EMPLOYMENT TRIBUNALS

Claimant: Mrs S M Fletcher

Respondent: 118 t/a Conduit Global

HELD AT: Manchester **ON:** 6, 7, 8, 9 and 10 February 2017
27 March 2017
(in Chambers)

BEFORE: Employment Judge Ross
Mr T A Henry
Mrs M A Gill

REPRESENTATION:

Claimant: In person
Respondent: Mr J Allsop of Counsel

RESERVED JUDGMENT

The judgment of the Tribunal is that:

1. The claimant's claim that she was unfairly dismissed for making protected disclosures is not well-founded and does not succeed.

2. The claimant's claim that she was dismissed pursuant to section 100(1)(c) Employment Rights Act 1996 is not well-founded and does not succeed.

3. The claimant's claim that she was subjected to detriments, namely being subjected to call audit and entered into an unjustified disciplinary process for making protected disclosures, is not well-founded and does not succeed.

REASONS

1. There was a long history to this case. The history can be seen from the previous Judgments and Case Management Orders. See Case Management Order

of Employment Judge Hodgson on 8 December 2014; Judgment on preliminary hearing on 5 February 2015 of Employment Judge Feeney; Tribunal order of 5 February 2015 from Employment Judge Feeney; Judgment on preliminary hearing by Employment Feeney on 8 April 2015; Judgment of Employment Judge Feeney on 21 July 2015; Order of Employment Judge Feeney on 21 July 2015; Unless order of Employment Judge Feeney dated 2 October 2015; strike out order of Employment Judge Feeney dated 3 December 2015; Judgment of Employment Judge Holmes on 4 January 2016; a further Judgment on Relief from Sanction from Employment Judge Holmes on 23 March 2016; a further Judgment on preliminary hearing and Case Management Orders of Employment Judge Holmes on 22 August 2016.

2. By the time this case reached the present panel for hearing the parties had agreed that the claimant's claim was a claim for public interest disclosure(s) detriment and a claim that she was automatically unfair dismissed by reason of making protected disclosure()s and/or that she was automatically unfair dismissed for health and safety reasons.

3. The claimant's case was set out at the supplemental pages 32-35 in relation to public interest disclosure by way of a “Scott Schedule” and at pages 36-39 in relation to the automatically unfair dismissal for health and safety reasons. In addition the claimant had supplied further and better particulars of her public interest disclosure claims at pages 39-54 of the supplemental bundle.

4. At the outset of the hearing the respondent’s counsel provided a List of Issues which was agreed by the claimant. The Tribunal considered the document with the parties and there were two alterations to it.

5. Firstly, Employment Judge Ross pointed out that where at 5(a) there was reference to dismissal as a detriment, then the case was properly stated to be that she alleged she was automatically unfairly dismissed by reason of her protected disclosures given the claimant was an employee..

6. Secondly the respondent also raised a jurisdictional issue in relation to time limits which was related to the public interest disclosure detriment claim (although no submissions were made on that point at the conclusion of the hearing).

7. We heard from the claimant, Ms Angela Linsky, formerly a call centre handler, Ms Tamara Gaughan, a call handler and the claimant’s representative. A statement from Ms Kim, now living in Korea, was supplied. For the respondent we heard from Ms Heighton, at the time HR Business Partner, Ms Molloy, at the time Assistant Call Centre Manager, Mr Johnson at the time Operations manager and Ms Andrea Browning at the time HR Business Partner in Cardiff. None of the respondent’s witnesses are still employed by the respondent.

8. The List of Issues is as follows:

<u>Public interest disclosure detriment claim</u>

(1) Did the claimant make disclosures of information on 29 April 2014 and 1 May 2014 tending to show –

(a) That the respondent had failed, was failing or was likely to fail to comply with any legal obligation to which it was subject (the legal obligations relied upon by the claimant are those set out in the response to further and better particulars of the claim dated 6 October 2015); and

(b) In relation to the claimant's claim concerning recruitment adverts placed by the respondent, that such failure has been or was likely to be deliberately concealed?

(2) Was the claimant's belief in the alleged breaches of section 43B(1) Employment Rights Act 1996 relied upon by her a reasonable belief?

(3) Were the legal obligations relied upon by the claimant ones which were capable of breach by the respondent?

(4) If the disclosures were of information capable of protection, were such disclosures in the public interest?

(5) Was the claimant subjected to detriments? The claimant relies upon:

(i) Call audit;

(ii) Unjustified disciplinary process.

(6) If the claimant was subjected to detriment, having regard to the burden of proof (see section 47B ERA 1996) were those detriments on the ground that the claimant had made such protected disclosures?

Public interest disclosure dismissal

(7) The claimant has less than two years' service. The initial burden is on her to show that there is a prima facie case suggesting that:

(i) She has made protected disclosures. The claimant relies on the same protected disclosures described above.

(ii) That the claimant's dismissal was because of the protected disclosures. (For the respondent it is alleged that the dismissal was wholly unrelated to the protected disclosures made).

Health and safety claim pursuant to section 100(1)(c)

(8) The claimant alleges that she was automatically unfair dismissal by reason of her health and safety disclosures.

(i) Did the claimant bring to the respondent's attention circumstances connected with her work that were harmful or potentially harmful to health and safety (the claimant relies upon the schedule at pages 36-38 of the supplemental bundle and reply to further particulars at pages 39-54)?

(ii) Were the means by which the circumstances above were brought to the respondent's attention by the claimant reasonable?

(iii) Was the belief on the part of the claimant that the circumstances referred to above were harmful or potential harmful to health and safety a reasonable belief?

(9) If the claimant has brought to the respondent's attention by reasonable means circumstances connected with her work which she reasonably believed were harmful or potentially harmful to health and safety (the prima facie case), was the reason or principal reason for the claimant's dismissal because she has brought those matters to the respondent's attention?

The Law

9. The relevant law in relation to the public interest disclosure detriment found at section 43B(1) ERA 1996; section 47B (burden of proof); and sections 43C to 43H ERA 1996 (qualifying disclosure).

10. The relevant cases relied upon by the parties are:

Eiger Securities LLP v Miss E Korshunova UKEAT/0149/16

Kilraine v London Borough of Wandsworth UKEAT/0260/15

Panayiotou v The Chief Constable of Hampshire Police [2014] IRLR 500

Shamoon v The Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285

Smith v The Chairman and other Councillors of Hayle Town Council [1978] IRLR 413

Ross v Eddie Stobart Limited UKEAT/0068/12

Kuzel v Roche Products Limited [2008] IRLR 530

Aspinall v MSI Mech Forge Ltd [2002] EAT 891/01

Korashi v Abertawe Bro Morgannwg University Local Health Board [2012] IRLR 4

Black Bay Ventures Limited t/a Khemistree v Gahir [2014] IRKR 416

Chesterton Global & another v Nurmohamed [2015] IRLR 614

Fecitt & others v NHS Manchester [2011] EWCA Civ 1190

The Facts

11. Applying the law to the facts we found the following facts.

12. The claimant commenced employment with the respondent on 19 November 2012 as a Health Adviser.

13. The claimant informed us that in February 2013, having originally worked on NHS Direct, this was replaced by a new service, 111. We find the 111 service is a national service which is available on a 24/7 basis. We find that the claimant's job title under the 111 service was Call Handler.

