RESERVED **Case No: 2602081/2016**

EMPLOYMENT TRIBUNALS

Claimant: **Annette Harpham**

Respondents: **Ian Newton (R1)**
Mansfield Community & Voluntary Service (R2)

Heard at: **Nottingham**

On: **26th, 27th, 28th, 29th June 2017**
19th, 20th, 21st, 22nd, 23rd, 26th, 27th, 28th February 2018
& 22nd March 2018 (In Chambers)

Before: **Employment Judge Heap**
Members: Mr. J Hill
Mr. T O'Dwyer

Representation
Claimant: **In Person**
Respondents: **Mr. A Tinnion - Counsel**

RESERVED JUDGMENT

1. The Claimant's complaints of detriment contrary to Section 47B Employment Rights Act 1996 fail and are dismissed.

2. The Claimant's complaint of automatically unfair dismissal contrary to Section 103A Employment Rights Act 1996 fails and is dismissed.

3. The Claimant's complaints of victimisation contrary to Section 27 Equality Act 2010 fail and are dismissed.

4. The Claimant's complaints of ordinary unfair dismissal contrary to Section 94 Employment Rights Act 1996 is well founded and succeeds.

5. A date for a Preliminary hearing conducted by telephone for the purposes of case management and to deal with listing the claim for a Remedy hearing will follow in due course.

REASONS

BACKGROUND AND THE ISSUES

1. This is a claim brought by Ms. Annette Harpham (hereinafter referred to as "The Claimant") against her now former employer, Mansfield Community & Voluntary Service (hereinafter referred to as the "Second Respondent") and also against a further individual Respondent, Mr. Ian Newton (hereinafter referred to as the "First Respondent") who for a period of time line managed the Claimant during the period of her employment with the Second Respondent with which we are primarily concerned.

2. The claim was presented by way of a Claim Form received by the Employment Tribunal on 12th December 2016. The claim is one of automatically unfair dismissal contrary to Section 103A Employment Rights Act 1996; detriment contrary to Section 47B of that Act; ordinary unfair dismissal contrary to Section 94 of that Act and of victimisation contrary to the provisions of Section 27 Equality Act 2010. All claims are resisted by the Respondent, not only on substantive grounds but, in some instances, also on jurisdictional grounds as we shall come to further below.

3. Following submission of the ET3 Response Form and in the usual way the matter came before Employment Judge Hutchinson for the purposes of a Preliminary hearing for case management on 1st February 2017 (see pages 40-44 of the hearing bundle).

4. Employment Judge Hutchinson set out at length the basis of the claim being pursued by the Claimant. That included identification of the protected disclosures on which the Claimant relied for the purposes of her whistleblowing complaints advanced, as set out above, under both Sections 47B and 103A Employment Rights Act 1996.

5. Those protected disclosures were identified as being as follows:

   (a) A grievance presented against Wynne Garnett on 27th May 2015 in which the Claimant said that she had disclosed that Wynne Garnett had been paid through Big Assist, Big Lottery funding awarded to the Second Respondent which equated to a conflict of interest and that £3,500 of this funding had been transferred to the First Respondent of Scintilla (a subsidiary of the Second Respondent);

   (b) That in a meeting with Paul Webster of the Second Respondent on 14th December 2015, she had raised again the issue about the aforementioned conflict of interest;

   (c) That on 4th January 2016 the Claimant had made a complaint to Paul Webster in his capacity as Chairman of the Second Respondent about the behaviour of the First Respondent[1];

[1] The Claimant accepted on day 12 of the hearing before us that this was not a protected disclosure and that she no longer relied upon it for the purposes of the claim.

(d) That on 22nd March 2016 in a meeting with Peter Clarke of the Second Respondent, the Claimant had again raised the issues concerning the First Respondent and Wynne Garnett;

(e) That on 20th April 2016 in a further meeting with Peter Clarke, the Claimant reiterated her concerns (those being the concerns referred to at paragraphs (a) to (d) above) and was assured that he would investigate matters.

6. The Claimant has expanded, however, her first disclosure on the basis that it is said that that also now encompasses comments made in a grievance hearing and in her appeal against the outcome of that grievance, in addition to the grievance letter itself.

7. Employment Judge Hutchinson also identified with the Claimant the alleged detriments complained of. In this regard, he identified with the Claimant 13 separate allegations of detriment, alongside the complaint of automatically unfair dismissal. In the alternative to being acts of detriment, the 13 allegations were also identified as being pursued as complaints of victimisation contrary to Section 27 Equality Act 2010.

8. Those acts were identified as follows:

- That on 30th July 2015 Wynne Garnett had circulated two documents at a Board meeting of the Second Respondent which had been written by himself and the First Respondent and which had been critical of the Claimant;

- On 26th January 2016 the First Respondent had fabricated a grievance against the Claimant, interviewing her colleagues in an attempt to gather evidence against her;

- In April 2016 a virus came through the Claimant's computer destroying her and colleagues' electronic files. These were restored for other staff within a matter of days but it took two months to restore her files;

- On 27th May 2016 the Claimant was excluded from a meeting that was held between Paul Webster, the First Respondent and members of the Mansfield and Ashfield Clinical Commissioning Group;

- On 1st April 2016 the Claimant requested sight of the Mansfield and Ashfield Clinical Commissioning Group budget and that was refused by Patricia Shaw and Peter Clarke;

- That on 15th June 2016 the Claimant tried to order a toner for her office printer and that was refused;

- In a period up to 14th July 2016 at the behest of the First Respondent her files were covertly gone through;

- After the Claimant commenced a period of sickness absence on 15th July 2016 she was not contacted by anyone from the Second Respondent and

she was isolated by them[2];

- Being required to attend a disciplinary hearing on 22nd September 2016[3] for alleged gross misconduct. The Claimant has never received an outcome in respect of that disciplinary hearing;

- A private letter from Peter Robinson, a member of the Mansfield and Ashfield Clinical Commissioning Group governing body was opened and sent to the Claimant by Su Hallam on 14th September 2016;

- Her dismissal on the alleged grounds of redundancy[4];

- A delay in making payment to her of her redundancy payment until 21st October 2016; and

- Not returning her personal belongings after the termination of her employment.

9. The claim again came before Employment Judge Hutchinson for a further Preliminary hearing for the purposes of case management on 1st June 2017. At that hearing, Employment Judge Hutchinson identified and set out the issues in respect of the ordinary unfair dismissal complaint as follows:

   (a) Can the Second Respondent establish that there was a potentially fair reason for the Claimant's dismissal, namely by reason of redundancy; and

   (b) If so, was the decision to dismiss the Claimant within the band of reasonable responses and in particular:

   - did the Second Respondent use fair selection criteria;
   - was there meaningful consultation;
   - did they consider alternatives to redundancy;
   - was the process, including the appeal process fair.

10. He also identified the complaints that the Claimant made with regard to that ordinary unfair dismissal claim. He identified in this regard that the Claimant's case was that she had not been dismissed because of redundancy and that that reason was a sham. The Claimant's case in respect of that ordinary unfair dismissal complaint was identified thus:

   (i) That there was no redundancy situation;
   (ii) That no fair selection criterial were engaged;

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[2] The Claimant has clarified before us that that isolation relates to a contention that she was isolated in relation to her sickness absence. That clarification was made on day 12 of the hearing before us.

[3] There was an error given to Employment Judge Hutchinson in relation to this event and it should have read 29th September 2016.

[4] Employment Judge Hutchinson's Order records that that act was advanced only as a detriment complaint under Section 27 Equality Act 2010 given that the dismissal could not be a detriment under Section 47B Employment Rights Act 1996 and was pursued as a complaint under Section 103A of that Act.

(iii) There was no meaningful consultation;
(iv) That the Second Respondent failed to look at voluntary redundancies; and
(v) That there was no independent appeal.

11. It should be observed that the Claimant has somewhat expanded that position in her written submissions and we have dealt with each of the issues that she raises now as to fairness in our conclusions below.

12. Employment Judge Hutchinson also made orders at that hearing for specific disclosure. As we shall come to in the course of our consideration as to credibility, it is fair to say that those Orders were not complied with by the Respondents as they should have been. We say more on that later.

13. It was against the backdrop described above with regard the issues to be considered, however, that the claim came before this Tribunal to determine the 13 allegations of whistleblowing detriment and/or victimisation; the complaint of automatically unfair dismissal and the complaint of ordinary unfair dismissal.

