EMPLOYMENT TRIBUNALS

Claimant: **Ms Annie Townsend**

Respondent: **Surrey County Council**

Heard at: **London South Employment Tribunal**

On: **17 – 21 and 22 July 2017 and 18 July 2017 in chambers**

Before: **Employment Judge Martin**
Ms Christofi
Ms Williams

Representation:
Claimant: **Ms Prince – Counsel**
Respondent: **Mr Salter - Counsel**

RESERVED JUDGMENT

The unanimous judgment of the Tribunal is that:

1. The Claimant's claims are dismissed

RESERVED REASONS

1. By a claim form presented on 19 August 2016 the Claimant made claims of detriment for making protected disclosures all of which were defended by the Respondent in its response dated 3 October 2016. The Claimant is still employed by the Respondent.

The issues

2. The issues had been agreed by the parties in January 2017 both of whom had the benefit of legal advice. On the Thursday before the hearing and after witness statements had been exchanged the Claimant sent to the Respondent a revised

list of issues. This revised list removed some detriments and added to the disclosures. This was the subject of discussion at the outset of the hearing. The Tribunal treated this as an application to amend the Claimant's claim and heard submissions from both parties. Whist acknowledging the lateness of the application and the way it was made, the Tribunal allowed the revised list of issues and amendments to the Claimant's claim on the basis that the Respondent had not said it could not deal with the amendments. The Tribunal considered the balance of hardship and that to disallow it would deprive the Claimant of the opportunity to put the amended matters forward. The issues are set out below and show the amendments made.

3. During the hearing, there were discussions about the agreed issues with the Respondent saying that the Claimant should only rely on the exact issues agreed, with the Claimant saying that there could be more flexibility. There is reference to this point when discussing the detriments below. The Tribunal has considered this matter and finds that the purpose of agreeing the issues is so that the parties know what they need to do to prepare for the case and decide what witnesses to call. Both parties were legally represented and their representatives agreed the issues. The Claimant said she had amended her issues on legal advice. Moreover, the issues reflect the case as set out in the Claimant's particulars of claim.

4. The Tribunal considered **Hendricks v The Commissioner of Police for the Metropolis [2003] IRLR 95**, which said that Tribunals in difficult claims of discrimination should hold case management meetings and determine the list of issues to be tried, and they should be relatively short. Although this case is not a discrimination case the same points arise. That was done in this case with the parties, who were both represented by solicitors and Counsel agreeing issues in January 2017. It was to those issues that the case was prepared. These issues remained as an agreed list of issues up to the Thursday before the hearing with the Tribunal allowing the amendments to the list of issues as set out above. This list then stood as the issues for the Tribunal to determine. The Claimant has had the opportunity to obtain legal advice, and has set out the issues in the amended list presented on the morning of the hearing. Te Claimant had ample opportunity to articulate her case as she wanted. The Tribunal allowed the amendments on the basis that this was the final list of issues and represented the issues that it would consider. The Tribunal does not consider that the Claimant can subsequently amend the issues during the hearing. In coming to its conclusions, the Tribunal has only considered the amended list of issues as it is worded.

The law

5. The relevant law is as follows:

   5.1 Section 43B(1) Employment Rights Act 1996 (ERA) provides that a qualifying disclosure is one where there is a disclosure of information which in the reasonable belief of the worker making the disclosure is made in the public interest and tends to show that a criminal offence has been, is being or is likely to be committed; that a person is failing, has failed or is likely to fail to comply with a legal obligation to which he is subject and/or that information tending to show either of those matters is likely to be concealed.

   5.2 Section 43C ERA provides that a qualifying may be made to the employer. (There was no issue taken by the Respondent that if disclosures were made, they were made in accordance with Section 43C).

5.3 Section 47B (1) ERA provides that a worker has the right not to suffer any detriment by any act done by his employer on the ground that the worker made a protected disclosure. S47B(1A)(a) extends that right to any act done by a fellow worker in the course of that worker's employment.

5.4 As to the burden of proof in relation to the claim of detriment Section 48(2) ERA provides that once the worker has shown the fact of a protected disclosure and the fact of detrimental treatment it is for the employer to show the ground on which the act or deliberate failure to act was done.

5.5 The case of **NHS Manchester v Fecitt & Others 2012 IRLR 64 (CA)** held that the test is whether the protected disclosure has materially influenced, in the sense of being more than a trivial influence, the employer's treatment of the whistle-blower.

