

Reserved judgment



Claimant: Miss N Hoang
Respondent: NCC Group Security Services Limited

Heard at London South Employment Tribunal on 25 – 29 June 2018

Before Employment Judge Baron

Lay Members: Ms C Bonner & Ms V Stansfield

Representation:

Claimant: The Claimant was present in person

Respondent: Ed Morgan - Counsel

JUDGMENT

It is the judgment of the Tribunal that the claims be dismissed.

REASONS

Introduction

- 1 The Claimant was employed by the Respondent from 6 May 2016 to 21 October 2016. On 5 March 2017 she presented a claim form ET1 to the Tribunal. Various amendments to the claim were subsequently made, the details of which are not relevant. In summary the claims before the Tribunal are of victimisation within section 27 of the Equality Act 2010, and of having been caused detriments and subsequently being dismissed by reason of having made protected disclosures.
- 2 The Claimant provided the Tribunal with an extraordinarily detailed witness statement setting out what she says occurred on an almost day-by-day basis.¹ Much of the evidence was superfluous to the issues before us. The statement was well structured and in chronological order and so it was relatively easy to extract the relevant material. The Claimant gave evidence herself and did not call any other witnesses. Evidence for the Respondent was given by Charlie Dean, Colin Gillingham, Darren James and Karen Woodcock. We also read a witness statement from David Middlehurst who was not available to give evidence.
- 3 We were provided with a main bundle of documents consisting of over 1,200 pages. The Claimant also provided her own supplementary bundle

¹ The Claimant also provided a brief supplementary statement.

of over 250 pages, some of which duplicated the documents in the Respondent's bundle. We have only taken into account those relatively few documents, or parts of documents, to which we were specifically referred. Because of the volume of detail in the Claimant's statement we have had to be selective in reading the documents to which she referred in that statement. It was simply not possible in the six days allocated for the hearing to read all such documents, and it appeared to us that it was not proportionate to do so. We are satisfied that we read those which are material.

Dramatis personae

- 4 Those involved in this matter were set out in a cast list helpfully provided by the Respondent. It is as follows:

Craig Blackie	Claimant's colleague
Danny Brown	Executive Principal Consultant
David Cannings	Executive Principal Consultant in the Cyber Defence Operations team based in the Milton Keynes office
Bernardo Damele	Executive Principal Consultant and Head of Training for the Respondent
Charlie Dean	Security Consultant
Tony Dorrell	Associate Director, Milton Keynes Office
Colin Gillingham	Associate Director of Professional Services, Graduate Line Manager and Claimant's Line Manager, Security Controller for the Leatherhead office
Lois Gryckiewicz	Human Resources representative for the Respondent
George Hafiz	Claimant's colleague, Security Consultant for the Respondent
Nga Hoang	Claimant, Junior Security Consultant on the Graduate Training Programme for the Respondent, Leatherhead Office
Felix Ingram	Executive Principal Consultant
Darren James	Associate Director of Operations (Security Consulting team)
Laura Kennedy-Gill	Senior Human Resources Advisor
Matthew Lewis	Group Research Director, Senior Technical Lead [Associate Director, Technical and later Research Director in Claimant's Witness Statement]
Chris Mayhew	Senior Consultant of the Respondent's Cyber Defence Operating Team

David Middlehurst	Principal Consultant, Claimant's assigned Mentor for her Research Project
David Spencer	Principal Security Consultant, Milton Keynes office
Ollie Whitehouse	Technical Director
Matthew Whitney	Internal Helpdesk
Sam Winter	UK HR Advisor for the Respondent
Karen Woodcock	Learning and Development Advisor

The claims and statutory provisions

- 5 As mentioned above, the claims before the Tribunal fall into three categories. The Claimant alleges that she was caused detriments which were either acts of victimisation within section 27 of the Equality Act 2010 or were by reason of having made protected disclosures within section 43A of the Employment Rights Act 1996. The Claimant also alleges that the reason, or principal reason, for her admitted dismissal was that she had made such disclosures.
- 6 In brief, the Respondent's position is that the Claimant did not make any protected disclosures within section 43A of the 1996 Act, and that any protected act(s) within section 27(2) of the 2010 Act were not the cause of any of the matters of which the Claimant complains. The reason for the dismissal, says the Respondent, was simply that the Claimant failed to complete her probationary period, and that there had been a breakdown in her relationship with the Respondent.
- 7 It is not necessary to recite in detail the procedural history. The Claimant had very helpfully consolidated various documents into one which contained her particulars of claim, and also schedules summarising the claims. Those schedules are below.

Schedule of alleged protected acts for the purposes of the claims of victimisation:

- (1) On 25th July 2016 in a letter to Darren James in a list of examples I referred to the use of inappropriate language of a sexual and racial nature (Paragraph 8, GoC).
- (2) Also on 25th July 2016, a conversation between me and Darren James at a Costa coffee shop, in which I told him about the conversation I had heard between Charlie Dean and George Hafiz in which inappropriate language of a racial and sexual nature was said to have taken place. My complaint was against Charlie Dean (Paragraph 8, GoC).
- (3) On 29th July 2016 during a phone meeting with Darren James and Laura Kennedy-Gill where we discussed the contents of the letter in (1) and I told them about the conversation I had heard as in (2) (Paragraph 10, GoC). During this call I did not name Charlie Dean but Darren James

was aware and had said he knows this guy and defended him saying something along the lines of him not being that type of person.

(4) On 5th September 2016 in a meeting with Darren James, Colin Gillingham and Charlie Dean I raised the issue of inappropriate language as before (Paragraph 17, GoC).

Schedule of alleged protected disclosures for the purposes of the claims of detriments caused by such disclosures:

(1) In June 2016 I reported a concern about an unusual connection from an internal IP address through the Pentest Lab Admin support portal (Paragraph 5, GoC).

(2) On 1st July 2016 I wrote an email to Colin Gillingham where I said I was having some real concerns about unauthorised access to my laptop. I listed many issues and also said it would be a real issue whilst performing client work. I rely on both paragraphs in that email and subsequent email exchanges on the matter on 4th July 2016 (Paragraph 5, GoC).

(3) On 25th July 2016 in a letter I wrote to Darren James with the words "Possible breach of the CMA" and in a subsequent email I informed him of concerns of unauthorised access to my work and personal laptops and mobile phone. These issues were discussed between us in a meeting held on the same day (Paragraph 8, GoC).

(4) On 29th July 2016 during a phone meeting with Darren James and Laura Kennedy-Gill where we discussed the contents of the letter in (c) (Paragraph 10, GoC).

(5) On 3rd August 2016 in an email with an updated letter (to that of the one in point (3)) I sent to Colin Gillingham, Darren James, Matthew Lewis, Danny Brown, Bernardo Damele (Paragraph 11, GoC) again with the words "Possible breach of the CMA" and the following paragraph:

"Additionally, I recognise that I am a potential source of attack and I have noticed that files on my personal laptop have been deleted and also that my personal laptop and mobile may be breached. There are serious and do require further investigation, which I hope can be conducted internally. I also note that over the past couple of weeks when I attempt to work my laptop freezes or just switches off resulting in my inability to do work. I feel this is not a coincidence or hardware issue but deliberate acts of sabotage which is extremely serious, as you would agree if corroborated."

(6) On 09/08/2016 during the meeting with Colin Gillingham and Lois Gryckiewicz from HR I informed them amongst other things that my work files (assessments) had been edited, files on my personal laptop had been deleted (VMs), and backup drives connected to my laptop had been tampered with (Paragraph 14, GoC).

(7) On 19/08/2016 during the meeting with Lois Gryckiewicz and Sam Winter I informed them of the issues as listed in Paragraph 14a, GoC.

(8) On 24th August 2016 I wrote to Helpdesk and Matthew Whitney in two separate emails informing them that my laptop had unlocked itself on several occasions. I told them of my concern that this could lead to the exposure of sensitive information (Paragraph 15, GoC).

(9) On 31/08/2016 in an email to Laura Kennedy Gill and Darren James I informed them of problems with my second laptop including Virtual Machines on the laptop being slow to the point of being unusable and it had unlocked itself a few times over the past two weeks (Paragraph 15a, GoC).

(10) On 01/09/2016 I had a meeting with Darren James and Laura Kennedy Gill to discuss the outcome of the internal investigations into my concerns. During this meeting I told them I did not accept the outcome of the forensics investigation, that my laptop was being turned off on purpose at suspicious times (for example whilst I was trying to write an email to HR) and work files had been edited (Paragraph 16, GoC).

(11) On 05/09/2016 I completed a Work Station/Environment Assessment Questionnaire for Laura Kennedy Gill in which I wrote:

“Laptop can operate very slowly when in the office (intermittent but impacts work), connected or disconnected to the network (usually after connecting to the network) but is absolutely fine when working from home” (Paragraph 16a, GoC).

(12) On 06/09/2017 I again raised issues in an email to Matthew Whitney of my laptop unlocking itself, the DVD drive opening by itself and that it was slow when working from the office but fine when working from home (Paragraph 15, GoC).

(13) On 07/09/2016 in an email to Laura Kennedy Gill and Darren James I again continued to raise my concerns insisting that my laptop had been tampered with. I repeated that my laptop was very slow when working in the office but fine when working from home so I had been working disconnected from the network which was impractical (Paragraph 17a, GoC).

