email.

85. Did the claimant make a public interest disclosure in relation to the workload of Dr N? The claimant conveyed a fact when he stated that when Dr N was on call he struggled to get through his workload during the previous week. By way of a further fact conveyed Dr N said he felt concerned in case he was missing things in his consultations. In a subsequent email the claimant referred to the risk that if they did not appear to listen to Dr N's feedback he may not offer his services as often or decline to do on-call work.

86. As to the public interest, we take the view that those persons who might be affected would constitute the patients registered with the respondents' surgery, and that those people are part of the public. Their proper medical care is in our judgment a matter of public interest.

87. As to reasonable belief, we have no reason to doubt that the claimant was genuinely expressing the concerns relayed to him by Dr N that Dr N might miss things in consultations. If Dr N did this then in our judgment the health and safety of individuals, namely patients of the Practice, would be likely to be endangered. The disclosure was made to Rebecca Clark, one of the partners in the Practice, and therefore to the claimant's employer.

88. We find that the claimant made a second qualifying disclosure in his email sent at 14:18 on 26 January 2016.

89. The third alleged disclosure relates to the confidential waste disposal bin issue. The claimant became aware of it when he received the statements that were to be used at the disciplinary hearing, and he raised it with Dr Shaw in the hearing.

90. According to the notes of the disciplinary meeting the claimant stated that Lisa Ashworth had searched the practice manager's shred-it bin and he stated his belief that there was a data protection breach that required further investigation as Lisa Banks might have seen documents involving patient identifiable data, payroll data and other confidential matters that were highly confidential. He was very concerned about data protection and information governance and believed it should be investigated as part of the practice's information governance procedures.

91. The claimant has disclosed information, namely that his confidential waste bin was opened and looked into by Lisa Ashworth, and that it is quite likely she could have seen documents that were highly confidential, potentially including patient identifiable data and payroll data. The interest of the employees of the Practice not to have their private information disclosed and the interests of the patients not to have their medical information disclosed appears to us to be a matter of public interest. We find that the claimant had a reasonable belief in what he said. Given the legal obligation on data controllers to maintain the confidentiality of personal data in their

possession the information disclosed in our view tended to show that either a criminal offence had been committed or that the respondents had failed to comply with a legal obligation to which they were subject in connection with the protection of the personal data which they held.

92. We therefore find that in the course of the disciplinary hearing on the afternoon of 29 January 2016 the claimant made a third protected disclosure.

93. The first time the claimant referred to whistle blowing was just after 13:00 on 29 January shortly after the commencement of the disciplinary meeting. We note that when the claimant made his first two disclosures he did not make them as formal protected disclosures. He did not use the respondents' procedure. He conveyed information which on subsequent analysis was found to have amounted to protected disclosures. The third disclosure was made by the claimant at a time when he had been informed about the concept of the protected disclosure, but again he did not specifically state that he was making a protected disclosure in relation to the confidential waste.

What was the principal reason for the dismissal?

94. We have set out section 103A above. In this case the claimant was not employed for two years and does not have the right to claim ordinary unfair dismissal. The claimant therefore has the burden of proving that it was more likely than not that the reason for his dismissal was the automatically unfair reason contained in section 103A and not for the reasons given by the respondents.

95. The oral evidence of Sarah Shaw confirmed that the matter concerning the instructions for calling ambulances was in her view the primary reason for the dismissal. We have set out above the words used by Dr Sarah Shaw in the letter of dismissal in connection with the ambulance issue.

96. The IDS Handbook, Whistleblowing at Work, at paragraph 6.10 states that:

> "Particular problems can arise where the employer claims that the dismissal was not imposed by reason of the protected disclosure itself but because of the manner in which the disclosure was made – i.e. that the dismissal was for the potentially fair reason of misconduct…However, where the employer's defence rests on the reason why the particular action against the employee was taken, a Tribunal will have to undertake the difficult task of determining whether the employer's reaction to the way in which a disclosure was made can be distinguished from its reaction to the act of making the disclosure itself."