The hearing

6. The Tribunal heard from the Claimant and Ms Kay Peters and Mr Carl Walker (both former employees of the Respondent) on her behalf. For the Respondent the Tribunal heard from Ms Joanne Simmons (Recruitment Advisor); Ms Johanna Bontoft (Senior Solicitor); Ms Rakhi Saigal (Strategic Business Partner in Human Resources); Mr Zahir Khan (HR coordinator); Mr David John (Audit Performance Manager); Julie Smyth (HR Reward Manager); Ms Gurbax Kaur (HR Operations Manager; Juliet Layton (Wellbeing and Inclusion Manager); Ms Ann Charlton (Director Legal Democratic and Cultural Services) and Mr Kenneth Akers (Head of Human Resources and Organisational Development). There were three agreed bundles of documents numbered to 1071.

The facts and conclusions that the Tribunal found

7. The Tribunal found the following facts on the balance of probabilities having heard the evidence and considered the documents and submissions. These findings are limited to those facts that are relevant to the issues and necessary to explain the decision reached. The Tribunal has not set out all the evidence heard, however all evidence was considered. The parties agreed a chronology and this is appended as it sets puts the Claimant's claims in context. Both parties provided written submissions for which they are thanked. These are not reproduced in this judgment.

8. The Tribunal began its deliberations on the basis that the Claimant's disclosures were protected disclosures thereby taking her case at its highest. The Tribunal considered whether the detriments occurred and if so, whether they were causally linked to the disclosures. If they were so linked, the Tribunal would go on to consider whether the disclosure was a protected disclosure pursuant to the legislation set out above.

9. The Claimant works in the Respondent's Human Resources Department and she is still employed. Her substantive role is grade S7 in the project Team as HR coordinator. She was employed by the Respondent from 2005 and worked in Human Resources from 19 August, 2011. At the time the Claimant started acting up to grade S9; she was working as a redeployment supervisor and sat on the Job Evaluation Panel.

10. The Respondent encourages staff development and has arrangements in place whereby staff can act up to different grades can be seconded to different areas of the organisation at different grades. The Respondent has a secondment policy. From 25 July, 2013 the Claimant acted up to S9 grade as HR Advisor in the

Projects team as redeployment advisor supporting staff facing redundancy to find new positions. This was extended on 22 January, 2014 and again on 13 August, 2014.

11. From 1 October 2014, the Claimant started a secondment at S9 working in a different area as an HR adviser in the Pay and Provisions Section. This move was requested by Ken Akers in May 2015. The Claimant was told that the secondment would last until the end of December 2015 and that she would then return to her substantive role at S7 in the Projects Team. The Claimant received written notification on 23 July, 2015, which also confirmed the duration of the secondment, and what would happen afterwards. The Claimant signed the agreement. Her secondment continued until the end of December 2015, whereupon the Claimant moved back to her S7 role. The Claimant's case is that the work she was doing during the secondment had not finished and the S7 role she went back to is different to her substantive post as the actual work was different, administrative in nature, "menial" and "demeaning".

12. The Claimant made four disclosures. Disclosure 1 was made on 17 August, 2014 disclosure 1a on 19 August, 2014, a "legal disclosure" in March 2015, disclosure 2 on 17 August 2015, and disclosure 3 on 10 June 2016. As can be seen from appended chronology and the detriments set out below, the Claimant claims various detriments because of making these disclosures.

13. The Claimant described the disclosures as follows:

14. <u>Disclosures 1 and 1 a</u>

    a. Carmel Millar and Matwher Baker were involved in the persecution oand eventual dismissal of Carl Walker
    b. That Surrey Fire and Rescue were advertising the post from which Carl Walker was made redundant
    c. That Carl walker's redundancy had been 'manufactured
    d. That Kay Peters made a complaint to Matthew Baker about bullying and harassment issues in the UNISON office and that no action was taken re her concerns
    e. That Matthew Baker made false allegations about Carl Walker's and Kay Peter's behaviour in the meeting
    f. That Kay Peters made a complaint to CM that the allegations were false and a complaint against Paul Couchman who had apologised on her behalf
    g. That Matthew Baker agreed to the suspension of an SCC employee in breach of UNISON's rules and procedures
    h. That Sarah Wright was wrongly taken down sickness capability and made redundant when OH clearly confirmed she could return to work
    i. That no action was taken against the HR manager for fabricating the capability case

15. <u>Legal advice disclosure</u> made to Bindmans solicitors acting on behalf of Mr Walker in his Employment Tribunal claim. The Claimant had been served a witness order to give evidence and in the course of preparing her witness statement told Bindmans the following:

    a. The fact that documents had not been disclosed
    b. A description of the documents that had not been disclosures details of the location of the documents which had not been disclosed.