Schedule of alleged detriments:

(1) On 1st September 2016 Colin Gillingham gave me misleading information on how to report sick days (Paragraph 19, GoC)

(2) On 13th September 2016 Colin Gillingham commenced an internal investigation into me (Paragraph 20, GoC).

(3) On 13th September 2016 David Middlehurst suggested to senior staff I had deliberately wasted his time and ignored my request for help (Paragraph 21, GoC).

(4) On 14th September 2016 David Cannings would not answer my request for help and suggested I ask the Leatherhead technical director. I received a response from Danny Brown for the same request for help but he did not answer my question even though it later turned out to be a simple solution (Paragraph 23, GoC).

(5) On 20th September 2016 Karen Woodcock lied in distorted feedback in equality and diversity training saying I did not take part in group activity (Paragraph 24, GoC).

(6) On 27th September 2016 Colin Gillingham lied to HR about the number of occasions I worked from home because of a bad back (Paragraph 25, GoC).

(7) On 11th October 2016 I was deceived into thinking the mid-term probationary review meeting was a feedback session when in fact the decision to dismiss was already made and was held as a cover (Paragraph 26, GoC).

(8) In the mid-term probationary review meeting Colin Gillingham did not seem interested in the things I said (Paragraph 27, GoC).

(9) In feedback of the mid-term probationary review Colin Gillingham made malicious and untrue comments about me (Paragraph 28, GoC).

(10) In the same feedback of the mid-term probationary review Colin Gillingham lied about me not taking technical advice on board (Paragraph 29, GoC).

(11) On 14th October 2016 Darren James criticised me saying that I should be dismissed after asking for help about my laptop. This was in contrast to Felix Ingram (white, male) who was not subjected to the same criticism nor dismissed in similar circumstances (Paragraph 30, GoC).

(12) In written reasons for dismissal dated 25th October 2016 Colin Gillingham lied as set out in Paragraph 32, GoC and I was subjected to unfair treatment as set out in that paragraph.

(13) On 20th October 2016 Colin Gillingham gave reasons for dismissal which he did not include in the dismissal letter and members of HR ignored my requests for that feedback. Colin Gillingham did not acknowledge the actions I had taken in response to points raised in the mid-term probationary meeting (Paragraph 33, GoC).

(14) On 20th October 2016 Colin Gillingham lied about me saying I had a "personal vendetta" (Paragraph 34, GoC).

(15) The Respondent failed to provide feedback on my submitted work during the first four months of my employment. This was not given until the decision to dismiss was made (Paragraph 35, GoC).

(16) Feedback sessions were withheld from me until the decision to dismiss was made (Paragraph 35, GoC).

(17) I was subjected to a further detriment in my dismissal for my victimisation claim.

8 The material statutory provisions are as follows:²

Equality Act 2010

27 Victimisation

² We are not reproducing sections 39 of the Equality Act 2010 nor section 47B of the Employment Rights Act 1996.

- (1) A person (A) victimises another person (B) if A subjects B to a detriment because—
 - (a) B does a protected act, or
 - (b) A believes that B has done, or may do, a protected act.
- (2) Each of the following is a protected act—
 - (a) bringing proceedings under this Act;
 - (b) giving evidence or information in connection with proceedings under this Act;
 - (c) doing any other thing for the purposes of or in connection with this Act;
 - (d) making an allegation (whether or not express) that A or another person has contravened this Act.
- (3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made in bad faith.

136 Burden of proof

- (1) This section applies to any proceedings relating to a contravention of this Act.
- (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
- (3) But subsection (2) does not apply if A shows that A did not contravene the provision.
- (4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule.
- (5) This section does not apply to proceedings for an offence under this Act.
- (6) A reference to the court includes a reference to—
 - (a) an employment tribunal;
 - (b) – (f)

Employment Rights Act 1996

43A Meaning of 'protected disclosure'

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

43B Disclosures qualifying for protection

- (1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—
 - (a) that a criminal offence has been committed, is being committed or is likely to be committed,
 - (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
 - (c) that a miscarriage of justice has occurred, is occurring or is likely to occur,
 - (d) that the health or safety of any individual has been, is being or is likely to be endangered,
 - (e) that the environment has been, is being or is likely to be damaged, or
 - (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed.
- (2) – (5)

48 Complaints to employment tribunals

- (1) (2)
- (1A) A worker may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of section 47B.
- (1B)
- (2) On such a complaint it is for the employer to show the ground on which any act, or deliberate failure to act, was done.
- (3) An employment tribunal shall not consider a complaint under this section unless it is presented—

- (a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or
 - (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.
- (4) For the purposes of subsection (3)--
- (a) where an act extends over a period, the "date of the act" means the last day of that period, and
 - (b) a deliberate failure to act shall be treated as done when it was decided on;
- and, in the absence of evidence establishing the contrary, an employer shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected do the failed act if it was to be done.

103A Protected disclosure

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

The facts

- 9 The various specific allegations made by the Claimant are set out above. As already mentioned, the Claimant's witness statement was very extensive and included many details not directly relevant to the allegations. It is not necessary, nor appropriate, to record all the information supplied to the Tribunal, nor to make a finding on every matter where there was a disagreement. It is, however, appropriate to make some more general findings concerning the Claimant's employment, and her probationary progress, in order to put the allegations into context. It is on that basis that we make our findings below.
- 10 The Respondent is a global technology business, the relevant part of which involves the testing of technology security systems for clients. It is a leader in its field. The Respondent does not have any national security information of any country on its own network and the Claimant did not have access to any other network during her employment.
- 11 The Respondent has since 2014 had a six month long Graduate Training Programme to train those on it to become Technical Security Consultants. The purpose of the Programme was to train the graduates in relevant technical skills, and also in 'soft' skills necessary to enable them to work satisfactorily with clients on the client's own site. The intention of the Programme is to foster home-grown talent. The Programme includes a mid-term review after about four months, and a review at the end of the programme.
- 12 The Programme is very structured. The document setting out the details of the Programme was before us and is 34 pages in length. For each week various specific 'Task & Goals' are set out, and the 'Measurement / Success Criteria' are stated. In section 2.1.2 of the Programme it was made clear that there was a significant amount of support and it was said that 'all managers and mentors are here to help you whenever needed.' The proximity of those on the Programme one to the other, and also to Senior Security Consultants, in the same open-plan office was to be of

benefit to the trainees. It enabled them to collaborate with each other, and also to seek assistance from those more experienced.

- 13 One aspect of the Programme was a research project on which the trainees were required to spend 20% of their time, being an average of one day each week. Mr Gillingham described the purpose as being 'to improve the graduate's knowledge in a specialised subject and train the graduate on independently working on a project such as they will do when *in field* on client work following *graduation*.' Mr Middleton was assigned to the Claimant as her mentor for her research project. The trainees were also required to complete assessment projects from time to time as set out in the programme.
- 14 Mr Gillingham was the operational line manager for the trainees, although on a day-to-day basis the trainees were able to obtain support from the Security Consultants who were working on the same floor and in the same open-plan office.
- 15 The Claimant was interviewed on 22 April 2016 by Mr Gillingham and Mr Lewis for a position as a Graduate Trainee on the Programme. An email was sent to the Claimant on 27 April confirming that she had been offered employment and setting out the basic terms. Her title was to be 'Junior Security Consultant' while on the Programme. The Claimant commenced her employment on 6 June 2016.
- 16 Mr Gillingham had sent two introductory and helpful emails to the Claimant on 3 June 2016 with some further practical details, such as the dress code. On the same day he requested from the Respondent's internal IT Helpdesk a new standard build Dell laptop for the Claimant. The Claimant comments in her witness statement that she did not receive her laptop until mid-day on 8 June 2016 because it had been requested late, whereas two others received theirs on their first day. That, she said tellingly in cross-examination, was evidence that Mr Gillingham had a negative attitude towards her right from the outset.
- 17 Looking at the case overall, we find that to be an interesting comment by the Claimant for which there was no supporting evidence. What occurred was that the Respondent's IT Helpdesk sent an email to Mr Gillingham on 3 June 2016 at 17:03 saying that HR had informed IT that the Claimant was starting in the Respondent's employment and Mr Gillingham was asked to complete a New Starter Request Form for the purpose of obtaining any necessary IT equipment. That he did at 17:14, and later clarified a query at 09:06 on 6 June 2016, being the next working day. It is not rational for the Claimant to conclude that therefore Mr Gillingham had a negative attitude towards her.
- 18 The laptop provided had Windows 7 installed as the operating system. After she received the laptop the Claimant spent the necessary time setting it up. This formed part of the Week 1 activities in the Programme, and there was cross-reference to 'Getting Started' in the Respondent's New Starter Guide. The Claimant had to enable BitLocker (for encryption purposes), set up Outlook email and so on. The Claimant says that she

encountered some difficulties along the way, but had succeeded in setting the laptop up by the end of the first week.