14. We find the respondent was an outsourced contact centre which provides a variety of services to its clients. We find that at the relevant time in 2014 one of the respondent's key clients was the NHS 111 service. We find the respondent employed call handlers, including the claimant, who were tasked with responding to the 111 calls from the public.

15. We find that the respondent's client at this time was North West Ambulance Service ("NWAS").

16. We find the respondent had no remit to determine the systems used or how the calls were handled. We find the training to call handlers employed by the respondent was provided by NHS Pathways accredited trainers.

17. We rely on the evidence of Ms Molloy. We find that the 111 service existed for the public to use as a first port of call rather than the emergency services in circumstances where there were queries or concerns about an individual's health. We find the call handlers received calls into the service and were required to follow a set of prompts from a computer system to obtain relevant factual information from the caller. They then had to analyse the information received against information in a relevant database and relay information back to the caller based on prompts from the system. We find the computer system was designed and supplied by the NHS.

18. We find that the call handlers were not expected to provide any form of medical opinion. Indeed we rely on the claimant's evidence to find that they were prohibited from doing so. They were expected to direct the caller appropriately, based on an initial analysis of the information provided. We find the call handlers did have access to medically trained clinicians when appropriate but the purpose of the service was to provide direction to the patients as to the next steps in their care.

19. We rely on the evidence of Ms Molloy that on occasion, which was rare, there may be a serious incident requiring an investigation ("SIRI").

20. We find that on 21 March 2013 the claimant had been involved in a call relating to a palliative care patient who had died in the early hours of the morning on 22 March 2013. We find that in circumstances where a death or serious incident occurs with any patient who has used the 111 service an audit process is instigated to consider what has happened and that process considers the actions of everyone and any one who has been involved in the case. We find this is the process known as a "SIRI".

21. Therefore we find that the claimant was interviewed about her involvement with the call on that date.

22. The claimant was absent on sick leave from 13 April 2013 to 19 April 2013.

23. On 25 April 2013 the claimant presented a grievance (see pages 410A-410B). At the outset she stated, "I wish to submit a formal grievance as I have been accused of causing/contributing to the death of a patient with terminal cancer". She then raised six other main headings. The grievance was heard on 13 May 2013 (see pages 410C-410L). The outcome is dated 25 June 2013 (see pages 411-413). The grievance was heard by Lee Eckart. In it he stated:

> "I would like to stress that when a SIRI is raised by our client this is not an allegation of malpractice by any individual but an audit exercise by our client that will involve all employees, whether NHS or third party supplier, that have been involved in the particular incident. These investigations are to modify practice and understand where procedures can be improved. I can assure you that they are not an exercise in apportioning blame or a witch hunt regarding individual employees. After speaking to those involved I am satisfied that you have not been singled out as part of this process."

24. The claimant appealed to Andrea Browning on 12 July 2013 (see pages 413A-C). The outcome was communicated to her by a letter dated 7 August 2013 (see pages 419-422). We find that the appeal was determined by Gordon Johnson. He acknowledged:

> "In summary the whole issue surrounding a serious incident (SIRI) should have been handled in a more professional and empathetic way. This appears to be the catalyst for the majority of the complaint. I acknowledge there has been a lack of clear and concise leadership at Middlebrook site."

25. He also apologised to the claimant "that these circumstances have been felt to cause you some distress".

26. The claimant was absent on long-term sick leave from 2 November 2013 to 5 January 2014.

27. On the claimant's return from sick leave Sofia Kazmi became the claimant's line manager. Ms Kazmi's line manager was Tracy Molloy.

28. We find, based on the evidence of the claimant and Mr Johnson that the respondent introduced an eight minute average handling time ("AHT") for 111 calls. The respondent arranged for call handlers to have training with Ms Gail Kenny. We find the claimant's training slot was took place on 10 March 2014 (see page 80).

29. We find that during this period in early 2014 the claimant attended one-to-one meetings with her line manager, Sofia Kazmi. We rely on the performance feedback forms and the claimant's evidence.

30. We find there was a performance feedback meeting in January 2014 (see pages 266-269 – signed by both parties). We find there was a further one-to-one meeting in February 2014 (pages 270-273 – signed by both parties). We find there was a further meeting in March 2014 (see pages 274-278). This form has not been signed but the claimant acknowledges in her statement at paragraph 62 that such a meeting did take place. We find there was a meeting in April 2014 (see pages 279-283 – not signed). There is a note on the form (page 279) stating that "this was

scheduled on 22 April 2014 but circumstances prevented this. Asked to carry one-to-one on to 1 May 2014. SF refused".

31. We will rely on the explanation on the one-to-one form that "X" means "exceeded"; "A" means "achieved"; "P" means "approached" and "F" means "failed to meet" in relation to the actions and objectives listed in the performance review plan For example see page 281.

32. When the claimant was cross examined she struggled to accept that in the January 2014 one-to-one feedback she had been marked as "F" on page 267, "P" on page 271, "F" and "P" in March 2014 at page 276 and "F" at page 281 (also "P" and "P" on that page). We find that the evidence of Ms Molloy and the performance review plans show the claimant was struggling with her performance.

33. On 16 March 2014 the claimant handled a suicide call (see page 74A). She received feedback in relation to the call in relation to the length of time she had remained on the call because according to the note at page 74A:

> "I am unsure why Suzanne decided to stay on the call for a further eight minutes. The patient was alert, responsive, gave clear instructions about her flat and how to locate it. She took the tablets five hours before making the call. There was no risk or reason for Suzanne to stay on the line until the ambulance crew arrived."

34. We find the claimant raised the issue of suicide calls with Ms Kazmi in her March one-to-one and as a result the manager escalated the matter to Ms Molloy (see page 74B) and Ms Molloy arranged for the claimant to have a training session with Ms Julie Stott of NWAS on 3 April 2014 (see claimant's statement paragraph 63. Se also page 75 where Julie Stott confirms to Sofia Kazmi that she has conducted the training).

35. We rely on the evidence of Ms Molloy that the claimant's manager expressed concerns to Ms Molloy about the claimant's call handling. We find that Ms Molloy asked Ms Kazmi to start doing some additional call reviews with the claimant (see also page 77).

