EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: S/4100373/16

Held in Glasgow on 3, 4, 5, 8, 9 and 11 May and 20, 21, 24, 25, 26, 27 and 28 July 2017 (and a members meeting on 8 September 2017)

Employment Judge: **Lucy Wiseman**
Members: **Margaret Fisher**
(Alex MacMillan)

Mr Gerard Doherty — **Claimant**
Represented by:
Mr A Cramond - Counsel

South Lanarkshire Council — **Respondent**
Represented by:
Mr G Stewart - Solicitor

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is to dismiss the claim.

REASONS

1. The claimant presented a claim to the Employment Tribunal alleging he had been subjected to detriment on the grounds of having made a protected disclosure/s.

2. The respondent entered a response denying the claimant had made protected disclosure/s. The respondent acknowledged the claimant had not

initially been returned to his substantive post following a work placement, but denied this had been on the ground of having made a protected disclosure.

3. Mr Alex MacMillan (member of the Tribunal) was not fit to continue with this case and in the circumstances the parties agreed to proceed to have the case heard and determined by the Employment Judge and Ms Fisher.

4. We heard evidence from the claimant; Ms Gillian Bhatti, Employee Development and Diversity Manager, who heard the claimant's Dignity at Work grievance; Ms Kim Potter, Operations Manager, who line managed the claimant; Ms Santosh Dade, Operations Manager, who line managed the claimant; Mr Arun Singh, Children and Justice Service Manager, who had line managed the claimant; Ms Elaine Maxwell, Personnel Adviser, who was responsible for arranging the claimant's stage 3 appeals to the elected members and Mr Robert Swift, the (now retired) Head of Children and Justice Services.

5. We were also referred to a jointly produced bundle of documents. We, on the basis of the evidence before us, made the following material findings of fact.

Findings of fact

6. The claimant commenced employment with Strathclyde Regional Council in July 1982 and transferred to South Lanarkshire Council following local government re-organisation in April 1996. The claimant was employed as a Manager for Residential and Day Care Services within Adult and Older People Services.

7. The service within which the claimant worked was restructured in 2009 and the claimant required to be redeployed.

8. The claimant was offered redeployment to the position of Social Worker (Senior Practitioner). The claimant did not have a formal social work qualification and it was agreed the respondent would support him in undertaking the social work degree programme (page 82). The claimant did not wish to accept this position.

9. The claimant was subsequently offered a temporary Team Leader post in the Community Service Workshop within the Social Work Resource, and he was redeployed to this post with effect from 9 November 2009 (page 76). The temporary Team Leader post was made permanent towards the end of 2010. The claimant was offered and accepted the permanent post of Team Leader (Social Work Resources) and this offer was produced at page 80.

10. The Schedule of Terms and Conditions of Employment for local government employees was produced at page 96A. The schedule included, at paragraph 21, a clause regarding "*Duties of Post*". It was stated that "*the duties applicable to your post will be prescribed by your Executive Director or other nominated person who will also exercise supervision over your services*." And, "*if the circumstances so require, you may be employed on other duties, appropriate to your grade, in your own or another Resource, after consultation with you and, if necessary, your Trade Union*".

11. The Community Service Workshop was part of the Unpaid Work Service within the respondent's Criminal Justice Service. The Criminal Justice Service deals with offenders going through the Court system and traditionally dealt with offenders placed on Community Service Orders. These Orders were replaced with Community Payback Orders (CPOs) which are used as an alternative to a custodial sentence in appropriate cases, and involve offenders carrying out unpaid work or other activities such as literacy and numeracy.

12. The respondent is responsible for managing CPOs and this involves finding work and activities for offenders, delivering, co-ordinating and monitoring that work or activity and providing reports to the Court. There are time

scales for completion of each CPO and if these time scales are not met, the team leader and case manager must apply to the Court, explain why this has happened and to seek an extension of time.

13. There was significant political interest regarding the introduction of CPOs and their subsequent management. Reports regarding the performance of the unpaid work service were regularly produced for the elected members of the respondent Council, and for the Resource in order to monitor whether goals were being achieved. Reports regarding the performance of the service were also provided to the Community Justice Authority, which is a statutory multi-agency body (comprising the Procurator Fiscal, senior Police, councillors from North and South Lanarkshire and victim support).

14. The respondent undertook a Best Value Review of the Unpaid Work Service in 2009/2010 which recommended two permanent team leader posts in the Unpaid Work Service because of the introduction of CPOs. A new structure was put in place by the respondent which comprised two team leaders; the introduction of five Social Workers and Social Work Assistants; the introduction of Co-Ordinators and an increase of the number of Supervisors.

15. The Social Workers and Social Work Assistants tended to carry out the case management of offenders and CPOs, write reports for the Courts and oversee sex offender cases; whilst the Co-ordinators identified suitable work/placements for the offenders and managed the Supervisors who were responsible for taking the offenders out in squads to undertake the unpaid work. The unpaid work could involve activities such as grass cutting, painting and workshop activities such as joinery in the Workshop which the respondent ran and managed as part of the Unpaid Work Service.

16. Mr Arun Singh was the Reception and Criminal Justice Service Manager with management responsibility for the Unpaid Work Service at the time of the claimant's redeployment to the Team Leader post. Mr Singh was aware the claimant had no front line social work practice, although he had worked

in management roles in social services where the focus was on helping to support and develop the service. Mr Singh encouraged the claimant to undertake the Open University Social Work degree course, which was in line with the respondent's "*grow your own*" professional staff scheme and also addressed the difficulties in recruiting social workers.

17. The claimant initially took some months to observe the work carried out in the Unpaid Work Service, and to shadow the other team leader, Mr Alan English. Mr Singh thereafter allocated the claimant to manage the workshop.

18. The respondent has a process of monthly supervision sessions for employees and their line manager. The notes of the claimant's supervision sessions with each of his line managers were produced. The Record of Supervision set out the Personal Development Review Objectives and an agenda of points raised and discussed in the supervision meeting. Mr Singh noted (page 158) that the claimant confirmed the "*running of the workshop was not something [he] was concerned about as his previous role had been in relation to management of premises*."

19. The claimant also started to manage the full spectrum of staff in the workshop and it was noted that the management of qualified staff would be a new thing for the claimant and that it was important for him to become familiar with the work of Social Workers in order to understand the supervision process and ensure standards were being met.

20. The Supervision Records confirmed the claimant was actively involved in the management and development of the Workshop. He identified a number of issues which required to be addressed and improved, and undertook the Personal Development Reviews for the Supervisors.

21. Mr Arun Singh moved to take up another post, and Ms Santosh Dade, Operations Manager, took on responsibility for managing the Unpaid Work Service in May/June 2012. At that time there were two team leaders who were responsible for managing delivery of the unpaid work service (the claimant and Mr English); 4 social workers and 6 social work assistants; 3 placement co-ordinators and 14 supervisors. Ms Dade was keen to build a team but was aware of the fact the claimant would be going off in January 2013 on placement as part of the social work degree course, and Mr Alan English was going to leave the service in early September. Ms Dade agreed with the claimant that between June and September he would shadow Mr English to get an understanding of the work and duties he covered.

22. Mr Colin O'Neill joined the Unpaid Work Service as a Team Leader (to replace Alan English) in September 2012. Mr O'Neill, who had experience of unpaid work, took on responsibility for managing the co-ordinators and supervisors and three social workers; and the claimant took on responsibility for managing the remaining social workers, social work assistants and the Lanark sub-office.

23. The unpaid work carried out by offenders on CPOs had to cease for a short period during 2012 because of concerns regarding health and safety. The respondent had to put in place risk assessments for all types of work to ensure that whatever work was being carried out was being done correctly and the risk of injury was minimised. This in turn led to the variety of unpaid work available to be carried out being reduced. It also led to an increase in health and safety training for all employees in the unpaid work service, although the claimant missed some of this training because he was on placement.

24. The claimant was absent from the workplace from January 2013 until August 2013, whilst he undertook the first placement as part of the Social Work degree. Ms Dade and Mr Malcolm McAulay, Justice Service Manager, met with the claimant and Mr O'Neill prior to the claimant's return to work following his placement. A note of the meeting was produced at page 270.

It was agreed that for the following six month period (until the claimant went off to do his second placement) that all social workers and social work assistants based at Auchentibber would be supervised by the claimant, and Mr O'Neill would be responsible for the Lanark based social worker and social work assistant, together with three co-ordinators and other developmental work relating to the unpaid work service.

25. Ms Dade was aware the claimant and Mr O'Neill had not been working well together and so Mr McAulay and Ms Dade emphasised the need for strong joint consistent management of staff in order to avoid some of the issues which had arisen in the past. It was also made clear that both team leaders would be responsible for the smooth running of operations across the service and that they were required to cover for one another when needed.

26. The claimant, following completion of the first placement, returned to the post of Team Leader in the Unpaid Work Service, carrying out the duties he had done before going on placement – that is, managing the social workers and social work assistants based at Auchentibber.

27. The claimant, upon his return from placement, became aware through concerns raised with him by the social workers and social work assistants, that there had been a significant increase in the number of stand downs. Stand downs occur when an offender turns up to perform unpaid work and there is no work available for them to do. If this happens, the offender will be credited with two hours work: however, stand downs may impact on the timescale in the CPO for completion of the Order and may result in the social worker having to seek an extension of time for completion of the Order. The claimant was also advised about concerns with the Fast Track system, health and safety, the treatment of offenders, over-subscription for morning work when there were not enough Supervisors and trouble-makers not being taken out. The claimant considered the service delivery was very poor, haphazard and lacked professionalism.

28. Ms Dade was aware of a number of these issues because they had been discussed in a team meeting on 25 June 2013 (page 264) at which she had been present with Mr O'Neill (the claimant being on placement). The items on the agenda for discussion included stand downs (the sheer number of stand downs, the fact co-ordinators were sometimes standing people down, offenders returning from breach were being stood down and offenders being stood down on their first day); the rota for Inductions and closures and breaches of Orders.

29. The issues were discussed again at another team meeting on 10 September 2013 at which the claimant was present. The notes of the meeting (page 280) noted that the issue of stand downs was raised and that "*the team advised level of service was a disgrace and it is unacceptable".* In particular it was noted that on 10 September 14 people were stood down; one person had been stood down 25 times over the course of his Order; the service was continually over-subscribed; supervisors were under pressure at pick up points and there had been no increase in the number of supervisors. The number of stand downs had increased from 68 in August 2011 to 251 in August 2013. It was agreed the claimant and Mr O'Neill would raise the issue of stand downs with Ms Dade and Mr McAulay to demonstrate more staff were needed.

30. The issue of the Fast Track system was also discussed because there had been "*chaos*" on one particular day with too many people turning up on one day and not enough staff.

31. The claimant, during the supervision session with his line manager Ms Dade, on 29 August 2013, (signed copy produced on page 279A) raised his concerns regarding what he considered to be a drastic decline in service delivery, and in particular the increase in the number of stand downs per day, with some offenders experiencing as many as 25 stand downs. The claimant also referred to the fact he considered resources were not being

utilised effectively; offenders were not being properly supervised and he had concerns regarding Mr O'Neill and his management of supervisors; the lack of professional assessment and consideration given by Mr O'Neill when allocating cases and his interference with the screening rota.

32. The claimant felt he had to deal with a continual flow of complaints from the social workers and social work assistants, and that this was placing an additional stress on him because of the negative environment. Furthermore, the claimant considered Mr O'Neill to be uncooperative and uncommunicative. The claimant told Ms Dade he wanted the service to improve because he would find it difficult to continue to work in a failing service.

33. The claimant's next supervision session took place on 19 September 2013 (a signed copy of the supervision note was produced at page 286A). The claimant raised the issue of stand downs again and the fact they were preventing offenders from completing CPOs on time. The claimant also referred to the fact level 2 orders were being delayed in terms of completion because level 1 orders were presenting problems. He referred to items (for example, wheelbarrows) having been stolen from the Lanark base and it not being known how many sets of keys, or key holders there were for the Auchentibber premises. The claimant also raised issues surrounding health and safety, and a lack of continuity whilst managing offenders.

34. The claimant, at the supervision session on 23 October (page 287), raised a large number of concerns regarding the attitude and practice of Mr O'Neill: for example, the change to the rota system; safe management of sex offenders; inability to competently operate the SWiS IT system; disregard for agreed health and safety guidelines; errors in the allocation of and closure of CPOs; abuse of flexi system; refusal to negotiate or co-operate regarding the management of stand downs and failing to provide information regarding the sale and distribution of goods made in the workshop.

35. The claimant told Ms Dade that he was concerned about his professional registration because he considered national standards were not being met. He informed Ms Dade that staying at Auchentibber would be detrimental to his health and that he may consider a move but wished to know more about the options that would be available to him. Ms Dade agreed to discuss this with Mr McAulay, and the claimant agreed to give more thought to which areas of work he would like to do.

36. The claimant attended a team meeting on 13 November 2013 and at that meeting the agenda of issues for discussion included the Fast Track system and stand downs.

37. Ms Dade acknowledged the service faced a number of issues and that stand downs were a particular problem (being experienced nationally) because CPOs had become popular with the Courts, but the increasing number of CPOs had not been matched with an increase in staff. Ms Dade organised a development day for employees to discuss these issues and formulate a plan to tackle them. She did not accept the situation was as critical as the claimant maintained.

38. Ms Dade also investigated the issues raised by the claimant concerning Mr O'Neill, and she investigated other issues raised by the claimant where he had provided sufficient information for her to take forward.

39. Ms Dade had an occasion to speak to the team leaders to inform them that on her return from annual leave, she had been called in to speak to the Director, who had informed her that some concerns regarding the unpaid work service had been brought to his attention by a councillor. Ms Dade did not believe the information had come from either team leader, but she wanted to make them aware of the situation because an employee in the unpaid work service was related to a councillor.

40. The claimant had a period of sickness absence from 28 November to 5 December 2013.

41. The claimant continued to raise concerns with Ms Dade and in particular he sent an email on 18 December 2013 (page 298) regarding the behaviour of a member of staff; and an email dated 8 January 2014 regarding the supervision of a sex offender (page 302). The claimant informed Ms Dade that a sex offender who was being supervised on a one-to-one basis in the workshop, was given money and allowed to drive unsupervised to purchase paint from a local store. The claimant was alarmed about this practice because not only was the sex offender a risk to vulnerable persons in the community, but there was a risk to the sex offender because he may be recognised.

42. Mr Robert Swift, Head of Children and Justice Service, was advised by Ms Dade and/or Mr McAulay that the claimant did not want to return to the Unpaid Work Service and so he sent an email to Ms Gail Robertson, HR, on 7 January 2014 (page 301) to enquire what options may be available for the claimant. The email was in the following terms:-

> "*Gerry is currently a team leader at Auchentibber (unpaid work). He is unqualified, but in the process of being trained as a social worker. He is about to go on final placement. He has indicated that he does not wish to return to Auchentibber at the end of training. Santosh has tried to establish his preferences for future work in the council but he is not very clear – he has asked to know what his options are.*
>
> *It would be helpful to be able to confirm that Gerry will not return to Auchentibber so that we can fill his vacancy on a permanent basis. But before we can do this he presumably needs to be matched with a post elsewhere. He will be newly qualified and I would have thought*

would need some front line experience, though I think he will be on protected salary as a team leader.

Please can you liaise with Santosh on the best way forward. The service at Auchentibber is challenging to manage and we need to get a capable team leader in post as soon as possible."

43. Ms Dade met with the claimant on 20 January 2014 for a supervision session (page 307). Ms Dade and the claimant discussed the email of the 8 January and the supervision of a sex offender. Ms Dade undertook to discuss this matter with Mr O'Neill. The claimant raised a number of other issues regarding Mr O'Neill, but Ms Dade considered they lacked sufficient clarity to take forward.

44. Ms Dade had (with the claimant's permission) asked for Ms Caroline Murray, HR, to join the supervision session to explore the options available to the claimant. The claimant reiterated he would find it impossible to return to the Unpaid Work Service because of all the practice issues. Ms Murray confirmed the claimant should consider his preferred area of work, but the claimant wished to know the availability of other posts and would then consider his options.

45. Ms Dade was not at the team meeting which took place on 31 January 2014 (page 316), but the issue of stand downs was discussed and it was noted that the number of stand downs appeared to be falling. The issue of sex offenders and their supervision was also discussed. These issues were also discussed at the team meeting on 28 February 2014 (page 319).

46. The issue of stand downs was discussed at each team meeting and an action plan to address the situation was put in place by Ms Dade.

47. The claimant commenced his second placement on 3 February 2014. The claimant's post of team leader was filled on a temporary basis by Mr Alan Irving.

48. Ms Dade left the Unpaid Work Service in February 2014 when she moved to take up a new role with the Council. Ms Dade briefed Mr Malcolm McAulay, Justice Service Manager, regarding the service, because responsibility for managing the service would fall to him in the interim.

49. Mr Robert Swift met with the claimant on 29 July 2014 to discuss his return to work following the completion of his second placement in August. Mr Swift was not only Head of Children and Justice Services, but he also held the role of Chief Social Work Officer (a statutory post) from 2015 to 2016 and was responsible for, among other things, ensuring high standards of professional social work practice. Mr Swift was responsible for meeting with all employees returning to work following completion of the social work degree, to discuss the area in which an employee would like to work. Mr Swift's task was to try to match the employee's preference/interest with vacancies and the needs of the service.

50. Mr Swift was aware of the claimant's employment history and the fact he did not want to return to the Unpaid Work Service. Mr Swift considered it would be beneficial to the claimant to be matched into the post of Senior Practitioner in order to consolidate his learning and gain credibility as a social worker. Mr Swift felt the claimant's experience in the Unpaid Work Service had been erratic because of the changing nature of the service and the fact it had been broken up by the two six month placements. Mr Swift did not want the claimant to return immediately to the Team Leader post because he felt the claimant would be managing very experienced social workers, who in turn were managing some very difficult and challenging offenders. The claimant had not done any assessments of those subject to CPOs, and so for him to supervise those doing that would be a challenge. Mr Swift was also under a duty, in terms of the SSSC and the Codes of

Practice to place suitably qualified people in posts, and he considered that before returning to a Team Leader post in a service which had become more challenging, the claimant should have an opportunity to consolidate his learning.

51. The claimant was advised by Mr McAulay (who at that time was the claimant's line manager and responsible for conveying the decision to him), at a meeting on 15 August 2014, that he was to return to a Senior Practitioner role. Mr McAulay sent an email to HR (page 331) following his meeting with the claimant, to confirm the claimant had agreed to report for work but that he was going to the Senior Practitioner post under duress and would be seeking advice/guidance.