14. At the outset of the hearing and so as to assist the parties, but particularly the Claimant as she appeared as a litigant in person, we set out a List of the Issues that the Tribunal would need to determine in relation to this claim. Save as for some minor amendments proposed by Mr. Tinnion who appeared on behalf of both Respondents, that list was agreed as drafted by the Tribunal. We do not set out the issues further here as a copy of that agreed List of Issues is appended to this Reserved Judgment. We are satisfied that all parties were content that the List of Issues represented the totality of the matters that the Tribunal was tasked with determining during the course of these proceedings.

THE CLAIMANT'S POSITION

15. The Claimant contends that during the course of her employment with the Respondent she made the protected disclosures in the terms recorded both above and also in the attached List of Issues. She accepted, however, on day 12 of the hearing that she no longer relied upon any complaint to Paul Webster on 4th January 2016 as a protected disclosure. However, she contends that as a result of having raised the other remaining protected disclosures that are relied upon, she was subjected firstly to detriment by the First Respondent, the Second Respondent or its employees and that the reason, or principal reason for her later dismissal by the Second Respondent was not by reason of redundancy as they claimed but because she had made those same protected disclosures.

16. Further and/or in the alternative, the Claimant contends that during her employment she did a protected act within the meaning of Section 27 Equality Act 2010 by reference to having submitted to the Second Respondent an equal pay questionnaire. She contends that as a consequence of that, she was subjected to detriment on account of it and thus that she had been victimised by the First and/or Second Respondents.

17. The Claimant advances an overarching assertion that everyone or almost everyone in the Second Respondent organisation, taking in also the First Respondent, were involved in a conspiracy to remove her from employment on account of the fact that she had done a protected act and/or made protected disclosures.

18. In the alternative, she contends that in all events her dismissal by purported reason of redundancy was unfair on the basis that there was no genuine redundancy situation and that there were flaws in the processes operated by the Second Respondent. The Claimant's arguments in that regard are already set out above.

THE POSITION OF THE FIRST AND SECOND RESPONDENTS

19. The Respondents contend entirely to the contrary. Firstly, it is not accepted by either Respondent that the Claimant made any protected disclosures but it is said that, even if she had been found to have made one or more protected disclosures, then she was not subjected to any detriment nor was any treatment of which she complains materially influenced by the disclosures upon which she relies.

20. Further, insofar as the matter of her dismissal was concerned, the Second Respondent's position is that the Claimant's position was redundant which entitled them to terminate employment, either on the grounds of redundancy or alternatively on the grounds of some other substantial reason ("SOSR"). The Respondents' position is that if the Claimant was found to have made a protected disclosure or disclosures, then those had nothing at all to do with her dismissal and certainly were not the reason, or principal reason, for it.

21. Insofar as the Claimant's complaint of victimisation is concerned, the position of both Respondents at the commencement of the hearing before us was reserved as to whether or not the Claimant had done a protected act. Mr Tinnion sensibly conceded that issue, however, by the close of his submissions accepting on behalf of both the First and Second Respondents that the Claimant had done a protected act within the meaning of Section 27 of the Equality Act 2010. However, the Respondents' position remained that the submission of that equal pay questionnaire was not a factor in any of the treatment of which the Claimant ultimately complained.

22. With regard to certain of the detriment and victimisation complaints, the Respondents' also contended that the Employment Tribunal had no jurisdiction to entertain them as the Claimant had presented them outside the appropriate statutory time limit provided for by Section 123 Equality Act 2010. The Claimant's position in respect of those matters was that all matters complained of constituted continuing acts culminating in dismissal and therefore had been presented "in time" or, alternatively, that time should be extended to consider them.

THE HEARING

23. The claim was originally listed for five days of hearing time, which took place between 26th and 30th June 2017. It was clear to the Tribunal at the outset of the hearing and when undertaking our reading in that there would be insufficient time for the claim to be concluded within the original time estimate. In this regard, there were a significant number of witnesses appearing on behalf of the parties and a not inconsiderable bundle of documents to be adduced in evidence. It was therefore canvassed with the parties whether or not the hearing should be adjourned and relisted for a more appropriate duration so as to avoid it being adjourned part-heard. Both parties, following discussion with each other, and despite their being aware that there would be a gap of several months before the Tribunal would be able to reconvene as a result of other cases in the list and availability issues, elected that they wished to continue with the hearing and for it to be adjourned part-heard. Having already completed our reading in and taking into account the wishes of the parties, the Tribunal acceded to that proposal.

24. At the conclusion of evidence on 30th June 2017, the matter was therefore adjourned part-heard and listed for a further 8 days of hearing time. That included a date to re-read back into the papers, which took place on 19th February 2018. The hearing time was subsequently extended to a 9th day to enable the evidence and submissions to be completed and for deliberations to take place. Deliberations had originally been scheduled for 1st March 2018 but, as a result of severe weather conditions affecting both the Employment Judge and one of the members, this had to be postponed to 22nd March 2018.

25. There was insufficient time even with an extended listing for the Tribunal to be able to deliberate and give our Judgment and Reasons to the parties at the close of the hearing. Accordingly, we reserved our Judgment. The parties were advised that as a result of typing and administrative resources and other cases in the list there was likely to be a delay in receiving this Reserved Judgment. As it has transpired, that delay was more protracted than had been envisaged owing to both the reasons set out above and also a delay in the Judge being able to fair up the Judgment as a result of judicial and other commitments and periods of leave taken. However, the parties can be assured that the Judge has paid careful regard when fairing up the Judgment to her notes of evidence, notes of deliberations on 22nd March 2018; the witness statements and the documents adduced in evidence. Whilst the delay is both unfortunate and regrettable, we are satisfied that this has not affected the findings or conclusions reached within this Reserved Judgment. However, Employment Judge Heap apologises to the parties for that delay and thanks them for their patience in awaiting the same.

26. During the course of the hearing we attempted to assist the Claimant, insofar as it was permissible for us to do so, in order to ensure that she was placed on as equal a footing as possible with the Respondents, who were both represented by experienced Counsel, Mr. Tinnion.

27. However, we should observe that it was abundantly clear to us that the Claimant had undertaken significant preparation prior to the hearings and was familiar with the issues, documentation and witness evidence with which she was expected to deal. She represented her case well and with tenacity.

28. Unfortunately, as we shall come to further below, the Respondents did not demonstrate themselves to be as prepared as the Claimant in respect of the matter of disclosure.

WITNESSES

29. During the course of the hearing, we heard evidence from the Claimant on her own behalf. We also heard evidence on her behalf from Mr. Tony Cawthorne, the Claimant's partner; Mr. Terry Mallaburn, a former colleague of hers at the Second Respondent and Mr. Pat Hardy, a former trade union representative who had assisted the Claimant during the course of her employment.

30. We were also provided by the Claimant with a witness statement from Alison Waring, a current employee of the Second Respondent. Miss. Waring did not attend to give live evidence. We understand from the Claimant in this respect that she had received a message from Miss. Waring shortly before she was due to give evidence to say that she would now be unable to do because her son was ill in hospital.

31. The Respondents' disputed that that was likely to be the case on the basis that it was said that one of the officers of the Second Respondent, Peter Clarke, had seen Miss. Waring in the background on a television programme around the time that she had informed the Claimant that she could not attend the Tribunal and that it was assumed that if what she was saying was correct then she would have been at the hospital rather than appearing on television.

32. We have made no findings in relation to that particular issue, although we have no doubt that the Claimant was told by Miss. Waring what she had said to us that she had been told and it was clear that the assertion that she had appeared on a television programme came as something of a surprise to the Claimant. However, leaving that aside we find ourselves unable to place any reliance or weight upon the statement of Miss. Waring due to the fact that it contained contentious matters and evidence which directly conflicted with what she had apparently said previously. Given that she had not attended to give live evidence we had not had the benefit of hearing any challenges to her evidence by way of cross-examination by Mr. Tinnion nor had we been able to ask her any of our own questions. We therefore find ourselves unable to place any weight upon that statement.

33. We should observe in this regard that we had discussed with the Claimant given the circumstances whether she wished to make an application for a witness order in respect of Miss. Waring. Having considered that position overnight, the Claimant determined that she did not wish to make any application for a witness order to compel attendance by Miss. Waring.