36. We find that on 13 April 2014 Ms Kazmi spoke to the claimant about a mental health call which had taken too long. The claimant agreed she was spoken to on that day (see paragraph 75 of her statement). The same Ms Kazmi emailed Ms Molloy:

> "I have to speak with Susanne Fletcher today about a call she dealt with. I really do feel like she is struggling. I have informed her that I am going to work with her and support her as best I can but if things do not improve then this will be made formal and I will have no choice but to put her on a PIP (Performance Improvement Plan)."

37. The email goes on to state that she will "offer informal coaching but document it, and assess it shortly". (see page 75A).

38. We find over the Easter weekend the claimant and her colleagues were discussing two agency adverts for Conduit, the respondent, which the claimant understood to be advertising for full-time positions. There was no dispute that the

terms of the claimant's contract as stated at page 128 of the bundle were "your normal working week will be an average of 16-40 hours per week but the requirements of your employment will offer some flexibility and you will be required to work additional hours from time to time". It also stated, "On reasonable notice the company reserves the right to vary your days and/or times of work".

39. The claimant gave evidence that she originally worked full-time hours but at a later point all staff had their hours reduced.

40. On 23 April 2014 at 00:20 the claimant emailed Tracy Molloy with various concerns (see pages 10-11 of the bundle). This was acknowledged that morning at 08:16 (see page 10) and Ms Molloy consulted HR. The claimant was invited to a grievance hearing to discuss her concerns.

41. The grievance hearing took place on 29 April 2014 between 9.00-10.30am by conference call. It was not completed and so was also heard on 1 May 2014. The minutes of the meeting on 29 April are found at pages 17-19. We find they are signed by the claimant, the note taker and Ms Heighton from HR who conducted the meeting. The continuation of the meeting on 1 May was minuted at pages 20-22 and once again the notes are signed by the claimant, the note taker and Ms Heighton.

42. On 6 May 2014 (page 26) the claimant was informed that Ms Heighton had commenced investigations and believed the likely outcome date will be 15 May 2014.

43. On 6 May 2014 the claimant contacted Ms Heighton and stated:

> "Whilst I was happy with the majority of the meeting I am concerned that some of the points which are important to me and have a bearing on where we are today e.g. the WMAS/Gary Smith issue will not be included. This issue is extremely important and did I touch upon it"

44. Ms Heighton replied on 7 May 2014:

> "Please detail to me exactly what your grievance is on these points."

45. On 15 May 2014 the claimant said (pages 30-32):

> "I just want to put everything to you in writing to avoid confusion."

46. Meanwhile we find that Ms Heighton conducted investigations. She spoke to Sofia Kazmi on 15 May 2014 (see pages 33-35); Tracy Molloy (see pages 36-38). She also emailed DeeDee James (see page 39). On 16 May 2014 she wrote to the claimant with an outcome (see pages 40-48). We find that some aspects of the claimant's grievance were upheld and some were not.

47. Meanwhile on 13 May 2014 an audit was taken of the claimant's calls and she was put on an informal plan and taken offline. The plan is dated 13 May although it was signed by the claimant on 16 May.

48. There was no dispute that Ms Molloy "filled up" and started to cry when given the claimant the performance improvement plan. The claimant said she believed this

was because Ms Molloy was “not comfortable with what she had to impose” (see paragraph 97). In cross examination Ms Molloy disputed that. She explained that when the claimant said to her she thought the performance improvement plan was issued because she had presented her grievance Ms Molloy was distressed by the claimant’s comment and upset that the claimant thought she would do such a thing. We prefer Ms Molloy’s account.

49. We find that on 29 May 2014 there was a meeting between the claimant, Tracy Molloy and Sofia Kazmi regarding an unsafe call. The call related to one which had occurred on 25 May 2014 concerning a baby boy and a rash (see page 96 and pages 97-98 for the respondent’s contemporaneous notes, and pages 99-100 for the claimant’s corrections to the notes). We also rely on the claimant's statement at paragraph 110 and Ms Molloy’s statement at paragraph 18.

50. We find that on 30 May 2014 there was a further meeting between the claimant, Sofia Kazmi and Tracy Molloy. The record of the meeting is at pages 101-102 with the claimant's amendments at pages 103-104. We find that during this meeting Ms Kazmi stated:

> “I advised Suzanne that the matter was going formal due to her capability to fulfil the role.” (See page 101)

51. She reiterated it was going formal from Monday 2 June and that the informal plan would continue until then (see page 101).

52. We find that on 31 May 2014 there was a meeting between the claimant, her line manager Sofia Kazmi and Marilyn Healey (NWAS clinical duty manager). We rely on the email at page 107 which gives Mrs Healey’s contemporaneous account of that meeting. We find that the meeting on 31 May 2014 followed a concern from a nurse adviser (Janet Briggs) regarding a call that had been taken by the claimant, Suzanne Fletcher. This account is found in the statement of Marilyn Healey at page 123.

53. We find the date the call was taken on 30 May 2014 (see page 104A). There is no dispute that the call related to the patient requiring information about a cold sore. Marilyn Healey, NWAS clinical duty manager stated that the nurse had considered the claimant’s assessment had incorrectly documented information of the symptoms. The nurse had raised concerns as she felt the call handler (the claimant) had dealt with aspect of the assessment in a way that was inaccurate and inappropriate, including diagnosing the patient. (See page 123,127).

54. Mrs Healey stated that when the claimant was asked to listen to the call taken by her on 30 May 2014 and feedback to Ms Healey if she thought she had done anything wrong, the claimant became “irate, angry and verbally abusive against Conduit as a company and the staff”. She raised serious concerns about the claimant’s capability to do the role of call handler.

55. We find the accounts of the meeting of 31 May 2014 are in the fact find for the investigation. They are to be found Marilyn Healey pages 123-128; Sean Padgett pages 140-144; the claimant pages 153-164; Linda Wray page 226; Julie McGowan page 136-7

56. As a result of her behaviour that day the following day,2 June 2014 the claimant was suspended. We also rely on page 105.

57. We find that the claimant attended work on 2 June and rely on her statement at paragraph 128. We find that the claimant was then suspended (see page 116A and 117). Later that morning the claimant sent a lengthy email (see pages 108-113). That email at pages 108-113 was forwarded by Tracy Molloy to Gordon Johnson and Beverley Heighton.

58. The following day, 3 June, Tracy Molloy emailed the claimant an invitation to an investigatory meeting on 5 June (see pages 121-122 and 122A) and an attachment at page 104B, which we were informed was Sofia Kazmi's account.

59. Also on 3 June the claimant emailed Tracy Molloy copying in employees from NWAS, namely Dan Ainsworth and David Buckley, into her complaint.

60. The complaint dealt with a variety of matters. On the last page the claimant stated she wished to "make a complaint about the unacceptable meetings I have been subjected to on Thursday, Friday and Saturday". She stated:

> "I believe that everything I have been put through since 13 May is wholly down to the fact that I put in a grievance and this was formalised as I made an appeal."