16. Disclosure two -17 August 2015

    a. The Claimant identified an employee in a post that should not exist
    b. The Employee is not qualified to work in the Elmbridge team
    c. That a supernumerary post has been set up to enable PC to remain branch secretary and
    d. That the team is under-resourced.

17. Disclosure three – 10 June 2016

    a. As a result of her whistleblowing she has suffered a detriment
    b. Her complaint was 'buried'
    c. That her Expolink account was shut down by a third party
    d. That the investigation report was withheld and
    e. That her case was no registered on the HR major case register or declared at Audit and Governance Committee.

18. The Tribunal first considered the detriments.

The detriments
(copy typed in italics from the amended list of issues)

Detriment a – Failure to investigate the Expolink Report of 17th April 2014.

19. During the case, it became apparent that the Claimant's case was that the Respondent had not conducted a proper investigation into her complaint, not that no investigation had been done. The Respondent's position is that it did investigate this report and that the issue before the Tribunal is not whether the investigation was adequate or whether the outcome was reasonable. The Respondent submitted that the Claimant was keen to rewrite her claim when she realised that there was an investigation. This is notwithstanding the Claimant being represented by solicitors throughout. During the hearing, Mr Salter, on behalf of the Respondent, said that had the issue be phrased as '*a failure to investigate properly*' then he would have called other witnesses to deal with this issue.

20. The Tribunal considered Ann Charlton's evidence (paragraph 27 onwards) in which she says *"The Expolink report and its addendum contained a lot of different claims. Some of these were very broadly drawn and others seemed to be expressions of a personal grievance by the Claimant. I decided that, initially at least, any investigation should not duplicate previous work and needed to be targeted at the areas where, if the allegations were proved, good governance was compromised."* Ms Chapman decided not to investigate disclosure relating to UNISON as she did not feel she had authority to investigate its internal matters and the matters raised occurred sometime previously. She was aware Mr Walker had brought a claim to the Employment Tribunal and did not therefore consider an internal investigation was appropriate. Her statement also refers to other matters raised by the Claimant with an explanation of why she did not consider it appropriate to investigate or what investigation she put in place. Ms Chapman asked Mr Stuart Nash to carry out an investigation into certain aspects of the Claimant's complaint. Ms Chapman wrote to the Claimant by email explaining she was commissioning an investigation.

21. The Tribunal's finding is that there was an investigation of this disclosure in that Ms Charlton clearly analysed the Expolink report and decided to what she considered to be valid and what she felt was already covered in other investigations. Ms Charlton also appointed an investigator who produced a

report on 11 March 2015.

22. The Tribunal accepts the Respondent's position that had the issue been worded differently to the way the Claimant now puts it, then it would have called other witnesses to give evidence. Therefore, the Tribunal has considered this issue as it is written.

23. The Tribunal finds that there was an investigation. However, it also accepts that it would have been better had the Respondent communicated more fully with Claimant about what was happening, the remit (i.e. why not everything was included) and the relevant time scales. In any event Ms Charlton sent the Claimant extracts from Mr Nash's report, there is nothing requiring her to send the full report. The Tribunal accepts that failure to investigate properly would be a detriment; however this is not the issue before the Tribunal.

Detriment b – Closure of the Expolink Report without notifying the Claimant.

24. It was common ground that the Claimant's Expolink report was closed. However, it is not known why or who closed it. It appears that a decision was made that HR should not be involved in the investigation or the disclosure and that Expolink was written to about this and they may have inadvertently closed it. The Claimant did not ask Expolink for an explanation which she could have done. The Claimant's third disclosure says it was Expolink who closed this down and there is no evidence to show why this happened. The Tribunal does find this detriment made out. There is no evidence of what happened or how the Expolink report came to be closed or that the Respondent sanctioned it being closed.