34. In addition to the hearing evidence from the Claimant, we also heard from a number of individuals on behalf of the Respondents. Those individuals were as follows:

- Peter Clarke – the current Change Manager at the Second Respondent whose role had been to oversee the restructuring process and also to cover the Chief Executive Officer role for a period of time;
- Ian Newton – the First Respondent and the Managing Director of Scintilla, a wholly owned subsidiary of the Second Respondent;
- Paul Webster – a Board member of the Second Respondent and the individual who dealt with the Claimant's appeal against dismissal;
- Patricia Shaw – the Finance Officer at the Second Respondent organisation;
- Mark Whaler – Senior Account Manager for Quality Network Services ("QNS"), an IT support company providing services to the Second Respondent and to Scintilla.

35. We make our observations in relation to matters of credibility in respect of each of the witnesses from whom we have heard below.

36. In addition to the witness evidence that we have heard, we have also paid careful reference to the documentation to which we have been taken during the course of the proceedings and also to the helpful oral and written submissions made by the Claimant on her own behalf and by Mr. Tinnion on behalf of both Respondents.

CREDIBILITY

37. One issue that has invariably informed our findings of fact in respect of the complaints before us is the matter of credibility. Therefore, we say a word about that matter now. We begin that with our assessment of the Claimant. Ultimately, our assessment of the Claimant as a witness was not assisted by her frequent failure to answer the questions which were put to her by Mr. Tinnion and instead essentially ignoring what she had been asked and giving a speech about something entirely different. That was despite the Tribunal having explained to each witness at the outset what was expected of them, including the fact that they needed to answer the specific questions put to them. The fact that the Claimant frequently did not do so was of concern to us.

38. However, having considered the matter carefully we did not consider the Claimant's behaviour in this regard to be deliberate evasiveness which might otherwise have been damaging to her credibility. Instead we considered that this was simply demonstrative of the fact that the Claimant clearly has extremely strong feelings about these proceedings and the way in which she perceives that she was treated by the Respondents. That manifested itself in the Claimant often losing sight of the question put to her by Mr. Tinnion and going "off topic" such was her strength of feeling and her apparent need to convey to the Tribunal her views and the findings that she urged us to make. It was that position, we are satisfied, that led to her being unable on a number of occasions to provide a seemingly

straightforward answer to a straightforward question during cross examination.

39. We should observe here that the Claimant has a strident overarching conspiracy theory, effectively taking in the First Respondent and also almost everyone within the Second Respondent organisation and which developed on somewhat shifting sands during the course of the hearing before us. All of the evidence which the Claimant gave to us was viewed through that prism and therefore somewhat tainted by that belief. There was a distinction between what in fact happened to the Claimant on several occasions and in meetings and her interpretation of what was going on. A prime example of this was in relation to files not being restored following a virus being released in to the IT system and the failure to order her a printer toner, both of which we come to further below. Whilst no doubt irksome for the Claimant, there was simply no evidence whatsoever to suggest that the complaints that she makes about these matters had any sinister undertones yet the Claimant was simply unable to accept that position as a result of her dogmatic and misplaced belief that there was a global conspiracy within the Second Respondent organisation relating to her. We did not consider her, as we have already observed, to be dishonest in her approach to giving evidence, but this simply belied her strong and tunnel vision belief in her own case. She had simply convinced herself of things that on the evidence before us were implausible. That strident belief ultimately tainted the Claimant's evidence and whilst we considered her to be giving what she believed to be an essentially honest account, it was nevertheless one that we treated with some caution given her inability to see past the conspiracy theory that she holds and which she accordingly applies to every situation in which she found herself in her dealings with the First and Second Respondents.

40. With regard to the other witnesses called on behalf of the Claimant, we considered them to essentially honest witnesses, although the recollection, particularly of Mr. Mallaburn were such that he was clearly not a particularly reliable historian and we accordingly treated his evidence, as indeed we did the Claimant's, with some caution.

41. We were satisfied, however, that the remainder of the Claimant's witnesses sought to give the evidence that they could to the best of their recollection and belief and that Mr Mallaburn equally attempted to do so but was candid in his acceptance that in some areas, he had a distinct lack of recollection of the events in question. Given the passage of time since the events in respect of which he was being questioned, that is perhaps to be expected.

42. We turn now to the witnesses for the Respondents, dealing firstly with Peter Clarke. Whilst it was clear to us that he had some difficulty in his recollection of events, although we observe in this regard that the events that he was being asked about were now some considerable time ago, we considered him to be an essentially honest witness. A number of areas of his evidence, however, were somewhat vague and to that extent, despite considering him to be essentially honest, the majority treated his evidence with some degree of caution. One of the members of the Tribunal had concerns that Mr. Clarke's evidence bore many hall marks of being evasive. Although that feeling was not shared by the majority to the same

degree, the findings of fact that we have made on the basis of his evidence are unanimous.

43. We then turn to the evidence of Mark Whaler. Although his credibility was called significantly into question by the Claimant we found nothing of substance to her criticisms in that regard. Mr Whaler did not, contrary to the submissions of the Claimant, have anything to gain by being untruthful in his evidence. We were satisfied that he sought to assist the Tribunal as best he could in relation to what were clearly technical issues. We are satisfied that he did so as clearly and openly as possible and there was nothing which led us to have any doubt as to the account which he provided to us. The Claimant's submissions to the contrary, again simply belied her deep mistrust of the Respondents and the fact that she genuinely believes there was something sinister in every action for which she had concern and which she perceived to be a direct attack against her. However, we were satisfied that Mr Whaler gave us a truthful and honest account which was consistent with the explanations that had been given to the Claimant about the restoration of her files at the material time.

44. Turning then to the evidence of the First Respondent and Mr. Paul Webster. We are satisfied that there was nothing in the evidence of either of those individuals which led us to doubt what they were saying. We are satisfied that they gave us an honest account to the best of their recollection and belief. Whilst the Claimant asserts that both gave untrue accounts, the First Respondent particularly, their evidence was largely consistent, despite lengthy cross examination, and plausible and both were prepared to make concessions where appropriate.

45. Finally, this leaves Patricia Shaw. We have to say that we were initially surprised with the lack of detail which Miss. Shaw was able to provide around the finances and accounts issues given her senior position as Finance Officer[5]. However, we are satisfied that those matters simply came from a lack of recollection - Miss. Shaw having been absent from the Respondents on the grounds of ill health for a significant amount of time - and her clear distress about giving evidence in these proceedings. Indeed, we understand her to have been in tears for most of the time that she was present in the Tribunal waiting area and also on some occasions in her evidence before us. That clearly impacted her ability to recall matters clearly. Accordingly, whilst we treated her evidence with caution we were nevertheless satisfied that she was providing to her an essentially honest account to the best of her knowledge, recollection and belief.

46. However, one area that gave us significant cause for concern, as we have already touched upon, was the matter of disclosure. Not only, without seemingly any reasonable explanation, were the Orders of Employment Judge Hutchinson of 1st June 2016 not complied with as they should have been but a number of documents were also provided by the Respondents which were heavily redacted. When those matters were explored by the Tribunal, it transpired that in many cases the redactions were simply not necessary at all and it was very difficult to understand why they had ultimately been made in the first place. However, as it transpired, the redactions that had been made in this regard were not a smoking gun as

[5] That being the post that she held at the material time with which we are concerned.

the Claimant may have previously believed and the content was relatively innocuous.

47. Therefore, we were satisfied that this was simply a matter of the Respondents' solicitors being somewhat overzealous and not fully appreciating or having explained fully to the Respondents their disclosure obligations. That self-same issue led to a failure to comply with the Orders of Employment Judge Hutchinson and we were extremely concerned in this case that disclosure was completed piecemeal; indeed, sometimes towards the end of the hearing and that being despite the very sizable gap in between the two sets of hearing dates when Counsel for the Respondents had assured us that matters would be attended to in the interim. We are far from satisfied that the Respondents or their solicitors took their disclosure obligations with the seriousness that should have attached to it.