97. Reference is made to **Bolton School v Evans** in which a teacher hacked into a school computer system and raised concerns that there could be unauthorised disclosures of confidential information in contravention of the obligations under the Data Protection Act. The headteacher concluded that Mr Evans had hacked into the system without authority and gave him a written warning. Mr Evans resigned claiming he had been subjected to a detriment and constructively dismissed. The Employment Tribunal concluded that although he had been disciplined for breaking into the computer system this conduct was not distinct from the disclosure of information but part and parcel of it. The Employment Appeal Tribunal overturned that finding and Mr Evans appealed to the Court of Appeal which found that Mr

Evans was disciplined for his actions in hacking into the system and not for informing the school that its system was insecure. The fact remained that the principal reason for disciplining him was its belief that he had committed an act of misconduct. In the court's view his claim under section 103A would fail as the disclosure was not the reason for the constructive dismissal. Although Tribunals should generally be careful when an employer alleges that an employee was dismissed because of acts related to the disclosure and not because of the disclosure itself, in this case the school had no ulterior motive for its decision to discipline Mr Evans.

98. We have found that the claimant made three protected disclosures. On behalf of the respondents it was accepted that it was the first disclosure that was of concern to them. We do not find that the disclosure concerning Dr N and his workload or the disclosure concerning the confidential waste in any way influenced the decision of Dr Shaw to dismiss the claimant.

99. As to the ambulance issue, we have noted above at paragraphs 6 and 7 that the claimant imparted information to a similar group of people concerning the calling of ambulances in November 2015 and that this was of no concern to the respondents. The claimant's 22 January 2016 email was of concern because in the view of the respondents the claimant went beyond giving information. They set out in their dismissal letter their concerns as to the content of the email over and above the information conveyed by the claimant. The guidelines were not for strict interpretation by staff not medically trained. He had behaved unacceptably when implying the ambulance service was used inappropriately. His conduct surrounding emailing staff with advice and meeting non clinical staff to discuss it was inappropriate.

100. We find that the principal reason for the dismissal was as set out above at paragraph 49 (1) which in our judgment relates not to the protected disclosure, the content of which had been received by the respondents without comment the previous November, but to the matters surrounding it where the respondents took the view that the claimant had gone beyond his role as practice manager and was involving himself in matters medical.

101. Taking all of these matters into account the claimant has not satisfied us that the principal reason for his dismissal was not the first reason given in the dismissal letter which was subsequently confirmed on appeal and so his claim that the principal reason for the dismissal was that he had made a protected disclosure must fail.

The Detriment Claims

102. In his ET1 the claimant alleges that the respondent subjected him to detriment done on the ground that he had made protected disclosures. The alleged detriments are set out at 44(a)-(p).

103. The following matters in our judgment relate to the way in which the disciplinary process was handled:

(a) The conduct of the disciplinary process without careful investigation or a proper opportunity for the claimant to present his side of the case.

(b) A capricious exercise of discretion in failing to provide the claimant with a warning instead of dismissal.

(c) Failing to rules the rules of natural justice to the disciplinary process, including allowing Dr Clark to be a decision maker, despite her role as a central witness in the core allegation against the claimant.

(d) Allowing and/or encouraging staff to submit misleading evidence against the claimant.

(e) Failing to follow the Practice grievance procedures in relation to an alleged grievance against the claimant by staff.

(f) Producing and asserting misleading and inaccurate evidence against the claimant.

(g) Producing misleading and inaccurate meeting minutes.

(h) Misleading the claimant with the statement that there would be no outcome to the disciplinary meeting.

(i) Failing to produce evidence to allow him to defend the disciplinary allegations.

104. These alleged detriments from (a) to (i) seem to us to relate to the way in which the disciplinary process was carried out by the respondents against the claimant and as such are matters that would go to the question of fairness were this a claim of ordinary unfair dismissal. The actions complained of followed the decision of the respondents to consider taking disciplinary action against the claimant in respect of the contents of the email sent by him. Some of them preceded the claimant informing the respondents that he had made protected disclosures. We have not found that the dismissal was as a result of the claimant having made a protected disclosure. We are not persuaded that these matters, if they were done, were done on the ground that the claimant had made a protected disclosure.

105. The following allegations of detriment can, in our judgment, be considered together:

(j) Excluding the claimant from job interviews despite not being suspended from duty;

(k) Taking a defensive and officious approach to the claimant in business correspondence;

(l) Excluding the claimant from business information and activities;

(m) Cancellation of the regular Practice meeting on 26 January 2016 at very short notice and with no consultation with the claimant.