52. The claimant was very unhappy about the decision that he return to a Senior Practitioner post, which he saw as a demotion. Mr Swift rejected the suggestion that this was a demotion because the claimant would be on the same grade and salary as a team leader.

53. The claimant, by letter of 15 August (page 332) raised a grievance regarding the decision to place him in a Senior Practitioner post. The claimant noted he had met with Mr McAulay and been advised that he was being redeployed to the Hamilton area as a Social Worker (Senior Practitioner), and that this was happening because he did not have the experience to be a team leader of a criminal justice team. The claimant considered he had not been provided with a valid explanation for the redeployment, and that the action was punitive disciplinary action because he had raised a number of dangerous and unprofessional practices (whistleblowing).

54. The grievance was heard by Mr Robert Swift on 6 October 2014. The claimant was accompanied by his trade union representative, Mr George Buchanan. Mr Swift wrote to the claimant on 17 October 2014 (page 337) to inform him of the outcome of the grievance. Mr Swift noted the claimant

considered the post of Senior Practitioner to be a demotion and he further noted the claimant wanted to return to his substantive post within Unpaid Work Services, which he now felt would not be detrimental to his health.

55. Mr Swift noted he had been asked to see if there were any team leader vacancies within Adults and Older People Services, and confirmed there were none at present.

56. Mr Swift noted the claimant had, in the team leader post within Unpaid Work Services, undertaken the role of team leader whilst undergoing training, and that the claimant had not undertaken the full range of duties as a team leader. Mr Swift further noted the claimant had informed Ms Dade that he did not wish to return to the Unpaid Work Service because it would be detrimental to his health.

57. Mr Swift referred to the need to take account of the SSSC standards that require employers to ensure that suitably qualified and experienced persons enter the workforce, and confirmed he did not consider it appropriate to put the claimant's sense of demotion ahead of the needs of the service. Mr Swift referred to the need to be confident that team leaders can ensure safe professional services, and he felt that whilst the claimant did have generic management experience, this needed to be underpinned by more professional social work experience before the claimant could safely manage social workers and their workloads. Mr Swift noted he had to take into account the risks posed by service users to others; the risks faced by social workers and the vulnerability of a manager in carrying out the role of team leader with limited experience of managing fieldwork services.

58. Mr Swift confirmed that for all of these reasons, the claimant would be placed in a Senior Practitioner post upon his return from sick leave. This was not a demotion and would be reviewed in 12 months when he could be matched to a team leader post.

59. Mr Swift did not specifically investigate the whistleblowing referred to by the claimant in the letter of grievance. Mr Swift was aware issues such as the tracking and ordering of equipment, missing equipment and staff using premises for other purposes had been raised and investigated at the time. The claimant did not, during the grievance, bring other matters to Mr Swift's attention.

60. The claimant was not satisfied with the outcome of the grievance, and by letter of 27 October 2014 (page 339), he appealed and asked that the matter proceed to stage 3 of the process. The claimant included in the points of appeal that he considered he had carried out the full range of duties; he had never been told he was not qualified for the team leader post and he understood his substantive post had been filled on a temporary basis only.

61. Ms Elaine Maxwell, Personnel Adviser, is responsible for managing all stage 3 discipline and grievance appeals. She co-ordinates and prepares the information and documentation and advises the elected members on points of policy and procedure. Ms Maxwell, when dealing with grievance appeals, will meet with the aggrieved person to gain an understanding of what has happened at stage 2, why the person is still aggrieved and what the person wants to resolve matters.

62. Ms Maxwell met with the claimant and Mr Buchanan, trade union representative, to discuss the grievance appeal. She understood from him that he now wished to return to the post of team leader at Auchentibber in the Unpaid Work Service.

63. Ms Maxwell then met with Mr Swift and Ms Elaine Forbes, Personnel Manager for the Social Work Resource, to understand why the decision had been made and to explore whether there was any scope for resolution.

64. Ms Maxwell brought the parties together for a meeting on 19 January 2015. The suggestion of splitting the role for the claimant so that he would do the team leader role for 2/3 days per week and the Senior Practitioner role for 2/3 days per week was discussed as a way to resolve the grievance.

65. The claimant considered this offer, but on 12 February, he emailed Ms Maxwell to confirm he was unable to agree to the proposal.

66. Ms Maxwell was subsequently advised by Ms Forbes, that Mr Swift had reconsidered the position and the claimant could return to a team leader post at Auchentibber. This change in position came about because an Audit had taken place regarding the Unpaid Work Service (following receipt of anonymous allegations regarding a range of matters including the ordering of equipment and the time-keeping of staff) and one of the outcomes of the audit had been a recommendation that an Operational Manager be put in post on site, rather than the service being managed remotely as had happened in the past. Ms Kim Potter was appointed to the Operational Manager post based at Auchentibber and she took up post on 27 April 2015. Mr Swift was re-assured by the fact of a manager being on site, that support and supervision would be on site and available to the claimant, and that this would address the reasons for not returning the claimant to the post of team leader.

67. The claimant was advised by letter of 24 April 2015 (page 377) that he would transfer back to "*your substantive post of team leader within the Community Payback team in Auchentibber*" with effect from 27 April 2015 following the successful completion of your social work qualification.

68. The claimant was keen to return to the post of team leader as soon as possible, but his return to the post was delayed because the respondent wished the claimant's return to coincide with Ms Potter starting in post as the new Operations Manager and the claimant required to register with the SSSC. The claimant did not need to be SSSC registered to hold the post of

team leader, but was advised by Ms Forbes that it was the expectation of the Resource, now that he held a social work qualification, that he would register and maintain his registration.

69. The claimant returned to the post of team leader on 27 April 2015, which was the same day Ms Potter started in post.

70. The claimant had been signed off as fit to return to work in February 2015 and Ms Dade had conducted the return to work interview in circumstances where she was covering for Mr McAulay who was absent. The claimant had, during his absence, been offered employee counselling, cognitive behavioural therapy and contact with the early intervention team. The claimant had also been referred to occupational health in November 2014.

71. The claimant had been made aware in emails from Ms Forbes and Mr McAulay that his tasks and responsibilities upon his return to the post of team leader, would be determined by Ms Potter.

72. Ms Potter had, prior to taking up the post of Operations Manager, read the Audit report. The Audit had taken place following allegations of "*deals*" being done for hours of work to be written off in return for work done on a car. Ms Potter was aware the Unpaid Work service was a challenging and failing service, and it was her remit to introduce procedures regarding all aspects of service delivery.

73. Ms Potter gave considerable thought to how to move the service forward: she was conscious she needed time to "*find her feet*" inasmuch as she needed to find out how the service was working, and the strengths and weaknesses of those in the team. She was also aware that health and safety had become a very big issue for the service because of the unpaid work activities. Ms Potter knew of both Mr Alan Irving and the claimant because she had attended meetings where they had been present. She was also aware the claimant had been in dispute with the respondent

regarding his post, although she was not provided with details regarding this matter.

74. Mr Alan Irving was in post as a team leader when Ms Potter took up her post as Operations Manager. He was a qualified and experienced social worker and he was responsible for case management and managing the social workers and social work assistants. Ms Potter decided there was no reason to change what Mr Irving was doing: accordingly, she decided the claimant would take on responsibility for managing the unpaid work element of the service, together with managing the co-ordinators and supervisors, and responsibility for the social worker and social work assistant based in the Lanark office. Ms Potter also wanted the claimant to take on lead responsibility for taking forward the plans for service improvement.

75. Ms Potter met with the claimant on 28 April 2015 (page 378) for a supervision session. Ms Potter confirmed the claimant, in the team leader role, would have responsibility for the management of the unpaid work element of the service. The claimant raised concerns that he did not consider himself to be trained in this area of work which was heavily regulated by health and safety. Ms Potter acknowledged that all line managers within the service were social work trained, however the delivery of the unpaid work service currently fell within the remit of social work, and they were responsible for delivery of the service. Ms Potter confirmed the claimant would be offered as much support and training as he required, but the claimant confirmed he was not happy and would go into dispute over this matter. The claimant wanted to return to what he considered to be "his substantive post": that is, the duties being carried out by Mr Irving.

76. Ms Potter met with Ms Campbell from the respondent's training department and a new training matrix was agreed for all staff. The purpose of this training matrix was to ensure that employees at all levels were adequately trained in health and safety relevant to the role they carried out. Ms Potter

asked the claimant to undertake additional training to address his concerns regarding the duties he was asked to carry out.

77. Ms Potter also undertook the stress risk assessment which had been outstanding following the claimant's absence for stress.

78. The claimant did not, throughout the period of this dispute regarding Ms Potter's decision, carry out the tasks he was allocated to do. The claimant selected and carried out tasks which he felt were appropriate to the other post. Ms Potter acknowledged this made running the service particularly difficult but she was not prepared to swap Mr Irving and the claimant simply to satisfy the claimant and upset Mr Irving. Ms Potter did discuss the situation with her line manager, Mr McAulay, and on 17 July 2015 (page 434) she wrote to the claimant to inform him that she had discussed the matter with Mr McAulay and "*had been advised to relay*" to him the fact he was in a position of Team Leader within the Unpaid Work Service, which is where he had wanted to return. Ms Potter noted the roles of team leader responsibility may appear different in day to day work but there was an expectation that one team leader would cover the duties of the other when the other person was not available or where there was a service need. Further, the weighting of managerial and supervisory responsibility division between the two team leaders based at Auchentibber, was the responsibility of the Operations Manager, as appropriate to the effective delivery of the overall service. Ms Potter clarified and confirmed the claimant's areas of responsibility.

79. Ms Potter also sought advice from Personnel about how to manage the situation. She was advised regarding the respondent's performance management procedure (that is, consideration of disciplinary action for failing to follow a reasonable management instruction); however, she was also advised by HR not to take any action until the grievance had been completed.

80. Ms Potter advised the claimant, during the supervision sessions on 21 July, 13 October and 8 December 2015, that continued failure to undertake the tasks allocated to him, would result in disciplinary action being considered.

81. Ms Potter carried out a review of case files and noted that many remained allocated to members of staff who had left, and many were simply inactive because the timescale for completion of the Order had expired, and there was no record of whether any work had been done within the timescale. Ms Potter decided to address this situation (because she wanted to close cases and remove them from the system where possible) and to that end she wrote to the Sheriff Clerk at Hamilton (page 425) to explain the situation.

82. Ms Potter advised the claimant of the situation and of the work to be done to close off Orders. The claimant, at the supervision session with Ms Potter on 21 July 2015, told her he was not happy regarding closure of expired but uncompleted Orders, and he requested written guidance on the exercise to be undertaken. Ms Potter confirmed there was no written guidance, but she provided him with a copy of the letter sent to each Sheriff Court to explain what was being done, and assured him a letter by Mr McAulay was to be placed on each offender's electronic file. The claimant remained unhappy about this situation.

83. The letter by Mr McAulay (page 427) noted a number of CPOs had expired but the case remained open on the service's system. Further, in a number of these cases, the case records had not been completed to the standard expected due to staffing/personnel issues within the teams. Mr McAulay confirmed that after a full investigation, he had made the decision to close these cases. This would ensure that management information reports were robust and met the needs of internal and external scrutiny, and would allow the service to focus on improving practice by providing training and support where it was needed.

84. Ms Potter arranged for the files to be taken off site on 27 July, and for the claimant, Mr Irving and herself to spend the day going through the files and closing them off and removing them from the system where possible. The claimant was very unhappy about closing off Orders where there was a significant amount of incomplete hours on the Order. He remained unconvinced, notwithstanding Ms Potter's assurances, that what he was being asked to do had the approval of the Court. The claimant did approximately 12 files and then left and did not return.

85. Ms Potter acknowledged this exercise did not go as planned, and subsequently, following a complaint, she (and Mr McAulay) had to attend a disciplinary investigation and hearing. Ms Potter was moved from the unpaid work service (there was no evidence to inform the Tribunal of what happened to Mr McAulay). Ultimately there was a judicial review of the service in September 2016 because a Sheriff expressed no confidence in the service.

86. The claimant submitted a grievance on 16 July 2015 (page 430) regarding Ms Potter's decision that his role was to manage the manual staff group of co-ordinators and supervisors. The claimant considered he did not have the skills, knowledge or experience to do this work, and he wanted to return to manage social workers and social work assistants. The claimant also referred to the fact that he had been advised by Ms Potter that his continued refusal to carry out her instructions to perform these duties could result in disciplinary action.

87. Mr Arun Singh, Child and Family Services Manager, was appointed to hear the claimant's grievance. Mr Singh met with the claimant and Mr Buchanan to fully understand the grievance. He understood the question for him to determine was whether the respondent had honoured its commitment to return the claimant to his substantive post. The claimant interpreted the term "*substantive post*" as being the duties he had previously carried out,

whilst the respondent interpreted the term as meaning the post of team leader.

88. Mr Singh, having spoken to the claimant, then met with Ms Potter, Ms Dade and Mr McAulay. Mr Singh also had access to all of the relevant documentation.

89. Mr Singh met with the claimant on 26 October to inform him of his decision, which he also confirmed in writing (page 455A). Mr Singh noted from his discussions with Ms Dade and Mr McAulay, that there had never been delineated roles for each team leader within the unpaid work service. The post of team leader was a generic one to allow a level of flexibility needed to deliver the service. Mr Singh also noted the claimant's line manager had put together a training programme to support him to gain the skills needed to undertake the tasks allocated to him.

90. Mr Singh did not uphold the grievance because he concluded the issue of a substantive post within the service did not extend to the roles and responsibilities a team leader may be asked to undertake.

91. The claimant read out a prepared statement in response to Mr Singh's decision. The statement referred to breaches of the social work code of conduct, and to the fact the claimant had been in contact with the SSSC who had advised him to raise the issues with senior managers. Mr Singh told the claimant he had not been able to fully note what the claimant had read out, and he asked for a copy of the statement so that he could investigate and/or escalate the issues. The claimant refused to provide this.

92. Mr Singh emailed the claimant the following morning (page 456) to say that in order to take the concerns forward, he needed to know what they were; and, if the claimant would not provide a copy of the statement, he should make his line manager aware of the concerns at a supervision session.

93. The claimant responded to that email to confirm he would not provide a copy of the statement, but would be happy to meet to discuss it. Mr Singh did not meet with the claimant, but he did inform Ms Potter of the fact the claimant had concerns he wished to raise.

94. The claimant had a period of sickness absence from 2 November 2015 until the 11 November 2015.

95. The claimant, by letter of 9 November (page 479) appealed against Mr Singh's decision. The claimant attended a stage 3 appeal hearing before the elected members of the Council on 19 January 2016. The grievance appeal was rejected and this was confirmed in writing by letter of 12 May (page 540). The letter confirmed the appeals panel had considered whether the claimant had been returned to his substantive post as team leader at Auchentibber and whether this extended to the specific remit of the team leader post, and tasks and responsibilities that he was asked to undertake. The panel were satisfied that the claimant had been returned to his substantive post of team leader at Auchentibber, and that the Resource acted reasonably in their request for him to undertake the tasks. The appeals panel noted that the Council had many team leader posts and further noted that all posts in the authority have a variety of tasks associated with them and that remits may vary.

96. The claimant, prior to his return to the team leader post, also submitted a Dignity at Work complaint on 23 March 2015 (page 362) in respect of the allegations regarding bullying and harassment raised in the initial grievance. The claimant submitted a Dignity at Work complaint following upon advice from Ms Maxwell in an email of 17 March 2015 (page 357) that the bullying and harassment allegations should be taken forward in this way. The Dignity at Work complaint concerned allegations that the claimant had been subjected to deliberate, ongoing and unreasonable behaviour by Mr Swift, Mr McAulay and Ms Dade. The claimant referred to the demotion and asserted the catalyst for this was related to threatening comments which

were attributed to the Director of Social Work regarding communicating with elected members as well as ongoing concerns regarding a number of dangerous and unprofessional practice issues which he had highlighted relating to the Unpaid Work Service (whistleblowing). The claimant also complained that Ms Dade and Mr McAulay had failed to undertake a stress risk assessment, and that Mr Swift's decision at stage 2 of the grievance had been discriminatory.

97. Ms Gillian Bhatti, Employee Development and Diversity Manager, was appointed to hear the claimant's Dignity at Work complaint. Ms Bhatti, in accordance with the respondent's procedure, asked for an investigation to be carried out and for a report to be provided to her. Ms Suzanne Brown was appointed to be the Fact Finding Officer and she met with the claimant on 8 April 2015 (page 367). The claimant had an opportunity to tell Ms Brown about the practice issues he had raised and the stress he had suffered. He referred to having been told his post was being filled on a temporary basis whilst he was on placement, but then being told it had been filled permanently. The claimant also argued that if he had not gone on placement he would have continued to work in the team leader role and therefore any suggestion that he lacked experience was nonsense. The claimant felt he was being blamed for the poor practice he reported.

98. Ms Brown reported to Ms Bhatti, who asked her to question the claimant further regarding certain points. Ms Bhatti then considered Ms Brown's report.

99. Ms Bhatti met with the claimant and his trade union representative, Mr Buchanan, on 8 July 2015, to confirm the outcome of the Dignity at Work complaint. Ms Bhatti also confirmed this in writing (page 414). Ms Bhatti concluded that Mr Swift's decision to place the claimant in a Senior Practitioner role had been reasonable given the concerns for his health and the desire to ensure that newly qualified social workers had a wide range of experience in order to consolidate their learning. Ms Bhatti recognised that

communication with the claimant could have been better and she had agreed with Mr Swift that communication with an employee will be formalised prior to them undertaking their first placement and at the end of the placement.

100. Ms Bhatti noted the individual stress risk assessment did not take place prior to the claimant's return to work at Auchentibber, and that this appeared to have been due to a change in management and a new operational manager taking up post. Ms Bhatti noted the stress risk assessment had now taken place and any agreed recommendations should be implemented without delay.

101. The claimant was not satisfied with the outcome of the Dignity at Work complaint and he appealed by letter of 13 July 2015 (page 416).

102. The claimant's stage 3 appeal against Ms Bhatti's decision was heard by elected members on 19 January 2016. The appeal was not upheld and the claimant was notified of this outcome by letter of 12 May 2016 (page 542). The appeal panel considered Ms Bhatti's findings and conclusions were reasonable and in accordance with the Dignity at Work policy, although they reiterated that communication with the claimant could have been better.

103. Ms Bhatti did not address the issue of whistleblowing as referred to by the claimant in the Dignity at Work complaint. Ms Bhatti (who works as part of the personnel team) was advised by Ms Forbes, Personnel Manager, in response to a query she raised that the whistleblowing/practice issues were being investigated in another process. Ms Bhatti considered this to be a reasonable approach and noted Ms Brown had agreed with the claimant and Mr Buchanan that the Dignity and Work complaint would not deal with the whistleblowing issues.