48. We would observe however, as indeed we did to Mr Tinnion, that either those that instruct him or the Respondents appeared to have dealt with disclosure in a piecemeal and, quite frankly, shambolic fashion such as a significant amount of time was lost in dealing with continuing disclosure issues and those matters continued to crop up throughout the hearing. This should not have occurred in any litigation, but particularly where the Claimant was acting as a litigant in person and where the Respondents had been legally and professionally represented throughout. It was a frankly dire state of affairs but, as we have already indicated, we are satisfied that there was nothing sinister within the Respondents' failure, or indeed the failure of their representatives, to comply with Employment Judge Hutchinson's Order or to deal with disclosure properly without continued reminders by this Tribunal. We say that particularly on the basis that it appeared from evidence of the Respondents witnesses that it was far from clear that they had been given any proper or full advice concerning their disclosure obligations and that there appeared to be a general lack of appreciation about the importance of the process. Nothing which was ultimately disclosed, or any of the redactions which were subsequently looked into, revealed any particular smoking gun. Had that not been the case and had we not been satisfied that this was simply a lackadaisical approach to disclosure, we might well have chosen to draw inferences from the Respondents' conduct in this regard. However, for the reasons that we have already given, we determine that it would not in this case be appropriate to do so.

49. We sincerely hope, however, that both the Respondents and their solicitors will ensure that there is no repetition of such an unfortunate state of affairs in any other cases before the Employment Tribunals in the future.

50. In addition to disclosure, there were further difficulties in that it transpired late in the day in the evidence given by Patricia Shaw that the Respondents solicitors had supplied to the Claimant a different version of Ms. Shaw's witness statement to that which the Tribunal, Mr. Tinnion and the witness herself had. The statement provided to the Claimant included an important paragraph which was essentially completely wrong regarding the reason for Ms. Shaw having withdrawn a grievance made about the Claimant. The Claimant had therefore prepared cross examination

questions on the premise that the grievance had been withdrawn for different reasons than Ms. Shaw told us about in evidence. Fortunately, the Claimant was able to continue with her cross examination but such an error should not have occurred and particularly more care should have been taken given that the Claimant was not represented.

THE LAW

51. Before turning to our findings of fact as we have found them to be, we set out below the law that we are required to apply to those facts.

Protected Disclosures

52. In any claim based upon "whistleblowing" a Claimant is required to show that firstly they have made a "protected disclosure".

53. That in turn brings us to the definition of a protected disclosure, which is contained in Section 43A Employment Rights Act 1996 ("ERA 1996") and which provides as follows:

> ***"In this Act a "protected disclosure" means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H*** (with which we are not concerned in the context of this claim).

54. Section 43B provides as follows:

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

55. An essential requirement of a disclosure which qualifies for protection under Sections 43B is that there is a disclosure of information. A disclosure is more than merely a communication, and information is more than simply making an allegation or a statement of position. The worker making the disclosure must actually convey facts, even if those facts are already known to the recipient (See **Cavendish Munro Professional Risks Management Ltd v Geluld [2010] IRLR 38 (EAT)**) rather than merely an allegation or, indeed, an expression of their own opinion or state of mind (See **Goode v Marks & Spencer Plc UKEAT/0442/09**).

56. It is not necessary for a worker to prove that the facts or allegations disclosed are true. Provided that the worker subjectively believes that the relevant failure has occurred or is likely to occur and their belief is objectively reasonable, it matters not if that belief subsequently turns out to be incorrect (See **Babula v Waltham Forest College [2007] IRLR 346 (CA)**.

57. A worker must establish that in making their disclosure they had a reasonable belief that the disclosure showed or tended to show that one or more of the relevant failures had occurred, was occurring or was likely to occur. That reasonable belief relates to the belief of the individual making the disclosure in the accuracy of the information about which he is making it. The question is not one of the reasonable employee/worker and what they would have believed, but of the reasonableness of what the worker himself believed.

58. However, there needs to be more than mere suspicion or unsubstantiated rumours and there needs to be something tangible to which a worker/employee can point to show that their belief was reasonable.

59. The questions for a Tribunal in considering the question of whether a Protected Disclosure has been made are therefore firstly, whether the Claimant disclosed "information"; secondly, if so, did she believe that that information tended to show one of the relevant failings contained in Section 43B Employment Rights Act 1996 and thirdly, if so was that belief reasonable.

Complaints of detriment under Section 47B Employment Rights Act 1996

60. If a worker can demonstrate that they have made a protected disclosure, then in order to succeed in a complaint under Section 47B Employment Rights Act 1996, they must also demonstrate that they have suffered "detriment". In this regard, Section 47B(1) Employment Rights Act 1996 provides as follows:

"A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure."

61. A worker must therefore prove that they have made a protected disclosure and, further, that there has been detrimental treatment. The term

"detriment" is not defined within the Employment Rights Act 1996 but guidance can be taken from discrimination authorities and, particularly, from **Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285.** In this regard, for action or inaction to be considered a detriment, a Tribunal must consider if a reasonable worker would or might take the view that they have been disadvantaged in the circumstances in which they had to work. However, an "unjustified sense of grievance" is not enough to amount to a detriment.

62. If the worker satisfies the Tribunal that he has both made a protected disclosure and suffered detriment, the employer then has the burden of proving the reason for the treatment pursuant to the provisions of Section 48(2) Employment Rights Act 1996. If the employer fails to prove an admissible reason for the treatment, a Tribunal must conclude that it is because of the protected disclosure.

63. In a case of a detriment, a Tribunal must be satisfied that the detriment was *"on the ground that the worker has made a protected disclosure"* and there must be found to be a causative link between the protected disclosure and the reason for the treatment. The test to be considered if whether "*the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's treatment*" of the Claimant (see **NHS Manchester v Fecitt & Others [2012] IRLR 64**). It follows that unless the individual who is said to subject the worker to detriment (or, in the case of a claim of automatically unfair dismissal, the person who takes the decision to dismiss) knows that the employee/worker has made a protected disclosure, their decision cannot be said to have been materially influenced by it (see also **Anastasiou v Western Union Payment Services UK EAT/0135/13/LA**).

64. There will be occasions where acts taken by an employer are based upon information which is given by another party with improper motive. However, in order for the actions of the employer to of themselves amount to an unlawful act, the individual employee who did the act complained of must him or herself have been improperly motivated in their own decisions or actions. Another person's motivation, taint, misleading or influence upon an unwitting or "innocent" decision maker discriminator does not render the act in question unlawful (see **Royal Mail Ltd v Jhuti [2017] EWCA Civ 1632).**

Automatically unfair dismissal – Section 103A Employment Rights Act 1996

65. Section 103A ERA 1996 provides that one category of "automatically unfair" dismissal is where the reason or principle reason for the dismissal is that the employee has made a protected disclosure. Section 103A provides as follows:

"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."

66. A Tribunal therefore needs to be satisfied that a Claimant bringing a

successful claim under Section 103A ERA 1996 has firstly been dismissed and, secondly, that the reason or principle reason for that dismissal is the fact that he or she has made a protected disclosure.

"Ordinary" unfair dismissal – Section 94 Employment Rights Act 1996

67. Section 94 Employment Rights Act 1996 ("ERA 1996") creates the right not to be unfairly dismissed.

68. Section 98 deals with the general provisions with regard to fairness and provides that two of the potentially fair reasons for dismissing an employee are either that the employee was redundant, or, otherwise, that there was "some other substantial reason" of a kind such s to justify the dismissal of an employee holding the position which the employee held. The burden rests upon the employer to satisfy the Tribunal on that question.

69. Assuming that the employer is able to do so, the all important test of reasonableness is then set out at section 98(4) ERA 1996 and provides as follows:

> ***"Where the employer has fulfilled the requirements of subsection (1),* (that is that they have shown that the reason for dismissal was redundancy) *the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)-***
>
> ***(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and***
>
> ***(b) shall be determined in accordance with equity and the substantial merits of the case."***

70. Insofar as redundancy dismissals are concerned there is statutory definition provided for by Section 139 Employment Rights Act 1996. This provides as follows:

> ***"(1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to:-***
>
> ***(a) the fact that his employer has ceased or intends to cease:-***
>
> ***(i) to carry on the business for the purposes of which the employee was employed by him, or***
>
> ***(ii) to carry on that business in the place where the employee was so employed, or***

(b) the fact that the requirements of that business:-

(i) for employees to carry out work of a particular kind, or

(ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer, have ceased or diminished or are expected to cease or diminish."

71. Key to the consideration of fairness in the context of a redundancy dismissal (once it has either been established that there was a potentially fair reason to dismiss on that basis) is the process adopted for selecting employees for redundancy. The relevant considerations are whether the employer:

a. Identified the correct pool for selection for redundancy;

b. Applied fairly and reasonably to that pool fair and objective selection criteria;

c. Undertook appropriate consultation with the employee on the method for selection and the process adopted (including consideration and consultation on the question of suitable alternative employment).