61. On the afternoon of 3 June 2014 a grievance appeal investigation meeting was held (see pages 57-62) in relation to the claimant's earlier concerns. The outcome to that grievance is found in a letter dated 9 June 2014 (pages 65-74). The outcome was that the claimant's grievance was not upheld. The outcome noted that some of the complaints related to individuals who were not Conduit employees and other points were matters that had already been addressed in previous grievance hearings.

62. Meanwhile on 4 June 2014 the claimant attended an investigatory meeting into her conduct. Although the notes at pages 153-164 note the meeting occurring on 4 June there was no dispute that that is a typographical error and it actually occurred on 5 June. Meanwhile Tracy Molloy had also interviewed Julie McGowan (see page 136); Sean Pagett (pages 140-14) and Marilyn Healey (see page 128). Marilyn Healey was the Clinical Duty Manager for NWAS, as was Julie McGowan and Sean Pagett.

63. We rely on the evidence of Marilyn Healey that the nurse adviser, Janet Briggs, had raised a concern that the claimant had conducted an inaccurate and inappropriate assessment of a patient. A patient had called regarding her BF having a cold sore via oral sex and wanted further information. Marilyn Healey said that the claimant had diagnosed, which should not be done by a call handler as they were not trained to do so.

64. Marilyn Healey recalled that when she spoke to the claimant about the call she told her that she would need to listen to it. The claimant became "angry, irate, blew up and made degrading comments regarding Conduit". She explained that she (Marilyn Healey) had to raise her voice and "advised her that due to her state of mind and her behaviour that I would be ending the meeting as she was being

unreasonable". She stated that the claimant "was not shouting from the beginning of the meeting but when she did start shouting she wouldn't stop. We weren't able to reason with her because of this" (see page 125). She explained that the claimant was by then not "in any fit mental state to listen to the call". There is no dispute the claimant was taken offline.

65. We find the evidence of Julie McGowan and Sean Pagett was that they dealt with the aftermath of the meeting. Julie McGowan described the claimant as "hysterical and crying, aggressive and emotional".

66. Meanwhile also on 5 June the claimant had presented a further grievance which she had sent to Tracy Molloy copying in Dan Ainsworth and David Buckley (see pages 217-225).

67. On 5 June 2014 at page 225 Beverley Heighton from Global HR sent the claimant a letter explaining it was not appropriate for her to contact NWAS because they were not her employer (see the attachment at page 152). The claimant replied (see page 22A).

68. Also on 5 June 2014 at 12:15pm the claimant had sent a further grievance (see page 64) in relation to her grievance and appeal hearing. The respondent dealt with that concern in the grievance appeal outcome letter (see page 73).

69. The claimant was on annual leave from 6-15 June 2014.

70. The respondent also interviewed Brenda Fe, a Clinical Trainer, on 9 June in relation to the investigation of what had occurred on 31 May 2014 (see pages 226-227).

71. On 15 June 2014 the claimant raised a further grievance (page 235). This grievance included a number of matters which had already been raised.

72. On 17 June 2014 the claimant was issued with an invitation to a disciplinary "corrective action" meeting. P245-245a.The gross misconduct alleged was that:

> "An incident in the call centre on Saturday 31 May 2014 following you being informed that you were to be taken offline for:
>
> - clinical safety concerns
>
> - actions taken by you which we consider may bring Conduit into disrepute."

73. Accompanying that letter we find was a number of enclosures listed at page 245a. These documents included a copy of signed informal PIP (pages 92-93 – action plan); a copy of the suspension letter (page 116); a copy of the document conversation 29/5/14 (with amendments from SF) p97-98,p99-100; a copy of document conversation 30/5/14 (with amendments from SF) p101-104; copy of signed investigation notes Marilyn Healey (123-128); copy of signed investigation notes Julie McGowan (136-137); copy of signed investigation notes Brenda Re (page 226-7); copy signed investigation notes Sean Pagett (page 140-144); a copy of investigation notes (not signed) reflecting changes in blue form from Suzanne

Fletcher (187-199); a copy of the corrective action policy (formerly known as dismissal and disciplinary policy) at page 245B-245H).

74. in addition there was an email exchange between the claimant and Ms Heighton on 20 June to which Ms Heighton copied in Mr Johnson. See p260a.-c.The Tribunal finds that p260 e-t are the documents requested by the claimant in her email of 20 June 2014 and responded to by Ms Heighton the same day at 16.37 in the black type.

75. The disciplinary meeting took place on 25 June 2014. The minutes are at pages 289-295. Handwritten notes were taken during the meeting and signed by Mr Johnson and Ms Fletcher (pages 296-324).

76. The outcome of the meeting is dated 27 June 2014 (pages 326-328). Mr Johnson found that he had no alternative but to dismiss the claimant on the ground of some other substantial reason due to an irrefutable breakdown in trust and confidence which was a fundamental requirement for an ongoing employment relationship. He relied on the incident in the call centre on 31 May 2014, the clinical safety concerns and actions taken by her which he considered may bring the company into disrepute.

77. The claimant appealed by a letter of 5 July 2014 (pages 347-350). The appeal hearing took place on 16 July 2014 (see pages 353-360). The appeal was unsuccessful and the outcome letter is at pages 371-376.

Issues

78. We turn to the protected interest disclosures relied upon by the claimant.

79. The claimant relied on seven disclosures of information which are identified at pages 32-35 of the supplemental bundle. They are amplified in her further and better particulars document at pages 39-54. The claimant also referred to the disclosures in her statement and in particular at paragraph 88.

80. The Tribunal referred to the List of Issues.

(1) Did the claimant make disclosures of information on 29 April 2014 and 1 March 2014 tending to show –

(a) that the respondent had failed, was failing or was likely to fail to comply with any legal obligation to which it was subject (the legal obligations relied upon by the claimant are those set out in the response to the further and better particulars of the claim dated 6 October 2015; and

(b) in relation to the claimant's claim concerning recruitment adverts placed by the respondent that such failure has been or was likely to be deliberately concealed?

(2) Was the claimant's belief in the alleged breaches of section 43B(1) relied upon by her a reasonable belief and in the public interest?

(3) Were the legal obligations relied upon by the claimant capable of breach by the respondent?

(4) If the disclosures were of information capable of protection, were such disclosures in the public interest?

(5) If on the basis of its assessment of the above issues the Tribunal considers that the claimant has made disclosures that qualify for protection under 43B ERA 1996 –

(a) Was the claimant subjected to the detriments relied upon by her or any of them? (The claimant relies on the detriments of call audit, unjustified disciplinary process and dismissal).

(b) If the claimant was subjected to the detriments relied upon by her (or any of them) then in respect of each disclosure were those detriments (or any of them) on the ground that the claimant had made such protected disclosures, having regard to the burden of proof?

(c) In the case of her dismissal, was the reason or principal reason for the claimant's dismissal that she had made the protected disclosures or any of them as set out as (1) above?