104. The claimant had a period of sickness absence from work from October 2016 until March 2017.

105. The claimant was redeployed to a supernumerary post of Team Leader in Adult and Older Persons Services in February 2017.

106. The claimant considered these events had had an impact on his health: he had had periods of absence due to stress, and his asthma and heart conditions had worsened. The claimant described that he felt isolated during this period, and that he had previously been a respected member of staff, but was now referred to jokingly as the Team Leader Without Portfolio. He felt he had lost professional standing because he had once managed social workers but that reduced to managing the people who manage the people who cut grass. In addition to this there had also been the fiasco surrounding the closing of cases.

107. The claimant had been told by his son-in-law that he had changed from being a bubbly person to being "*dour*", and his wife hated Sundays because he was back at work the next day. The claimant himself felt he had become forgetful and was lacking in concentration and confidence.

Credibility and notes on the evidence

108. The claimant's case was that he had made protected disclosures during supervision sessions with Ms Dade on 29 August 2013, 19 September 2013, 23 October 2013 and 20 January 2014; and that he had made a disclosure to Ms Potter on 21 July and 27 July 2015 regarding the closing off of expired Orders. The detail of what was disclosed on these occasions ran to 24 pages of further particulars (page 42 – 66). The claimant asserted he was, because of having made protected disclosures, subjected to the detriment of (i) being moved to a Senior Practitioner role; (ii) not returned to his substantive post as had been agreed in April 2015; (iii) when he

returned to a team leader role he was asked to undertake duties for which he did not have the skills, qualifications or experience; (iv) threatened Ms Potter on three occasions with disciplinary action and (v) having his grievance rejected by Mr Singh.

109. The theme underlying the claimant's case and said to link the protected disclosures and the detriments was (i) a desire to keep the claimant out of the Unpaid Work Service because he had raised a variety of serious practice issues and (ii) the fact he was viewed as a trouble-maker.

110. We, on the whole, found the claimant to be a credible witness although we considered that he tended to exaggerate parts of his evidence. There were three particular examples of this: firstly, the claimant invited the Tribunal to accept that the 24 pages of further particulars of the protected disclosures set out what he had said to Ms Dade and others. Ms Dade acknowledged that practice issues had been raised by the claimant on more than one occasion, but she disputed the claimant had provided the level of detail he now sought to rely on. Ms Dade, in support of her position, relied on the supervision notes which noted the points discussed on each occasion. We accepted Ms Dade's evidence to the effect that her practice is to take notes during the supervision session, have them typed up into the document produced and then to agree the notes and have the document signed at the following session. The supervision notes of 29 August and 19 September 2013 were signed copies, and although the other copies of the supervision notes produced for this Hearing were not signed, we noted there was reference in each of them to the previous supervision record having been signed. We, on this basis, preferred Ms Dade's evidence regarding the issues and level of details raised by the claimant with her during supervision sessions.

111. The second example related to the duties which Ms Potter asked the claimant to carry out and which involved managing the unpaid work side of the service. The claimant explained in great detail that he did not have the

skills, knowledge or experience of construction or horticulture to allow him to undertake these duties. There was reference, for example, to not knowing if the right cement had been used for a job, or how much timber would be required for a project. The claimant told us he would not know which were the correct materials for the job in order to be health and safety compliant, or if the equipment and materials were being used correctly. The claimant repeatedly said that he would have to rely on others, but would not know if they were right.

112. The respondent's witnesses accepted the claimant would need training and support to carry out these duties, but they rejected his suggestion that he would need to know how to do each job undertaken by the offenders in order to manage the co-ordinators and supervisors appropriately. The witnesses stressed that it was the claimant's role to manage the co-ordinators and supervisors, to ensure they were meeting the health and safety and other requirements and not to know how to personally carry out all the tasks.

113. We acknowledged the anxiety the claimant may have felt at being asked to carry out different duties, however we considered that in giving his evidence to this Tribunal, he exaggerated and focussed on tasks he would not be required to undertake. We, for these reasons, preferred the evidence of Ms Dade, Mr Singh and Ms Potter.

114. We did note that Ms Potter, very candidly, told us that she acknowledged the supervision of the workshop/unpaid work was not a social work role. She did not have the skills to do that role and most social workers would be in a similar position. She has put forward a paper setting out these concerns. However, at the time of these events, the management of the service was a social work responsibility and Ms Potter was tasked with utilising the staff she had to manage the service.

115. The claimant, in his evidence, sought to portray Ms Dade, Ms Potter and Mr Swift as being angry about him raising practice issues and wanting to keep him quiet by removing him from the service. We could not accept this evidence for two reasons: firstly, the respondent's witnesses each accepted there were difficulties, or challenges, with the service and that it was, at times, a failing service. The issues raised by the claimant were routinely discussed by others: for example, Ms Dade told us she was aware of the issues raised by the claimant and the notes of the team meetings confirmed issues such as stand downs were discussed. An action plan was prepared to address some of the challenges the service had to deal with. Secondly, we accepted the evidence of Ms Dade and Mr Swift to the effect that regular reports regarding the performance of the service were produced for elected members of the respondent Council, internal Audit, the Social Work Resource and Community Justice Authority, which involved representatives from outwith the Council. We therefore concluded against that background, that the suggestion Mr Swift wanted to keep the claimant quiet, could not be supported because it was clear the issues which concerned him, also concerned others and were being openly discussed within and outwith the Council.

116. The third example related to the claimant's position that there was a distinct split in the role of team leader within the unpaid work service, and that each team leader did either management of the social workers or management of the unpaid work. Mr Singh, Ms Dade and Mr Swift rejected that suggestion. They all acknowledged the different duties, but emphasised the need for the team leaders to be able to cover for each other and for an element of flexibility in the service. Ms Potter agreed with the suggestion there was a split service, but still maintained the need for flexibility.

117. We preferred the evidence of the respondent's witnesses and found as a matter of fact that although the team leaders tended to do different duties, it was for the line manager to decide how best to utilise the team leaders.

There was evidence, for example, that the claimant had initially managed the workshop side, he then developed to manage social workers. There was also evidence to the effect that when one team leader left, the other had to cover some/all of their duties. The evidence supported the respondent's witnesses that there was flexibility within the role, and that duties were regularly reviewed and changes were made in terms of management responsibility to suit the strengths of the team leaders.

118. We found the respondent's witnesses to be credible and reliable. Ms Bhatti gave her evidence in a straightforward and reliable manner: she had a clear recollection of the decisions she had made and the reasons for doing so. Ms Bhatti was also able to give some insight to the approach of the respondent in supporting employees to undertake the social work degree course through the Open University. The respondent has a shortage of social workers and supports approximately 5 employees each year to undertake the degree course. Ms Bhatti supported Mr Swift's evidence to the effect that employees undertaking the degree course are not guaranteed to return to their previous role because the respondent would wish to balance placing them in a role where vacancies in the Resource exist, balanced against what the employee wishes to do.

119. Mr Singh, Ms Dade, Ms Potter, Mr Swift and Ms Maxwell also gave their evidence in a straightforward and balanced manner. Mr Swift, in particular, impressed as a calm, thoughtful witness. The Employment Judge acknowledged Mr Swift`s recollection of some of the issues was not as clear given he has been retired for a year; whereas Ms Fisher was of the opinion Mr Swift had to be pressed to answer some of the questions posed. Mr Swift was clear regarding the reasons for his decision to move the claimant to a Senior Practitioner post. Mr Swift told the Tribunal that there were, for historic reasons, a number of senior employees in the Council who held team leader posts but were not social work qualified. This was a position he, and the respondent, wished to address because the SSSC was moving in the direction of professionalising social work and its management. It was for

this reason the claimant was encouraged to undertake the social work degree.

120. We accepted Mr Swift's evidence that he met with all employees returning after completion of the social work degree to discuss their preferences, experience, suitable vacancies and to balance that with the needs of the service.

121. Mr Swift had some doubts about the claimant returning immediately to the role of team leader because that would involve supervising the complex work of social workers and standing in for social workers when required, and in a service which had become more challenging. Mr Swift was of the opinion that the service was safer if a qualified social worker was in post as team leader and it was for that reason he wished the claimant to consolidate his learning and enhance his credibility as a social worker having had some practical experience. Mr Swift acknowledged the claimant had been carrying out the role, but told the Tribunal that he had not been "comfortable" with that situation.

122. Mr Swift held the view that it should be essential for team leaders to be qualified. His strong view was that if a team leader is not qualified then it is less safe for them to manage social workers who are undertaking high risk work because they do not have detailed knowledge of the role and experience. Mr Swift relied on these views to inform his decision that the claimant should get some front line social work experience before returning to a team leader role.

123. Mr Swift, when giving his evidence regarding the above matters, used the expression "*risk"* to describe his opinion that it was less safe for an unqualified team leader to manage social workers than it was for a qualified team leader. Mr Swift acknowledged this term was not used when he explained to the claimant the reasons for moving him to a Senior

Practitioner post. Mr Swift also acknowledged that it had never previously been suggested to the claimant that he was a risk.

124. We understood, and accepted, that in using this terminology Mr Swift was not suggesting the claimant personally was a risk in the role of team leader. The term was used very much in the context of Mr Swift drawing a distinction between qualified and unqualified team leader and was not used as any personal criticism of the claimant.

125. The claimant made clear in his grievances that he believed decisions were being taken by the respondent because he had complained about practice issues (whistleblowing). Mr Swift did not deal specifically with this issue because (i) the practice issues he knew of were being addressed through an action plan; (ii) the claimant did not pursue this during the grievance and (iii) the focus of the grievance was the move to the Senior Practitioner role.

126. Ms Bhatti identified the whistleblowing issue in the Dignity at Work complaint, but she did not deal with it because she was informed upon enquiry, that it was being dealt with elsewhere.

127. Mr Singh did not deal with it because he did not consider it to be part of the grievance and, when the claimant read out his statement at the end of the hearing, he refused to provide Mr Singh with a copy of it.

128. We accepted the evidence of Mr Swift, Ms Bhatti and Mr Singh as set out above, and we also accepted that the claimant, when given the opportunity to make his position clear, did not do so. However, a by-product of the way in which the respondent dealt with this matter was that no one specifically addressed the claimant`s complaint that decisions affecting him were made because he had blown the whistle. We did not make any finding or draw any adverse inference, regarding the way in which this matter was dealt with because we accepted that at each stage Mr Swift, Ms Bhatti and Mr Singh believed they had dealt with the issues before them; and the

claimant, at the time, agreed with the way in which matters were being addressed.

Claimant's submissions

129. Mr Cramond made oral submissions based on a written submission which he produced for the tribunal. Mr Cramond referred to the paper apart to the ET1 and the further and better particulars detailing the protected disclosures made by the claimant and the detriments suffered. The claim was brought under Section 47B Employment Rights Act.

130. Mr Cramond invited the Tribunal to revisit the entirety of the evidence and the chronological order of events. He submitted the respondent had sought to rely on selective emails and documents in support of its case: for example, no grievance or dignity at work policies had been relied upon, there was no documentary evidence regarding the Audit undertaken or the appointment of Ms Potter. Further, there was a distinct absence of any written documentation of the investigations undertaken in respect of the various grievances. The Tribunal was, it appeared, being asked to simply accept the word of the respondent's witnesses on matters spoken to.

131. Mr Cramond invited the Tribunal to prefer the evidence of the claimant in all conflicts of evidence. It was submitted the claimant had presented as consistent, plausible and reasonable in all respects when giving his evidence. His evidence was supported by the documentation produced. It was submitted that the evidence of the respondent's witnesses should be treated with caution. The evidence was not, in some significant respects, consistent: for example, Ms Potter was clear she had not been spoken to by Mr Singh as part of the grievance he heard, whereas Mr Singh was clear he had spoken to Ms Potter even though he did not refer to her by name in the letter of outcome. Also Ms Bhatti was clear that Mr Swift had made the decision to move the claimant to the role of Senior Practitioner whereas Ms Maxwell had the impression the decision was made by Mr McAulay.

132. Mr Cramond submitted the respondent had failed to put its case to the claimant in several material and relevant respects:-

- that the claimant believed anything other than in the public interest when disclosing information to Ms Dade;

- that the claimant reasonably believed the information he was disclosing showed or tended to show the breaches detailed in the further particulars;

- that the claimant's evidence regarding comments made during supervision or agreements made regarding return to work were not correct;

- that the claimant was in any way a "*risk*" to the social work services at any time if he returned to work at Auchentibber;

- that the claimant failed to undertake his duties when he returned to work after April 2015 and

- that the claimant had been offered and/or refused training to undertaken his role when he returned to Auchentibber in April 2015.

133. Mr Cramond referred the Tribunal to the further particulars setting out the details of the disclosures said to have been made by the claimant, and he invited the Tribunal to find these were the protected disclosures made by the claimant within the meaning of Section 43B Employment Rights Act. Mr Cramond noted the respondent admitted various pieces of information were disclosed insofar as they were recorded in the supervision notes – for example, stand downs and management of CPOs. The dispute between the parties appeared to relate to the detail provided by the claimant and whether the disclosures were made in the public interest or for the claimant's own personal and professional benefit.

134. Mr Cramond invited the Tribunal to accept the claimant's evidence which had been clear, consistent and supported by the documents produced for the grievances and appeals. Mr Cramond suggested that Ms Dade, the manager of the service at the time it was said to have deteriorated, would have had reason not to note all of what the claimant raised.

135. Mr Cramond submitted the hurdle for proving that a reasonable belief or a belief in the public interest was not a high hurdle, and he referred the Tribunal to the Judgment of the EAT handed down on 17 July 2017 in the case of **International Petroleum Ltd v Alexander Osipov** for a useful summary of the position.

136. It was noted there had been some reference to the claimant not using the whistleblowing policy. Mr Cramond submitted failure to use the correct policy did not strip an employee of protection. The claimant was entitled to, and did, make disclosures to his manager.

137. Mr Cramond invited the Tribunal to have regard to the cases of **Blackboy Ventures** and **Eiger Securities LLP v Corshuniva UKEAT/0149/16.** Mr Cramond invited the Tribunal to find all the relevant tests had been satisfied and to find the claimant did make protected disclosures as set out in the further particulars. He submitted the respondent's assertions were without reasonable prospects of success.

138. Mr Cramond referred the Tribunal to the further particulars of the detriments suffered and summarised them as follows:-

> **the demotion and/or decision to move the claimant to a Senior Practitioner post and/or otherwise to move him out of his role as team leader at Auchentibber (and the various acts or omissions*

which ultimately prevented the claimant returning to his substantive post as team leader);

- *the decisio*n *and continued decisions not to return the claimant to his substantive post and/or the duties upon his return to Auchentibber on 27 April 2015, not to return him as had been agreed as the outcome of his original grievance and requiring him to undertake the duties of team leader for which he did not have the necessary skills, knowledge, qualifications and experience to undertake;*

- *the continued threats of disciplinary action at three supervision sessions and*

- *the decision to reject the claimant's grievance heard by Mr Singh.*"

139. Mr Cramond referred the Tribunal to the case of **Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11.**

140. The respondent's actions, it was submitted, caused clear detriment to the claimant even though there was no financial detriment and the claimant's grade did not change. The key terms of the claimant's contract of employment were unilaterally varied and imposed on him; his employment position and status were destabilised; there was a loss of managerial responsibility; there was a change of location; it was a step backwards and the post of Senior Practitioner had previously been rejected by the claimant. The suggestion by the respondent that the move was designed to help the claimant should be rejected.

141. Mr Cramond submitted a person's substantive role was more than just the job title: it is about the substance of it and the duties they perform. Mr Cramond invited the Tribunal to find the unpaid work service was a split

service and the decision to ask the claimant to perform the technical team leader duties was a unilateral variation of his contract of employment. The claimant did not have the necessary skills and experience to undertake that role. The claimant acknowledged that he had been offered training, but it was submitted that no amount of training would have provided him with the necessary skills, knowledge and experience to undertake the role.

142. Mr Cramond submitted that once the claimant had established that protected disclosures were made and detriments suffered, the burden of proof fell to the respondent to prove the reason for the acts or failures to act which caused the detriment to be suffered. The respondent was required to prove, on the balance of probabilities, that the treatment of the claimant was not done "*on the ground that*" he made a protected disclosure/s. It was submitted that in whistleblowing cases the causation test was more favourable to the claimant. The Tribunal needed to be satisfied that the act or failure to act complained of was not "materially influenced" (in that it was in no sense whatsoever on the grounds that the claimant made a protected disclosure) by the claimant's protected disclosure: **Fecitt v NHS Manchester [2012] IRLR 64.** If the employer failed to prove the act, or deliberate failure to act, complained of was not on the prohibited grounds where there is a prima facie case that it was, the question or issue must be determined in favour of the claimant.

143. It was further submitted that an individual need not have direct knowledge of the protected disclosures made. The Tribunal was referred to the case of **The Co-operative Group v Baddeley [2014] EWCA Civ 658** and in particular to paragraphs 41 and 42.

144. The Tribunal must also have regard to the mental processes, both conscious and unconscious of the employer when determining the grounds upon which a particular act is done (**Harrow London Borough v Knight [2003] IRLR 140**). Motive is immaterial in the sense that it does not matter why the employer would wish to treat a protected employee differently and it

does not matter whether there is an intent to discriminate against the employee.

145. Mr Cramond submitted that whether or not the respondent's managers believed the claimant had made protected disclosures was irrelevant: **Beatt v Croyden Health Services NHS Trust [2017] EWCA Civ 401.**

146. Mr Cramond invited the Tribunal to scrutinise the evidence with particular care and attention, and to draw adverse inferences from the available evidence. He submitted that with the appropriate degree of scrutiny, the respondent was unable to satisfy the burden of proof because there was no plausible, credible or reliable evidence to support the reasons provided by the respondents for the actions they took.

147. Mr Cramond noted it was significant the Tribunal had not heard evidence from Mr McAulay, and he submitted this was a fundamental flaw in the respondent's case. Mr McAulay's knowledge, actions, influence and involvement in this case and in key decisions causing the claimant detriment was obvious. Importantly, Mr McAulay was privy to the protected disclosures made by the claimant because Ms Dade told him this information during her supervision sessions with him. He discussed and agreed the claimant's duties with Ms Dade. He became the claimant's line manager during the second placement and informed the claimant of the move to Senior Practitioner. He was Ms Potter's line manager and the disclosures made by the claimant related to the service he was overseeing.

148. Mr Cramond invited the Tribunal to find Mr McAulay was the decision-maker in respect of the move to Senior Practitioner. This finding should be inferred from the fact he was the claimant's line manager; he advised the claimant of the decision; his email regarding the move stated "*I*"; the claimant understood Mr McAulay had made the decision and he raised a grievance and a dignity at work complaint based on that understanding. Even if the Tribunal found Mr Swift made the decision, it was clear he consulted with Mr

McAulay regarding the decision and Mr McAulay must have had substantial and material influence over (or manipulated) the decision made.