- 19 Another element in the Claimant's initial induction was for her to read the Respondent's policies. We were referred to the Grievance Policy, Open Door Policy,³ and the Equality and Diversity Policy. The Claimant signed a sheet on 14 June 2016 confirming that she had read those policies, and also other policies.
- 20 Protected disclosure number 1 occurred on 16 June 2016.⁴ The Claimant had had concerns during the preceding few days about a flickering screen on her laptop and also a possible unauthorised connection to it. She sent an email to Mr Gillingham asking who should be contacted if she suspected that her laptop had been infected with malware or had been accessed without authorisation. She then sent an email to what was described as a portal:

I am in the process of creating a windows assessment VM today and noticed from the netstat that I keep getting a connection to [xx.xxx.xxx.xx] which I have to kill manually because it is causing my computer to slow down considerably that I cannot work with it properly. Is it possible to find out if this is a normal system network?

- 21 No response was received by the Claimant to that report and the matter was not pursued by the Claimant at that time.
- 22 In late June 2016 there was a conversation between two trainees close to the Claimant during which Charlie Dean asked the other person to translate a sexual swear word and a word for female genitalia into Chinese. The Claimant did not note the exact date.
- 23 Towards the end of June it was time for the trainees to decide on their research projects. This was provided for in the list of tasks for Week 4 of the Programme. The Claimant selected a particular project and confirmed that in an email of 1 July 2016 sent to Messrs Damele, Lewis and Brown. There were then further emails of a technical nature, the details of which are not relevant. The Claimant entered into email correspondence seeking assistance on technical aspects. Mr Middlehurst in particular was very helpful. He sent a substantial email to the Claimant on 5 July 2016 and at the end said he would be willing to offer further help and answer questions. The Claimant cancelled a proposed meeting with Mr Middlehurst by an email of 14 July 2016, saying that her laptop was broken at the time. Mr Whitehouse also provided guidance to the Claimant on 5 July 2016.
- 24 On 1 July 2016 also the Claimant made what she contends was her protected disclosure number 2. This is in an email to Mr Gillingham. The text is as follows:

I am having some real concerns about unauthorised access to my laptop. I have had odd things happening on my laptop since the first week. These would include the screen suddenly freezing up on one occasion, killing off multiple instances of an internal connection to a newly installed VM, over the past week my kali VM instances would shut down by itself when I have been away from my laptop, intermittent issues that my wireless adapter, file shares that I have manually

³ Another name for a whistleblowing policy

⁴ We will not use the adjective 'alleged' on each occasion.

deleted open up again (this does not include after start-up which is done automatically, files mysteriously been deleted on my virtual machines – this is a specific folder on kali that is used to store all my hacker tools – this is quite serious since I cannot imagine any scenario where I would have done this accidentally and this means I have to spend time going over previous work to reinstall software.

If it were just a one-off I wouldn't mention it but since it is having an impact on my ability to do work not to mention that it would be a real issue whilst performing client work can you advise on what I should do? I would prefer to leave it as is for now but if I do notice it happening again it would be good to know what process I should follow.

- 25 Mr Gillingham made internal enquiries of Mr Lewis and Mr Brown and told the Claimant by email on 4 July 2016 that they would work with the Claimant that day for initial fact finding and possible investigation into the difficulties she was experiencing. Later that day Mr Gillingham passed on some recommendations which Mr Lewis had made, and the Claimant then replied saying that there were still problems but that she was happy to leave it if Mr Gillingham did not think further investigation was required.
- 26 The Claimant accepted in cross-examination that she was not making any suggestion that Mr Gillingham either ignored or sought to conceal what the Claimant had said in her email. Further she accepted that she was concerned that the problems were impeding her ability to undertake her own work.
- 27 Mr Gillingham explained in his witness statement (which was not challenged during cross-examination) that what had occurred could be caused by either faulty hardware, the unreliable installation of software, or software conflicts. His particular point was that the very nature of the work of computer security meant that software conflicts were likely to arise between hacking tools deliberately installed for testing purposes and anti-virus software which was designed to prevent hacking. That appears to us to be entirely logical. Mr Gillingham further stated that when Dell laptops auto-update sometimes they become unlocked of their own accord, and it is also possible for CD drives to open automatically.
- 28 A further problem arose with the Claimant's laptop on 13 July 2016 in that it would not start. The Claimant consulted Matthew Whitney at the Helpdesk and was advised that it was a hardware issue with the motherboard and that a Dell engineer would visit the following day. The engineer actually repaired the laptop during the afternoon of 15 July 2016. Mr Whitney forwarded to the Claimant an email from the Dell engineer containing the Dell contact details. There was a suggestion in the email chain with Mr Whitney of the Claimant contacting Dell direct in the future.
- 29 At this time the Claimant made the first suggestion of working from home. The Claimant sent an email to Mr Gillingham on 13 July reporting the advice she had received concerning her defective laptop and asked if she could work from home pending the visit of the Dell engineer. Mr Damele replied on the following day saying that she could work from home but that 'it's an exception to the rule.'
- 30 The Claimant's evidence was that the fact that her laptop broke down that week was not a coincidence, and said she believed it was deliberately sabotaged. There was no corroborating evidence to support that belief.

However, the Claimant decided to keep a diary on her personal laptop. She asserted that that laptop was also running slowly for a time. The Claimant also recorded in her diary that on Monday 18 July 2016 she felt 'a distinct hostility in the office . . . as if people were watching and talking about' her.

31 We record that the Claimant alleges that on 20 July 2016 at a training session Charlie Dean 'aggressively and deliberately slammed a piece of paper in front of me while I was trying to write the answer.' We return to that later.

32 On 20 July 2016 also the Claimant sent an email to Mr Gillingham and Mr Lewis asking if she could move from the Leatherhead office at which she was working to the Respondent's office in Milton Keynes. The reason she gave was that a family friend had moved there. That was untrue. Mr Lewis told Mr Gillingham he did not object, commenting that the Claimant had not been mixing well in Leatherhead. Mr Gillingham then contacted Tony Dorrell in Milton Keynes about the request, and he agreed. Mr Gillingham said the following about the Claimant in the email to Mr Dorrell:

She is quite focused and studious, gets on with things but tends to keep to herself more than the others.

33 Later in the day on 20 July 2016 Mr Gillingham emailed the Claimant to say that the proposed move was agreed and asked about the date. In cross-examination the Claimant criticised Mr Gillingham for supporting her request on the basis that he was happy that she was leaving the Leatherhead office. We reject that allegation. It is of a kind as the allegation that Mr Gillingham had delayed the process of providing the Claimant with a laptop. In fact the Claimant did not pursue the proposed move to Milton Keynes.

34 There had been an undercurrent of the Claimant alienating herself from contact with others in the open-plan office. In paragraph 20 of her witness statement the Claimant comments that other consultants were talking loudly, and in paragraph 29 she said that early on in her training she decided to move seats because of the noise level and behaviour of others, and she used the excuse of the air-conditioning being too cold.

35 The Claimant gave evidence that her laptop turned itself off several times on 20 July 2016 and also again on 22 July 2016. We accept that evidence although there was no corroboration, but we have no reason to disbelieve the Claimant.

36 On 25 July 2016 the Claimant wrote a letter of just over one page to Mr James and asked to discuss it with him. This, says the Claimant, constituted both a protected disclosure (number 3) for the purposes of section 43A of the 1996 Act and a protected act (number 1) for the purposes of section 27 of the 2010 Act. The Claimant did not satisfactorily explain why it was addressed to Mr James rather than to Mr Gillingham as her line manager in accordance with the grievance procedure, except to say that Mr James was in the office at the time. Mr Gillingham was in Manchester that day and the Claimant knew that to be the case. That is a

wholly unsatisfactory explanation, particularly bearing in mind the nature of the Respondent's business.

- 37 The Claimant complained of 'collective bullying behaviour' and set out eight 'headings' as examples but without any detail. The Claimant referred to inappropriate racial and sexual language, and also a possible breach of the Computer Misuse Act. In cross-examination the Claimant said that she believed that someone internal to the Respondent had had access to her work laptop, and also her home laptop, and had deliberately deleted software tools.
- 38 The Claimant said that she wanted to raise the matter informally. The Claimant said that she had concluded that the incidents were intentional. She said the following:
- This has led to a severe impact on my own personal well-being and therefore inability to do my work to the best of my abilities – of course I recognise the training programme is by design intended to push the graduates but I feel it is unfair to judge my competency when having to endure such working conditions.
- 39 The Claimant asked for time off and also to be able to work from home as she felt she could be productive there, and also to have some time away to see if things could improve upon her return.
- 40 Mr James forwarded the email to Laura Kennedy-Gill who was based in Manchester, suggesting that an investigation was required. Mr Gillingham learned of it. Mr James went to see the Claimant and they then went out to a Costa coffee shop for an informal conversation. The Claimant told him about the conversation about female genitalia mentioned above. There was a conflict of evidence as to whether or not the Claimant named the individuals involved on that occasion. In any event Mr James was able to conclude who they were. Mr James and the Claimant also had a general conversation including whether the Claimant was right for the job. Mr James did what he could to encourage her. This conversation is protected act number 2.
- 41 On the same day Ms Kennedy-Gill sent an email to the Claimant to introduce herself and suggested a 'catch-up' on 27 July with her and Mr James so that they could understand the Claimant's 'point of view and also agree any actions moving forwards.' There were then further emails between the Claimant and Ms Kennedy-Gill of an entirely friendly nature about practical arrangements for a conversation.
- 42 On 25 July 2016 the Claimant also sent another email to Mr James saying that her personal mobile phone 'may potentially have some kind of breach as it has been acting peculiarly'. She said in cross-examination it was intuition and that she felt that others could intercept messages.
- 43 The Claimant was advised by her GP that she was not fit for work for the period from 26 July 2018 until 5 August 2016.
- 44 Mr Gillingham, quite rightly in our view, considered that the Claimant's complaints fell into two categories. One concerned the behaviour of others in the office. The other category covered the issues concerning the laptop. Arrangements were made for the Claimant to have a replacement laptop

and for the Respondent's Cyber Defence Operations Team to investigate the first laptop. That was done, and we mention that again below.