81. The Tribunal turned to the first alleged disclosure: “that Conduit call hander roles are deliberately advertised as full-time contracts when they are not full-time contracts but are flexible hours contracts resulting in recruits receiving lower levels of pay to which they were led to believe that they would receive, resulting in recruits suffering financial difficulties and then leaving, which also then increases staff attrition and recruitment costs and compromises the effectiveness of the service provided to patients”. The claimant alleged that this disclosure was made both on 29 April 2014 and on 1 May 2014 at NWAS Middlebrook site to Beverley Heighton, the HR Business Partner at Conduit.

82. The Tribunal turns to the first issue: what is the disclosure of information? The Tribunal finds it implausible that the issue was discussed on both dates and using the precise words now relied upon by the claimant.

83. The Tribunal finds that the claimant disclosed information on 29th April suggesting that Conduit call handler roles were advertised by third parties as full-time contracts when they were not full-time but flexible hours contracts. The tribunal relies on the evidence of Ms Heighton and the minutes of the meeting which record that the claimant raised a concern that “Adverts issued last week by Berry and Tate were promising fulltime hours SF feels this is misleading” p 18.There is no dispute that Beverley Heighton went on to investigate that part of the claimant's claim and contacted both the respondent’s staff who dealt with the agency (p23,24) and also the advertising agencies (p39).

84. However we are not satisfied that the precise words relied upon by the claimant were the words spoken by her and on that basis the allegation fails at this point.

85. However given we find that the claimant disclosed information namely "the adverts issued last week by Berry and Tate were promising full time hours.SF feels this is misleading" the Tribunal has gone on to consider the remaining issues.

86. We turn to the next issue, which is whether the claimant's belief in the alleged breach of 43B(1)ERA 1996 was a reasonable belief and in the public interest. We remind ourselves that the test is not that of the reasonable worker; it is whether in the reasonable belief of the claimant there was a breach of s 43B(1)(b). ERA 1996.

87. The claimant had seen the advertisements which stated that the vacancy was for a full-time position. She knew that the staff were working short hours and so did not believe there was no vacancy for a full-time contract. In the claimant's mind the advertisement was therefore misleading and we are satisfied this belief was in her mind a reasonable belief.

88. However, we turn back to the next part of the test, which is does this disclosure tend to show one or more of the following –s43B(1) (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject? The claimant, at page 40(Bundle 1) in the further particulars, identified the legal obligation as "the duty of care that the employer has to its employees, the duty of care to NHS service users and patients and the contractual obligations as an NHS partner". When asked for the statute or legislation she replied, "The legislation to which the legal obligation relates is false advertising and misrepresentation, Employment Law, Health and Safety at Work Act 1974".

89. The Tribunal is not satisfied that any of this amounts to legislation bestowing a legal obligation on the respondent in relation to advertisements. An advertisement is an inducement to apply for a position only. The Tribunal is not aware and was not made aware of any legal obligation to which the respondent or the agency could be subject in relation to an advertisement placed by an agency where there is a factual inaccuracy in the advertisement in relation to the number of hours available to a successful job applicant. Accordingly the Tribunal is not satisfied that in the reasonable belief of the claimant her disclosure "Adverts issued last week by Berry and Tate were promising fulltime hours SF feels this is misleading" tends to show that "a person has failed is failing or is likely to fail to comply with any legal obligation to which he is subject". Accordingly the disclosure is not protected.

90. For the sake of completeness, although it is not necessary because we have found the disclosure is not qualifying for protection, we turn to the question of the public interest. The minute suggests the claimant at the time the claimant was concerned about this for personal reasons; "Conduit are aware that SF has previously stated that she joined the company on the understanding that it was a fulltime role with guaranteed hours and finds it unacceptable that this is not the case." Despite this we are satisfied that a job advertisement with inaccurate information is potentially a matter of public interest

91. We turn to the alleged breach of s43B(1)(f), which is that "the information tending to show any matter falling within any one of the preceding paragraphs has been or is likely to be deliberately concealed". We are not satisfied there was any evidence available to the claimant to suggest there had been any deliberate concealment by the respondent. We find that the words "deliberate concealment" requires an intention to conceal or deceive We are not satisfied there was any

evidence available to the claimant which could suggest an intention by the respondent to supply incorrect information to the agency. For this reason we are not satisfied that disclosure one amounts to a disclosure that attracts the protection of section 43B(1)(f) ERA 1996.

92. Accordingly the Tribunal is not satisfied that allegation one is a protected disclosure.

93. We turn to the second disclosure which is that: "Conduit does not facilitate employee access to any internal employment policies which is a breach of the legal obligation under the terms of the NHS contract provided to Conduit". This disclosure was allegedly made on 17 April 2014 to Tracy Molloy and then later to Beverley Heighton. We find the disclosure to Beverley Heighton was at the meeting which took place on 29 April and 1 May. We accept the claimant's evidence that she raised an issue of "she and other workers not being able to access the company's policies and procedures on Conduit café". We do not find the words relied upon by the claimant now were the words used at the time. We find it implausible that she used these specific words on two occasions. We do find she raised the issue of access to policies with Beverley Heighton (see page 18) but we find the disclosure of information to Beverley Heighton was that, "SF still does not have access to the company policies and procedures on Conduit café" as noted in the minutes. The fact that it was raised was accepted by Ms Heighton and she took action to remedy the position.

94. Having identified the disclosure of information we turn to consider whether, in the reasonable belief of the worker making the disclosure, it is made in the public interest and tends to show 43B(1)(b), "that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject".

95. We find that the disclosure made to Beverley Heighton at page 18 could not be said to be in the public interest because it refers only to the claimant herself.

96. We turn to consider the legal obligation the claimant relied upon. At page 32 she relies upon the "legal obligation under the terms of the NHS contract provided to Conduit". At page 42 the claimant describes the legal obligation as being "the employer's contractual obligation and duty of care to employees and NHS patients and the contractual obligation to the NHS and its duty of fidelity in fiduciary duties to its employees". She says she relies upon the legislation under common law and the Employment Rights Act and/or the Health and Safety at Work Act and/or the Health and Social Care Act.

97. We find the claimant's contract of employment at paragraph 11(p3) makes it clear that its rules policies and procedures are non contractual documents.

98. The claimant states she has never seen the contract between the NHS and Conduit. She had simply made a guess and assumed there must have been breach of a legal obligation. We are not satisfied that her guess that there had been a breach of that obligation based on a mere assumption is a reasonable belief.

99. So far as the conversation with Tracy Molloy is concerned, we find the claimant in her meeting with Tracy Molloy on 17 April raised the issue of access to policies. Tracy Molloy cannot recall that part of the conversation. We accept the

claimant raised the lack of access to policies was as described in the claimant's statement. However we are not satisfied that disclosure in relation to failure to provide access to the employment policies relevant to an individual employee policies can amount to a public interest.