72. With regard to the selection criteria, Employment Tribunals must avoid subjecting them to undue scrutiny provided that those selection criteria are objective (see **British Aerospace plc v Green and Ors 1995 ICR 1006, CA**). The question for the Tribunal will be whether the selection criteria were or were not inherently unfair and whether they were applied in the particular case in a reasonable fashion.

73. The burden is no longer upon the Respondent alone to establish that the requirements of Section 98(4) ERA 1996 were fulfilled in respect of the dismissal. This is now a neutral burden.

74. However, we remind ourselves that an Employment Tribunal hearing a case of this nature is not permitted to substitute its judgment for that of the employer (see **Sainsbury's Supermarkets Limited v Hitt [2002] EWCA Civ 1588** and **Williams v Compare Maxam Ltd 1982 ICR 156, EAT**). It judges both the employer's processes and decision making by the yardstick of the reasonable employer and can only say that the dismissal was unfair if either falls outside the range of responses open to the reasonable employer. Put another way, could it be said that no reasonable employer would have done as the Respondent did?

Victimisation – Section 27 Equality Act 2010

75. Section 27 Equality Act 2010 ("EqA 2010") provides that:

"(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.

(4) This section applies only where the person subjected to a detriment is an individual.

(5)The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule."

76. In dealing with a complaint of victimisation under Section 27 EqA 2010, a Tribunal will need to consider whether:

(i) The alleged victimisation arose in any of the prohibited circumstances covered by Section 39(3) and/or Section 39(4) EqA 2010 (which are set out above);
(ii) If so, was the Claimant subjected to a detriment; and
(iii) If so, was the Claimant subjected to that detriment because he or she had done a protected act.

77. In respect of the question of whether an individual has been subjected to detriment, the Tribunal will need to consider the guidance provided by the ECHR Code (as referred to further below) and the question of whether the treatment complained of might be reasonably considered by the Claimant concerned to have changed their position for the worse or have put them at a disadvantage. An unjustified sense of grievance alone would not be sufficient to establish that an individual has been subjected to detriment (see paragraphs 9.8 and 9.9 of the ECHR Code).

78. If detriment is established, then in order for a complaint to succeed, that detriment must also have been "because of" the protected act relied upon. The question for the Tribunal will be what motivated the employer to subject the employee to any detriment found. That motivation need not be explicit, nor even conscious, and subconscious motivation will be sufficient to satisfy the "because of" test.

79. A complainant need not show that any detriment established was meted out solely by reason of the protected act relied upon. It will be sufficient if the protected act has a "significant influence" on the employer's decision making (**Nagarajan v London Regional Transport 1999 ICR 877**). If in relation to any particular decision, the protected act is not a material

influence of factor – and thus is only a trivial influence - it will not satisfy the "significant influence" test (**Villalba v Merrill Lynch & Co Inc & Ors 2007 ICR 469**).

80. In any claim of victimisation, the Tribunal must be satisfied that the persons whom the complainant contends discriminated against him or her contrary to Section 27 EqA 2010 knew that he or she had performed a protected act (**Nagarajan v London Regional Transport [1999] ICR 877**). As per **South London Healthcare NHS Trust v Al-Rubeyi (2010) UKEAT/0269/09** and **Deer v Walford & Anor EAT 0283/10**, there will be no victimisation made out where there was no knowledge by the alleged discriminators that the complaint relied upon as a protected act was a complaint of discrimination.

The ECHR Code

81. When considering complaints of discrimination, a Tribunal is required to pay reference to the Equality & Human Rights Commission Code of Practice on Employment (2011) ("The Code") to the extent that any part of it appears relevant to the questions arising in the proceedings before them.

Time limits and jurisdiction

Discrimination complaints

82. Section 123 provides for the time limit in which proceedings must be presented in "work" cases to an Employment Tribunal and provides as follows:

"Proceedings on a complaint within section 120 may not be brought after the end of—

(a)the period of 3 months starting with the date of the act to which the complaint relates, or

(b) such other period as the employment tribunal thinks just and equitable.

(2)Proceedings may not be brought in reliance on section 121(1) after the end of—

(a) the period of 6 months starting with the date of the act to which the proceedings relate, or

(b) such other period as the employment tribunal thinks just and equitable.

(3)For the purposes of this section—

(a) conduct extending over a period is to be treated as done at the end of the period;

(b) failure to do something is to be treated as occurring when the person in question decided on it.

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

(a) when P does an act inconsistent with doing it, or

(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it."

83. Therefore, Section 123 provides that proceedings must be brought *"within a period of three months starting with the date of the act to which the complaint relates or any other such period as the Tribunal considers to be just and equitable".*

84. For the purpose of those provisions, conduct which extends over a period is to be treated as done at the end of that period and the failure to do something is to be treated as occurring when the person in question decided upon it. Therefore, in the event of conduct which extends over a period, time will not begin to run until the last act done in that period. The appropriate test for a "continuing" act" is whether the employer is responsible for an "an ongoing situation or a continuing state of affairs" in which the acts of discrimination occurred, as opposed to a series of unconnected or isolated incidents (**Hendricks v Metropolitan Police Commissioner [2002] EWCA Civ 1686**).

85. If a complaint is not issued within the time limits provided for by Section 123 Equality Act, that is not the end of the story given that a Tribunal will be required to go on to consider whether it is "just and equitable" to allow time to be extended and the complaint to proceed out of time.

86. In doing so, the Tribunal must have regard to all of the relevant facts of the case and is entitled to take account of anything that it considers to be relevant to the question of a just and equitable extension. A Tribunal has the same wide discretion as the Civil Courts and should have regard to the provisions of Section 33 Limitation Act 1980, as modified appropriately to employment cases (see **British Coal Corporation v Keeble [1997] IRLR 336**).

87. In considering whether to exercise their discretion, a Tribunal must consider factors relevant to the prejudice that each party would suffer if an extension were refused, including:

(a) The length of and reasons for the delay;

(b) The extent to which the cogency of the evidence is likely to be affected by the delay;

(c) The extent to which the party sued had co-operated with any requests for information;

(d) The promptness with which the Claimant acted once they knew of the possibility of taking action; and

(e) The steps taken by the Claimant to obtain appropriate professional advice once they knew of the possibility of taking action.

88. The emphasis is on whether the delay has affected the ability of the Tribunal to conduct a fair hearing and all significant factors should be taken into account. However, the burden is upon a Claimant to satisfy a Tribunal that it is just and equitable to extend time to hear any complaint presented outside that provided for by Section 123 EqA 2010.

Whistleblowing detriment complaints

89. Different considerations and a different test applies when considering whether time should be extended to consider any complaints of whistleblowing detriment. The relevant provisions in this regard are contained in Section 48 ERA 1996 and they say this:

"48 Complaints to employment tribunals.

(1)An employee may present a complaint to an employment tribunal] that he has been subjected to a detriment in contravention of section 43M, 44, 45, 46, 47, 47A, 47C(1), 47E , 47F or 47G.

A shop worker may present a complaint to an employment tribunal that he or she has been subjected to a detriment in contravention of section 45ZA.

(1ZA)A worker may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of section 45A.

(1A)A worker may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of section 47B.

(1AA)An agency worker may present a complaint to an employment tribunal that the agency worker has been subjected to a detriment in contravention of section 47C(5) by the temporary work agency or the hirer.

(1B)A person may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of section 47D.

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

(2A)On a complaint under subsection (1AA) it is for the temporary work agency or (as the case may be) the hirer 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, a temporary work agency or a hirer 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 to do the failed act if it was to be done. "

90. The question is therefore whether it was "not reasonably" practicable – or to put it another way not reasonably feasible - for a complaint to be presented in time. The burden is upon a Claimant to satisfy the Tribunal on that question and it is a high hurdle to meet. An extension of time will always be the exception and not the rule. If a Claimant can satisfy the Tribunal that there was something either physically or mentally impeding the complaint being presented in time – and thus it was not reasonably practicable to present it within the appropriate statutory time limit – that is not the end of the matter. That Claimant must also go on to persuade the Tribunal that the claim was thereafter presented within a reasonable period after the normal time limit expired.

FINDINGS OF FACT

91. We ask the parties to note that we have only made findings of fact where those are required for the proper determination of the issues in this case. We have invariably therefore not made findings on each and every area where the parties are in dispute with each other if that is not necessary for the proper determination of the complaints that are before us.