Detriment c – The Head of Legal ignoring the Claimant's letter in late April or early May 2015

25. There are curious features about this detriment. First, the Claimant in her oral evidence to the Tribunal now relies on an email (not a letter) dated 8 April 2015. This is not what has been stated in her witness statement, the particulars of claim or the agreed issues as amended. The Claimant accepts that she did not send a letter to the Head of Legal in late April or early May 2015. The Claimant's argument is that the Respondent knew about the 8 April email and gave evidence about it and so the Tribunal should consider it. Given the Tribunal conclusions about the status of the list of issues, and taking note of the Claimant's particulars of claim which also refers to a letter in late April or early May 2015 the Tribunal find this detriment not to be made out. The Claimant was legally represented throughout and it should have been identified at a much earlier stage.

26. In any event, even had the Tribunal accepted this as an issue, the Tribunal accepts Ms Charlton's explanation for not responding to the email of 8 April, 2015 namely that she needed to think about her response, put aside and simply forgot about it as she very busy at that time. There was no evidence of the Claimant chasing Ms Carlton up and still not receiving a response. The Claimant's suggestion that it was inconceivable that Ms Charlton, as a professional person would forget is not accepted. The Tribunal accepts that she is very busy and that it was a particularly busy time for the Respondent and she may well have overlooked this.

Detriment d – A request from Ken Akers to move to S9 job

27. The Respondent accepts that Mr Akers asked the Claimant to move to a S9 role in Pay and Provisions. The Claimant's secondment was due end at the end of September 2015. The secondment Mr Akers suggested for the Claimant would

continue until end December 2015 and was treated as an extension to the original secondment for administrative purposes. This would extend her S9 grade for three months. The Tribunal finds that it was made clear to the Claimant and the Claimant agreed in writing that the secondment would end at the end of December 2015 whereupon she would return to her substantive s7 role in the project team. The Claimant suggested that she could disagree, even though she had agreed in writing, as the letter said she could contact the Respondent if she had any queries. The Tribunal does not accept that this means that the end date was not fixed. It clearly was fixed and the Claimant knew of it and what would happen afterwards.

28. The Claimant says she thought that if she did not accept the offer that there was a threat to her from Ms Carmel Miller (former Head of HR) because of her disclosures. Mr Akers knew that the Claimant had made complaints about senior management, but not the detail and wanted to support the Claimant in what he recognised was a difficult situation for her. He thought that by moving her to another department would make the process easier for her. The Claimant says that Mr Akers said to a third party he was doing this to protect her. Mr Akers denies this and the Claimant accepted in cross-examination that the third party may have misinterpreted what Mr Akers said. Mr Akers in any event does not accept that it was a detriment as it was an opportunity to work on a high-profile project which allowed her to extend her temporary terms and conditions for a further month. The Tribunal accepts his evidence.

29. The Claimant suggests that the reason that end of the secondment was put as 31 December 2015 was because was that was the date when Ms Miller was to retire. However, the Respondent's evidence is that the arrangements for the secondment were made in May 2015, and they did know of Ms Miller's retirement until July 2015 and the dates are co-incidental. The Tribunal accepts this evidence.

Detriment f – failure to mitigate the removal of the S9 role

30. When the Claimant returned to her S7 role the Respondent agreed to increase her salary to the top of the S7 salary scale for her substantive post because of the knowledge and experience she had obtained while working at S9 level. However, the Claimant's argument is that she should have received salary protection in accordance with the Respondent's Change Management Policy. The Tribunal finds that the section dealing this relates to redundancy only. The Claimant was not a risk of redundancy and therefore not in the redeployment pool. She was aware and signed her agreement that she would be returning to her substantive post.

31. The Claimant's argument is that she was not returned to her substantive role as the work she was returned to was different to the work she did before she began acting up in July 2013. The Claimant works in the projects team, and the Respondent says that the work she was doing in July 2013 was no longer being done by the projects team but had moved to '*business as normal'* and other projects had taken its place. The Tribunal accepts that in any business, and particularly in the HR projects team that work moves on and employees are required to do other tasks within the remit of their job description. The Claimant accepted her job description had not changed. The Tribunal find that she was not entitled to pay protection and the Respondent did what it could to mitigate her return to S7 grade by putting her at the top of the S7 pay scale.