100. We find that there is a gloss on the wording at the table in paragraph 88 of the claimant's statement, but we are not satisfied that that is reflected by the words actually used by the claimant at the time, which is what we must consider. We rely on our finding above that the claimant states she has never seen the contract between the NHS and Conduit. She had simply made a guess and assumed there must have been breach of a legal obligation. We are not satisfied that her guess that there had been a breach of that obligation based on a mere assumption is a reasonable belief on her part.

101. Accordingly we are not satisfied that disclosure two is protected within the meaning of the Employment Rights Act 1996.

102. We turn to disclosure three, "That Conduit received huge finders fees from West Midlands Ambulance service for transferring large numbers of Conduit recruits from Conduit to West Midlands Ambulance Service under a TUPE agreement". The claimant alleges this disclosure was made to Beverley Heighton on 29 April 2014 and on 1 May 2014 at the NWAS Middlebrook site.

103. We find that the disclosure of information the claimant made to Beverley Heighton was that she felt "she will never get a job at NWAS because a colleague said there was a transfer fee to be paid". See p18. We find that this was the disclosure of information rather than the words now relied upon by the claimant. We find that a contemporaneous document, namely the minutes of the meeting signed by the claimant at the time, is more likely to be accurate than the account in the claimant's witnessed statement compiled over 2 years after the event.

104. We turn to consider whether those words can be a protected disclosure.

105. We are not satisfied that within the claimant's reasonable belief a person had failed, is failing or is likely to fail to comply with any legal obligation. The claimant referred to a variety of legal obligations (see pages 42-43 where she referred variously to "breach of TUPE rules, legal obligations of NHS procure outsourcing company and NHS financial probriety [sic]". She also referred to, on page 43, "TUPE rules, Employment Rights Act, NHS contractual law and possibly Agency Workers Regulations Act and NHS financial probriety [sic]". We are not satisfied that there were any reasonable grounds for the claimant's belief that there had been a breach of any legal obligation.

106. The claimant also relied on a breach of 43B(1)(f): that information tended to show any matter falling within any one of the preceding paragraphs has been or is likely to be deliberately concealed. We find there is no evidence of deliberate concealment. We rely on the grievance outcome letter from Ms Heighton at page 43 where she stated:

> "You stated that you wanted to work direct for the NHS and that you joined Conduit as a route to secure a position with the NHS. You now feel you will not gain a position working for NWAS because you have been told that

> Conduit charge an introduction fee to WMAS in order to TUPE substantive staff members to their employ."

107. We find that this is the matter that was discussed and Ms Heighton responded that she had investigated the matter and there was no evidence of WMAS paying any fee for substantive staff to TUPE transfer. We find it is likely that the claimant has misunderstood the position.

108. In the dismissal appeal outcome letter (page 374) Oliver Curtis stated in relation to the allegation that Conduit had profited from the TUPE transfer of WMAS that:

> "The investigation demonstrates that the claimant had been advised that this was not the case on numerous occasions."

109. He went on to say that there was no evidence to support her claim that Conduit charged a fee for the transfer of staff.

110. Accordingly we find that this was not a protected disclosure because firstly the precise words relied upon by the claimant were not said. Secondly the words she did speak did not amount, within the reasonable belief of the claimant, to a breach of a legal obligation within the meaning of s43(B)(1)(b) or a breach of s43(B)(1)(f) ERA 1996.

111. We turn to disclosure four: "That my manager must have been in error when she ordered me to avoid contacting the Clinical Support Staff provided as a vital backup to the 'Adastra Pathways' patient diagnostic system when dealing with complex calls, telling me that this was the instruction being passed down by the North West 111 Commissioners in order to test the Adastra system integrity at the expense of unnecessary ambulance dispatch". The claimant said that this was made to Beverley Heighton on 29 April and 1 May at NWAS Middlebrook site. We turn to the first issue: what was the disclosure of information?

112. There was a dispute between the claimant and Beverley Heighton whether this issue was raised at all. Ms Heighton denied that any issue in relation to disclosure four was raised with her at the grievance hearing on 29 April and 1 May. The claimant agreed in cross examination that it was not contained in her grievance and that the issue is not recorded in the minutes of the meeting (at pages 17-19), although she reiterated that she believed she had raised the matter with Ms Heighton. She agreed it was not in the email at page 27 or in a detailed email at pages 30-32.

113. The only version of events relating to this alleged disclosure in the claimant's statement is at paragraph 55. That relates to a conversation between the claimant and her manager, Sofia.

114. We find that Ms Heighton dealt thoroughly with the issues raised by the claimant -see her grievance outcome letter at pages 40-48.

115. We found Ms Heighton to be a good witness. Her answers were clear and direct. By contrast the claimant's answers lacked focus and on some occasions her answers were evasive and she failed to answer the question.

116. We prefer the evidence of Ms Heighton that the issue stated at allegation four was not raised with her and accordingly cannot amount to being a protected disclosure. This is supported by the lack of any reference in the contemporaneous document.

117. We turn to allegation five: "That Conduit was avoiding their obligations under their NHS contract by not providing employees with any employee training or any employee support in relation to serious incidents requiring investigation (SIRIs)". This allegation was made to Beverley Heighton on 29 April and 1 May at NWAS Middlebrook site.

118. We turn to consider what was the disclosure of information in allegation five? There was a factual dispute. The claimant said in cross examination that she used the exact words used at page 34 on both 29 April and 1 May. Ms Heighton was sure that those words were not used. She said the only discussion in relation to SIRI is as noted on page 18, namely:

> "SIRI took too long (five months) and was unprofessionally dealt with. SF felt under pressure and received no support from Conduit."

119. There is no dispute that the claimant was subjected to a SIRI in 2013 and raised a grievance about the matter which was thoroughly investigated at that time. In the present grievance outcome at page 43 Ms Heighton stated:

> "You stated that the SIRI you underwent in 2013 took too long to complete and that an email with incorrect details on it was sent internally. You want this email removed from your personnel file. Investigation showed that the matter in which the SIRI was conducted investigation was investigated and responded to in the appeal to the grievance held 29 May 2013. For this reason I have not re-addressed the point." (See page 43)

120. She stated she was attaching a copy of the outcome letter of that meeting to the claimant.

121. We find the contemporaneous documentation is consistent with Ms Heighton's recollection. We find that it is much later, when the claimant was asked to clarify her protected disclosures that she has used the words as listed at page 34. We find that Ms Heighton's recollection is likely to be accurate and the claimant is likely to be mistaken. For the avoidance of any doubt, although the issue of SIRI was raised the claimant did not raise the issue that the respondent was avoiding their obligations under their NHS contract by not providing employees with training or employee support. Accordingly this allegation cannot amount to a protected disclosure because we find it was not made in the way that the claimant has stated.