- 45 The proposed telephone 'meeting' with the Claimant and Mr James took place on 29 July 2016, involving Ms Kennedy-Gill also. Manuscript notes were taken by Ms Kennedy-Gill.⁵ The Claimant raised the issue of the conversation in June 2016 without naming names. She also referred to being ignored or excluded. There was much mention of the technical difficulties with her work laptop, and also her personal laptop and mobile phone. It was agreed that there would be an investigation into the work laptop. Towards the end of the meeting the Claimant said that she needed time away from the office as she was by then quite behind with her next assessment.
- 46 Although the manuscript notes are not entirely clear, we see that at one point the Claimant the following text is against the Claimant's initials:
- CMA – problems with l/top & one of virtual machines – other issues, I can't ignore my work.
- We take 'CMA' to be a reference to the Computer Misuse Act 1990.
- 47 The Claimant then on 3 August 2016 sent an email based on the email of 25 July 2016 but with amendments. She also sent a covering email. On this occasion it was sent to Mr Gillingham, Mr James and three others. The Claimant now said that she was 'a potential source of attack' and that she had 'noticed that files on [her] personal laptop have been deleted and also that [her] personal laptop and mobile may be breached.' She said these were 'deliberate acts of sabotage which is extremely serious'. This is alleged to be the protected disclosure number 5.
- 48 In the covering email the Claimant also asked to be allowed to work from home from when her form Med3 expired, saying that she did not feel her concerns had been, or would be, sufficiently addressed. Mr Gillingham's attitude was that working from home was not an option. Mr Gillingham replied to the Claimant on 5 August 2016 saying that efforts were being made to resolve the points she had raised and to get her 'back in to a working environment.'
- 49 Mr Gillingham told the Claimant that a replacement laptop would be ready for her on her return to work while her existing laptop was analysed. He added that the Claimant would be allowed additional time to install software and copy documents to the new laptop and would be provided with 'assistance on getting back to the appropriate stage of the programme.'
- 50 On 8 August 2016 the Claimant sent an email to Mr Gillingham saying that she would be working from home that day as a training session had been rescheduled for the following day. No request had been made by her to be able to work from home, and her form Med3 (as amended) had expired on 5 August, the immediately preceding working day.
- 51 The Claimant returned to work on 9 August 2016 and collected her replacement laptop. She had a meeting with Mr Gillingham, with Ms

⁵ Unfortunately they were not transcribed.

Gryckiewicz joining in by telephone from Manchester. This is alleged protected disclosure number 6. Ms Gryckiewicz asked the Claimant to name the individuals about whom she was complaining, but the Claimant declined to do so. She said that she wanted to work in a normal environment and also that she did not have the resources to do the job. The Claimant said she was unsure why she had been hired, and that she had been deliberately isolated by others. Ms Gryckiewicz asked if the Claimant was in the right frame of mind to work. The Claimant said that she needed time to get back into a position where she could work, and also that she needed to work from home for a couple of weeks for that purpose.

- 52 The notes made by Ms Gryckiewicz record the Claimant as saying that an essay had been sabotaged, and that strange things were happening to her emails. There was also mention of the forensic investigation being undertaken. The last exchange is as follows:

CG: Just to close off then – forensic work is going ahead, will get results in the next couple of days. Will consider working from home but I have concerns about training and progress. Everyone asks why you're not there. We will make you aware of the decision. Let us know how you get on at the Doctors. I'll find out from Bernado when the next formal training session will be. Please think about giving us specific examples so we can address the shortcomings.

NH: I have written them down, that is another story.

- 53 Mr Gillingham was concerned about the Claimant's state of mind, and sent to her the contact details for the Respondent's Employee Assistance Programme. That again indicates that Mr Gillingham did not have any hostility towards the Claimant.
- 54 There was a further discussion on 19 August 2016 involving the Claimant, Ms Gryckiewicz and Ms Winter. This is alleged protected disclosure number 7. It really did not take matters much further. The Claimant was saying that some of her documents had been accessed by others, and that she was not willing to name names as she did not want to get anyone into trouble. On this occasion the Claimant added that she thought that Mr Gillingham did not like her.
- 55 On 24 August 2018 the Claimant reported issues with her replacement laptop. This is alleged protected disclosure number 8. She sent an email to the Helpdesk saying that the laptop had unlocked itself twice while she was away from it, once when connected to the internet and once when disconnected. She said that she was concerned that if she were on a client's site it may unlock and expose sensitive information. Mr Whitney on the Helpdesk suggested reinstalling Windows, to which the Claimant said that she had done that but it had not helped. She said that she would 'enquire within the company to a more appropriate team.' A similar email was sent to the Cyber Incident Response Team.
- 56 On 31 August 2016 the Claimant received the investigation report into her first laptop. It is a short report in the form of answers to various specific questions. Nothing was found which was unexpected.
- 57 On 31 August also there was an exchange of emails with Ms Kennedy-Gill, one or a combination of which, the Claimant says formed protected

disclosure number 9. In an email at 15:23 the Claimant comments to Ms Kennedy-Gill that it was unfortunate that the sudden shutdowns of the laptop were not logged and so could not be investigated but, she said, she stood by what she had said about those incidents. Ms Kennedy-Gill then enquired whether the Claimant had had issues with her replacement laptop to which the Claimant replied as follows at 16:03:

Yes I have had issues with this laptop, it was very slow at times when I started using it again in the first two weeks (things in my VM were just slow to the point of being unusable). I had to rebuild it with Windows 10 and has mostly been fine but on a couple occasions just very slow again. I suspect it has something to do with a virtual machine I have (which would not have been investigated). It also unlocked itself a few times over the past two weeks.

58 At 17:03 the Claimant said the following:

I did not raise those issues with my new laptop or the VM issue as I was not sure what the investigation would encompass.

To be honest with you both, I know that someone/people are tampering with my laptop(s) and regardless of the outcome of the internal investigations, since it has not stopped I do not think it will in the future. I think the best I can do is to harden it and rebuild everything from scratch and hope my security defences improve (I guess afterall, that is my job).

59 The Claimant then had a meeting with Mr James and Ms Kennedy-Gill on 1 September 2016 during which the Claimant says that she made the protected disclosure number 10. The first topic discussed concerned Mr Dean and the incidents mentioned above. This was the first occasion that Mr Dean had been identified in a formal meeting. There was also discussion about the Claimant's feeling of being isolated, and the notes record that the Claimant was feeling more comfortable. It was agreed that there would be a meeting with Mr Dean.

60 The conversation then turned to issues concerning the laptops. The Claimant's position was that she did not accept the investigation report saying that the CDO Team was not independent. She said that her laptop turned off at suspicious times and that was done by somebody on purpose. She also said that her work files continued to be edited. The possibility of an investigation being carried out by an external body was raised by the Claimant and Ms Kennedy-Gill said that substantial costs would be involved. Mr James made it clear that the matter had been investigated as far as possible and the issue was closed. The Claimant said that she just wanted to know when her first laptop would be returned.

61 Also on 1 September 2016 there occurred the incident resulting in detriment number 1 to the Claimant caused by one or more of the alleged protected disclosures or protected acts. The Respondent's Attendance Policy required that in the event of an absence from work the employee should telephone her line manager by 9:30 am on the first day of absence, and in the event of the unavailability of the line manager then contact should be made with HR.

62 There is a chain of emails concerning a doctor's appointment for the Claimant on 1 September 2016. Then at 15:18 the Claimant said that she did not feel well, having had a lingering cough. She again asked if she could work from home on the following day. Mr Gillingham replied at 18:04:

Your request is approved. Please send me an email by 9 am stating what you intend to work on during the day. If you are not able to work because of the cough then it will need to be recorded as sick leave.