Detriment g – untruthful explanation for ending of the S9 post

32. Claimant's case is that the S9 post was ended because Ms Miller had retired and

she no longer needed to be protected from her. Tribunal has already found that the December end date was agreed with the Claimant before the Respondent knew that Miss Miller was to retire at the end of the year. The Tribunal also heard evidence that the phase of the project, which the Claimant was working on had substantially completed they are moving onto stage II, which required different skills to the Claimant's. The Claimant's case is that there was still work to do. The Tribunal accepts that there may have been some work relating to phase 1 to finish off, however, the Tribunal accepts the Respondent's evidence that the majority of the phase one work had completed.

33. The Tribunal also heard that in common with most public bodies the Respondent's finances were such that savings had to be made across the organisation. Ms Saigal (for whom the Claimant worked in her seconded role) gave evidence that in her department she had a deficit of £102,000 which she needed to address. The Claimant's argument is that only £22,000 of this related to staff overspend and therefore this was not a relevant consideration. The Tribunal accepts the Respondent's position, that it did not matter where the overspend came from, it had to be reduced and reducing staff was the quickest and simplest way to achieve this. Whilst there may have been some work to complete on phase 1, Ms Saigal decided that the post which the Claimant was in would become a vacant post to save costs. Another secondee was kept on for a few months because that secondee had the skills required to progress the project to the next stage.

34. In August 2016, some eight months after the Claimant returned to her substantive post Ms Saigal employed a temporary worker for a fixed term as additional work was required to be done at that time. This work was different to the work that the Claimant had been doing and needed different skills. The Claimant refers to this temporary worker as evidence that work still needed to be done and her secondment should have been continued. However, this was eight months later and is not relevant to the time when the Claimant's secondment ended.

Detriment h – The absence of an agenda and a false statement that the email of 20 January 2016 described the purpose of the meeting.

35. This detriment relates to an invitation by Mr Akers to the Claimant to attend a meeting. The Claimant had been absent from work following a bereavement. The Claimant was invited by an email saying: *"Now that you are back, I think it would be good to meet and have a chat about working together. I am conscious that since your complaint we have not spoken and I want to make sure that we had done all we could to resolve this issue. I've suggested that Rakhi comes to the meeting and I would be happy if you chose to be accompanied by a colleague, your line manager or a trades union representative. I stress that this is not a meeting under any formal process rather an opportunity to reflect on the way forward".*

36. The Claimant complains that there was no agenda for the meeting. The meeting never took place. The Claimant's request for an agenda was made a week after it should have happened. The Tribunal accepts that the reference to Claimant being able to have someone to accompany her to the meeting would, in the ordinary course of events suggest a more formal meeting, however, in the context of this email it was not under any formal process and as such no formal agenda was required.

37. The background is that the Claimant has been off work for a period of time, due to stress, and the illness of her father, who sadly died. On 3 December, 2015 Respondent received a letter from the Claimant's solicitor, stating that at an unscheduled meeting, Mr Akers had threatened the Claimant with disciplinary

action and potentially dismissal if she did not accept the findings of the report into her whistleblowing disclosure. Mr Akers denied this allegation, saying that the Claimant had misconstrued the conversation he had with her which related to an email sent to the Chief Executive the tone of which was inappropriate.

38. As the Claimant was returning to work in January 2016, Mr Akers wanted to speak to the Claimant as set out his email. He was however concerned about meeting the Claimant on his own given what had happened the previous meeting and he wanted someone with him so his words could not be misconstrued. His view was that if he had somebody with him then the Claimant should know and she should be offered the opportunity to have someone with her if she wanted to.

39. Tribunal finds that the email which Mr Akers is sent is very clear as he emphasises that this was not a meeting under any formal process. The Tribunal accepts Mr Akers evidence, and given it was an informal meeting an agenda was not necessary. This detriment is not made out although the Tribunal considers that Mr Akers could have spelt out more clearly why he was suggesting the Claimant could be accompanied to the meeting. There was no evidence to suggest that the email was a false statement of the purpose of the meeting.

Detriment i – Refusal to process the Claimant's job application of 20 May 2016.