122. We turn to disclosure six: "That Conduit is not conducting all audits in line with NHS policy stated within the NHS contract under which Conduit has to operate and Conduit is therefore risking patient safety". This disclosure was made to Beverley Heighton on 29 April 2014 and 1 May 2014 at NWAS Middlebrook site.

123. We find there was a factual dispute between the claimant and Ms Heighton as to what was said at the meetings on 29 April and 1 May. The claimant was insistent

at the Tribunal that she used the precise words at page 34 for allegation six in both meetings.

124. Ms Heighton was equally adamant that those words were not used. Ms Heighton agreed that as the contemporaneous documents note, there was a discussion whereby the claimant stated she agreed with the auditing of calls but the feedback "is not always delivered as it should be" (see page 21). The claimant also stated in relation to meetings generally, "feedback is not given in a timely manner and there is not often the chance to listen to failed calls".

125. At the Tribunal the claimant gave a detailed explanation of what she understood the NHS policy to be, namely that there should be three call audits plus one self review each month and that this was a contractual obligation under the Pathways license. She agreed she had never seen the Pathways license but she had looked at the Commissioners' guide on the internet.

126. We are not satisfied that this detailed information was placed before Beverley Heighton at the meetings on 29 April and 1 May. We accept the evidence of Ms Heighton that it was not. The only reference in the detailed grievance outcome letter to these matters was where Ms Heighton dealt with the feedback issue at page 45.

127. The claimant did not raise this issue in her follow up email of 30 May. In cross examination the claimant referred to her email of 15 May 2014 (at page 31) to say that she referred to 1-2-1 meetings and she was dealing with this issue. We find that there is no information in that paragraph to suggest the claimant was raising a disclosure about call audits not being in line with NHS policy under the NHS contract. The extract states:

> "Also there is absolutely no consistency whatsoever in one-to-ones. You are given no preparation time and things are recorded which you are not asked to sign…"

128. We find that this is not the same as an allegation that Conduit is not conducting call audits in line with NHS policy.

129. Accordingly we find that it is factually incorrect that the claimant made a disclosure of information stating that Conduit is not conducting call audits in line with NHS policy as stated within the NHS contract under which Conduit has to operate and Conduit is therefore risking patient safety to Ms Heighton on 29 April and 1 May 2014, and accordingly this allegation cannot succeed as a protected disclosure.

130. We turn to allegation seven: "That the Adastra Pathways functionality could not support the caller or the call handler on complex mental health cases and therefore patient was put at risk".

131. Once again there was a factual dispute between the claimant and Ms Heighton as to what was said at the meetings on 29 April and 1 May. Ms Heighton said the only discussion in relation to this issue was where the claimant raised a concern that the training given was not sufficient in relation to patients with complex health issues-see page 21: "SF stated training given (acknowledged that it is provided by NHS) is not sufficient for suicide patients or complex health issues". Ms Heighton was certain that there was no discussion of the Adastra Pathways

functionality, a call algorithm. At paragraphs 46-50 of her statement she identified that the issue was only in relation to the fact the claimant felt she had not received sufficient training to deal with suicide patients.

132. The claimant said that she had further raised the issues by her email of 15 May at paragraph 8. The Tribunal cannot see that within paragraph 8 there was any specific reference to the Adastra Pathways functionality. Instead there was some general concern raised by the claimant in relation to dealing with suicide calls.

133. Once again when cross examined the claimant was adamant she had used the precise words stated in allegation seven on both 29 April and 1 May. We are not satisfied that she did. We find she is mistaken. We prefer the evidence of Ms Heighton. We find her evidence is supported by the contemporaneous documents.

134. The claimant has a great attention to detail. Throughout the bundle she frequently issued further grievances and follow up emails. However, we cannot find any document that clearly identifies that she actually raised the issue of the Adastra Pathways functionality at the meetings of 29 April and 1 May despite receiving the minutes of those meetings and the outcome of Ms Heighton. Accordingly, given that we find the claimant is factually incorrect this protected disclosure cannot succeed.

135. Although we have found that none of the disclosures were protected within the meaning of section 43B(1) of the Employment Rights Act 1996, we have for the sake of completeness gone on to deal with the other issues. (There is no dispute that the alleged disclosures were made to the employer within the meaning of s43C ERA1996.)

136. We turn to the detriments. There is no dispute the detriments relied upon by the claimant were a call audit and an “unjustified disciplinary process”.

137. We turn to deal with causation. We remind ourselves of s48(2) ERA 1996 and the case of Fecitt v NHS Manchester 2012 ICR 372, CA

138. We find in relation to the call audits that there was clearly contemporaneous evidence that there were concerns about the claimant's performance before she made any alleged protected disclosures on 29 April and 1 May. We rely on the performance feedback form in March (see page 275 – “Suzanne has failed two calls out of three”). We also rely on the email at page 76 which notes that the claimant's immediate line manager, Sofia, had been asked to start doing additional call reviews in April.

139. We find the reason that the action plan was being considered was because of the respondent’s genuine concerns about the claimant's performance (see also pages 267,268, 270,276, 279 and also page 88). Accordingly, the respondent has satisfied us that there was a genuine reason for the call audit and the action plan which was not related in any way to any protected disclosures made by the claimant.

140. In addition we find that it was part of the respondent’s policies to conduct a call audit. The claimant herself said when giving evidence that there was a system of call audits which she accepted was required. She said there had to be three call audits per month and the contemporaneous notes state that she accepted the need for calls to be audited (see page 21). We find this evidence is inconsistent with a

suggestion that the claimant was subjected to call audit because she had made alleged protected disclosures on 29 April and 1 May.

141. We turn to the second detriment: “unjustified disciplinary process”.

142. There is no dispute that the respondent conducted an investigatory process. The claimant was suspended and eventually invited to a disciplinary hearing. We turn to the reasons for that investigation.

143. We find the reason was an incident in the call centre on 31 May 2014 when the claimant was asked to listen to a call from the day before and to give feedback.

144. We find that Janet Briggs, a nurse, raised some concerns about a call completed by the claimant. Janet Briggs does not work for the respondent. When Marilyn Healey, Clinical Duty Manager for North West Ambulance Service, who does not work for the respondent sat down with the claimant's line manager and the claimant explaining that she needed her to listen to the call and feedback if there was anything she felt she had done wrong, the claimant “became irate, angry and verbally abusive against Conduit as a company and the staff”. Marilyn Healey felt that the claimant was not in any fit state to listen to the call and stated to her manager there was no way she could go online. She raised this concern by email with the respondent the following day, 1 June 2014. We find there is no evidence to suggest that Marilyn Healey, who is not employed by the respondent, was aware of any of the claimant’s protected disclosures. We find that having received a concern which ended, “I have serious concerns about Suzanne’s capability to do the role of call handler”, the respondent acted properly by commencing a disciplinary investigation to determine whether the matter should proceed any further. We find it was because the complaint had been raised that the claimant was suspended; she was investigated and statements obtained from others who were present, including Marilyn Healey.