- 63 The point made by the Claimant was that following the procedure requested by Mr Gillingham in the email could have led to disciplinary action against her as it did not accord with the procedure in the Attendance Policy. She conceded in cross-examination that what occurred on that occasion could be seen as Mr Gillingham seeking to be helpful, and further that she had not in fact been the subject of any disciplinary action. There is absolutely nothing in the allegation that there was any detriment to the Claimant, and also there is nothing whatsoever to connect what occurred to any alleged protected disclosure or protected act.
- 64 On 5 September 2016 there was the planned meeting involving the Claimant, Mr James and Mr Dean during which the Claimant says she made protected act number 4. This again relates to the inappropriate language issue. There are no contemporaneous notes of that meeting but it was summarised in an email from Mr James to Ms Kennedy-Gill. Charlie Dean apologised for any upset caused to the Claimant, and he said that he had nothing against the Claimant. He could not recall the second incident during the training session. The Claimant agreed to leave it at that.
- 65 On 5 September 2016 also the Claimant completed a Work Station Assessment Questionnaire which she alleges constituted protected disclosure number 11. There are standard questions with 'tick-box' answers. There is space for free text at the end and the Claimant wrote the following:
- Laptop can operate very slowly when in the office (intermittent but impacts work), connected or disconnected to the network (usually after connecting to the network) but is absolutely fine when working from home. This makes work frustrating and uncomfortable.
- 66 On the following day, 6 September 2016, the Claimant was in contact with the Helpdesk, one email being protected disclosure number 12. The correspondence starts with Mr Whitney contacting the Claimant to enquire about the issues she had been experiencing with her temporary laptop. Her reply was as follows:
- I am not sure which colleague of yours mentioned this but it probably is related to the issue I raised with helpdesk a few weeks ago just after I got this laptop and I had to get it rebuilt to Windows 10. It unlocked itself a few times, the DVD drive opened itself, it was very slow at times whilst in the office (but works perfectly normal when at home).
- The other issues are to do with the fact that it is quite heavy (bad for a formal back injury) and does not have the specs as my old laptop does – I do not have enough space for all the VM's I use and I need the Nvidia CUDA graphics card for password cracking.
- That said, I have not really been connecting to the network and have disabled the USB ports when not in use and that seems to be fine (obviously not good going forward if I have to keep connecting and disconnecting from the network, sure you can understand how convenient that is!).
- Anyway, if I can just get my old laptop back in the state that I returned it, it should not be a problem. Since the investigation team have concluded that they cannot find out what the problem was I do not have any reason to believe why they would not want it returned to me right?

That should save you the hassle of looking into this laptop.

- 67 Protected disclosure number 13 occurred on the following day when the Claimant sent an email to Ms Kennedy-Gill. The two relevant paragraphs are:

Laptop can operate very slowly when in the office (intermittent but impacts work), connected or disconnected to the network (usually after connecting to the network) but is absolutely fine when working from home. This makes work frustrating and uncomfortable.

On the issue of the tampering investigation, I understand alleging that other employees are/have intentionally and ethically tampered with other employees' laptops in order to sabotage work is a serious issue, which is why I must insist that I do not accept the findings of the investigation and did request a further in-depth investigation but this was not approved due to the costs involved and no other independent third party team available to perform the investigation.

Whether or not the issue is taken seriously enough from the organisation's perspective is out of my hands. If it is company policy that I cannot perform my own investigation then I will not, but if the problem persists can I assume you would want to be made aware of it (as advised by company policies)?

- 68 Detriment number 2 occurred on 13 September 2016. The detailed allegation is that Mr Gillingham started an internal investigation into the Claimant requesting details of her access dates and times at the Leatherhead office. The Claimant only discovered this matter following the making of a Subject Access Request ('SAR') under data protection legislation. Some background is needed.

- 69 Because of the nature of its business the Respondent is very conscious of the need for appropriate security measures to be in place. Each employee is provided with a swipe card which is programmed to provide access to those areas in buildings, and only those areas, to which the employee in question needs access. The system keeps a record of the use of the card both for authorised access, and also for occasions when an attempt has been made to enter an unauthorised area.

- 70 Mr Gillingham is the Security Controller for the Respondent. Every month he receives reports from the security systems covering all the Respondent's premises of occasions when employees have sought to use the card to access an unauthorised area. He was required to investigate such reports, and he himself was the subject of occasional audits in his capacity as Security Controller.

- 71 The report for August 2016 showed that on 23 August the Claimant had been denied access through a particular door. We were provided with two pages of the spreadsheet which covered 23 August 2016. There are about fifty entries on it.⁶ There was only the one entry concerning the Claimant, and Mr Gillingham did not take any action on it. Indeed, as mentioned the Claimant was not aware of the matter until the documents were provided following her SAR. The Claimant sought to show that there had been a change in attitude towards her by referring to a report for 7 June 2016 which showed 14 instances of access having been denied, three of which related to the Claimant, about which no action had been taken. Mr

⁶ We have not taken the trouble to count them exactly.

Gillingham pointed out that that was the day after the Claimant started work, when she and others were being shown around the building and were being shown how the security access cards worked.

- 72 We entirely reject any allegation that Mr Gillingham made any investigation into the Claimant's activities which were above and beyond any investigation he carried out as part of his normal duties. He simply received the standard report. There was no detriment to the Claimant, and again what Mr Gillingham did could not possibly have been related to any protected disclosure or protected act. There is no substance in this wholly spurious allegation.
- 73 The Claimant's original laptop was returned to her on 9 September 2016. She continued to experience problems with it.
- 74 Detriment number 3 is that on 13 September 2016 Mr Middlehurst suggested to senior staff that the Claimant had been wasting his time and that also he had ignored her request for help. As mentioned we did not hear from Mr Middlehurst, but we did have two witness statements from him. On 5 July 2016 he had sent the Claimant a detailed email concerning her proposed research project. He met her on 31 August 2016 to discuss the project. The Claimant's own evidence was that she told him that she did not think there was much point in having a meeting as she was still learning the new programming language required for the project. She also said that she was behind with her other work and would have to find time to work on the research project later. She treated the research project as being secondary.
- 75 As a result of her SAR the Claimant was provided with an email from Mr Middlehurst to Mr Damele, with copies sent to Messrs Lewis, Gillingham and James dated 13 September 2016. Mr Damele had enquired about Mr Middlehurst having spoken to the Claimant about her research project:
- I did (on the 31st) and it was a bit disappointing. I had a chat with Darren in the afternoon so he could potentially give you an update if in the office etc.
- To summarise, she immediately shut down and said to me "There is not much point having a meeting as I've not made any progress" despite after having emailed her the day before to agree the meeting.
- I carried the meeting forward as much as possible (however it was difficult to keep it moving) asking if she had any concerns or anything we could support her with. We discussed a few bits and pieces but she occasionally threw in comments like "It does not matter anyway", "This is not high on my priority", "I've got bigger problems to worry about".
- 76 We do not understand what detriment the Claimant is alleging she suffered. There was in any event no evidence to enable us to conclude that, firstly, there was any inaccuracy in the contents of the email and, secondly, that the writing of it was caused by any alleged protected disclosure or protected act.
- 77 Detriment number 4 is alleged to have occurred on 14 September 2016. The Claimant sent an email to David Cannings raising a specific technical issue, and asking to be directed to someone who could assist if he were unable to do so. Mr Cannings replied saying that he could not assist, and asking the Claimant to liaise with Mr Gillingham and the 'local Technical

Director'. The Claimant then sent an email to Mr Brown, asking if he was the Technical Director for Leatherhead and whether he could assist. Mr Brown replied saying that he was not the Technical Director, that he thought he had come across the same problem before which was 'just some configuration setting that need changing.' He said he could not remember and would get back to the Claimant when he had 'figured it out.' He asked for some more details.

78 It is the Claimant's allegation that Mr Cannings had been told by Mr Gillingham and Ms Kennedy-Gill not to answer the Claimant's questions, and further that Mr Brown deliberately withheld his help and pretended not to know the answer. This is all entirely speculative and entirely without any foundation in fact.

79 Karen Woodcock, the Respondent's Learning and Development manager, then became involved. She was based in the Respondent's Manchester office. She provided training sessions at the Leatherhead office on 20 September 2016. The morning session was an Equality and Diversity workshop. The afternoon session was referred to as 'DiSC' training. Ms Woodcock described it thus:

The purpose of the DiSC training is to allow members of the team to work better together. They have the opportunity to learn about their own personality types and how they interact and communicate better with people with differing personality types.

80 Ms Woodcock was asked by Ms Kennedy-Gill to provide feedback on the session. Ms Woodcock sent an email to Ms Kennedy-Gill and Mr Gillingham on 22 September 2016. This is detriment number 5. The Claimant alleges that Ms Woodcock lied and gave distorted feedback.

81 The relevant text relating to the Claimant is as follows:

Did not speak unless spoken to, did not take part in group activity, had her laptop and 2 phones to form a barrier, on the break Nga left the training and could not return due to trying to get her lap top fixed.

82 The Claimant gave substantial evidence in paragraphs 213 to 215 of her principal witness statement. We were impressed by Ms Woodcock as a witness, and it is apparent from the Claimant's witness statement that she distanced herself from the training. For example, she said she took her laptop with her so that she could continue setting it up during the training. In our view that is wholly inappropriate. Full attention should be given to the matter at hand during a training session. We do not accept that Ms Woodcock lied, nor that the feedback was distorted. Further, there was no evidence that Ms Woodcock knew of any of the alleged protected disclosures, nor the alleged protected acts.

83 Detriment number 6 occurred on 27 September 2016 and it is that Mr Gillingham lied to HR about the number of occasions the Claimant had worked from home because of a bad back. At 9:35 am that morning the Claimant sent an email to Mr Gillingham saying that she needed to work from bed/home because of a sore back. Mr Gillingham expressed frustration in an email to Ms Kennedy-Gill saying that if the Claimant could work from home then she could work from the office. In the first sentence he said that this was not the first time that the Claimant had decided to

work from home due to a bad back. Ms Kennedy-Gill raised the question as to whether the Claimant had complied with the Attendance Policy and whether she had rung Mr Gillingham. However, it is the point about the number of occasions which is at issue.