92. The Second Respondent is a charity and a company limited by guarantee. It's aim, as we understand matters, is to connect and support local voluntary and community organisations within Mansfield and the surrounding areas. The Second Respondent has a wholly owned trading subsidiary by the name of Scintilla. The Manging Director of Scintilla for the period with which we are concerned is the First Respondent to these proceedings, Mr. Ian Newton.

The Claimant's role and the Service Level Agreement

93. The Second Respondent runs a number of projects so as to seek to achieve the aims to which we have referred above. One of those projects was managed by the Claimant in her position as Health Partnership Officer. That was a project lead role which was funded by the Mansfield and Ashfield Clinical Commissioning Group ("MACCG").

94. The Claimant had commenced employment with the Second Respondent on 2nd April 2007 and at the time of the termination of her employment was engaged in the position of Health Partnership Officer, to which we have already referred. The Claimant was assisted by Alison Waring in providing services to the MACCG although the Claimant very much took the lead on the project.

95. The project delivered by the Claimant in her capacity as Health Partnership Officer was subject to a Service Level Agreement ("SLA") as between the Second Respondent and the local Primary Care Trust ("PCT").

96. We have spent some considerable time during the course of the hearings trying to narrow down with the parties what the relevant SLA was at the time of the latter stages of the Claimant's employment and, particularly, at the point of the termination of it. Ultimately, it has been difficult to do so as a result of what seems to be a lackadaisical approach to recording keeping by the Second Respondent. Nevertheless, as far as we can ascertain from the parties there was a relevant SLA which operated between 2008 and 2011 and which was subsequently extended by written agreement with the PCT. If there was a later incarnation of the SLA itself then we have not seen that, or at least we have not seen it in its entirety.

97. As one would expect in an SLA, there are a number of clauses applicable as between the PCT and the Second Respondent setting out the key requirements for the services which should be provided and the relevant provisions as to how those services should be delivered. Part of those matters concerns the Personnel and Authorised Officers who are part and parcel of delivering the services under the SLA. The Claimant places emphasis upon the latter and we shall come to that further in due course.

98. Clause 7 of the SLA requires the Second Respondent to engage Personnel, which is defined as being enough people with the ability, skill knowledge, training or experience necessary to provide the services. In addition to those Personnel, the is reference within the SLA to Authorised Officers. That is defined within the schedule to the SLA (see page 68 of the hearing bundle) as the individual appointed by the provider (i.e. the Second Respondent) and the Commissioner (i.e. the PCT) to represent them under the SLA contract. It appears common ground that at the time that the Claimant was delivering the contract, she was the Authorised Officer.

99. Paragraph 9 of the SLA deals with the role of the Authorised Officer and provides as follows:

"***Authorised Officers and Liaison***

The parties shall appoint one or more Authorised Officers as set out in schedule 4 and may change such Authorised Officers at any time.

At least one Authorised Officer of each party shall have full authority to represent that party in all matters pertaining to this SLA. Other Authorised Officers may have such limited authority as is described in the notice appointing them.

Upon any change in the details specified in the notice of appointment of an Authorised Officer, the relevant party shall contact the other setting out the change details.

The parties shall ensure that their Authorised Officers meet on a regular basis for the purpose of ensuring the smooth running of the SLA and to identify concerns early to prevent disputes arising."

100. The Claimant contends that her position as Authorised Officer was such as to ringfence her post under the terms of the SLA, such as that could not be included within any general pool for selection for redundancy. We do not accept that. It is clear from the SLA that the Authorised Officer can be changed at any time on notice to the PCT. There is nothing within the SLA, or anything else that we have been taken to, which requires the Authorised Officer to have remained the Claimant at all times. Indeed, that would be unusual in all events given that a requirement to have only the Claimant appointed as Authorised Officer would have negated the ability of the Second Respondent to otherwise terminate the employment of the Claimant, for example by reason of conduct, or caused not inconsiderable difficulties if she herself had elected to leave the Second Respondent organisation or some other intervening event had meant that she was unable to continue in the role of Authorising Officer.

101. There is quite simply nothing within the SLA which required the Claimant's position as Authorised Officer or the Claimant herself to be ringfenced. It simply required there to be an Authorised Officer; their identity was not specified and the clause is clear that they could be subject to change.

102. We have no doubt whatsoever that the Claimant was entirely dedicated to her role with the Second Respondent and that she valued it very much. We also accept that she strived to make a success of the role and achieved good results for the Second Respondent and for the PCT during the course of her employment as Health Partnership Officer.

<u>The Claimant's involvement as employee representative and communications with Wynne Garnett</u>

103. In addition to her responsibilities under the SLA, the Claimant also acted as an employee or staff representative. Her role in this regard was to assist the workforce of the Second Respondent with regard to employment relations and working conditions. As part of those duties, the Claimant took on responsibility for seeking to drive forward evaluations in relation to

the pay and gradings of the Second Respondent's employees. Particularly, in April 2015 the Claimant in her capacity as staff representative was instrumental in corresponding with Wynne Garnett, the then Chief Executive of the Second Respondent, in relation to a request for a pay rise. She also requested a copy of the job description and person specification for the Managing Director's role at Scintilla. That was the post which was later taken up by the First Respondent. Her email to Mr. Garnett, which appears at page 113 of the hearing bundle, said this:

> "*… in 2013 I requested a copy of the job description and person specification for a new, unadvertised post 'Managing Director' which is the highest paid role in the MCV's family, in my capacity as staff rep. I was never provided with this information and would now like to request it again, as you have mentioned in your email that we have agreed a new HR sub group which will be led by Jenny Martin, a new Board Member who is an HR specialist. The work of this group will include reviewing job descriptions, contracts, policies and reward strategies in the context of the new Plan.*
>
> *The Managing Director's job description and person spec, will provide a good benchmark for us all, when evaluating our levels of responsibility, diversity or work, workload, experience and qualifications against remuneration and reward strategies.*
>
> *We would like a response to our request for a meeting and information requested above re: JD & person spec by Friday 8th May 2015*.
>
> …"

The Claimant's grievance

104. There is no record of there being a response from Mr. Garnett to that communication. Following a further chaser email to Mr. Garnett on 19th May 2015, the Claimant submitted her grievance to Ian Marshall, the then Chair of the Board, by email dated 26th May 2015. That was copied to Jenny Martin, who at that time was also a Board member with some human resources expertise; Terry Mallaburn, a colleague of the Claimant and Harry Harrison of the GMB. Mr. Harrison was at the material time the Claimant's trade union representative. This is the first of the protected disclosures upon which the Claimant relies and therefore we set out in full what she said in that particular communication. It read as follows:

> "*…*
>
> *My grievance is against Wynne Garnett, Chair Mansfield CVS (MCVS), Vice-chair Scintilla and Big Assist provide to MCVS.*
>
> *Firstly, I would like to provide some background information, which will hopefully provide some understanding as to why I feel that I need to raise this grievance. As well as having the substantive role of Health Partnership Officer at MCVS, I am also the elected staff rep, a position which I have held for over 7 years, I have sat on the*

personnel sub-group as part of this role. Unfortunately, I feel that the treatment I receive and the negativity often directed towards me by certain Board members is because I raise staffing, employment law and equality issues as part of the staff rep role. To the point that since 2013, every mechanism for staff to provide feedback, raise concerns about their employment and have a voice has been removed; there hasn't been a personnel sub-group meeting since July 2013 – which was the CEO's last meeting before he left by mutual agreement. As this meeting the CEO raised concerns about the recruitment process for the Managing Director and Senior Consultant roles in Scintilla. There has been no staff representation on the Board since 2012, following Terry Mallaburn's resignation, which was a result of the negative reaction he received from certain Board members when he asked a question about a forecast showing a £17K reduction in staffing costs and how the board proposed to make those reductions. There has been no supervision or appraisal procedure for staff since 2013, again removing the opportunity for staff to raise and record any problems they may be experiencing. There has only been three staff meetings since 2013 (sic). *All the Board meeting and Board sub-group meeting minutes, which used to be accessible to all staff to view, are no longer shared or able to view.*

My grievance is based on Wynne's failure to provide me with the following requested information: -

Eighteen months ago I requested from Wynne, at a time when he was being paid to be the interim CEO of MCVS a copy of the Managing Director of Scintilla's job description and person specification, as this was a relatively new, unadvertised post and the highest paid role within MCVS. I requested this information, as I believed at the that time my own role had the equivalent, if not greater, levels of responsibility and workload. I was never provided with the information requested.