149. He further invited the Tribunal to find that it was Mr McAulay who decided the duties the claimant was to undertake upon his return to Auchentibber. Mr McAulay was Ms Potter's line manager and Ms Potter was a new, temporary operations manager tasked with turning round the service following the Audit. She had little knowledge of the claimant's (or Mr Irving's) skills and experience and was unable to tell the Tribunal whether Mr Irving was still in the post temporarily. She was given very little background information about the claimant and whistleblowing and she did not consult with him prior to making her decision. It was submitted that even on those facts alone, it was inconceivable that she was capable of making an informed decision regarding duties.

150. Mr Cramond acknowledged Ms Potter denied that she was being told what decisions to take, but he submitted the email of 17 July 2015 (page 433) made clear she was being told what to do on the key issue of duties for the claimant. Mr Cramond invited the Tribunal to scrutinise the wording of the email and submitted it would be very odd for Ms Potter to write "*you will be supported by the operations manager*" when referring to herself. Furthermore, Mr Singh had (with regard to the outcome of the grievance he heard) concluded "*The managers…"* using the plural rather than singular. Mr Cramond submitted the only reasonable explanation of all the above was that Ms Potter was being directed by Mr McAulay as to the duties the claimant would undertake upon his return to Auchentibber, and that Mr McAulay was the actual decision-maker in relation to all such matters. However, even if the Tribunal did not reach this conclusion, it was submitted Mr McAulay materially influenced the decisions regarding the claimant.

151. Mr Cramond submitted the decisions taken by Ms Potter were materially influenced and/or deliberately manipulated by others around her. Further, Ms Potter's evidence was that she required the claimant on a daily basis to

undertake the duties assigned to him. The claimant's grievance arose out of the protected disclosures he had made. Accordingly, it was submitted, Ms Potter's decisions were materially influenced by the protected disclosures the claimant had made.

152. The Tribunal had no evidence regarding the mind-set of Mr McAulay who made and/or heavily influenced/manipulated some of the key acts and omissions which caused the claimant detriment. It was submitted that the Tribunal should draw an adverse inference from the absence of Mr McAulay as a witness. Further, it was submitted that without the evidence of the decision-maker, the respondent could not surpass the burden of proof placed upon it.

153. Mr Cramond submitted the only reasonable and plausible explanation for the treatment of the claimant was that he had made protected disclosures. The chronology and background supported the claimant's position; he had never been the subject of capability procedures; he had acted in the team leader role without problem; he returned from his first placement without issue; the unpaid work service was traditionally a split service; the claimant told Ms Dade he wanted to explore his options but he did not say he wanted to leave the service and the service was a failing service. It was submitted that action only appeared to have been taken against the claimant after he made protected disclosures.

154. Mr Cramond further submitted that as well as Ms Dade, Mr McAulay, Mr Swift and Ms Potter must have had knowledge of the practice issues raised by the claimant. Ms Dade and Ms Potter were line managed by Mr McAulay, with whom they had supervision sessions at which practice issues were discussed. Mr McAulay had supervision sessions with Mr Swift and he accepted he was aware there were issues within the service. The claimant made clear on a number of occasions that he considered he was being treated differently because he made protected disclosures, but that position

went unchecked without investigation. This raised the question whether the position was deliberately withheld from Ms Potter.

155. It was submitted the respondent's explanations for their actions were illogical, or without substance or simply not credible, and Mr Cramond invited the Tribunal to have regard to the cross examination of the respondent's witnesses for the criticisms made. Mr Swift referred to the claimant being a "*risk*" as a team leader. Mr Cramond submitted there was no evidence of this and the claimant's performance reviews suggested quite the opposite. The reasons provided to the claimant to explain the move to Senior Practitioner did not include reference to risk. Mr Swift had referred to a change in standards by the SSSC, but no evidence had been led of this.

156. Mr Swift had also referred to the need for the claimant to obtain practical experience. However, there was no expectation the claimant would become a social worker, and he was not required to be registered with the SSSC in order to hold the post of team leader.

157. The respondent had also relied on the claimant not wishing to return to Auchentibber for health reasons. However, the claimant had not ever agreed to move and only intimated to Ms Dade that he wished to know what his options were. It was submitted the claimant had a contractual right to return to the post of team leader at Auchentibber.

158. The claimant's return to his post was delayed pending Ms Potter taking up her post. It was submitted there was no basis for this decision in circumstances where the claimant did not pose a risk. The alleged risk related to case management duties and the claimant did not return to do those duties.

159. Mr Cramond submitted the real reason behind all of the respondent's actions was because they wanted to keep the claimant away from Auchentibber whilst the second Audit was taking place. There was support

for this submission in the fact the issues raised by the claimant were serious and cast aspersion on the management ability of those involved in the service. Ms Dade had already told the team leaders that the councillors knew too much about the service and a veiled threat had been made to move the person who had disclosed this information from the service. The email from Mr Swift dated 7 January 2013 (page 301) clearly indicated a desire for the claimant not to return to Auchentibber so the post can be filled on a permanent basis. The claimant was given no choice in moving to a Senior Practitioner role and did not agree to it. The reasons given by Mr McAulay to the claimant to explain the move were not the same as those given by Mr Swift in evidence to the Tribunal. Mr Alan Irving filled the claimant's post on a temporary basis and the respondent's witnesses could not explain how or when that became a permanent appointment.

160. Mr Cramond also pointed to the fact Mr Swift had heard the claimant's grievance regarding the decision to move him to a Senior Practitioner post. If this was Mr Swift's decision, it was odd that he had heard this grievance. It was submitted this pointed to the respondent wishing to keep control of things until the Audit was completed.

161. Mr Cramond submitted that the faults and unreasonable behaviour of the respondent were so numerous, serious and unusual that they could not be explained away other than by the finding that the claimant was being treated differently because he made protected disclosures. Further, or alternatively, the behaviour of the respondent pointed to a concerted and deliberate attempt to keep the claimant away from Auchentibber and/or the management of the social workers and social work assistants.

162. It was further submitted that even if Mr Swift considered the claimant a risk and this was the reason for the move to Senior Practitioner or the reason for directing the claimant to undertake management of the technical side, this was also, whether consciously or unconsciously, because the claimant had made protected disclosures.

163. Mr Cramond invited the Tribunal to uphold the claim and to make an award for injury to feelings in accordance with the schedule of loss.

Respondent's submissions

164. Mr Stewart submitted that each of the alleged protected disclosures required to be individually assessed to establish whether it was a disclosure of information; whether it was a qualifying disclosure and whether it was the reasonable belief of the clamant that the disclosures were made in the public interest. Mr Stewart referred the Tribunal to the cases of **Cavendish Munro Professional Risks Management Ltd v Geduld [2009] UKEAT/0195/09; Smith v London Metropolitan University [2011] UKEAT/0364/10** and **Blackbay Ventures Ltd v Gahir [2014] UKEAT/0449/12.**

165. The respondent acknowledged the claimant had raised operational issues with Ms Dade during the course of supervision sessions, but not in the level of detail provided in the further particulars. If however any disclosures were made by the claimant, it was submitted the claimant did not reasonably believe that such disclosures were being made in the public interest. The matters raised by the claimant were not raised in the public interest, but rather as operational matters affecting the service he was responsible for. The raising of such operational issues with a line manager during supervision could not reasonably be considered a protected disclosure. Such matters, by their very nature, were discussed in each supervision session.

166. Mr Stewart referred to the evidence of the claimant and Ms Dade to the effect that a number of members of staff were raising the same and similar issues with the claimant and Ms Dade. Mr Stewart referred to the case of **Chesterton Global Ltd v Nurmohamed UKEAT/335/14** where it was held that the question before the Tribunal is not whether the information

disclosed is of public interest, but whether the claimant reasonably believed at that time that his disclosure was being made in the public interest. Mr Stewart acknowledged the issues raised may well have been of interest to the public, but there was a distinction between relaying information the public may have an interest in, and relaying information in the public interest. Mr Stewart invited the Tribunal to find, on this basis, that the disclosures made by the claimant were not protected disclosures.

167. Mr Stewart acknowledged the claimant had set out the detriments (allegedly) suffered in the further particulars. He also referred to the **Shamoon** (above) case regarding the meaning of "detriment", but submitted the Tribunal should have regard to the fact an unjustified sense of grievance could not amount to a detriment.

168. Mr Stewart submitted that in relation to each alleged detriment, the Tribunal had to ask (i) was there an act or deliberate failure to act by the employer; (ii) whether such alleged act or deliberate failure to act amounted to a detriment and (iii) whether that was causally connected to the making of the protected disclosure. The burden of proof rests on the employer to show the reason an act was done, or an omission made, on the balance of probabilities. Once the Tribunal is satisfied the employer has acted for a particular reason that is not the protected disclosure, that necessarily discharges the burden of proof: **Fecitt** (above). Mr Stewart accepted that where a detriment is established without fault on the part of the claimant, the Tribunal will be entitled to look with a critical eye at the explanation advanced by the respondent for that treatment, to see whether the innocent explanation is indeed the true explanation.

169. The first detriment alleged by the claimant was that he was not returned to the post of team leader at Auchentibber upon completion of the second social work degree placement. Mr Stewart invited the Tribunal to have regard to the evidence of Mr Swift when he had explained the rationale for his decision to offer the claimant the position of Senior Practitioner. It was

submitted Mr Swift's evidence was clear, logical and wholly consistent with the contemporaneous records produced for the tribunal. The claimant was offered the Senior Practitioner post in order to provide him with practical social work experience and to broaden and consolidate his learning and experience: the position was to be reviewed after 12 months and a match to a team leader post at that time anticipated. Mr Stewart invited the Tribunal to accept Mr Swift's evidence that the move was not a demotion and that the needs of the service required to be considered above a perception of status.

170. Mr Stewart also invited the Tribunal to have regard to Mr Swift's evidence regarding the onus on him to ensure qualified team leaders were in place to supervise experienced social workers. The Tribunal had also heard unchallenged evidence from Ms Bhatti, Mr Singh and Mr Swift that it was normal practice for those returning from the social work degree course to meet with the Head of Service to discuss a return to placement within the social work resource. It was submitted Mr Swift's decision in this regard was not influenced in any way by alleged whistleblowing by the claimant.

171. The second alleged detriment related to the claimant not being returned to his substantive post as had been agreed in April 2015. Mr Stewart invited the Tribunal to have regard to the evidence of Mr Singh, Ms Dade and Ms Potter regarding the fact the duties undertaken by the claimant during his time as team leader had varied. The allocation of duties was a matter for the line manager. It was submitted that it cannot be a detriment for an employee to be instructed to carry out duties which are within the scope of their post.

172. Mr Stewart invited the Tribunal to accept the clear and consistent evidence of Ms Potter that the reason for instructing the claimant to carry out those particular duties was not in any way influenced by any alleged disclosure.

173. The third alleged detriment was being asked to undertake a role for which he had no qualifications, knowledge or skills. Mr Stewart submitted the

claimant's evidence regarding the role he was asked to perform, should be treated as unreliable. All of the respondent's witnesses had clearly given evidence that there was never any question that the team leader would be expected to have involvement in the day to day operation of machinery, power tools, supervision of horticulture or construction work. The evidence was clear and to the effect the role of team leader was to have oversight of the unpaid work service, and others working within that service who are responsible for the matters suggested by the claimant.

174. The fourth alleged detriment was the threat of disciplinary action if he did not carry out these duties. Mr Stewart invited the Tribunal to accept the evidence of Ms Potter regarding her decision to allocate the claimant to supervise the technical side; the fact the claimant was resistant to carrying out those duties; the fact she took guidance from Personnel and advised the claimant that refusal to carry out reasonable instructions may result in disciplinary action being considered. It was submitted that no threat was issued by Ms Potter.

175. Mr Stewart invited the Tribunal to find the respondent's witnesses credible and reliable and to prefer their evidence in any dispute to that of the claimant. Mr Stewart submitted the respondent had discharged the burden of proving that there was a reason other than the making of protected disclosures for the acts or failures to act relied upon by the claimant. Mr Stewart invited the Tribunal to dismiss the claim.

176. Mr Stewart had regard to the schedule of loss and submitted the claim for injury to feelings had been grossly overstated. He submitted no medical evidence had been led to support any conclusion that the claimant was materially affected by any detriment to which he was subjected. In all of the circumstances, and if the claimant was successful with his claim, an award in the lowest **Vento** band should be made.

Discussion and Decision

177. The issues for this Tribunal to determine are: (i) did the claimant make protected disclosures; (ii) did the claimant suffer a detriment, or detriments, as alleged and (iii) if the answer to one and two is yes, then was the claimant subjected to a detriment on the ground that he made a protected disclosure or disclosures.

Did the claimant make a protected disclosure or disclosures?

178. We firstly had regard to the terms of Section 43A Employment Rights Act which provides that a "*protected disclosure*" means a qualifying disclosure as defined by Section 43B which is made by a worker in accordance with any of Sections 43C to 43H.

179. Section 43B provides that a qualifying disclosure means any disclosure of information which, in the reasonable belief of the worker making it, is made in the public interest and tends to show one or more of the following:-

(a) that a criminal offence has been committed, is being committed or is likely to be committed;

(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject;

(c) that a miscarriage of justice has occurred, is occurring or is likely to occur;

(d) that the health and safety of any individual has been, is being or is likely to be endangered,

(e) the environment has been, is being or is likely to be damaged or

(f) that information tending to show any matter falling within any one of the above has been, is being or is likely to be deliberately concealed.

180. We were also referred to the following authorities regarding the interpretation of Section 43B(1), and the general approach to be adopted by a Tribunal considering this type of case. In the case of **Cavendish Munro Professional Risks Management** (above) the EAT held that the statutory provisions recognised a distinction between "*information*" and "*allegation*". It was noted that "*information*" meant the conveying of facts and this should be distinguished from making a statement of a person's position or making an allegation.

181. We also had regard to the case of **Kilraine v London Borough of Wandsworth [2016] IRLR 422** where a Tribunal dismissed a claim following its decision that the alleged disclosures were not protected disclosures because they contained allegations and not information. The EAT considered that employment tribunals had to take care in the application of the principle arising out of ***Cavendish Munro*** and should not be too easily seduced into asking whether an alleged protected disclosure was information or an allegation when reality and experience suggested that, very often, "*information*" and "*allegation*" were intertwined. The question was simply whether it was a disclosure of information.

182. In the case of **Eiger Securities LLP v Korshuvnova [2017] IRLR 115** the EAT held that the words used by the claimant intertwined information and allegation, and held that whether such words were to be regarded as a "*disclosure of information*" within the meaning of Section 43B depended upon the context and circumstances in which they were spoken. The decision as to whether such words which included some allegations crossed the statutory threshold of disclosure of information was essentially a question of fact for the employment tribunal which had heard evidence.

183. Mr Cramond referred the Tribunal to the case of **International Petroleum Ltd v Osipov** (a judgment handed down on 17 July 2017) where the following useful summary was provided:-

> *"26. Moreover, it is quite clear by the nature of the information disclosed that they are the archetypical examples of protected disclosures. The test of public interest is not a high hurdle to surpass: the worker must have a reasonable belief that the information disclosed tends to show that a relevant failure has occurred, is occurring or is likely to occur; and a reasonable belief that the disclosure is made in the public interest. The test for belief in each case is subjective and there is a low threshold for establishing that the worker had a belief in the relevant matters. The belief does not have to be proved to be correct. There is also an objective element: the belief must be reasonable. What is reasonable involves consideration of what a person in their position, with their knowledge would reasonably believe (**Korashi v Abertawe Bro Morgannwg University Local Health Board [2012] IRLR 4).***
>
> *27. What is in the public interest for these purposes was considered in **Chesterton Global Ltd v Nurmohamed [2015] ICR 920**. The Employment Appeal Tribunal considered Parliamentary materials that showed the words "in the public interest" were introduced to do no more than prevent a worker from relying on a breach of his own contract of employment where the breach is of a personal nature and there are no wider public interest implications. .."*

184. Mr Stewart referred to the **Chesterton** case. The EAT in that case held that the question for consideration under Section 43B(1) was not whether the disclosure per se was in the public interest but whether the employee held a reasonable belief that it was made in the public interest and that the

information being disclosed met the criteria set out in Section 43B(1)(a) – (f); that the public interest test could be satisfied even where the belief turned out to be wrong or there was in fact no public interest in the disclosure being made, provided the employee's belief that the disclosure was made in the public interest was objectively reasonable.

185. We were also referred by both representatives to the **Blackbay Ventures Ltd** case (above) where the EAT suggested that when a Tribunal is considering a claim by an employee of detriment for having made protected disclosures, the Tribunal might take the following approach:-

> *"(a) each disclosure should be separately identified by reference to date and content;*
>
> *(b) each alleged failure or likely failure to comply with a legal obligation, or matter giving rise to the health and safety of an individual having been or likely to be endangered as the case may be should be separately identified;*
>
> *(c) the basis upon which each disclosure is said to be protected and qualifying should be addressed;*
>
> *(d) save in obvious cases if a breach of a legal obligation is asserted, the source of the obligation should be identified and capable of verification by reference for example to statute or regulation. It is not sufficient as here for the employment tribunal to simply lump together a number of complaints, some of which may be culpable, but others of which may simply have been references to a checklist of legal requirements or do not amount to disclosure of information tending to show breaches of legal obligations. Unless the employment tribunal undertakes this exercise it is impossible to know which failures or likely failures were regarded as culpable and which*

attracted the act or omissions said to be the detriment suffered. If the employment tribunal adopts a rolled up approach it may be not possible to identify the date when the act or deliberate failure to act occurred as logically that date could not be earlier than the latest act or deliberate failure to act relied upon and it will not be possible for the appeal tribunal to understand whether, how or why the detriment suffered was as a result of any particular disclosure; it is of course proper for an employment tribunal to have regard to the cumulative effect of a number of complaints provided always they have been identified as protected disclosures.

(e) The employment tribunal should then determine whether or not the claimant had the reasonable belief referred to in section 43B(1) of the ERA 1996 under the "old law" whether each disclosure was made in good faith; and under the "new law" whether it was made in the public interest.

(f) Where it is alleged that the claimant has suffered a detriment short of dismissal it is necessary to identify the detriment in question and where relevant the date of the act or deliberate failure to act relied upon by the claimant. This is particularly important in the case of deliberate failures to act because unless the date of a deliberate failure to act can be ascertained by direct evidence the failure of the respondent to act is deemed to take place when the period expired within which he might reasonably have been expected to do the failed act.