- 84 In cross-examination Mr Gillingham accepted that there were no other examples available to the Tribunal of the Claimant seeking to work from home because of a bad back, but said that this was not the first time that the Claimant had sought to work from home. That is correct, and we have recorded at least some of the instances above.
- 85 This is where the history of the Claimant's employment becomes relevant. By now there had been several instances of the Claimant seeking to work from home, and concerns were raised about her alienating herself from her colleagues. We find that Mr Gillingham did not deliberately lie, but merely made a mistake. We do not accept that there was any link between any alleged protected disclosure or any alleged protected act.
- 86 Under the Programme each trainee had Interim Assessments from time to time, and also a mid-term review. The mid-term review is after about four months. The Claimant's review was to be on 11 October 2016. The detriments numbered 7 to 10 inclusive all relate to the review.
- 87 The process involved Mr Gillingham obtaining feedback from the technical managers who had worked more closely with the Claimant. That he did by an email of 29 September 2016 which referred to the Claimant and others. Mr Gillingham asked for feedback on technical skills, and also comments as to their soft skills and their potential as consultants in the future. The Claimant was also asked on 28 September 2016 to complete a form answering standard questions.
- 88 The feedback from managers contained the following principal points. The Claimant liked the training but had been behind at some stages during the programme. She was casual about her research project. She did not believe the results of the investigation into issues with her laptop. The Claimant was quiet and withdrawn and her lack of integration was causing concern. She had the potential to become a Security Consultant if she were to become more involved.
- 89 In her replies to the standard questions the Claimant said that report writing, public speaking and a lack of general technical knowledge were weaknesses. She would prefer not to undertake any public speaking. The Claimant did not identify any area in which she thought that she had done particularly well. The Claimant asked for more regular feedback and said that the Respondent should 'enforce policies as set out by the company consistently and fairly.'
- 90 In preparation for the mid-term review meeting Mr Gillingham prepared fairly detailed notes under standard headings. He commented on the Claimant's desire to stay isolated. He said that she was very withdrawn, and struggled to integrate with others. The Claimant had been behind, possibly because she went into too much depth. Mr Gillingham stated that the Claimant did 'not seem to believe the results' of the investigation into her laptop. During the formal training the Claimant had been quiet and

withdrawn and distracted by her laptop and phone. Mr Gillingham said that initially the Claimant had seemed very well organised but due to other issues had struggled to keep to the schedule. Towards the end Mr Gillingham said:

Nga has the potential to pick up the requirements of being a security consultant if she was more involved, sought advice, followed the advice and it would be of benefit to proactively offer advice and guidance to others.

Nga really needs to start integrating with the team both at a Grad level and generally in the office rather than distancing herself. I believe it will be extremely hard for her to do so the longer it takes for her to make that effort. This will in turn affect her ability to be a security consultant as part of the bigger team.

- 91 The review meeting took place on 11 October 2016. Present were the Claimant, Mr Gillingham and Mr Damele. Mr Gillingham made a file note after the meeting. The principal matter discussed concerned the Claimant's soft skills. The Claimant said that she did not like the people she worked with when asked why she was so distant, but did not elaborate on the point.
- 92 Mr Gillingham was not satisfied that the Claimant should continue through to complete the Programme and become a Security Consultant with the Respondent to work on client's sites. He had concluded that she was not capable of working as part of a team, which was a fundamental aspect of the role of a Consultant. Mr Gillingham decided to take advice from HR. He was advised to hold a probationary review meeting to see if the Claimant could satisfy the outstanding concerns.
- 93 The Claimant alleges that before the mid-term review meeting the decision had been made to dismiss the Claimant and that she was deceived into thinking it was a feedback session. We comment that holding a feedback session does not necessarily mean that a dismissal decision could not have been taken already. The two points are not mutually exclusive. However, we do not accept that a final decision to dismiss the Claimant had been taken. The Claimant also alleges that Mr Gillingham was not interested in the things the Claimant said. We were of course not present at the meeting, but we did have the advantage of hearing Mr Gillingham give evidence. We do not accept that that criticism is justified. The Claimant refers to 'malicious and untrue comments' being made. Those comments were that she was very withdrawn and that she had seemed very casual about her research project. The evidence we have heard and read amply supports the accuracy of those comments, and we cannot find that there was any malice on the part of Mr Gillingham.
- 94 The final point in respect of this meeting is that the Claimant alleges that Mr Gillingham had lied in saying that Mr Lewis had previously provided the Claimant with similar advice to that received following her 'round robin' email of 13 October 2016 next mentioned, and that she had not taken the advice on board. The Claimant refers to précis notes sent to Ms Kennedy-Gill. We have difficulty in understanding this point insofar as it relates to the meeting and think that that is an error by the Claimant.
- 95 On 13 October 2016 for reasons which are not entirely clear the Claimant sent a 'round-robin' email to three email groups in the Respondent asking

for assistance with her 'kali VM playing up' and her laptop unlocking itself from time to time. The number of employees in the email groups was in excess of 300. Craig Blackie (and others) replied to the Claimant and it appears that the solution to the Kali issue was simple. We note that the Claimant said in a reply to Mr Blackie that she had been 'ultra paranoid' about the laptop unlocking itself.

- 96 Mr Gillingham made a memorandum note for 12 and 13 October. This only came to the Claimant's attention as a result of her SAR. Mr Gillingham referred to the email of 13 October 2016 and added:

The response to the Kali problem is almost identical to that provided by Matt Lewis several weeks prior.

The solution provided to the Claimant (as described by her) following her email of 13 October 2016 was:

It's just a case of locking with ctrl-alt-delete in focus and better alternative is to use Windows key + l

- 97 Mr Gillingham did not refer to this matter in detail in his witness statement. He was referred to an email to the Claimant from Mr Lewis of 4 July 2016 which did not refer to either of those solutions. It may be that Mr Gillingham was in error in his memorandum, or there is another email. We reject the Claimant's allegation of there having been any detriment on two grounds. The first is that this is a stand-alone allegation of detriment, and she was not aware of the comment until her employment had been terminated. The second is that we consider it to be fanciful for there to have been any connection between any of the alleged protected disclosures of protected acts.

- 98 The Claimant's email of 13 October 2016 was forwarded to Mr Gillingham by Mr Whitehouse asking if there had been any outcome regarding the issues raised by the Claimant. Mr Gillingham replied as follows:

Ongoing in several areas but basically we are looking to get external legal advice with regard to termination of employment – did a mid probation review on Tuesday to make it more formal and HR are now looking for the way forward with the legal rep.

- 99 We accept the evidence of Mr Gillingham to the effect that the final decision to dismiss the Claimant had not by then been taken, and that there was still the possibility of the Claimant making a case at the probationary review meeting.

- 100 We mention two other matters briefly as being of marginal relevance. At this time the Respondent was still pursuing obtaining security clearance for the Claimant. That is material to the chronology concerning the decision to dismiss the Claimant. The second point is that the Claimant, and at least one other, volunteered to assist with an individual visiting the Respondent for work experience during the week commencing 24 October 2016. That was put forward by the Claimant as evidence of her seeking to address concerns raised by Mr Gillingham on 11 October 2016.

- 101 The Claimant alleges that detriment number 11 occurred on 14 October 2016 when Mr James criticised her saying that she should be dismissed after asking for help with her laptop. There were some other emails

following the email from the Claimant of 13 October 2016 concerning availability of laptops. Then on 14 October 2016 Mr Gillingham sent an email to Mr James as follows:

FYI

Likely to be happening next Thursday when I am back in the office

Legal guy thinks we have a strong case

To which Mr James replied:

Especially after the email she sent to dltech re her laptop – the one Craig answered

We believe that email to be the one of 13 October 2016 above.