On 14th April 2015, a draft strategic plan was shared with staff via email, in this plan it states that; 'job descriptions, contracts and reward strategies would be look [sic] *at to recognise the work undertaken by staff'. Following this, I again twice requested a copy the Managing Director's job description and person spec, in order that members of staff could evaluate their own roles against it, in accordance with provision set out in Equality Act 2010. I again have not been provided with the information requested, with my last email request being completely ignored.*

Secondly, immediately prior to the circulation of the draft strategic plan, staff through me had requested to meet with Wynne in his role as Chair of MCVS, to raise their staffing concerns; around workloads, an annual pay increase, no supervision and appraisals. Despite several email requests to Wynne requesting a meeting, no meeting has been arranged or taken place.

Finally, I have requested a copy of the minutes of all meetings

involving the Board, where I, in my capacity of Staff Rep have been mentioned or discussed. Again, my request for this information has been neither acknowledged nor the information the information provided.

Resolution you are seeking?

1. *I would like to receive a copy of the Managing Director of Scintilla's job description and person specification, as the highest paid role within MCVS for use as a comparator.*

2. *I would like an explanation as to why my requests have been ignored, as I don't feel that the requests are onerous or unreasonable.*

3. *A meeting with Wynne Garnett and staff for them to air their concerns.*

4. *I would like to receive a copy of the minutes of all meetings involving the Board, where I have been discussed; particularly the meeting were* [sic] *request for a pay rise on behalf of the staff team was discussed. Also, the meeting were* [sic] *staff representation on the HR sub-group was discussed and agreed. As I find it surprising that as the elected staff rep and former member of the personnel sub-group that I was not invited to the new HR sub-group, I would have hoped that staff involvement would have been welcomed in line with good practice.*"

105. The grievance was shared with Mr. Garnett, who had initially responded "*Cracking!*" (see page 122 of the hearing bundle).

106. The Claimant attended a grievance meeting to discuss the issues raised in her complaint on 2nd July 2015. We have seen notes of that meeting which run from pages 124 to 129 of the hearing bundle.

107. The grievance was dealt with by Ian Marshall, the then Operations Manager and the Claimant's line manager. Harry Harrison of the GMB attended along with the Claimant and notes were taken by Charlotte Wright, an employee of the First Respondent. We have paid careful note to the events of that meeting, given that the Claimant now contends before us that her protected disclosure was contained not only in the letter but also in the grievance meeting and subsequent appeal meeting. The relevant extracts of the grievance meeting minutes in this regard say this:

"…

- *AH[6] asked if WG[7] had received several thousand pounds (awarded to his company Red Gem) for writing this Strategic Plan as a business consultant. IM[8] confirmed that WG had. AH said that this is a massive conflict of interests, as WG is the Chair of our*

[6] A reference to Annette Harpham – the Claimant.
[7] A reference to Wynne Garnett.
[8] A reference to Ian Marshall.

organisation.

- *Red gem, WG's company, was given several thousand pounds in 2013 to deliver this work around the above concerns, Red Gem and WG did not deliver this work, and staff never received any support or job descriptions.…"*

108. On 8th July 2015 Wynne Garnett stood down as Chair of the Board of the First Respondent and was replaced by Michael Longdon (see page 130 of the hearing bundle).

109. Mr. Marshall wrote to the Claimant with an outcome to her grievance on 22nd July 2015. Although her grievance was not upheld, Mr. Marshall did take steps to address concerns that the Claimant had raised with him at the grievance meeting such as provision of the Job Description for the post of Managing Director at Scintilla which she had requested, inviting her onto the HR Sub-Group and providing copies of Board minutes. Thereafter, there is evidence before us of the Claimant being involved in employee relations matters (see for example page 176 of the hearing bundle).

110. The Claimant responded escalating the grievance to stage two (the appeal stage) on 3rd August 2015. It was a very detailed, somewhat challenging and lengthy letter and we set out the relevant parts of that letter and the appeal process further below.

<u>The Board meeting of 30th July 2015</u>

111. There was a Board meeting on 30th July 2015. It is common ground that at that Board meeting, an email document which had been written by the First Respondent was circulated amongst Board members. We have heard from the First Respondent that he had sent this document to Ian Robinson, a member of the Board in confidence. That had been done, the First Respondent told us, following a telephone conversation between himself and Mr. Robinson during which he had spoken about the matters contained in his email and Mr. Robinson had asked him to put things in writing as he had a poor memory. It was the First Respondent's position that he had not understood that the email would be printed off and circulated; simply that the information contained in it would be shared with the Board. The email, which appears at page 132 of the hearing bundle, said this:

"*…Further to our conversation I am making you aware of the following:*

- *When Alan was appointed CEO in 2007, the post he vacated was offered to Lesley. Alan decided to start Lesley at the highest spinal point (this give* (sic) *Lesley a significant pay rise).*
- *Annette finds out about this and writes to Alan and the Board complaining this is unfair discrimination and demands to be put on the same spinal point as Lesley, back dated to when Lesley received her increase.*
- *A meeting is held in 2009 between Annette and 2 Board members (Simon and Isobel) who agree to award her the pay raise and back date to 2008.*

The reason I mention this is because even though I do not have a problem releasing my Job Description and the HR firm Ian is working with agree that the roles are not commensurate, I believe Annette will then make a claim under the 2010 Equality Act. I do not believe Annette will accept the HR's finding and will again claim some kind of discrimination through the Act.

What concerns me is that the initial grievance I believe is from the staff, with Annette acting on their behalf. The point she raises about the job description is I believe not on behalf of the staff, but is for her own gain. I have spoken to several MCVS staff who are unaware of the request for the Job Description are not interested in seeing it, with one adding that it is clear the 2 roles are different – one is a Management Post the other is delivering a project.

I feel the new Board need to be aware of what has previously happened to that they are prepared to deal with a situation where Annette decides that she wants to take the Board on regarding the 2 roles.

I have previously discussed this with Ian Marshall, so he is aware of my thoughts and I believe he has also mentioned this to Mike. This is clearly confidential and not to be apart [sic] *of the minutes.*

…"

112. In addition to the email written by the First Respondent, Mr. Garnett also submitted a lengthy document to the Board entitled "Reflections on CVS". It is fair to say that that document was somewhat critical of the Claimant. In this regard, the Claimant identifies the following passages which she contends were unreasonably raised by Mr. Garnett:

- *"Over recent months Annette and Terry[9] have raised a number of grievances and concerns;*
- *The current staff representative[10] has an approach that is adversarial. Previous Board Members will attest to behaviour in sub group meetings that has been confrontational and inappropriate (this was also picked up by external consultants in 2013). There were also concerns about the inappropriate sharing of information and the long running criticism of Scintilla (I was told in confidence that people had been set up to ask questions about Scintilla finances at the AGM).*
- *In the 14 years I worked at CVS and in my time as a consultant working with many other organisations I have never seen this kind of behavior and approach and the concerns with the staff representative led to decisions not to include her in Board discussions on funding and HR issues.*
- *In addition to the broad points above there have been a number of specific criticisms that are levelled at me specifically and which undermine my integrity* – It should be noted in the context of this

[9] A reference to Mr. Mallaburn
[10] A reference to the Claimant

point, Mr. Garnett did not make mention of any concern that the Claimant had raised about Red Gem or a conflict of interest but instead concentrated on the Claimant's grievances concerning the Board Action Plan; pay awards; meetings and job descriptions and job evaluations.

- *It would be quite inappropriate for a member of staff to take a single other job description and use it as the basis for some DIY job evaluation.*
- *It is not clear whether the staff representative has a full mandate to raise the issues she has.*
- *Moving forward….. should include a review of the staff representative role and staff engagement processes with the Board and sub groups;*
- *Consider the need for new staff representation to provide a fresh start and for clear guidance as to how future staff representatives are elected and how long they can serve.*

113. The Claimant contends that, in her words in her closing submissions, the emails were written as "revenge" for her grievance and equal pay questionnaire. We do not accept that.

114. Whilst we are satisfied that the Claimant was most likely seen as a nuisance as she continually raised lengthy concerns about a whole host of matters and was somewhat like a dog with a bone if we might put it like that in regard to Scintilla and the job description issue, we are satisfied that the disclosure that the Claimant had made regarding Red Gem and a conflict of interest were of no consequence at all in that picture. Indeed, there is no mention about that whatsoever in either the email from the First Respondent or the lengthy document drafted by Mr. Garnett which set out the issues as he saw it with the Claimant.