(g) The employment tribunal under the "old law" should then determine whether or not the claimant acted in good faith and under the "new law" whether the disclosure was made in the public interest."

186. The references in the above case to the "*old law*" and the "*new law*" relate to the changes introduced by the Enterprise and Regulatory Reform Act 2013, which introduced the requirement that the reasonable belief of the worker making the disclosure, is that it is being made in the public interest. The change came into effect as from 25 June 2013, and accordingly it is the new provisions which apply and must be considered in this case.

187. The first issue for this Tribunal to determine is what information was disclosed by the claimant, when and to whom. There was a material dispute regarding this matter: the claimant had produced further particulars of the disclosures he made, and it was his position that he had disclosed all of these matters, in the detail set out in the further particulars. Ms Dade rejected that suggestion: she accepted the claimant had raised a number of practice issues, but she denied all of the issues in the further particulars had been raised with her, and she further denied that the claimant had provided all of the detail set out in the further particulars.

188. We, in considering this matter, decided it would be helpful to firstly have regard to the information in the further particulars which included details of what the claimant asserted he had disclosed, to whom, and the relevant statutory provisions.

29th August 2013

The claimant discussed the following concerns with Ms Dade during the supervision session:-

- *stand downs (Section 43B(1)(a), (b) and (f) Employment Rights Act)*;

- *co*-ordinators unilaterally making decision to stand down offenders contrary to the case manager's wishes (Section 43B(1)(a), (b) and (f));

- *case managers' requests not to stand down specific offenders were being ignored (Section 43B(1)(a), (b) and (f))*;

- *offenders frequently complained to case managers regarding the harsh and disrespectful treatment (Section 43B(1) (a), (b) and (f))*;

- *the fast track system implemented by Ms Dade and Mr O'Neill failed to meet service requirements, was disorganised and had a haphazard approach to service delivery (Section 43B(1)(b) and (d))*;

- *there was poor staff morale*;

- *inaccurate offender time sheets were being submitted/or there was a failure to submit any time sheets (Section 43B(1)(a), (b) and (f))*;

- *offenders were regularly left unsupervised in the workshop area (Section 43B(1) (d))*;
- *there was no co*-ordinators rota, there was an abuse of flexi time and staff were failing to sign in and out;

- *there was inappropriate management of supervisors, with threats being made to those raising questions (Section 43B(1)(f))*;

- *the activity room used by supervisors to complete their paperwork was converted into the co*-ordinators' office (Section 43B(1) (b) and (d));

- *supervisors were wearing clothing which readily identified offenders doing unpaid work (Section 43B (1) (b) and (d))*;

- *there was a lack of professional assessment and consideration being given by Mr O'Neil when allocating cases (Section 43B(1) (a) and (b))*;

- *Mr O'Neill continually interfered with the screening rota (Section 43B (1) (b) and (d))* and

- *the stress attached to working in such a negative environment.*

19th September 2013

- *stand downs (as above);*

- *health and safety of staff because stand downs were causing tensions between offenders and staff (Section 43B (1) (a), (b) and (d));*

- *the priority given to level 1 orders meant that level 2 orders were being delayed (Section 43B (1) (b));*

- *lack of professional assessment by Mr O'Neill when allocating cases (Section 43B (1) (a), (b) and (d));*

- *health and safety in terms of recording injuries sustained (Section 43B (1) (b) and (d));*

- *it was not known how many key holders or sets of keys there were for Auchentibber and the workshop (Section 43B (1)(d));*

- *offenders being allowed to leave early and being credited with 7 hours (Section 43B (1)(a), (b) and (f)).*

23rd October 2013

- *Mr O'Neill's intention to change the rota system;*

- *service equipment being lent out or going missing (Section 43B (1)(f);*

- *the attitude and practices of Mr O'Neill, in particular relating to the safe management of sex offenders; part time staff carrying full time workloads; disregard for health and safety guidelines; errors in the allocation and closure of CPOs; abuse of the flexi system and failure to provide information regarding the sale of goods made in the workshop (Section 43B (1) (a), (b), (d) and (f));*

- *large amounts of timber being purchased (Section 43B (1) (a) and (f));*

- *offenders being issued with gym passes (Section 43B (1) (a) and (b));*

- *offenders removed from squad work to fill places on the Come Dine With Me cookery class (Section 43B (1) (b)) and*
- *offenders exceeding 30% other activity within their order (Section 43B (1) (b)).*

20th January 2014

- *supervision and management of sex offenders and the public, and the lack of direct supervision of sex offenders (Section 43B (1)(a), (b) and (d));*

- *a sex offender placed in the workshop with little or no supervision Section 43B (1)(a));*

- *a sex offender being given money to go to a shop unaccompanied to buy paint (Section 43B (1)(a), (b), (d) and (f)) and*

- *health and safety issues and in particular the new guidelines issues regarding the removal of household goods (Section 43B (1)(b) and (d)).*

29th July 2014

- *the claimant informed Mr Swift of his concerns regarding various practice issues.*

21st July 2015

- *the claimant raised concerns at a supervision session with Ms Potter regarding the closure of expired/uncompleted CPOs (Section 43B (1)(a), (b) and (f)).*

- *On the 27th July 2015 the claimant again raised concerns regarding the closing of CPOs and he remained unconvinced that the action being taken had the approval of the Court (Section 43B (1)(a), (b) and (f).*

189. We next had regard to Ms Dade's evidence to this Tribunal: she acknowledged the claimant had raised some practice issues (for example, stand downs and lack of supervision), but rejected the suggestion that he had provided her with the level of detail set out in the 24 pages of further particulars. Ms Dade, in support of her position, relied on the supervision notes. We accepted Ms Dade's evidence that her practice is to take notes during the supervision session and then type up the supervision record. The employee is asked to review the supervision record at the following supervision session and to sign it if they are in agreement. We noted the claimant had signed the supervision records for 29 August and 19

September 2013. The records for 23 October 2013 and 20 January 2014, produced for this Hearing, were not signed. We noted however there was no suggestion the claimant had refused to sign them and indeed subsequent supervision records (for example on 20 January 2014) refer to previous supervision sessions being "*signed off*".

190. We concluded from the fact the supervision records had been signed that they represented an accurate note of the issues discussed. We acknowledged the record is a "*note*" and therefore it provides nothing more than a summary of the headings discussed: it did not record everything said on the occasion. We considered however that it represented an accurate summary of the issues discussed and in this respect the supervision records supported Ms Dade's recollection and her evidence to this tribunal. We inferred from the fact the supervision record noted items for discussion, that the discussion would have been broader than simply the fact of (for example) stand downs occurring. We drew this inference because it was clear from the evidence of the witnesses that the issue of stand downs caused a number of related issues and consequences.

191. Ms Dade accepted that during the supervision session on 29 August 2013, the claimant raised serious concerns regarding the number of stand downs and issues related to the management of stand downs. Ms Dade accepted the claimant had also raised an issue regarding offenders being left unsupervised in the workshop area.

192. Ms Dade, relying on the supervision record for 19 September 2013, accepted the claimant had raised the issue of stand downs again; the problems with level 1 orders and the delay being caused in completing level 2 orders; equipment going missing and lack of continuity caused by the changes made to the allocation of case work.

193. The supervision record for 23 October 2013 indicated the main topic for discussion was the claimant's opinion of the service, and the fact he told Ms

Dade that staying at Auchentibber would be detrimental to his health. The claimant indicated he would consider a move but wanted to know more about the options which might be available to him. Ms Dade noted she would discuss this with Mr McAulay and the claimant to establish more clarity regarding what areas of work the claimant would like to do.

194. The supervision record for 20 January 2014 indicated there had been a discussion regarding the supervision of a sex offender and assigned duties within the workshop. Ms Dade agreed to discuss this with Mr O'Neill. The notes record the claimant also raised some practice issues (for example, games for scouts) but there was no clarity as to what he was referring to.

195. We, having had regard to all of the above, concluded the claimant raised the following issues with Ms Dade during supervision sessions:-

(i) concerns regarding stand downs: these concerns included the number of stand downs; the way in which decisions regarding stand downs were being taken; the impact stand downs had on offenders; frustration caused by having the timescale for completion of orders extended; lack of resources impacting on the ability to complete orders and the priority given to level 1 orders meant level 2 orders were being delayed;

(ii) concerns regarding offenders being left unsupervised in the workshop area, which included concerns regarding health and safety issues;

(iii) changes made to the allocation of case work which had led to lack of continuity and disharmony amongst supervisors;

(iv) equipment going missing and

(v) the supervision and management of sex offenders, which included a sex offender being left unsupervised in the workshop and a sex offender being given money to go to the local shops unsupervised to purchase paint.

196. The claimant also asserted he had made Mr Swift aware of the above practice issues at their meeting on 29 July 2014. There was very little evidence regarding this matter beyond this bald assertion in the further particulars. Mr Swift acknowledged he was aware of the challenges facing the service because they had been raised with him by Ms Dade and Mr McAulay. We concluded there was insufficient evidence regarding this alleged disclosure to allow us to properly consider it further.

197. There was no dispute regarding the fact the claimant did raise concerns with Ms Potter regarding the closure of expired/uncompleted CPOs. He raised these concerns during a supervision session with Ms Potter on 21 July 2015, and again on 27 July when the exercise was being undertaken.

198. We next asked ourselves (i) whether the claimant disclosed information to Ms Dade and Ms Potter; (ii) if so, did he disclose that information in the reasonable belief that it was in the public interest and (iii) if so, did he have a reasonable belief that the information tended to show one of the relevant failures set out in Section 43B(1)(a) – (f). The dispute between the parties focussed on the extent of information provided by the claimant, and whether he had disclosed information in the public interest or simply for operational and personal reasons.

199. We concluded above (there being no dispute between the parties) that the claimant raised the issue of stand downs with Ms Dade during the supervision session on 29 August 2013. We concluded the claimant told Ms Dade about the high number of stand downs occurring on a daily basis. He was concerned not only about this but also about the fact co-ordinators

were unilaterally making decisions to stand down offenders contrary to a case manager's wishes. The co-ordinators were failing to adhere to the agreed process for standing down offenders and this was causing complaints from offenders and friction between staff. The claimant also told Ms Dade that offenders were being left unsupervised in the workshop area and this raised issues regarding health and safety.

200. The claimant asserted the respondent, by standing down an offender when s/he had attended to undertake community payback, was not adhering to the Order of the Court. The respondent was under a legal obligation in terms of Section 43B(1)(b) to nominate, within 2 days of receiving a copy of the Order, an officer of the authority as the responsible officer for the purposes of the Order. The responsible officer is responsible for making any arrangements necessary to enable the offender to comply with each of the requirements imposed by the Order; to promote compliance with those requirements and to take such steps as may be necessary to enforce compliance with the Order. These legal obligations are contained in Section 27C Criminal Procedure (Scotland) Act 1995. The claimant further asserted this information tended to show that both the criminal offence and the breach of legal obligation were likely to be deliberately concealed.

201. The claimant relied on the details set out in the above paragraph to support his position that the manner in which co-ordinators were standing down offenders contrary to the case manager's wishes, and the friction this caused, fell within Section 43B(1)(a), (b) and (f).

202. The claimant asserted the information disclosed regarding the lack of supervision of offenders in the workshop tended to show a failure in terms of Section 43B(1)(d) because by their actions the respondents were failing in their duty to ensure the health and safety of employees and members of the public.

203. We asked ourselves, in relation to the supervision session on 29 August 2013, whether the claimant disclosed information in relation to the issue of stand downs and their management/consequences. We were satisfied, in relation to the issue of stand downs, that the claimant did disclose information to Ms Dade when he informed her not only of the high number of stand downs and the way in which co-ordinators were making decisions about stand downs, but also about the impact this was having on the offenders and the staff.

204. We next asked whether this disclosure of information regarding stand downs and their management was, in the reasonable belief of the claimant, made in the public interest. We noted with regard to this matter that the issue of stand downs was an operational issue raised not only by the claimant but also by other members of staff, and it was on the agenda for discussion at team meetings. It was a high profile ongoing issue causing problems not only for the respondent, but also for other authorities. Ms Dade, Mr McAulay and Mr Swift were aware of the issue and the challenges it presented and we inferred from the fact performance reports were widely produced that elected members and the Community Justice Authority would also have been aware of the issues.

205. We also noted the claimant's supervision sessions with Ms Dade made reference to the claimant's concerns for his professional standards. For example, on 29 August 2013, the supervision record notes "*majority of the supervision was devoted to understanding Gerry's frustration with regards to his current role/responsibilities. Gerry indicated that he will not compromise his professional standards."*

206. There was no dispute regarding the fact the claimant considered Mr O'Neill not only had a poor attitude, but the claimant also considered him to have a number of poor practices which either breached regulations or professional standards. The claimant was not, as he told Ms Dade on 29 August 2013,

willing to accept Mr O'Neill's way of working or to compromise his professional standards.

207. We concluded from the above that the claimant raised issues regarding stand downs and the difficulties caused because they were operational issues affecting service delivery, and because the claimant wished to ensure Ms Dade knew part of the difficulty lay with Mr O'Neill and not him. We were not at all persuaded that at the time the disclosure was made on 29 August 2013, the claimant was of the reasonable belief the disclosure was made in the public interest. We concluded the claimant`s belief that the disclosure was made in the public interest came later. We considered the subsequent grievances, where the claimant referred to the raising of practice issues as whistleblowing, supported our conclusion that it was at this (later) point that the claimant reasonably believed the disclosure was made in the public interest.

208. We did not doubt the issue would be one of interest to the public, however, this is not the question to be determined by the Tribunal. The issue is whether the employee had a reasonable belief that it (the disclosure) was made in the public interest. We preferred the respondent's submissions on this point and we concluded for the reasons set out above that at the time the disclosure was made, the claimant did not have a reasonable belief that it was made in the public interest.

209. The second issue disclosed on 29 August related to offenders being left unsupervised in the workshop area. We asked ourselves whether the claimant disclosed information when he told Ms Dade about this, and we answered that question in the negative. The claimant made a bald assertion that offenders were being left unsupervised in the workshop: he did not provide information to allow Ms Dade to understand when this had happened or who had been involved. If, for example, Ms Dade had wanted to carry out an investigation into this matter, she would not have had

sufficient information to allow her to do so. We concluded on this basis that the claimant did not disclose information to Ms Dade.

210. We, for the above reasons, concluded the claimant did not make a protected disclosure to Ms Dade on 29 August 2013.

211. We next considered what information the claimant disclosed to Ms Dade during the supervision session on 19 September 2013. He informed her that stand downs were still a major problem and were having a significant impact on the completion of CPOs. The claimant referred to a lack of resources restricting the service's ability to complete orders within the timescales, thus causing a significant backlog. The number of stand downs and the backlog led to offenders becoming frustrated particularly when the service had to apply for an extension of time to complete the Order, and also led to offenders breaching their Order because they on occasion failed to turn up for work because they had been stood down so many times.

212. The claimant also referred to level 1 Orders (that is an Order of 100 hours or less to be completed within a 3 month period) being given priority over level 2 Orders (that is an Order of 101 – 300 hours to be completed within a 6 month period) and causing level 2 orders to be delayed.

213. The claimant also raised the issue of Mr O'Neill's allocation of case work and asserted Mr O`Neill applied no professional assessment when allocating cases and this had led to complex cases being allocated to a social work assistant instead of a social worker. It had also led to staff who had carried out the initial interview with the offender not being allocated to the subsequent work. This caused confusion for offenders who were unsure of their nominated worker, and it also meant that if Orders were extended another member of staff would be allocated to the case thus causing further resentment and uncertainty. The claimant often had to reallocate cases to

ensure staff were best placed/matched to the needs of the offenders and this caused frustration and disharmony amongst staff.

214. The claimant asserted the information disclosed regarding the number of stand downs and lack of resources was a disclosure within Section 43B(1)(a); and that the information disclosed regarding the level 1 orders being given priority was a disclosure within Section 43B(1)(b).

215. The claimant asserted the information disclosed regarding the allocation of cases was a disclosure within Section 43B(1)(a), (b) and (f).

216. We considered the claimant did disclose information to Ms Dade regarding the issue of stand downs and their impact. We concluded, for the same reasons as set out above, that the claimant did not make this disclosure in the reasonable belief that it was in the public interest. We further concluded the claimant did not disclose information to Ms Dade regarding allocation of cases in the reasonable belief that it was made in the public interest. We reached that conclusion because we were satisfied the issue was raised because it was an operational issue which impacted on the delivery of the service for which the claimant was responsible, and because the claimant sought to highlight the poor practice of Mr O'Neill. The claimant`s belief that the disclosure was made in the public interest post-dated the making of the disclosure.

217. We concluded the claimant did not make a protected disclosure during the supervision session with Ms Dade on 19 September 2013.

218. We next considered whether the claimant made a protected disclosure during the supervision session with Ms Dade on 23 October 2013. He informed Ms Dade that there had been reports of equipment being lent out/going missing. The equipment included electric power tools, wheelbarrows and hand tools. The claimant had spoken to Mr O'Neill about this but had not been satisfied with his response. The claimant raised

general complaints with Ms Dade regarding the attitude and practices of Mr O'Neill but did not provide her with specific examples.

219. The claimant asserted the disclosure regarding equipment was made under Section 43B(1)(a) and (f).

220. We concluded the claimant disclosed information to Ms Dade, but we decided the claimant did not have a reasonable belief that the disclosure was made in the public interest. We made that decision for the same reasons as set out above.

221. We next considered whether the claimant made a protected disclosure during the supervision session with Ms Dade on 20 January 2014. The claimant expressed concern regarding the supervision and management of sex offenders, and told Ms Dade that a sex offender had been placed in the workshop with little or no supervision. The community laundry was nearby, and was staffed by three female staff assisted by vulnerable female offenders. There was a requirement for strict supervision of the sex offender and also a requirement to carry out a risk assessment. The claimant told Ms Dade that no risk assessment had been carried out contrary to the legal obligation to do so, and that this had endangered the health and safety of staff, other offenders and the public.

222. The claimant further disclosed that the sex offender had been left unsupervised for most of the day and had, on one occasion, been given £20 from petty cash to go to the local shop unaccompanied to buy paint.

223. The claimant asserted this information disclosed breaches of Section 43B(1)(a) (b) and (d).

224. We concluded the claimant did disclose information to Ms Dade because he told her not only about the lack of supervision in the workshop, but why this was of concern and he also provided details of a specific incident.

225. We next asked whether the claimant had a reasonable belief that it was made in the public interest. We concluded the claimant did have a reasonable belief that the information was disclosed in the public interest. We considered this was different to the foregoing disclosures because this was not simply an operational issue: it was an issue which could have far-reaching consequences, and it also went far beyond any opinion the claimant had of Mr O'Neill and his practices.