- 102 We accept that the comment made by Mr James could be reasonably seen by the Claimant as a detriment, as effectively being support for a decision to dismiss her. What the Claimant has failed to show is that there was any connection between the comment made and any alleged protected disclosure or protected act. Mr James specifically refers to the 'round robin' email, and we find below the reasons for the dismissal.
- 103 There was a further meeting on 20 October 2016 at which the Claimant was dismissed. There are notes of that meeting made by Ms Kennedy-Gill (who was on the telephone), and Mr Gillingham also made his own file note afterwards. Mr Gillingham did not delay in explaining to the Claimant that her employment was being terminated because her soft skills and consultancy skills were not adequate despite support having been provided.
- 104 Mr Gillingham then accompanied the Claimant to her car in the car park. In his notes of the events of that day Mr Gillingham recorded that the Claimant had said that he had personally wanted to get rid of the Claimant from day one and that it was a 'personal vendetta'. The Claimant's witness statement is to the same effect save that she did not include the phrase 'personal vendetta'. She stated that she had said that Mr Gillingham had never really liked her and she did not know why that was. The Claimant only saw Mr Gillingham's notes following her SAR. The use of the phrase 'personal vendetta' is said to be detriment number 14. On the assumption that the Claimant did not in fact use the phrase 'personal vendetta' we entirely fail to see what possible detriment there can have been to her by Mr Gillingham including it in his notes. However, having heard the Claimant, we consider it more likely that the phrase was used by her. At the very outset of the Claimant's cross-examination she stated that Mr Gillingham was the principal person behind all the alleged detriments which she suffered. He was the moving force, and he manipulated others, she said.
- 105 Detriments numbers 12 and 13 cover various points. The first is that HR ignored the Claimant's requests for feedback following her dismissal. In her witness statement she referred to an email of 24 October 2016 to Mr Gillingham, with a copy to Ms Kennedy-Gill. Various practical matters were mentioned, and then the Claimant asked for reasons for her dismissal, and the names and testaments of the people used to come to the decision. The letter confirming the dismissal was dated 25 October

2016 and was sent by Ms Kennedy-Gill. The material part of the letter is as follows:

I am writing to confirm the decision to terminate your contract of employment due to the failure of your probation. This is due to a breakdown in the working relationship and failure to follow these instructions, examples of which include:

- Breakdown in the working relationship: one example discussed was that, despite the fact that the Company has offered you every possible support in your role, you made a comment made to Colin Gillingham, Associate Director and Bernardo Demele, Executive Principal during your midterm review held on Tuesday, 18 October 2016, stating you do not trust the senior management team to support you and you do not enjoy working at NCC Group plc.⁷
- Not following reasonable instructions: one example discussed was circumventing the reporting procedure for any concerns or experienced issues with your Company assigned laptop. Contact was made directly with the Dell laptop engineer, bypassing the NCC Group Helpdesk which created a lack of control of potential costs to the business.

106 Mr Gillingham accepted that that text did not accurately reflect all his reasons for making the decision to dismiss the Claimant. The two principal reasons were the lack of communication and general 'soft' skills, and also her inability to compete work quickly. Ms Kennedy-Gill did not provide the further information the Claimant had requested in her email of 24 October 2016.

107 Detriments 15 and 16 relate to feedback on the Claimant's work. The detailed allegation is that she was excluded from one of two oral feedback sessions as it was scheduled when she was away on sick leave, and the only such session was on 7 October 2016. The only written feedback was provided on 28 September 2016 by David Spencer.

Submissions

108 Each of the Claimant and Mr Morgan provided written submissions, and they made relatively brief oral submissions also. The Claimant's submissions were very extensive, being of 55 pages, and nearly 30,000 words in 381 paragraphs. An inordinate amount of time had clearly been spent in the preparation of that document. An enquiry was made towards the end of the hearing by the Claimant as to the appropriate length of written submissions, during which she asked if 50 pages was acceptable. At the outset of the hearing the Tribunal had told the parties that one afternoon was to be set aside for submissions, meaning approximately one hour each. When she enquired as to the length of submissions the Claimant was told that it would be wholly impossible for the Tribunal and Mr Morgan to assimilate 50 pages in the time available. Consequently she 'greyed out' a considerable portion of the submissions. She sent a copy by email and so the Tribunal was able to read the portions which were greyed out. The document, whilst being far too long, is well-structured with headings making for relatively easy reference. When considering our decision we have noted the passages which appeared to us to be

⁷ The date should be 11 October 2016

particularly material. We did not consider it necessary to invite Mr Morgan to provide further written submissions in response after he had had time to digest the Claimant's submissions.

- 109 The essence of the case for the Claimant is set out towards the beginning of her submissions as follows:

My disclosures about hacking was the main reason for my dismissal. Notwithstanding the fact that the Respondent is a security company and provides services based on ethical hacking, if this information was publicly exposed would be very damaging to their reputation (evidenced by the attitude of the very senior staff in the company who said they would be in huge trouble if my allegations were true), I believe Colin Gillingham and Darren James know who the actual perpetrator(s) was/were and are protecting them. I submit that the evidence provided tends to show that the investigation by Darren and Laura Kennedy Gill as well as the forensics team had swept things under the carpet. I made disclosures in the alleged 13 instances (either individually or aggregated) I describe but I submit it was as a result of my continuing disclosures up to and including my direct allegations on 07.09.2016 that the hacking was perpetrated by employees in the company and on my contacting of Dell on 16.09.2016 telling them about my laptop shutting down and subsequently discovering the forensics report to be unreliable, that my dismissal became a foregone conclusion.

- 110 As expressed by her in cross-examination, it is the Claimant's case that there was a conspiracy against her, and that the prime mover was Mr Gillingham. Each of Mr James, Mr Middlehurst, Ms Woodcock, Ms Kennedy-Gill, Mr Mayhew and Mr Cannings were also said to have been involved, and she used the phrase that at least Mr Cannings had been 'under the influence of others'.

Discussion and conclusion

Protected disclosures

- 111 We will first of all consider the question as to whether any of the thirteen alleged disclosures were protected disclosures for the purpose of section 43A of the 1996 Act. Although there is much repetition, we have considered each of the alleged disclosures separately in the relevant context and we therefore deal with each separately.
- 112 The principal statutory provision is section 43B which we have set out above. Its provisions have recently been considered by the Court of Appeal in *Kilraine v. London Borough of Wandsworth* [2018] EWCA Civ 1436. In essence, Sales LJ simply stated that the law is as set out in the section, and a gloss should not be put on the wording in that section.
- 113 It is the Claimant's case that the relevant information in each case fell within section 43B(1)(a). The Claimant also relies upon section 43B(1)(f). The offences in question were breaches of sections 1, 3 and 3ZA of the Computer Misuse Act 1990. Those provisions can be summarised as follows:
- Unauthorised access to computer material
 - Unauthorised acts with intent to impair the operation of a computer, to hinder access to any program or data held in any computer, and to impair the reliability of such data
 - Unauthorised acts creating a significant risk of serious damage of a material kind and is reckless as to whether such damage is

caused, where 'material kind' is damage to the national security of any country.

- 114 It is the Respondent's case that insofar as information was imparted on each occasion, all that the Claimant was doing was reporting technical problems which were hindering her from getting on with her work. The Claimant did not believe that any disclosure of information was in the public interest.
- 115 Protected disclosure number 1 occurred on 16 June 2016, towards the end of the second week of the Claimant's employment. We have set out the text of the email above. There is no doubt that the Claimant was conveying information. However, all that she was stating was that she was getting a connection to an internal IP address. This was, in our judgment, an entirely straightforward enquiry from an individual who had just started in the company and had been setting up her laptop. All she was doing was asking if it was normal for such a connection to be made. We do not find as a fact that at that date the Claimant had any belief that a criminal offence was being committed, nor that one was likely to be deliberately concealed.
- 116 The long title to the Public Interest Disclosure Act 1998 commences: '*An Act to protect individuals who make certain disclosures of information in the public interest.*' The relevant provision in the Act has been amended and now specifically requires that the person disclosing the information must do so in the reasonable belief that the disclosure was in the public interest. That belief must have been present at the time, and been the purpose of the disclosure. There is no further definition of what is in the public interest. There is no specific rule which can be applied generally. Assuming that the other elements of section 43B of the 1996 Act are satisfied the Tribunal must decide whether the person disclosing the information reasonably believed that it was being made in the public interest at the time of the disclosure, adopting a sensible approach to the meaning of that phrase. The fact that information may be conveyed in the interests of an individual does not by itself prevent it also being conveyed in the public interest, but there must in general be an indicator of there having been a public interest element.
- 117 The Claimant noted that she had a level of security clearance and submitted that if she had completed her training then she could have been working on sensitive public contracts, and for non-governmental bodies, and that a breach of her laptop would have put data at risk. That is all as may be, but it is speculative and that general submission does not address the particular issues which we have to decide.
- 118 Mr Morgan submitted that there was no evidence that any other employee was affected, the Claimant was not in fact undertaking client work, there was no evidence that any client data was imperilled, and that the laptop and all intellectual property rights belonged to the Respondent. The consequence he said was that the technical issues militated against the conclusion that this disclosure, and the others, had the necessary public interest dimension to attract the protection of the legislation.