145. We therefore find that the respondent has shown the disciplinary procedure was not unjustified. We find that a reasonable employer having received a complaint of this type from a client would reasonably suspend the named individual and investigate the matter, which is what the respondent did. Accordingly this detriment cannot be attributed to any protected disclosures by the claimant.

146. Finally we turn to the issue of jurisdiction. It was suggested by the respondent at the outset of the hearing on the basis that the detriment claims were out of time that this was an issue but it made no submissions on this point. Given that the Tribunal has determined that any disclosures of information do not qualify for protection and also that the alleged detriments are unrelated to any disclosures of information if they had qualified for protection, the claims for public interest disclosure detriment have failed and so the Tribunal does not find it necessary to determine this issue

147. The claimant also stated she was dismissed for making protected disclosures within the meaning of section 103A Employment Rights Act 1996.

148. We turn to consider the dismissal. The claimant had less than two years’ service. It is for her to show that there is a prima facie case that the reason for her dismissal could have been because she raised protected disclosures.

149. We note there is close link in time between the period when the claimant says she made protected disclosures on 29 April 2014 and 1 May 2014 and the date of her dismissal which was 27 June 2014. We find that this close link in time is sufficient to shift the burden of proof to the respondent.

150. We turn to the respondent to consider the reason for dismissal. The respondent relied on "some other substantial reason" and in particular an irrefutable breakdown in trust and confidence, which is a fundamental requirement for an ongoing employment relationship. We rely on the evidence of Mr Johnson to find that the incident in the call centre on Saturday 31 May 2014 was a matter that was of serious concern to the company. We find Mr Johnson relied on the statement of Marilyn Healey that the claimant became "angry, irate, blew up and made degrading comments about Conduit". We find that Mr Johnson took into account that Ms Healey was a client of the respondent.

151. The claimant disputed Ms Healey's account and referred to it as being "malicious". Mr Johnson considered the evidence of other witnesses: Mr Pagett, Ms Fe and Ms McGowan and found that the claimant had reacted to feedback in a completely unprofessional and inappropriate manner.

152. We rely on the evidence of Mr Johnson to find that there had been persistent concerns regarding the claimant's clinical safety which had first been identified in early 2014. Having considered the evidence about her call handling we find that Mr Johnson had genuine concerns about the claimant's clinical safety.

153. We find that Mr Johnson relied on the fact that the claimant repeatedly contacted senior members of the respondent's client to complain despite having been specifically requested by the respondent not to do so. Mr Johnson relied on page 152 which specifically informed the claimant she was not to contact NWAS but she continued to do so (see page 254). We find that Mr Johnson took into account that the claimant had refused to take on board any constructive criticism of her clinical call handling (in particular how she reacted to Marilyn Healey at the meeting on 31 May 2014). We find that he relied on the claimant's lack of insight into her behaviour at the disciplinary hearing where she stated she thought the call was "a good call"

154. Mr Johnson had accounts of the claimant, Marilyn Healey, Sean Pagett, Julie McGowan and Ms Re. We find he was entitled to prefer the account of the other witnesses to that of the claimant. The claimant's account is at odds with everyone else's. At page 192 in the investigation statement she accepted she had a limited recollection: "All I can remember is saying that I had some issues in a grievance". However at the disciplinary hearing page 290 she referred to MH, The NWAS clinical delivery manager as producing a "malicious and venomous statement".

155. We are satisfied Mr Johnson has shown that the trust and confidence between the claimant and her employer had been eroded by her conduct on 31 May 2014 and the way that she had continued to contact NWAS despite the request by her employer that she direct matters to them. Accordingly the claimant's claim that the reason or principal reason for her dismissal was that she made protected disclosures to Beverley Heighton in meetings on 29 April and 1 May 2014 fails, because we are satisfied the real reason for her dismissal was for the reason stated in the dismissal letter at pages 326-328.

156. Finally, we turn to the claimant's claim that the reason for her dismissal was pursuant to section 100(1)(c). These were identified by the claimant at pages 36-38 of the bundle.

157. We find there was a lack of clarity in relation to the claimant's health and safety claim. We find that the allegations raised in the Scott Schedule at pages 37-38 were not clearly raised with Ms Molloy at the time. The claimant accepted in cross examination that she expressed herself in that table at pages 37 and 38 because that was how she understood Judge Hodgson had directed her to do it. She confirmed there was no email in relation to the allegation made to Tracy Molloy on 5 April 2014. Her evidence was that following a health and safety meeting which she did not attend (Conduit circle employee forum) she had placed post-it notes on the minutes of some of the meetings to identify her concerns. The claimant's evidence, which was not disputed by Tracy Molloy, was that she raised some generalised concerns about working conditions with Tracy Molloy on 17 April 2014.

158. In relation to the issues raised by the claimant with Beverley Heighton we rely on the minutes at pages 17-22 which were signed by the claimant as an accurate reflection of the issues which were discussed at that time.

159. So far as 23 May 2014 is concerned, where the claimant says she raised issues with Andrea Browning, HR Business Partner, in relation to her grievance appeal, the document is at pages 50-53. The claimant states she "appealed the points not upheld in relation to health and safety i.e. risk assessment not DSE assessment, and training support advised by substantive staff."

160. Paragraph 11 at page 51 states:

> "I stated that I wanted to see a DSE assessment for the role. No I didn't. The document I requested was the risk assessment for the role that Conduit undertook as part of its obligation to insource the role. However you have inadvertently confirmed the blatant disregard for the health and safety of the Middlebrook site and it is appalling that Tracy is only just being trained on this after at least nine months in the role."

161. The Tribunal finds there was a lack of clarity as to how this amounts to the circumstances connection with her work which she reasonably believed were harmful or potentially harmful to health and safety. Page 51 simply refers to a "blatant disregard for health and safety of the Middlebrook site". It does not specifically identify what the alleged breach of health and safety is.

162. Even if the claimant has brought to her employer's attention the circumstances connected with her work which she reasonably believed were harmful or potentially harmful to health and safety, the Tribunal is not satisfied that that was the reason or principal reason for the dismissal. The claimant has less than two years' service and she has to adduce facts to show a prima facie case. The Tribunal is not satisfied that she has done so.

163. However, in case we are wrong about that and assuming that the burden of proof has passed to the respondent, we are satisfied that they have shown that the reason for the claimant's dismissal was as stated above, namely the breakdown of the employment relationship between the claimant and the respondent arising out of

her conduct in the meeting with the client, Marilyn Healey, on 31 May 2014 and the complaints made to the client despite the request not to contact them. Accordingly the claimant's claim for unfair dismissal fails.

Employment Judge Ross

Date 18 April 2017

JUDGMENT AND REASONS
SENT TO THE PARTIES ON

19 April 2017

FOR THE TRIBUNAL OFFICE