40. In May 2016, Ms Saigal had an urgent need for an S9 Human Resources Advisor. The normal process is that advertisements are first placed in the redeployment pool for 7 days and then advertised either internal, externally or both initially and externally. There are exceptions to this, for example where a post is urgently needed to be filled. Ms Saigal asked Mr Khan to place an advert for internal and external applicants. For some reason this process went wrong and Mr Khan accepts mistakes were made. The Claimant applied, however, for some reason her application did not show up on the system (along with other applications) and therefore Ms Saigal asked for the advert time to be extended. For some reason a second advertisement was placed on the website for the same job instead. The Claimant saw this and queried it saying she had already applied under the first advert and asked to put in a different application as she only had two days to produce her first application and applicants for the second advert had nine days. She was given this opportunity but did not submit another application.

41. The Respondent found her original application and processed it along with the other applications it had received for both advertisements. The Claimant was shortlisted and interviewed. She was not successful.

42. Clearly the Claimant's application was processed by the Respondent as she was shortlisted and interviewed. The Claimant's detriment is limited to this. This detriment is not made out.

Detriment j – rejection of the third disclosure

43. On reading this disclosure the people involved appear to be Ms Bontoft and Mr Akers. Ms Charlton is only mentioned peripherally in relation to the previous whistleblowing complaints. In submissions, it was put forward on the Claimant's behalf that Ms Charlton was not the appropriate person to investigate as she was the subject of the complaint. The disclosure complains that her previous whistleblowing complaints had been '*buried*' and that she had been subjected to whistleblowing detriment; that her case had not be registered on the HR major case register or declared at Audit and Governance committee and raised a further issue that the Respondent's reward policy was invalid.

44. Three days after receiving this disclosure Ms Charlton wrote to the Claimant saying:

    "As one of the designated recipients of reports from Expolink I have been asked to consider your recent communication which you describe as a "whistleblowing. I am now writing to you to let you know how I have dealt with it and the outcome.

    A significant part of your Emil refers to your view of past events. I do not intend to comment on these matters. They have either been dealt with previously or concern our own employment and are the subject of a different process".

45. Ms Charlton goes on to say that the Claimant's complaint about the SCC bargaining process was not a protected disclosure and that she apoke to Mr Akers about this and was satisfied with his response, referred to ACAS guidance and states that she does not feel further action was necessary.

46. Tribunal find this to be a reasonable response. Ms Charlton looked at the complaint, decided on matters and investigated the union point. The Tribunal does not find this detriment to be made out.

Detriment k – rejection of C's job application for S9 post

47. The Respondent's evidence was that that at the interview the Claimant did not reach the threshold mark of 50%. The interview was conducted by two people who both reached the same conclusion. The Claimant says this was not possible as she had been successfully doing an S9 role on secondment. However, the Respondent's evidence was that she did not demonstrate this at the interview. In cross-examination, the Claimant said that the Respondent knew she could work to S9 level as she had been doing this work for some time on secondment and seems to accept that she did not tell the interviewers all that had done and could do. The Respondent's case is that at the interview she did not demonstrate the required competencies.

48. The Claimant complains that the questions were loaded against her. The Tribunal finds that the same questions were asked of all candidates. The Claimant was the only internal candidate and therefore her follow up questions inevitably were about her work at the Respondent whereas for the external candidates they would relate to work they undertook in their employment. The Tribunal is satisfied that all candidates were treated equally.

49. The reason for the Claimant not being appointed was because she did not demonstrate at interview that she reached the required standard. Ms Kaur who was one those interviewing the Claimant said she did not know of any protected disclosure made by the Claimant and the Tribunal accepts her evidence. The Claimant was unable to say whether Ms Kaur knew of her disclosures. There was no evidence that any other senior manager in the HR department had any input into the selection process and therefore the Tribunal find that the reason was because the standard was not reached and not because of any protected disclosure the Claimant may have made.

Detriment l – refusal to engage on issue of feedback from interview

50. After the interview the Claimant asked for feedback from Ms Kaur which she received in a meeting with her. The Claimant then sent an email to Ms Kaur setting out the feedback given and criticising the application process and outcome. Ms Kaur replied on the same day (8 July 2016) saying that whilst she accepts the Claimant's view, she considered that the interview was a fair assessment with candidates having the same opportunity to respond to the same

questions and apologising that the Claimant felt as did.

51. Ms Kaur engaged in feedback both by having a 1:1 meeting with the Claimant and responding to the Claimant's email. The Claimant says the feedback should have been given in writing, however, Ms Kaur says normal practice is verbal feedback only.

52. The Tribunal does not find this allegation to be made out and in any event Ms Kaur was not aware of the disclosures the Claimant had made.