- 119 We agree with Mr Morgan. We find that this disclosure was made because, as the Claimant said, her computer was slowing down considerably. We do not accept that the Claimant reasonably believed that the information conveyed related to the public interest at all. There was no expression by the Claimant of any concern beyond the practical problems being caused to her. Indeed that is a point common to each of the alleged disclosures.
- 120 Protected disclosure number 2 occurred on 1 July 2016. Again we have set out the text above. The Claimant referred to 'unauthorised access'. We accept that by using that phrase the Claimant was referring to the possibility of a criminal offence having been committed. We do not accept that the Claimant was acting in what she believed to be the public interest on this occasion either. There was no indication that that was the case. The complaints were of her screen freezing, of files being deleted and so on. They were technical issues. We have noted the evidence of Mr Gillingham that there could easily be conflicts between different items of software especially in the environment in which the Respondent specialised. We conclude that the Claimant's concern was the adverse impact on her ability to do her own work, and potentially work for clients in due course.
- 121 Protected disclosure number 3. This is the letter attached to the email to Mr James of 25 July 2016. In our judgement it does not convey any information. It simply contains a variety of complaints by the Claimant.
- 122 Protected disclosure number 4. This relates to the telephone 'meeting' of 29 July 2016. The Claimant did refer to the Computer Misuse Act, and we will accept that she had a reasonable belief that there was a breach of the Act. The Claimant was repeating information previously provided as to the technical difficulties she was having with her laptop. However, again this founders on the public interest requirement. There is nothing to indicate that the Claimant had any public interest in mind.
- 123 Protected disclosure number 5. This is the email of 3 August 2016 which is largely a repeat of the email of 25 July 2016. We need say no more about this than it is effectively the same as the earlier email, and it does not convey any information.
- 124 Protected disclosure number 6. In her submissions the Claimant says that at the meeting on 9 August 2016 there was a discussion concerning the editing of work files, and the deletion of work files and files on her home laptop. She also says that she referred to back up files having been tampered with. The notes of the meeting do not record that detail, but we will accept that there was some mention of those matters. However, reading the notes as a whole we conclude that the tenor of the discussions was how best to facilitate the Claimant's return to work. It was in that context that the Claimant referred to an essay having been sabotaged and files deleted. Again we will accept that some very limited information was provided, but the context was ongoing technical problems and the absence of the Claimant from the workplace at the time. They were entirely domestic matters, not affecting the public interest one jot.

- 125 Protected disclosure number 7. The Claimant says in her written submissions that the information provided at the meeting on 19 August 2016 'was clearly a continuance of the same broad issue related to my previous disclosures.' We agree that what occurred on that occasion did not take matters further, and they do not take the Claimant's claims any further either. No new information was provided and there was nothing to suggest that on this occasion the Claimant had the public interest in mind.
- 126 Protected disclosure number 8. This matter is also straightforward. The Claimant says in her submissions that it was 'clearly a continuance and related to my previous disclosures.' The Claimant disclosed information that her laptop unlocked itself. Her concern was that confidential information might be disclosed. That is clearly a private matter which could affect the Respondent in the Claimant's mind, and we fail to see how the Claimant considered that there was any public interest in the matter.
- 127 Protected disclosure number 9. There were exchanges of emails on 31 August 2016 between the Claimant and Ms Kennedy-Gill, and we have set out the text of the 15:23 and 17:03 emails above. There is again an allegation that the Claimant's laptop has been tampered with, and we accept that the Claimant reasonably believed that there had been a criminal offence. These points are again being raised within the private environment of the Claimant's employment by the Respondent.
- 128 Protected disclosure number 10. This point is somewhat different. The matter breaks down into separate parts. The first is that the Claimant said at the meeting on 1 September 2016 that she did not accept the accuracy of the investigation report. That technically is a disclosure of information.⁸ However, that is as far as it goes. The other elements of section 43B are not satisfied. The second element is the repetition of the allegation that work files had been edited. For reasons articulated above we do not accept that the Claimant reasonably believed at the time that there was any public interest element.
- 129 Protected disclosure number 11. The Claimant completed a Work Station / Environment Questionnaire on 5 September 2016, and noted in it that her laptop operated slowly, making work frustrating and uncomfortable. We find that that is just about sufficient to amount to a disclosure of information. However, this in our view is nothing more than a statement of a difficulty the Claimant was having. There is not even a suggestion of any criminal offence having been committed. We note that the Claimant added also comments about a back problem and that the noise level was loud. All she was doing was making comments about her personal working conditions.
- 130 Protected disclosure number 12. We have set out the text of the email of 6 September 2016 above. This is a repetition of technical issues, save that the fact that the DVD drive opened itself has been added. There is no suggestion of any criminal offence, and the email was in our view simply part of the ongoing exchanges about the issues which the Claimant said

⁸ 'The state of a man's mind is as much a fact as the state of his digestion.' - *Edgington v Fitzmaurice* (1885) 29 Ch D 459

she was having. The Claimant was by then asking for her old laptop back. There is no public interest element.

- 131 Protected disclosure number 13. The final alleged protected disclosure is in an email of 7 September 2016, and we have set out the paragraphs which are apparently at least potentially relevant. The Claimant said in her submissions that this was 'a continuance of the same broad issue of hacking' and that she 'believed the hacking was coming from employees within the company'. The first question is whether there was any information disclosed. As we have mentioned above, there is just about enough here to constitute a disclosure of information. Again we will accept that the Claimant had a reasonable belief that there had been unauthorised access to her laptop constituting a criminal offence.
- 132 The Claimant sought to satisfy us concerning the public interest requirement by saying that the Respondent's policies require that any suspected breaches are reported, and that the loss of sensitive data would be a part of the reason to make a report, and so 'public interest is implied in that statement.' We do not accept the Claimant's submission. Again we find that at the time the Claimant did not have a reasonable belief that the disclosure was being made in the public interest. It was simply another element in the now substantial saga of issues which the Claimant said she was having with the laptops provided to her, which were having adverse consequences on her ability to work.
- 133 For those reasons we find that the Claimant did not make any protected disclosures, and so the claims of having suffered detriments on the ground of having made one or more protected disclosures necessarily fail.

Protected acts

- 134 There are four alleged protected acts for the purposes of section 27 of the Equality Act 2010. Protected act number 1 is the letter of 25 July 2016 to Mr James attached to an email of that date. Mr Morgan conceded that this at least had the potential to be a protected act. We agree that it was a protected act in that the Claimant stated that there had been 'inappropriate language making reference to things of both a sexual and racial nature.' Protected act number 2 occurred during the discussion on 25 July at the Costa coffee shop. We have found that the Claimant effectively repeated what she had said in her letter, and so that was a protected act also. We also find that alleged protected act number 3 occurred in that the Claimant repeated the allegations during a conversation on 29 July 2016 involving Mr James and Ms Kennedy-Gill. Those two later conversations do not appear to take the matter any further.
- 135 Protected act number 4 is said to have occurred during the meeting on 5 September 2016. We doubt if that was itself a separate protected act, for the simple reason that the allegations had been made earlier, and this was a meeting arranged to seek to resolve the complaints which the Claimant had made.

Victimisation

- 136 The Claimant also alleges that the detriments mentioned above were because of her having committed one or more of those protected acts.

The Claimant must prove that she has suffered the detriment in question. She must also prove facts from which the Tribunal could reasonably conclude that the detriment in question was caused by one or more of the protected acts. That involves showing that the person(s) responsible for causing the alleged detriment was aware of the relevant protected act(s). The combination of a protected act and an incident alleged to be a detriment is not by itself sufficient to discharge that burden of proof. There must be something so that the two can be linked. If the Claimant can prove such matters then the burden shifts to the Respondent to show that the detriment was not to any extent caused by the protected act.

- 137 We do not need to consider the question as to whether each of the alleged detriments did in fact constitute a detriment for the purposes of the 2010 Act. There are two themes running through this case. The one, and by far the major one, was the difficulties which the Claimant experienced with her laptops, the efforts to resolve them, and the impact such difficulties were having on her following the Programme. The second theme, and by a long way secondary to the main theme, were the complaints about Mr Dean. We are unable to find any evidence which could reasonably lead us to conclude that anything that occurred to the Claimant was caused by her complaints about Mr Dean. That issue was resolved at the meeting on 5 September 2016.

Limitation and jurisdiction

- 138 In her written submissions the Claimant mentioned this issue in relation to at least some of the alleged detriments. In his written submissions Mr Morgan said that he would deal with the point in oral submissions but he did not in fact do so. In the light of findings above it is not necessary for us to consider this matter.

Overall comments

- 139 We have been provided with a very large amount of detail and we have had to make findings on the specific allegations made by the Claimant. Having done that we have looked at the picture overall. First of all we roundly reject the general allegation there was in effect a conspiracy within the Respondent behind which Mr Gillingham was the moving force. There is absolutely nothing which we have seen which could possibly lead us to that conclusion. The first stumbling block facing the Claimant is that Mr Gillingham was the principal person behind her employment but yet, says the Claimant, he was responsible right at the outset for delaying the provision of a laptop to her.
- 140 Another obvious example of the Claimant's willingness to see a campaign where none exists is her allegation that Mr Gillingham conducted an internal investigation. In her particulars of claim she said that she 'was never informed or notified of this investigation and there were no grounds for this to be the case.' Of course the Claimant was not notified that her name appeared once on the security exception report simply because there was no internal investigation carried out. Mr Gillingham simply received the normal monthly report covering all staff.

- 141 Because of the technical nature of the case, and the lack of expert evidence, we have been deliberately generous to the Claimant in accepting that she had, at least at times, a reasonable belief that there was unauthorised access being obtained to her laptop. However, it must by now be the experience of most people that computers develop hardware faults, and also that there are often software issues causing unexpected things to happen. We have accepted that this was more likely than usual in the Claimant's case because of the nature of the Respondent's business.
- 142 The Claimant had, by her own admission, sought to distance herself from her colleagues. She had not become involved in the Programme as expected. Her conduct at the training session run by Ms Woodcock was symptomatic of her attitude. Her failure to pass the probationary period is wholly understandable from the facts provided to us.
- 143 There is no merit in any of the multiplicity of allegations made by the Claimant and they are dismissed for the reasons set out above.

**Employment Judge Baron
Dated 31 October 2018**