226. We accepted the claimant's evidence that the lack of supervision may have put other vulnerable persons (particularly those who worked in close proximity to the workshop) at risk, or members of the public. Further, the lack of supervision could have put the sex offender at risk when they went out unsupervised, because they may have been recognised by a member of the public and subjected to abuse or a revenge attack. The ramifications of either of these things happening would have been extremely serious for the respondent.

227. We accepted the claimant had a reasonable belief that the disclosure of information concerning the supervision of sex offenders was made in the public interest.

228. We next considered whether the claimant had a reasonable belief that the information disclosed tended to show (a) that a criminal offence was likely to be committed; and/or (b) that a person was failing to comply with a legal obligation and/or (d) that the health and safety of any individual was likely to be endangered. We accepted the claimant reasonably believed that a person had failed, or was failing, to comply with the legal obligation to carry out a risk assessment, and further, that he reasonably believed that the information disclosed tended to show that the health and safety of individuals was likely to be endangered. We reached that conclusion having accepted the evidence of the claimant as to the requirement for a risk

assessment to be undertaken, and his evidence regarding the particular risks associated with sex offenders.

229. We did not accept the claimant reasonably believed a criminal offence was likely to be committed. There was no evidence to suggest the seriousness of the offences with which the sex offender was charged. We considered that in the absence of this information, the word "*likely*" was too strong. We considered the claimant may reasonably have believed that a criminal offence might have occurred. This does not satisfy Section 43B(1)(a).

230. We decided the claimant did make a protected disclosure to Ms Dade on 20 January 2014 when he disclosed information to her regarding the lack of supervision of sex offenders in the workshop, and that a sex offender had been given petty cash and allowed to go out to buy paint unsupervised.

231. We next considered whether the claimant made a protected disclosure at the supervision session with Ms Potter on 21 July 2015. The claimant told Ms Potter that he was not happy with the "*tidy up*" of cases whereby he believed expired orders were to be closed off. The claimant requested written guidance regarding the closure of expired uncompleted CPOs. Ms Potter told the claimant there was no written guidance, but that a statement drafted by Mr McAulay, was to be included in the offender's electronic case record. Ms Potter also gave the claimant a copy of a letter which had been sent to all Sheriff Courts in the area following the matter being raised with them. The claimant queried what was to be put in the completion report. He was told by Ms Potter that there was no legal requirement to submit completion reports to the Court. The claimant was sceptical about this because it was one of the national standards. The claimant was not only concerned about being asked to close off the Orders, but also at the fact there was to be no assessment of the type or seriousness of the Orders being closed off, in particular in relation to sex offenders and serious assault.

232. The claimant asserted this disclosure tended to show a breach of Section 43B(1)(a), (b) and (f).

233. We asked firstly whether the claimant made a disclosure of information regarding this matter. We considered there was some difficulty with this issue because the claimant's case, taken at its highest from the further particulars, demonstrates that what occurred with Ms Potter was an exchange of views. It is clear the claimant (i) told Ms Potter that he was not happy doing what he believed he had been asked to do; (ii) asked for written guidance and (iii) queried what was to be put on the completion report. The further particulars explain why the claimant was not happy to carry out this work, but there was no suggestion the claimant told Ms Potter of this.

234. The claimant, Mr Irving and Ms Potter attended on 27 July to carry out the "tidying up" exercise. The claimant raised concerns with Ms Potter regarding closing off Orders with significant amounts of incomplete hours on the Order: one example brought to Ms Potter's attention was an expired Order for 200 hours with no hours completed. Ms Potter instructed the claimant to close the Order, but despite Ms Potter's assurances and instruction, the claimant remained unconvinced that what he was being asked to do had the approval of the Court. The claimant made these views known to Ms Potter.

235. The claimant asserted this disclosure tended to show a breach of Section 43B(1)(a), (b) and (f).

236. We asked ourselves whether the claimant made a disclosure of information on this occasion. We noted the claimant not only made Ms Potter aware of his concerns but he had the benefit of referring to particular Orders and highlighting why he did not consider it appropriate to close the Order. We considered the claimant did disclose information rather than simply, as above, tell Ms Potter he was not happy to do as she asked.

237. We next asked whether the claimant had a reasonable belief that the disclosure was made in the public interest, and we were satisfied he did. The claimant`s concerns related not solely to his professional standards, but went beyond this to the respondent's interaction with the Courts and the legal process.

238. We then asked whether the claimant had a reasonable belief that the information disclosed tended to show (a) that a criminal offence was likely to be committed, and/or that (b) a person was likely to fail to comply with any legal obligation to which he is subject and/or (f) that information tending to show any matter falling within (a) or (b) was likely to be deliberately concealed.

239. The claimant did not identify the criminal offence he believed was likely to be committed and accordingly we could not conclude that he held a reasonable belief in this. The claimant did refer to the legal obligations contained within the Criminal Procedure (Scotland) Act which governed CPOs and, given the claimant's concerns for what was happening, we were satisfied he held a reasonable belief that a failure to comply with a legal obligation was likely to occur.

240. The claimant further asserted the information disclosed tended to show a breach of section 43B(1)(f), and that is that information tending to show any matter falling within (b) was likely to be deliberately concealed. The claimant invited the Tribunal to believe that at the supervision session with Ms Potter on 13 October 2015, Ms Potter removed 27 July 2015 date from the supervision note. The claimant was suspicious about this and challenged Ms Potter about the legality of her instructions. The claimant told Ms Potter that he intended to reopen all of the cases he had closed. The claimant subsequently requested a list of all expired orders closed on 27 July, and learned that only he and Mr Irving had closed off expired orders. The claimant inferred from this that Ms Potter was deliberately trying to conceal information.

241. We had regard to the supervision record for 13 October 2015 (page 453A). The note records that:-

> "*GD raised concerns legally and sssc regarding the implications of the closure exercise previously undertaken .. KP updated GD on the meeting she and Malcolm had with the Sheriffs and the need to compile a list of cases to be returned to court from the previously challenging case management period. KP advised that the exercise could be open to legal challenge. It was therefore agreed that GD would reopen any case where he could not identify a clear accountability of hours for unpaid work and/or other activity and return to court under breach or vary/revoke requests. Given the complexity of the cases GD would require to complete and submit reports."* The action column of the record noted *"GD to review case closures. Any cases that cause concern will be re-opened and reports submitted to court by GD. GD to provide a list of names for those cases to be returned, which will be added to the list of returns requested by this Sheriffs. GD to provide this information by Friday."*

242. We concluded, having had regard to the supervision note, that we could not accept the claimant's evidence that Ms Potter had tried to remove 27 July date from the supervision note, or that it had been his suggestion to reopen cases. We further could not accept his evidence that simply because Ms Potter had not closed cases it meant she was deliberately trying to conceal information. The documentary trail of what was happening and the communication with the Sheriffs undermined any suggestion that Ms Potter was trying to conceal the "*tidying up*" exercise.

243. We concluded from the above that the claimant did not reasonably believe that the information disclosed tended to show a breach of Section 43B(1)(f).

244. We concluded the claimant made a protected disclosure to Ms Potter on 27 July 2015, when he disclosed information to her regarding his concerns about closing CPOs.

245. We, in conclusion, decided the claimant made protected disclosures on 20 January 2014 when he told Ms Dade that sex offenders were not being supervised (Section 43B(1)(b) and (d)) and on 27 July 2015 when he told Ms Potter why he was not happy to close off expired but uncompleted CPOs (Section 43B(1)(b)).

Did the claimant suffer a detriment

246. The claimant asserted he had suffered the following detriments:

- he was demoted to the position of Senior Practitioner;
- he was not permitted, upon his return to the post of Team Leader on the 27 April 2015, to undertake the duties he had carried out prior to going on his second placement;
- he was threatened with disciplinary action at three supervision sessions with Ms Potter and
- his grievance was rejected by Mr Singh.

247. We, before turning to consider the above points, had regard to the cases to which we were referred regarding the meaning of the term "*detriment*". In **Chief Constable of West Yorkshire Police v Khan [2001] ICR 165** the House of Lords held that an omission to act may constitute detrimental treatment. The term "*detriment*" is to be given a wide interpretation and looking at the treatment from the employee's point of view encapsulates detriment neatly.

248. We also had regard to the case of **Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337** where it was established that a detriment exists if a reasonable worker would or might take the view that the treatment was in all the circumstances to his or her disadvantage. An unjustified sense of grievance could not amount to a detriment, but whether or not an employee has been disadvantaged is to be viewed subjectively.

249. We noted, with regard to the alleged acts set out above, that there was no dispute regarding the fact they did take place insofar as the claimant was moved to the post of Senior Practitioner; he was allocated different duties upon his return to the team leader post; Ms Potter did, on three occasions, advise him that a continued refusal to carry out his duties could result in disciplinary action being considered and Mr Singh did reject the claimant's grievance.

250. We considered whether the claimant was subjected to a detriment by the fact of those acts having taken place. The claimant described the move to Senior Practitioner as a "*demotion*" and this primarily related to what he perceived to be a loss of status. The claimant also referred to a loss of managerial responsibility, a change of location, not wanting to be a social worker and the move hampering promotion prospects.

251. There was no dispute regarding the fact the post of Senior Practitioner was at the same grade and salary as the post of team leader. We were accordingly satisfied that on the face of it, the move was not a demotion. However, the post was one the claimant did not want to do and it was a post he had been previously offered on redeployment, and rejected. We therefore concluded that viewed from the claimant's perspective the move would be to his disadvantage because, even if for no other reason, he did not want to hold that position.

252. The claimant, upon his return to the role of team leader at Auchentibber on 27 April 2015, was allocated duties to manage the unpaid work part of the

service, together with the coordinators and the supervisors. The claimant considered this to be a detriment for two reasons: (i) he believed it did not implement what had been agreed to resolve his grievance and (ii) he did not have the skills, knowledge and experience to undertake this work.

253. We deal with both of these matters in more detail below: suffice to say we did not accept the claimant's position that there had been an agreement to return him not only to the team leader post, but to the duties he had previously carried out. We preferred the respondent's evidence that the agreement was to return the claimant to the post of team leader. Further, we considered (as set out above in the credibility section) that the claimant sought to exaggerate the reasons why he could not manage the unpaid work side of the service. The claimant, when he moved to the unpaid work service in 2009, managed the workshop and the supervision notes of Mr Singh recorded the claimant had no difficulty in taking this on. We considered that, more importantly, the supervision records demonstrated the claimant gradually built up experience and took on new tasks including the supervision of qualified social workers which was something the claimant had not done before.

254. We acknowledged that the situation with unpaid work had changed over the years and that health and safety had become an important aspect of the service. Ms Potter recognised the need for training for the claimant and made arrangements for him to attend the relevant courses. It appeared to this Tribunal that the claimant was being asked to take on new duties in just the same way that he had to take on new duties when he joined the service in 2009. It further appeared that if the claimant had undertaken the duties allocated he would have developed skill, knowledge and experience in the same way that he had done with regard to managing the social workers. The only difference appeared to be the fact the claimant did not want to do the duties he was allocated.

255. We returned to the question of whether the claimant was subjected to a detriment when returned to the team leader post and was allocated duties to manage the unpaid work. We asked ourselves whether a reasonable worker could conclude the treatment was to his disadvantage. We balanced on the one hand whether the claimant had an unjustified sense of grievance regarding the allocation of duties which boiled down to nothing more than the fact he liked and wanted to do particular duties which he saw as being more prestigious. This was particularly so given the claimant had managed the workshop previously; other qualified social workers had managed that side of the service; the team leader post is a generic post with generic duties and training was provided to allow him to undertake the duties he had been allocated as team leader. On the other hand, the claimant was clearly aggrieved about the decision. We concluded that whilst we did not consider the claimant had been subjected to a detriment, we must apply the test of viewing the matter from the claimant's perspective, and applying that test, we had to conclude the claimant was subjected to a detriment.

256. We next considered the fact the claimant was told by Ms Potter on three occasions during supervision that he would be expected to undertake the duties allocated and that failure to do so would result in disciplinary action being considered. We accepted that viewed from the claimant's perspective the fact disciplinary action may be considered by the respondent would be a detriment given the anxiety it may cause.

257. The final detriment concerned the decision of Mr Singh not to uphold the claimant's grievance regarding a return to duties he wished to carry out as team leader. It was said this was a detriment because it caused the claimant to have to continue in the situation about which he was aggrieved. We accepted that viewed from the claimant's perspective this was a detriment.

258. We, in conclusion, decided the claimant was subjected to a detriment when (i) he was moved to a Senior Practitioner post; (ii) he returned to the team leader post and was allocated duties to manage the unpaid work; (iii) he

was advised by Ms Potter that disciplinary action could be considered if he continued to refuse to carry out the allocated duties and (iv) Mr Singh rejected his grievance relating to the allocation of duties.

Was the claimant subjected to detriment on the ground of having made protected disclosures

259. We firstly noted the claimant did not (either in evidence or submissions) clarify which detriment/s were said to have been caused by which protected disclosure/s. We decided (above) that the claimant had made two protected disclosures: one to Ms Dade on 20 January 2014 and one to Ms Potter on 27 July 2015. We noted all of the detriments post-dated the first protected disclosure; and detriments (iii) and (iv) post-dated the second protected disclosure. We accordingly considered whether all of the detriments were on the grounds of having made the protected disclosure on 20 January 2014 and also whether detriments (iii) and (iv) were on the ground of the claimant having made the protected disclosure on 27 July 2015.

260. We had regard to Section 48(2) Employment Rights Act which provides that where an employee has presented a complaint that he has been subjected to a detriment on the ground of making a protected disclosure, it is for the employer to show the ground on which any act, or deliberate failure to act, was done. The respondent requires to prove on the balance of probabilities that the treatment of the claimant was not done on the ground he made a protected disclosure, or disclosures.

261. We next had regard to the case of **London Borough of Harrow v Knight [2003] IRLR 140** where the EAT held that the term "*done on the ground that*" requires an analysis of the mental processes (conscious and unconscious) which caused the person to so act. It is necessary in a claim under Section 47B to show that the fact that the protected disclosure had been made caused or influenced the employer to act in the way complained of. The Court of Appeal in the case of **Fecitt v NHS Manchester [2012]**

IRLR 64 held that with regard to the causal link between making a protected disclosure and suffering detriment, Section 47B will be infringed if the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's treatment of the whistleblower. It was further held that where a whistleblower is subject to a detriment without being at fault in any way, tribunals will need to look with a critical, indeed sceptical, eye to see whether the innocent explanation given by the employer for the adverse treatment is indeed the genuine explanation. The detrimental treatment of an innocent whistleblower necessarily provides a strong prima facie case that the action has been taken because of the protected disclosure and it cries out for an explanation from the employer.

262. We further had regard to the case of **Beatt v Croydon Health Services NHS Trust [2017] EWCA Civ 401** to which we were referred generally.

263. The first detriment concerned the decision that the claimant, upon his return from the second placement in August 2014, be moved to a Senior Practitioner post at Hamilton rather than return to the Team Leader post in the unpaid work service at Auchentibber. Mr Cramond, in his submissions to the tribunal, invited us to scrutinise the evidence and to firstly have regard to who made this decision. Mr Cramond suggested that in fact Mr McAulay had made the decision and it followed, if this was correct, that the Tribunal could not know what had influenced Mr McAulay to make this decision because he had not given evidence, and accordingly an adverse inference should be drawn that the reason for the move was because the claimant had made a protected disclosure.

264. Mr Cramond invited the Tribunal to find as a matter of fact that Mr McAulay was the person who decided to demote the claimant, and he invited us to make that finding because Mr McAulay was the claimant's line manager; he advised the claimant of the decision and the claimant understood Mr McAulay to have made the decision and submitted a grievance and the dignity at work complaint on this basis.

265. We could not accept Mr Cramond's submission on this point, and we found as a matter of fact that the decision to place the claimant in a Senior Practitioner role was made by Mr Swift. We made that finding because we accepted Mr Swift's evidence that it was his decision and because it accorded with his evidence (supported by Ms Bhatti) that it is his responsibility to meet with those returning after the social work degree to discuss the role to which they would return. Mr Swift adopted that practice in this case: he met with the claimant on 29 July 2014 to discuss this matter.

266. We acknowledged that it may be said there was no discussion and the claimant was simply told he was to move to a Senior Practitioner post, and this is correct inasmuch as Mr Swift had identified the post for the claimant. (We deal with the reasons for this below).

267. Mr Swift accepted that he asked Mr McAulay to advise the claimant of the decision because he was the claimant's line manager. There was no dispute regarding the fact Mr McAulay did meet with the claimant in August, to inform him he was being redeployed to a Senior Practitioner post. There was also no dispute regarding the fact the claimant believed Mr McAulay had made the decision and submitted his grievance on this basis.

268. We did not consider the fact Mr McAulay is the claimant's line manager, and told him of the move to Senior Practitioner to undermine the finding that the decision was that of Mr Swift. We found Mr Swift's evidence was supported by Ms Bhatti when she told that Tribunal that the respondent's practice was for the Head of Service or Director of Social Work to decide where vacancies in the Resource exist. Further, Mr Swift spoke to each person regarding their return after the degree. Ms Bhatti was asked specifically who had made the decision to move the claimant to a Senior Practitioner post and she replied, without any hesitation, that it had been Mr Swift.

269. Mr Cramond suggested that if the decision had truly been that of Mr Swift, then he would not have heard the claimant's grievance regarding the decision. We were not referred to the respondent's grievance procedure and accordingly we had no insight to who would normally hear a grievance. Mr Swift was clear that he heard the grievance because he was the Head of Service. This may or may not be in accordance with the respondent's grievance procedure, although we noted from our industrial experience that it would be usual for a grievance to be heard by someone other than the person who had made the decision. That said, however, we noted the claimant was represented by an experienced trade union representative who did not raise the issue. Further, we could not conclude or infer that the respondent had breached its procedure, and we could not infer (as invited by the claimant's representative to do) that Mr Swift deliberately heard the grievance in the order to keep control of the process. We considered that Mr Swift either heard the grievance because that was the procedure, or because a procedural error was made. We noted, there was, in any event, a safeguard in place for the claimant who was able to appeal against the decision of Mr Swift.

270. We were accordingly satisfied that Mr Swift made the decision to move the claimant to the post of Senior Practitioner. We next asked why that decision was made.

271. We firstly acknowledged the fact the claimant was redeployed to the team leader post in the unpaid work service in 2009 and he undertook that role without problem from that time until he was moved in August 2014. The claimant, during that time, was line managed by Mr Singh and Ms Dade, who in turn reported to Mr McAulay, who reported to Mr Swift. Mr McAulay took on line management responsibility for the unpaid work service when Ms Dade moved to take on another role.