Detriment m – A continuing demotion

53. The Claimant was not demoted. She was returned to her substantive S7 post at the end of the secondment. The Claimant agreed in writing to both the end date of the secondment and that she would return to her substantive S7 post. The Claimant says that she was not returned to her substantive post on the basis that the work she had been doing when she left it to act up was different to the actual work she is currently doing which is considers menial and demeaning. When she returned to her S9 role, she told the Respondent she would only do grade appropriate work ie S7 work and so was not given work which could be considered S9 work. The Respondent's case is that her substantive post is S7 and her job description did not change. Inevitably individual projects end and new ones come along meaning a change in the type the Claimant is required to do.

54. The Claimant suggests that she should be given a permanent S9 role as she had been doing S9 work for over 2 years in accordance with the Respondent's policy and therefore she was demoted. However, for a substantial part of that time she was acting up in the project team which is different to a secondment. Additionally, the Claimant had two separate secondments and was not seconded to an individual S9 role for a period of two years. In any event the policy does not say that it is automatic to be given an S9 role in these circumstances. The Tribunal accept Ms Saigal's evidence that the Claimant's substantive post had been kept open for her, and they had recruited for a different S7 post in the Claimant's absence. Ms Layton's witness statement explains that in October 2015 they decided to create a new coordinator post in the projects team which was filled by Ms Raven. She explained that the Claimant's substantive post had been held for her pending her return and which she returned to. The two posts supported different projects and were equal in status.

The Tribunal's general conclusions

55. The Tribunal has found that the Claimant did not suffer the detriments alleged or if she did, there was no causal connection between the detriment and any disclosure made. The Tribunal has made the findings above having heard many witnesses and considered a large number of documents. The Tribunal found the Respondent's witnesses to be credible and accept the evidence they have given. Where there was a conflict of evidence the Tribunal has found that the Respondent's evidence is to be preferred much of which was corroborated by the documents in the bundle.

56. The Claimant raised issues about many matters, including but not limited to, being appointed to positions without interview or going through the formal recruitment process and about an employee not being qualified to do a particular role. These were put to the Respondent's witnesses who gave persuasive accounts for each of the decision taken. The reasons given included that they had particular skills needed operational requirements and tight time frames. These allegations were made without the Claimant seeking an explanation from

the Respondent before making disclosures. Had she done so, the Tribunal find she would have been given an explanation which would have resolved these issues.

57. The Tribunal finds that the Claimant made allegations against the Respondent many of which are very serious. For example, accusing Ms Charlton, Ms Bontoft, Ms Kaur and Mr Akers, all of whom are professional people, of lying. However, when asked about this, she had no evidence to substantiate these allegations, and it was not put to Ms Bontoft or to Mr Akers that they had lied.

58. Where a Claimant makes these types if serious allegations, they should only do so with care and with the appropriate evidence. The Tribunal found no evidence to suggest that Ms Charlton, Mr Akers, Mr Kaur or Ms Bontoft were lying. The Tribunal found no evidence of someone '*unidentified'* and '*unnamed'* who was orchestrating a series of events against the Claimant.

59. The Claimant persisted in relying on the redeployment policy when it was evident that she was not in the redeployment pool as can be seen from a reading of the Change Management Policy. The Claimant also persisted in suggesting that she had a right to be given a permanent S9 role as she had being doing S9 work for over two years. This is not what the policy says.

60. The Claimant appears to suggest that she should have been returned to an S7 role undertaking exactly the work she did when she started acting up. Given the evidence given by the Respondent this would not be possible as the project she had been working on had come to an end and a different project had replaced it. The Claimant was returned to her substantive S7 role within the project team and given her work in HR she should have appreciated this.

61. The Tribunal also prefer the Respondent's evidence as it was consistent. The Clamant on the other hand referred to new serious matters which had not been in her pleadings, list of issues, or witness statement. One such example was an allegation that Ms Kaur told her that she was going to deliberately discount her application for the S9 role. If this had occurred, it would have been significant and would have been in her pleading or at the very least in her witness statement.