106. The allegations at (j)-(m) inclusive appear to be the reactions of Rebecca Clark and Sarah Shaw to the claimant following his 22 January email which, as was apparent from Rebecca Clark's email sent on the afternoon of 22 January, she regarded as inappropriate. We are not satisfied that these alleged detriments were

done on the ground that the claimant had made the protected disclosure. Rather they appear to be the response of the respondents following what they perceive to be the actions of the claimant in giving what they believed to be advice on a non clinical issue to their staff.

107. Allegation (n) is of colleagues avoiding the claimant in the workplace.

108. In looking at this alleged detriment we first of all consider whether the claimant has suffered identifiable detriment. He has given evidence that he felt excluded on the basis that his work colleagues did not come into the staffroom on three occasions on 1 and 2 February 2016 when they normally would have joined him there. Accepting the claimant's evidence that this had a significant impact upon him, we do find that the claimant was subjected to a detriment.

109. Was he subjected to that detriment on the ground that he had made a protected disclosure? As stated above, we have not received any evidence from either Lisa Banks or Andrea Jones but we are aware that they both gave witness statements to the respondents when asked to do so and that the claimant was in possession of them. We have set out above the view of Andrea Jones that the claimant had blatantly abused the trust of the respondents whilst in a responsible position and we have noted how Lisa Banks was concerned with the amounts of time the claimant was spending out of the Practice and had kept a diary logging his absences, holidays and time off in lieu. In the absence of evidence from Jones and Banks we draw the inference that they did not wish to join the claimant in the staffroom because they had each made their witness statement against him and everyone was awaiting the outcome of the disciplinary hearing that they no doubt were aware had taken place on 29 January. We do not, therefore, find a causal link proven between the protected disclosure and the detriment.

110. Allegation (o) is of misquoting and quoting selectively from the transcript of the disciplinary hearing to imply that the claimant had dishonest or false intentions in relation to his whistle-blowing.

111. As to allegation (o) we take the view that this is another matter relating to the conduct of the disciplinary proceedings that would have gone to fairness had the claimant brought an ordinary unfair dismissal claim. We do not find that it was a detriment done on the ground that the claimant had made a protected disclosure.

112. Allegation (p) is of holding an appeal only to review the decision and not to review the facts of the case.

113. The claimant's witness statement does not deal with this allegation nor does there appear to be anything referring to it in his cross examination. We were not taken to the appropriate section within the respondents' handbook concerning appeals but there is a section to the effect that if the appeal is on the grounds that the person has not committed the offence then the appeal "may" take the form of a complete re-hearing and the procedure reserves the right to allow third parties to chair any formal hearing.

114. Notwithstanding the absence of evidence from the claimant on this allegation (p), we regard it as being related to the question of fairness in the disciplinary

proceedings and not detriment done on the ground that the claimant had made a protected disclosure.

115. There is a further detriment that appeared in the agreed List of Issues prepared for the preliminary hearing and it is the allegation is that the respondents failed to respond to a request for an employment reference for the claimant in early April 2016, the request being made by GP Access Limited to Sarah Shaw.

116. The claimant did not deal with this in his witness statement but we inserted into the bundle an email chain involving Harry Longman of GP Access and Sarah Shaw. On 4 April 2016 Mr Longman sent an email to Dr Shaw saying that Paul Duxbury had given her name as a referee and he understood he was Practice Manager at her Practice. Mr Duxbury had applied to work with GP Access and he wondered whether they could have a brief conversation. Sarah Shaw responded at 21:17 on Monday 4 April saying she was back in work on Wednesday and could she call him then if it was convenient. On 25 July 2016 Harry Longman sent an email to the claimant telling him that Sarah Shaw never called.

117. Sarah Shaw was not cross examined on this issue but the claimant was. He said it was correct that Sarah Shaw did not say she would not give him a reference. He agreed Harry Longman could have chased it up but he did not. As a matter of fact there was no reference but there was no refusal. Notwithstanding this there was no detriment because the claimant got the appointment that he sought with Harry Longman. As a matter of fact, therefore, the claimant has not satisfied us that he suffered this detriment.

118. In conclusion having not found that the principal reason for the claimant's dismissal was that he made a protected disclosure we do not find that the claimant suffered any detriment done on the ground that the claimant had made a protected disclosure. The claimant's claims are therefore dismissed.

Employment Judge Sherratt

2 March 2017

RESERVED JUDGMENT AND REASONS SENT TO THE PARTIES ON

3 March 2017

FOR THE TRIBUNAL OFFICE