272. Mr Singh described the service as having been "*neglected*" at the time when he took over responsibility for it. The Best Value review recommended two

team leaders and a number of social workers, social work assistants, co-ordinators and supervisors, and that with change in structure, Mr Singh made a number of improvements in the service.

273. The increase in the number of CPOs proved a real challenge for the service. The claimant, upon his return from the first placement, noticed a real difference in the standard of service delivery. There were operational issues facing the service and whilst we accepted the claimant started to raise issues, we noted he was not the only person to do so. We further noted operational issues such as stand downs were being discussed at the regular monthly team meetings. We inferred from the fact of regular performance reports that these issues were known to the elected members and the Community Justice Authority.

274. The claimant raised operational issues with Ms Dade from the time of his return from first placement until the time he went off on second placement in early February 2014. Ms Dade raised the operational issues during supervision sessions with her line manager, Mr McAulay; and Mr Swift accepted he too had been aware of the issues facing the service. The claimant endeavoured to paint a picture of Mr Swift, and the managers below him, trying to contain knowledge of the operational issues to within the department. That was not a position we could accept because it was clear from the evidence of the respondent's witnesses that CPOs were not only high profile but were also a political issue, and accordingly there was a great deal of interest in, and scrutiny of, the service. There were regular performance reports regarding the service, which were provided to the Director of the Resource, internal Audit and elected members. There were also reports to the Community Justice Authority. We could not, against that background, accept the picture the claimant endeavoured to paint.

275. The claimant suggested he had been "*warned off*" by Ms Dade whom it was alleged had told the team leaders that the Director was angry because

someone had leaked information to a councillor, and if he found out who had done this, they would be moved. Ms Dade accepted that she had spoken to the team leaders about having been called in by the Director, and she told them that a councillor had been provided with information. However, Ms Dade told us that a relative of a councillor worked in the service, and she suspected the person had gone home and discussed details of the work of the service. Ms Dade spoke to the person's line manager about the matter. We preferred her version of events to that of the claimant.

276. The claimant pointed to the fact he was raising these concerns and made a protected disclosure on 20 January 2014 as the reason for being moved.

277. The fact the claimant raised operational issues and made a protected disclosure were not, however, the only factors to consider regarding the move to a Senior Practitioner post. There were two other factors to consider and they were (i) the claimant's stated desire not to return to Auchentibber and (ii) Mr Swift's reasons for moving the claimant.

278. The claimant told Ms Dade in the supervision session on 23 October 2013 that he was of the opinion that staying at Auchentibber would be detrimental to his health. He indicated that he would consider a move but wanted to know more about the options which might be available to him. Ms Dade indicated she would discuss this with Mr McAulay. Ms Dade asked the claimant to give more thought to the area/s of work he would like to do. She also obtained the claimant's permission to invite Ms Murray, Personnel, to the next supervision session.

279. The next supervision session took place on 20 January 2014. The record notes the October supervision record was signed off by the claimant. Ms Murray joined the supervision session in January and the record noted that this was so suitable options for the claimant could be explored. The

claimant indicated that he could not go back to the unpaid work service due to practice issues, and that it would be impossible for him to stay there. Ms Murray explained there were no vacancies available at present and again invited the claimant to consider his preferred area of work: for example, did he wish to stay in Justice or would he consider other areas of work. There followed some discussion and it was noted the claimant would like to know the availability of other posts and would then consider his options. Ms Murray indicated she would keep the claimant informed of any vacancies becoming available in the future.

280. The claimant was critical of the fact he was not subsequently provided with a vacancy list; however we could not attach weight to this fact in circumstances where the claimant went off on placement shortly after the meeting with Ms Murray, and the matter was taken up by Mr Swift.

281. Ms Dade acted on what she had been told by the claimant on 23 October, and informed Mr McAulay and Mr Swift (either directly or through Mr McAulay). Mr Swift, by email of 7 January 2014, progressed the matter by seeking advice from Personnel. The email referred to the claimant having indicated he does not wish to return to Auchentibber at the end of training, and that he wished to know what his options are. The email continued:-

> "*It would be helpful to be able to confirm that Gerry will not return to Auchentibber so that we can fill his vacancy on a permanent basis. But before we can do this he presumably needs to be matched with a post elsewhere. He will be newly qualified and I would have thought would need some front line experience, though I think he will be on protected salary as a team leader. Please can you liaise with Santosh on the best way forward. The service at Auchentibber is challenging to manage and we need to get a capable team leader in post as soon as possible.*"

282. The claimant, in his evidence to the Tribunal, sought to play down the fact he told Ms Dade and Ms Murray that he could not go back to the service,

and that it would be impossible for him to stay there. He sought to qualify what he had said, or what he had meant, insofar as he argued he had not ever agreed to move from the unpaid work service and only wanted to consider his options. We considered it was clear from the evidence of Ms Dade, and the supervision notes, that the claimant told Ms Dade and Ms Murray that he could not go back to the unpaid work service because of the practice issues; and that the stress of those he managed raising these issues with him and the concerns he had regarding professional standards impacted on his health. The claimant stated it would be "*impossible*" for him to stay there. The claimant told Ms Dade that he could not return to Auchentibber because it would be detrimental to his health.

283. We acknowledged the claimant told Ms Dade and Ms Murray he wanted to know what his options were, but this was against a clear background that the claimant could not return to Auchentibbber. (We acknowledged that it was implicit in what the claimant said, that if the practice issues at Auchentibber were resolved, he would feel able to return. However, there was no suggestion that during the claimant's second placement the practice issues improved.) We concluded the claimant put the respondent on notice that he could not return to Auchentibber, and they not unreasonably acted on that given the claimant had raised the issue of his health and had already had a period of absence for stress.

284. We noted from the above points that Mr Swift's email of 7 January 2014 predated the protected disclosure made on 20 January 2014. Accordingly, the protected disclosure could not have been the reason for Mr Swift's email.

285. The claimant was also critical of the language used by Mr Swift in the email: he took exception to the desire to confirm he would not return to Auchentibber, and the reference to needing a "*capable*" team leader in place. The claimant took this as criticism of him and an implication that he

was not a capable team leader. We did not doubt what the claimant felt, but the context of Mr Swift's email must be seen against the reality of the service being unable to fill the post of team leader (which is the post to which the claimant did not wish to return) on a permanent basis, if the claimant still held that post. Further, Mr Swift's description of the service as "*challenging*" was accurate, as was the need for a capable team leader in those circumstances.

286. We concluded from all of the above that the claimant told Ms Dade (and through her, Mr McAulay and Mr Swift) that he could not return to Auchentibber because of the practice issues, and because a return would be detrimental to his health. We further concluded that the respondent acted on this and started the process of moving the claimant from Auchentibber.

287. Mr Cramond, in his submission to the Tribunal, argued the respondent should not be allowed to rely on the claimant's health as a reason for moving him, because the respondent failed to take reasonable steps to manage the claimant's ill health. We were invited to draw an adverse inference from this. We could not accept Mr Cramond's submission because it was clear from the evidence of Ms Dade, that the claimant was offered all of the usual supports which are offered to an employee absent with stress, including a referral to occupational health. Furthermore, we could not accept that even if the respondent had failed to take reasonable steps to manage the claimant's ill health, that this in some way undermine the fact the claimant told Ms Dade (and Ms Murray) that he could not return to Auchentibber because it would be detrimental to his health.

288. The second factor to consider is Mr Swift's reasons for moving the claimant. The first point we noted in this respect is that Mr Swift's reasons for moving the claimant included the fact the claimant did not want to return to Auchentibber, and that being so, he required to find another post to which the claimant could be moved.

289. We also had regard to the fact it was for Mr Swift, as Head of Service, to meet with those returning from the social work degree to discuss the area they would like to work in. We accepted this is a balancing act because the vacancies available may not match the preference of the employee and Mr Swift would require to balance those preferences with the needs of the service. We further accepted there is no guarantee that an employee will return to the post they held prior to undertaking the social work degree.

290. Ms Bhatti told us that approximately five employees per year are supported to undertake the social work degree. She also confirmed that the Head of Service would decide "*where vacancies in the Resource exist*" and that the respondent would wish to place people in an area where the respondent needed them and to provide learning for the employee. Ms Bhatti, who concluded as part of the Dignity at Work complaint that communication with the claimant could have been better, confirmed that a standard letter had been introduced in 2016 which stated that "*upon successful completion of the degree, [you] will be placed in the Resource where a vacancy exists*". She confirmed this had always been the practice, but it had not been in a written format.

291. Ms Bhatti told us there was no guarantee the claimant, as a team leader, would return to that post. Instead, he would return to where there was vacancy at that level.

292. Mr Singh told us that, as a general rule of thumb, senior employees completing the degree would return to a Senior Practitioner role, because this would preserve salary. He acknowledged that some employees had not wanted to do this and had returned to a team leader role.

293. Ms Dade told us that the claimant had returned to the role of team leader after the first placement, and that she expected him to return to the team leader role after the second placement. Ms Dade told Mr McAulay of this, and in an email at page 328 Mr McAulay stated he was not sure what had

been agreed with the claimant prior to him going on the degree course, but Mr McAulay's understanding was that other team leaders who had gone on the course, returned to a team leader post (with one exception for a child care team leader).

294. We concluded, from this evidence, that when Mr Swift met with the claimant on 29 July 2014 to discuss his return following completion of the second placement, this was in accordance with the usual practice. We further concluded that whilst Mr Swift will have regard to an employee's preference, he requires to balance this with the needs of the service and ultimately there is no guarantee for any returning employee of where they may be placed.

295. There were a number of reasons why Mr Swift did not return the claimant to a team leader post: firstly, the claimant had stated he could not return to Auchentibber because it would be detrimental to his health. Secondly, Mr Swift considered the claimant should have an opportunity to consolidate his learning by gaining front-line practical experience, and through this he would gain credibility in social work. Third, Mr Swift held the firm view that it should be essential for team leaders to be qualified. It was an anomalous and historic situation within the respondent Council whereby a small number of team leaders were not social work qualified. This was a situation Mr Swift wished to address because his "*strong view*" was that if a team leader was not qualified, it was less safe for them to manage social workers who were undertaking high risk work because they did not have a detailed knowledge and experience of the role. Fourth, a team leader may be required to stand in for a social worker and the claimant would need practical experience to be able to do this. Fifth, the SSSC is promoting the professionalism of social work and Mr Swift has a duty to ensure that suitably qualified people are in post. And sixth, Mr Swift was aware there were no team leader vacancies in Adult and Older Persons Services, and the claimant could not be placed within Children and Family Services because of the high risk work carried

out in that service. Accordingly, Mr Swift's options for matching the claimant to a suitable post were limited.

296. The claimant challenged Mr Swift's reasoning on five grounds. The first challenge related to the fact Ms Dade expected him to return to his post at Auchentibber and had told him this. The claimant supported this by referring to other employees returning from the social work degree who had returned to a team leader post. We set out above the fact Ms Dade had told the claimant she expected him to return to his post, and she had made Mr McAulay aware of this. This, however, was overtaken by the fact of the claimant telling Ms Dade that he could not return to Auchentibber because it would be detrimental to his health. We have also set out above that the respondent acknowledged some returning employees did return to a team leader post; however, the evidence also demonstrated that other employees returned to a Senior Practitioner role. We considered the material fact to be that the decision regarding the post to which a person would return is determined by Mr Swift balancing the employee's preference and the needs of the service.

297. The second challenge related to the fact Mr Swift's evidence to this Tribunal differed from the explanation given to the claimant. There was no dispute regarding the fact the claimant was advised by Mr McAulay, his line manager, at a meeting on 11 August 2014, that he would not be returning to the team leader post at Auchentibber, but that he was being redeployed to a Senior Practitioner post at Hamilton if no other vacancies were available. The claimant's position was that he was simply told by Mr McAulay that he did not have the experience to be a team leader and that this was the reason for the move. We noted however that this was not the only reason given to the claimant to explain the reason for the move because Mr McAulay's account of the meeting (page 331) confirmed that he had advised the claimant there were no vacancies in criminal justice; that it would not be appropriate to place him in child care; that they would check if there were vacancies in community care, but if no post was available, he

would be redeployed to a senior practitioner post. Mr McAulay noted the claimant had asked about his substantive post, and Mr McAulay explained that it was not available because the claimant had indicated at the meeting with Ms Dade and Ms Murray that he did not want to return to Auchentibber due to issues/friction and that it was also affecting his health.

298. We accepted the claimant may only have been told by Mr McAulay that the reasons for the move related to his lack of experience as a team leader, and the fact he did not want to return to Auchentibber. We also accepted that Mr Swift's evidence to this Tribunal regarding the reasons for the move expanded on those reasons. We could not accept the suggestion that on that basis alone, Mr Swift's evidence should not be accepted. We considered that in explaining the reasons for the move, Mr Swift very openly and candidly told us of the views he held and which influenced his thinking.

299. The third challenge related to the credibility of the explanation that the claimant did not have the experience to be a team leader. The claimant was told this by Mr McAulay and, in the outcome of the grievance, Mr Swift reiterated this when he stated "*I do not believe you have the necessary experience to undertake the role of team leader*" (page 338). We agreed that on the face of it the respondent's position that the claimant, having done the job of team leader for five years and having become qualified (in circumstances where he did not need to be qualified to hold the post of team leader), did not have the experience to be a team leader appeared perverse. We, in considering this matter, had regard not only to the oral evidence of Mr Swift, but also to the letter setting out his decision in respect of the claimant's grievance (page 338). The terms of the letter were as follows:-

> "*Your last substantive post was a team leader within the unpaid work service, where you undertook this role whilst undergoing training, and because you were not in post continuously did not take on the full range of duties as a team leader.*

When you attended your final placement you advised Santosh Dade, Operations Manager, that you did not wish to return to the Unpaid Work Service after qualifying, as to do so would be detrimental to your health.

I have taken account of the SSSC standards that require employers to ensure that suitably qualified and experienced persons enter the workforce. It would not be appropriate to put your sense of demotion ahead of the needs of the service. I do not believe the offer of Senior Practitioner constitutes demotion as this post is at the same grade and salary as your previous role.

I need to be confident that team leaders can ensure safe professional services. You do have generic management experience however this needs to be underpinned by more professional social work experience before you can safely manage social workers and their workloads. I also need to take into account the risks posed by service users to others; the risks faced by social workers and the vulnerability of a manager in carrying out the role of team leader with limited experience of managing fieldwork services.

Therefore you will be placed against a Senior Practitioner post within Hamilton local office, Criminal Justice and will commence this post on return from sick leave. …

Notwithstanding the fact that there are no suitable vacancies, I do not believe that you have the necessary experience to undertake the role of team leader, though I think that you may be able to do this in time.

As part of the PDR process, your current position will be reviewed in 12 months, subject to this you could be matched with a team leader

post after that, should there be a suitable vacancy and you are able to demonstrate the necessary practice experience and knowledge."

300. We considered the terms of this letter make clear the context in which it was being said that the claimant did not have the experience to be a team leader. The context related to the fact the claimant's current experience required to be underpinned by more professional social work experience. This accorded with the explanation given by Mr Swift in his evidence to this tribunal, to the effect the claimant required to consolidate his learning and gain practical experience. We considered that put simply, the theory learned whilst undertaking the degree required to be put into practice and experience gained.

301. We concluded, having had regard to the above, that the explanation that the claimant did not have the experience to be a team leader, was not perverse because the term "*experience*" related to being a qualified social worker holding the team leader post. However, the facts of this case demonstrate that a fuller explanation of the reasons for moving the claimant would have been of benefit.

302. The fourth challenge related to Mr Swift's use of the term "*risk*". Mr Swift told the Tribunal that his strong view was that it should be essential for team leaders to be qualified, and that if they were not qualified it was "*less safe*" for them to manage social workers who were undertaking high risk work. Mr Swift considered there was a risk attached to that situation. Mr Cramond, in his submissions to the Tribunal regarding this matter, stated there was no evidence the claimant presented a risk, and certainly not one which required the need for an on site supervisor. We considered these submissions sought not only to confuse what Mr Swift had said insofar as Mr Swift did not say the claimant personally was a risk, but they also sought to erroneously conflate the issues of risk, the claimant and the requirement for an Operations Manager to be based on site. The evidence regarding the

need for an on-site Operations Manager was not related to the claimant. The need for this was identified through an Audit.

303. Mr Swift was aware the unpaid work service had become more difficult operationally, and the fact an Operations Manager was going to be on-site was the factor which allowed him to agree to the claimant returning to a team leader role at Auchentibber, because he was satisfied support and supervision would be in place to allow the claimant to return.

304. The fifth challenge related to the fact the claimant held a contract for the post of team leader, and moving the claimant without his consent imposed a unilateral variation to the contract. There was no dispute regarding the fact the claimant was not given notice of the move. The respondent relied on the right to employ the claimant on other duties appropriate to his grade if the circumstances so require.

305. We, having considered all of the above points, stood back and had regard to the claimant's argument that he was moved to a Senior Practitioner post (or moved from the team leader role) because he made a protected disclosure. We considered the crucial fact in considering this matter was the fact that prior to making the protected disclosure on 20 January 2014, the claimant had already told Ms Dade that he did not want to return to Auchentibber because to do so would be detrimental to his health. The claimant's desire not to return to Auchentibber was acted upon by the respondent prior to the claimant making the protected disclosure on 20 January: the wheels of moving the claimant were already in motion. It was only when the claimant realised the respondent was acting on his wishes not to return to Auchentibber, and planning to move him to the post of Senior Practitioner, that the claimant started to back-track on this, and changed his mind about returning to Auchentibber.

306. We asked ourselves whether the fact of the protected disclosure being made (that is, the fact the claimant disclosed information regarding the lack

of supervision of sex offenders) materially influenced the respondent's decision to move the claimant from the role of team leader and place him in a Senior Practitioner role. We were entirely satisfied that the fact the claimant disclosed this information did not materially influence the decision to move the claimant. We reached this conclusion because there was no evidence to suggest (as the claimant did) that the respondent could, by removing the claimant, limit or control the disclosure of this information. On the contrary, the evidence was to the effect these matters were widely discussed internally and externally. The service was high profile and under scrutiny and we heard of two internal and an external Audit having taken place: to suggest that matters could be concealed in those circumstances was not credible. Further, to conclude that the respondent wanted to limit/control who knew of this information would have required the Tribunal finding that Ms Dade, Mr McAulay, Mr Swift and others conspired to that end and this was not a finding we were prepared to make.

307. We, in addition to the above, also had regard to the fact that all of the respondent's witnesses accepted the unpaid work service had its challenges. The witnesses used different language to express this, and Ms Potter went as far as to say the service was "*a failing service*". We took from the fact that all of the witnesses were well aware of the challenges, that the issues being raised by the claimant were not a surprise or a revelation: put short, the claimant was not (on the whole) disclosing information they were not aware of. The fact the information disclosed by the claimant was generally known and discussed, and an action plan had been put in place to address some of the issues, tended to undermine the claimant's argument that the respondent wanted to punish him for disclosing the information or keep him quiet.