The disclosures

62. Given the findings above the Tribunal has not set out in detail its findings as to whether the disclosures were protected pursuant to s43 ERA 1996. The Claimant provided detailed submissions on this however the Respondent's submission was limited to acknowledging this was a live point. The Tribunal has considered the disclosures and the Claimant's submissions and finds that all disclosures have protected elements (save for the legal advice disclosure) although some matters are personal grievances of the Claimant and would not be protected as acknowledged by Ms Charlton. In relation to the legal advice disclosure the Tribunal does not consider this to be protected. There was no evidence to support the Claimant's evidence that Bindmans were giving her legal advice, even though Bindmans were representing her at this hearing. The Claimant was providing a witness statement pursuant to a witness order. There was no evidence of any advice given to her which would bring this within the protection of the legislation.

Jurisdiction

63. There is an issue about whether the Claimant's claims were brought in time. Given the findings above the Tribunal has not considered this point.

CHRONOLOGY
(as agreed by the parties)

Page references in the bundle are in squared brackets [ ]

25 July 2013	Claimant acting up to S9 [142]
6 August 2013	CSG Minutes [150-150h]
22 January 2014	Acting up extended [184]
28 April 2014	Julie Jenkins email [213]
30 April 2014	Ann Charlton Replies to Jenkins email [218]
7 May 2014	Christine Melly email [222] Ann Charlton Replies to Melly email [225]
19 May 2015	Further Ann Charlton email to Christine Melly [230]
13 August 2014	Claimant's acting up extended [257]
17 August 2014	**PID1 [83],**
19 August 2014	**PID1A [87]**
2 September 2014	Claimant gains secondment opportunity at S9 [279]
24 September 2014	Expolink passes C's details (as the person who made PID1 and PID1A to R) [p.280-284]
28 September 2014	C emails PID1 and PID1A to David McNulty [p.285]
1 October 2014	twelve-month secondment starts [331][333]
6/7 October 2014	Ann Charlton contacts Claimant [297]
21 December 2014	Draft investigation report [389] 11(a) Failure to investigate the Expolink Report
c.March 2015	**Legal Disclosure PID** Final Investigation report
8 April 2015	11(c) (on C's case) Email to Head of Legal ignored: this is not agreed by the Respondent

Late April, Early May 2015 11(c) Letter to Head of Legal ignored (as set out in list of issues).

May 2015	11(d) Ken Akers's request Claimant move to Pay and Provisions
18 May 2015	Record of meeting [431] where Claimant old secondment until December 2015 then return to S7.

28 May 2015	Internal Audit Report [434]
25 June 2015	1-2-1 [473a]
23 July 2015	Written notification duration of Secondment [479]
17 August 2015	**PID2**
27 October 2015	C discovers Expolink shut down 11(b) Closure of the Expolink report without notifying the C
2 November 2015	Claimant absent from work: Stress at Home [515]
10 November 2015	Claimant absent from work: Stress at home [526]
16 December 2015	Claimant absent from work: "Is suffering with stress due to caring and supporting her father who is terminally ill" [586]
December 2015	11(e) S9 role ends 11(f) failure to mitigate the removal of s9 role 11(g) an untruthful explanation for the ending of the S9 post
January 2016	11(m) A continuing demotion
4 January 2016	Claimant absent from work: bereavement [596]
20 January 2016	11(h) the absence of an agenda and a false statement that the email of 20 January described the purpose of the meeting Claimant returns to work [619] Email [618]
22 January 2016	Claimant absent from work: bereavement [630]
26 January 2016	Claimant absent from work: stress at work [630]
8 February 2016	Claimant absent from work: stress at work [653]
14 February 2016	OH report [638]
22 February 2016	Claimant absent from work: dental surgery [663]
29 February 2016	Claimant absent from work: dental surgery [663]
14 March 2016	Claimant returns to work [666b][666m]
20 May 2016	11(i) Refusal to process Claimant's job application
26 May 2016	Internal Governance report [702]
13 June 2016	**PID 3 [93]** 11(j) rejection of the Third Disclosure
23 June 2016	Candidates interviewed for S9 post [765-834] 11(k) Rejection of C's job application for S9 post.

6 July 2016	Claimant meets with Gurbax Kaur over feedback for interview [837]
8 July 2016	Claimant emails Gurbax Kaur over feedback for interview [p.837] Gurbax Kaur replies to C's email [p.836] 11(l) Refusal to engage on issue of feedback from interview
1 August 2016	C contacts ACAS [p.71]
9 August 2016	ACAS early conciliation certificate issued [p.71]
19 August 2016	ET1 [1]

Employment Judge Martin

Date: 09 August 2017