308. We decided for all of the above reasons that the respondent did not move the claimant to a Senior Practitioner role on the ground the claimant had made a protected disclosure. We accepted the reason for the move was because the claimant did not want to return to Auchentibber because it

would be detrimental to his health, and because Mr Swift considered the claimant should consolidate his learning and gain some practical experience before returning to a team leader role.

309. The second detriment related to the claimant's return to a team leader role at Auchentibber when he was allocated duties to manage the unpaid work side of the service, rather than managing social workers and social work assistants as he had previously done. The first issue to which we had regard was the evidence in respect of what was agreed regarding the return of the claimant to a team leader role. There was no dispute regarding the fact Ms Maxwell explored resolution of the stage 3 appeal with both parties, and as part of that process she was ultimately advised by Ms Forbes that Mr Swift had agreed the claimant could return to Auchentibber. The claimant's evidence was that there had been agreement to return him to his substantive post at Auchentibber, managing social workers and social work assistants. Mr Swift's evidence was that it had been agreed the claimant would return to a team leader post at Auchentibber. Ms Maxwell's evidence was that it was agreed the claimant would return to a team leader post at Auchentibber. Both Mr Swift and Ms Maxwell stated it would be for the Operations Manager to decide upon duties to be undertaken.

310. We also had regard to the documentary evidence and noted the claimant sent an email on 17 March 2015 (page 358) asking Ms Maxwell to clarify the "*timescale for returning to my team leader post*". Ms Maxwell replied (page 357) to say "*from the discussion we had last week, you will return to your team leader post once your registration has come through*". The claimant queried the need for SSSC registration and Ms Forbes sent an email later on 17 March (page 357) stating not only was it the expectation that now the claimant held a social work qualification he would be registered, but that he should also maintain his registration. The email went on to say: "*In relation to a return to Auchentibber, once we know your position in this regard, we will need to commence discussions with the current temporary postholder in terms of their personal position.*

Furthermore, your tasks and responsibilities will be determined by the new Operations Manager when they take up post ..".

311. We concluded from this evidence that there was no agreement to return the claimant to a team leader post carrying out the same duties as he had previously done. The agreement was to return the claimant to a team leader post at Auchentibber.

312. We next considered the decision to allocate duties to the claimant which involved management of the unpaid work side of the service. The claimant, in relation to this decision, invited the Tribunal to find (i) the service was a split service and team leaders either did one side of the service or the other; (ii) that Mr McAulay had made, or heavily influenced the making of, this decision and (iii) Ms Potter's evidence was not credible.

313. The claimant considered the unpaid work service was a "*split*" service and by that he meant there was a clear divide between managing social workers and social work assistants, and managing the unpaid work side of the service. The claimant sought to demonstrate this by giving evidence of the fact he had undertaken the management of social workers and social work assistants for the majority of his time as team leader.

314. Mr Singh's evidence was to the effect that the service went through a period of transition when he managed it insofar as a new structure was put in place following the Best Value review when two team leaders were put in place, social workers and co-ordinators were introduced and the number of supervisors was increased. The service thereafter evolved and he tried many variations of team leaders managing different staff groups and different localities. Mr Singh told us that when the claimant joined the service he shadowed the existing team leader and then took on responsibility for managing the workshop. Mr Singh noted the claimant had not been concerned about this because he had had experience in his previous role of managing premises. The claimant also managed

supervisors. The claimant began to manage all staff in the workshop, and subsequently this included social work assistants and social workers.

315. Mr Singh, in response to a question asked in cross examination, rejected the suggestion there was a "*neat split*" between the duties of the two team leaders. He painted a picture of a much more fluid situation.

316. Ms Dade also described a service whereby each team leader had an element of managing social work staff and co-ordinators: this was particularly so because responsibility for managing the Lanark office involved management of the full range of staff. Ms Dade accepted the description of the service as "*split*" was partially correct because on a day to day basis each team leader did their own duties. However, Ms Dade emphasised the need for each team leader to be able to cover for the other during periods of annual leave or sickness absence.

317. Ms Potter accepted the description of Auchentibber being a split service with one side being case management (social workers and social work assistants) and the other side being the unpaid work.

318. We, in addition to the above, also had regard to the fact there is one job outline for the post of Team Leader, which is generic with regard to duties and responsibilities. It was Mr Swift's evidence that employees are required to work according to the exigencies of the service, and this was supported by the Conditions of Service (page 92) which confirmed, in relation to "*duties of post*" that the duties applicable to the post would be prescribed by the Executive Director or other nominated person.

319. We concluded, having had regard to the above evidence, that the claimant was offered and accepted the post of Team Leader. The duties applicable to that post were those as prescribed by the Executive Director or nominated person. We further concluded there was not a neat split in duties and responsibilities in the unpaid work service as suggested by the

claimant: there required to be some flexibility to allow team leaders to cover for each other. This does not undermine the fact we accepted the claimant, prior to leaving on the second placement, had carried out the duties allocated to him which involved management of social workers and social work assistants.

320. The claimant invited the Tribunal to find that it was Mr McAulay who made the decision regarding the claimant's duties upon return to Auchentibber, or to find that Mr McAulay heavily influenced the decision made by Ms Potter. We had regard to the evidence of Ms Potter regarding this matter. Ms Potter was appointed to the post of Operations Manager based at Auchentibber following upon the recommendations of the Audit report. This was a promotion for Ms Potter, and she knew she was taking on responsibility for a failing service and was required to focus on the issues which had been identified by the Audit. Mr McAulay provided Ms Potter with an update when he handed over to her, and he also provided her with a copy of the Audit report.

321. Ms Potter's evidence was that she was told very little about the history of what had happened in the claimant's case. She knew he had previously worked at Auchentibber and had recently completed a social work degree. Ms Potter also knew the claimant had been moved, but was now returning to Auchentibber. Ms Potter was not aware of the substance of the grievances, but she would not expect to have been because these details are confidential. Ms Potter accepted she had been heavily reliant on information from Mr McAulay and/or Mr Swift.

322. Ms Potter effectively started with a blank sheet of paper. Mr Alan Irving was in post as a team leader carrying out the duties of managing the social workers and social work assistants The other team leader post was vacant because Mr O'Neill had moved to another post. Ms Potter was conscious of the fact the service was in a poor way, and she had to "*find her feet*" inasmuch as how the service was working and the strengths and

weaknesses of the members of staff and how best to use them. Ms Potter considered there was merit in keeping Mr Irving in the role he was doing, and to slot the claimant in to the vacant role.

323. Ms Potter was asked specifically whether Mr McAulay had suggested to her what role the claimant should be given upon his return to Auchentibber, and she responded "*no*". It was suggested to Ms Potter that she had not in fact decided upon the claimant's duties, or that she had been heavily influenced in her decision. Ms Potter rejected that suggestion and confirmed that she made the decision.

324. We, in addition to the above, also had regard to the evidence of Mr Swift, and the emails of Ms Maxwell and Ms Forbes (above) where it was stated that it would be for the Operations Manager to decide upon the claimant's duties upon his return to Auchentibber.

325. We preferred the direct evidence of Ms Potter, to the submission of Mr Cramond, and we found as a matter of fact that Ms Potter made the decision regarding the claimant`s duties upon his return to Auchentibber. We found Ms Potter to be a credible witness and we had no reason to not accept her evidence on this point. We acknowledged some criticism could be levelled at the lack of background information provided to Ms Potter prior to taking up such a difficult role, but that is not a criticism that can be made of Ms Potter. Any such criticism would also have to be balanced against the fact that by allowing Ms Potter to take up line management responsibility with a clean sheet of paper, any preconceived ideas about the claimant would have been removed.

326. We considered the approach of Ms Potter in simply slotting the claimant in to the vacant duties, was supported by Ms Dade and the approach she took when she took over responsibility from Mr Singh. Ms Dade told us that as a new manager she would not want to make any changes until she had had time to understand the service and the strengths and weaknesses of staff.

327. We concluded, having had regard to all of the above points, that the decision to allocate the claimant to undertake supervision of the unpaid work side of the service was taken by Ms Potter.

328. The claimant challenged the credibility of Ms Potter's decision on the basis that it could not be reasonable to ask a team leader to undertake duties for which they did not have the skills, knowledge and experience. There was no dispute regarding the fact the supervision of the unpaid work side of the service was challenging because of the health and safety requirements. Ms Potter accepted the claimant was not trained in health and safety, but she identified training for the claimant and asked him to undertake it.

329. Ms Potter could not accept the claimant's objection to carrying out the duties allocated. The claimant's role was to supervise and ensure all health and safety requirements were observed. The claimant was not required to physically carry out any of the tasks or supervise tasks being done.

330. Ms Potter very candidly told us that she believed the supervision of the unpaid work should be undertaken by someone other than a social worker, and she had put forward a paper to make this case. However, she was in the position where the whole unpaid work service came under the remit of social work, and therefore the service had to be delivered.

331. We, in considering this matter, had regard to the fact the team leader post is a generic post and that employees may be asked to carry out the duties required by their manager. We acknowledged that moving to undertake different duties may be daunting, but the fact of the matter was that the claimant had had to do that very thing when he moved to the unpaid work service to take up a team leader role in 2009. He shadowed the team leader; he took on management of the workshop; he developed to manage social work assistants and grew into the role. The supervision notes by Mr Singh referred to the claimant being anxious about managing professional

staff (social workers). The subsequent situation with Ms Potter was no different inasmuch as undertaking the new duties would be a steep learning curve for the claimant, but he would be trained and supported whilst he carried out those duties.

332. We concluded for all of these reasons that Ms Potter's decision was credible.

333. We asked ourselves whether Ms Potter's decision to allocate the claimant duties to supervise the unpaid work side of the service was materially influenced by the protected disclosure made on 20 January 2014. We, in considering this issue, noted there was a significant gap between the making of the protected disclosure on 20 January 2014, and Ms Potter's decision on 27 April 2015. This in itself is not determinative of the issue, but it is a material factor.

334. We also noted that Ms Potter's position was that she had been given very little information regarding the background to the claimant; she knew nothing of the content of the grievances; she was not aware the claimant thought he had been treated differently because he blew the whistle, and the first she had heard of "*whistleblowing*" was in Mr Cramond's cross examination, and Ms Potter told us that the expression "*means nothing to me*".

335. Mr Cramond put it to Ms Potter that she was lying about these matters, and she rejected that suggestion.

336. We, as stated above, found Ms Potter to be a credible witness and we accepted her evidence. There was no evidence either direct or by way of inference upon which to conclude Ms Potter knew about the protected disclosure, or more generally, the practice issues the claimant had raised. Accordingly, we concluded that the fact of the claimant having made a

protected disclosure did not materially influence Ms Potter in her decision that the claimant should supervise the unpaid work side of the service.

337. The third detriment related to the actions of Ms Potter in informing the claimant on three occasions (21 July 2015; 13 October 2015 and 8 December 2015) that a continued failure to carry out duties would result in disciplinary action being considered.

338. Ms Potter met with the claimant the day after she took up post as Operations Manager, and advised him of the duties he was to undertake. The claimant immediately informed Ms Potter that he would require to enter into dispute about this because he wanted to return to (what he termed) his substantive post. Ms Potter advised the claimant that his substantive post was that of team leader and that was the post to which he had returned at Auchentibber. Ms Potter confirmed the post did not extend to the duties previously carried out by the claimant.

339. The claimant refused to undertake the duties allocated to him and cherry-picked the tasks he felt were appropriate to the work being done by Mr Irving. The consequences of the claimant's actions were that the service was not being delivered and staff were not being supported. Ms Potter considered the situation was not sustainable and so she spoke to Personnel for advice about how to manage it. Ms Potter was made aware of the disciplinary route, but told not to pursue this until the grievance process had resolved the issue regarding the substantive post.

340. There was no dispute regarding the fact that Ms Potter informed the claimant on three occasions that failure to carry out the allocated duties would result in disciplinary action being considered.

341. We asked ourselves whether Ms Potter's decision to inform the claimant of the possibility of disciplinary action being considered was materially

influenced by the fact of a protected disclosure having been made on 20 January 2014 and 27 July 2015.

342. We noted that the first time Ms Potter referred to disciplinary action was on 21 July 2015, and this was prior to the protected disclosure of 27 July being made. We also had regard to the lapse of time between 20 January 2014 and 21 July 2015, and the fact we accepted (above) that Ms Potter was not aware of the previous disclosure or the fact practice issues had been raised by the claimant.

343. We also had regard to the fact that Ms Potter took advice from Personnel regarding her options for managing the claimant. Ms Potter could not put a date on when this happened, but it must have been before 21 July. We were accordingly satisfied that Ms Potter had already taken advice regarding her options prior to the protected disclosure being made on 27 July.

344. We concluded for all of these reasons that Ms Potter was not materially influenced by the protected disclosures having been made, when she advised the claimant that his continued failure to carry out his duties would result in disciplinary action being considered.

345. The fourth detriment was the fact Mr Singh rejected the claimant's grievance. The claimant submitted a grievance regarding the decision to allocate him to supervise the unpaid work side of the service. The basis of the grievance was that this was a departure from his substantive post duties, and a failure to implement the outcome of the previous grievance. (We have already dealt with the issue of the outcome of the previous grievance – above – and we do not repeat our reasoning here. Suffice to say that we concluded the resolution of the previous grievance was an agreement that the claimant would return to a team leader post at Auchentibber).

346. Mr Singh rejected the claimant's position that "*substantive post*" meant not just the post of team leader, but included the duties which the claimant had previously carried out. The claimant considered Mr Singh could have decided to move the claimant back to those duties, and the fact he did not do so meant the claimant was subjected to a detriment by having to continue to do the duties he did not want to do.

347. The claimant challenged Mr Singh's credibility on the basis Mr Singh told us he had, when investigating the grievance, interviewed Ms Potter, Ms Dade and Mr McAulay. Mr Singh accepted that in the letter of grievance outcome (page 455A) there was a reference to having spoken to Ms Dade and Mr McAulay. Mr Singh was asked if, in light of this, he wished to reconsider his position, and he said no. Mr Singh referred to information he had obtained from Ms Potter regarding the training matrix she had put in place. Ms Potter told us she had not been interviewed by Mr Singh.

348. We preferred Mr Singh's evidence on this point because he could only have known about the training matrix Ms Potter had put in place by speaking to her.

349. We asked ourselves whether Mr Singh's decision was materially influenced by the claimant having made protected disclosures. Mr Singh "*completely disagreed*" with the suggestion that his decision to reject the grievance was because the claimant had blown the whistle. He also "*completely disagreed*" with the suggestion that he had relied on people who sought to manipulate the outcome of the grievance for that reason.

350. We, in considering this matter, had regard to the fact Mr Singh had moved out of the unpaid work service in 2012. There was no suggestion that Ms Dade had notified him of the issues raised by the claimant, and there was no suggestion Mr Singh had any real contact with Mr McAulay. We considered the claimant was essentially inviting the Tribunal to infer that Mr Singh, when interviewing Ms Dade and Mr McAulay, had been told by them

of the issues raised by the claimant and, for those reasons, the grievance should be rejected. We could not draw that inference. There was very good reason for Mr Singh rejecting the claimant's grievance, and that was because there had been agreement to return the claimant to a team leader post at Auchentibber, and that is what had happened. There was no right (either contractual or otherwise) for the claimant to return to the duties he previously carried out. Mr Singh reviewed all of the information he gathered including the note of a meeting Ms Dade held with the claimant and Mr O'Neill on 14 August 2013, regarding the claimant's return from the first placement. The note recorded the claimant would supervise the social workers and Mr O'Neill would supervise the unpaid work service. Ms Dade had told Mr Singh that this was an arrangement in place until the claimant went off on his second placement.

351. The claimant relied on this note to demonstrate that "*his duties*" were the supervision of social workers. Mr Singh relied on the information provided by Ms Dade to conclude this was an interim arrangement for six months until the claimant went on the second placement. The note recorded this. We concluded it was reasonable for Mr Singh to rely on what he had been told by Ms Dade, particularly when this was supported by the note. We should state that even if this was not an interim arrangement, the service had moved on considerably from the time Ms Dade had agreed this with the claimant and Mr O'Neill. Ms Dade was no longer responsible for managing the unpaid work service and Mr O'Neill was no longer in post.

352. We concluded there was no evidence of Mr Singh having knowledge (directly or indirectly) of the protected disclosures made by the claimant, and on that basis we concluded his decision to reject the grievance was not materially influenced by the claimant having made protected disclosures.

353. We, in summary, decided:-

(a) the claimant made a protected disclosure on 20 January 2014 and 27 July 2015;

(b) the claimant was subjected to detriment when (i) he was not returned to the post of team leader, but was instead moved to the post of Senior Practitioner; (ii) he returned to a team leader post but was allocated duties different to those previously carried out; (iii) he was advised disciplinary action could be considered if he continued to fail to carry out the allocated tasks and (iv) Mr Singh rejected the grievance and

(c) the claimant was not subjected to any of the above detriments on the ground of having made a protected disclosure, or disclosures.

354. We decided to dismiss the claim.

355. We should state that if we have erred in our decision regarding the making of protected disclosures, and if the claimant made the protected disclosures set out in the further particulars, our ultimate conclusion would have been the same: that is, that the claimant was not subjected to detriment on the ground of having made a protected disclosure or disclosures. We say that because we were satisfied there was no evidence, either direct or by way of inference, to support the claimant's suggestion that the respondent wanted to keep him quiet and/or wanted to keep him out of the service until the Audit had been concluded. We considered that not only was there no evidence of this, but also, if the respondent removed the claimant from the service to keep him quiet, this was undermined by the fact Mr Swift agreed the claimant could return to the service.

356. We acknowledged the claimant had had a lengthy period of unblemished service with the respondent until these events. However, as we have stated above, the fact issues were raised by the claimant (even if they were all protected disclosures) was not the only material factor occurring at the time.

The claimant undertook a social work degree, went off on placements and, officially, told Ms Dade he could not return to Auchentibber after the second placement. The respondent acted on the claimant`s clearly stated position that he could not return to Auchentibber because it would be detrimental to his health. We were entirely satisfied that this was the catalyst for moving the claimant and the subsequent decisions.

357. We preferred and accepted the respondent's explanation for the actions they took and we were entirely satisfied that even if all the alleged disclosures set out in the further particulars, were protected disclosures, the respondent was not materially influenced by that fact when they made their various decisions.

Employment Judge: Lucy Wiseman
Date of Judgment: 26 September 2017
Entered in register: 27 September 2017
and copied to parties