115. Although we have not heard from Mr. Garnett, we have little doubt that the frustrations that he set out in his document resulted from the Claimant's continual raising of the job descriptions, evaluations and pay rise issues and her apparent antipathy towards Scintilla. That much is clear from the content of the document itself. Having seen for ourselves the Claimant's somewhat dogmatic approach and lengthy communications on topics with which she did not agree, we are satisfied that the content of that document was highly likely to be reflective of Mr. Garnett's genuine feelings about how the Claimant dealt with employee relations matters. Her lengthy and often combative communications were often, it seems to us, not helpful and we bear in mind that the Board were all volunteers who spent a considerable amount of time dealing with those matters.

116. There is nothing before us which suggests that the issue behind the email documents was the Claimant's complaints about the Red Gem conflict of interest. Indeed, we accept that despite the Claimant continuing to raise the matter the Second Respondent did not see any issue with regard to the position and it was clearly of no consequence to Mr. Garnett insofar as the content of his "Reflections" document was concerned.

117. Insofar as the Claimant's equal pay questionnaire was concerned, we accept that that was also not a motivating factor in the drafting of the

documents. Whilst the First Respondent's email and the document penned by Mr. Garnett referred to the Claimant's request for job descriptions, that was against a historic and continual request by her for the Managing Director contract for Scintilla. The First Respondent was of course aware of that and Mr. Garnett had been the recipient of a number of requests in that regard and thereafter the subject of the grievance when it was not provided. However, there is nothing in Mr. Garnett's document which makes any reference to the Equal Pay questionnaire and we do not accept the Claimant's account that this was penned as revenge for the same and to discredit her. In all likelihood, we find it more likely that it was simply Mr. Garnett setting out his own concerns for the benefit of the wider Board. Such matters would not be unusual topics of conversation at a Board meeting.

118. Turning then to the First Respondent, we accept his evidence that at the time that his email was penned and later circulated by Mr. Robinson to the Board he was not aware that the Claimant had submitted an equal pay questionnaire. Whilst the Claimant points to the fact that he had included comment regarding a claim under the Equality Act, we are satisfied that that had been a reference that the Claimant had also made in her earlier grievance (see page 119 of the hearing bundle). That "initial grievance" was expressly referred to in the email from the First Respondent but there is no mention whatsoever of the equal pay questionnaire as might logically have been the case if he was aware of it and it was the basis for his email to the Board.

119. Equally, we do not accept, as the Claimant claims, the First Respondent's comments were to punish her and to portray her in a bad light to the Board. We accept that the content of the email accorded with what the First Respondent understood to be correct about previous representations that the Claimant had made on pay matters with regard to Lesley Watkins. The email was not about denigrating the character of the Claimant but about bringing the Board up to speed on an area where the First Respondent perceived that there might be a litigation risk. We do not find that unusual in the context of matters that could and should be reported to a Board.

The Equal Pay Questionnaire

120. The email from the First Respondent and Mr. Garnett's "reflections" document post-dated a questionnaire which the Claimant had served on the Respondent by hand at the grievance meeting of 2nd July 2015, to which we have already referred. That was a questionnaire under the Equality Act 2010 which made reference to the fact that the Claimant contended that she had an inequality of pay with male comparators. The questionnaire, which appears at pages 142 to 156 of the hearing bundle, set out that the Claimant contended that she undertook work of equal value to the First Respondent in his role as Managing Director of Scintilla. The questionnaire also set out why she contended that her work was of equal value to that of the First Respondent.

121. Following legal advice taken by the Second Respondent, the Claimant's Equality Act questionnaire was responded to on behalf of the First Respondent in the following terms (see page 152 of the hearing bundle):

> "***I do not agree that you are doing work equal to that of your comparator(s), for the following reason(s).***
>
> *You have one line report, and you are a project lead in one specific area (health team) and while the MD of Scintilla only has three direct line reports, he is responsible for ensuring that the 16 or so apprentices meet an educational standard – including health and safety and other areas of training including English, Maths and computer literacy and provide data in support of this. As you will appreciate, failure to do so results in Scintilla not being able to claim the funding from the government for this.*
>
> *The MD of Scintilla must work with the finance officer and external auditors to prepare an independently audited set of accounts for each financial year, then presenting them at the company's AGM, compared to your role monitoring the SLA and sending the information to the CCHG;*
>
> *The MD of Scintilla is accountable for creating and managing a monthly company budget update and review, which he currently presents to the Board of Scintilla at the quarterly board meetings, compared to your role managing a single team budget*
>
> *The MD of Scintilla must attend Board meetings to review the progress of the company and be held accountable for any failings to generate income as predicated, compared to your role writing reports for the CCG;*
>
> *The MD of Scintilla must work in Partnership with the Chair of the Scintilla Board to create, implement and deliver a Business Plan over the course of 3 years, compared to your role negotiating contracts with the CCG;*
>
> *The MD of Scintilla is also responsible for an overall budget of circa £230,000, whereas you are responsible for a budget of circa £54,000.*
>
> *MD is responsible for dealing with a minimum of 10 contracts (plus a number of smaller ancillary contracts), whereas you are responsible for one single contract.*
>
> *While you of course receive a lower pay than the MD of Scintilla Ian Newton receives SP 39, £32,800 and you receive SP 34 £27,849, this is reflected in your respective responsibilities. In reality, the pay differential does not reflect the genuine chasm between your respective responsibilities.*
>
> *In terms of holiday entitlement, you are both on the same terms which allows for any employee with Ian Newton receiving 29 days*

plus Bank Holidays plus 5 days for 5 years' service and 3 days for 10 years' service where as you received 29 days plus Bank Holidays, plus 5 days for 5 years' service and an extra 3 days when you have been employed with MCVS for 10 years' service, which will start in April 2017. This would make the holiday entitlement the same."

122. After that point there was no further communication from the Claimant in respect of contesting the equal pay issue and, particularly, no equal pay claim was intimated or submitted to the Employment Tribunal.

The grievance appeal

123. As we have set out above, the Claimant appealed against the decision of Ian Marshall with regard to her grievance. It was a lengthy document and we do not set out the entire content here. We have restricted that to the elements of the appeal upon which the Claimant relies in the context of her assertion that she had made a protected disclosure. The relevant parts in that regard said this:

> "*…*
>
> *The third area of discussion was conflict of interest; I did say that I believed that it was a conflict of interest for Wynne Garnett to receive £4,500 to write the strategic plan, through the Big Assist funding; this sum was confirmed as correct in the meeting. You state in your grievance outcome response that 'whilst we conform to the charity commissions guidance in regards to Trustees receiving just payment for work undertaken, this process is being reviewed …'. You also said at point (i) that I '… provided no evidence to support your allegation'. As I have been misquoted in this paragraph I would like this statement amending. I do however acknowledge your comment that there was no evidence. I therefore provide the following below:*
>
> *Charity Commission's guidance:-*
>
> ***Pay a trustee to do work for the charity***
>
> *Legal requirement: before paying a trustee, you must have regard to the commission's guidance on paying trustees for services. It explains how you must:*
>
> - *produce a written agreement between the charity and the trustee (or connected person) being paid*
> - *specify the exact or maximum amount to be paid*
> - *make sure the trustee does not take part in decisions made by the trustee board regarding any aspect of the agreement*
> - *agree the payment in in your charity's best interests and reasonable for the service provided*
> - *not allow payments or other benefits to half or more than half of your board – the number of trustees receiving any payment or benefit must be in the minority*
> - *make sure your charity's governing document doesn't*

prevent you from paying trustees for services.

…"

124. The Claimant went on to set out an extract from the Second Respondent's memorandum and articles of association dated 18th November 2010 which provided the following in relation to payments to Trustees:

> "*…*
> *a Trustee may enter into a contract for the supply of goods or services to the Charity, other than for acting as a Trustee provided that the total value of the goods or services supplied in any one financial year does not exceed £1000 or 1% of the Charity's income, whichever is the smaller number.*
>
> *…"*

125. The Claimant also went on to set out further provisions regarding the conditions which related to the payment to Trustees for any work undertaken. She also set out a section of the memorandum and articles of association relating to conflicts of interest and in this regard recorded as follows:

> "*…*
>
> *29(1) A Trustee must declare the nature and extent of any interest, direct or indirect, which s/he has in a proposed transaction or arrangement with the Charity that has not been previously declared.*
>
> *29(2) A Trustee must absent himself or herself from any discussions of the Trustees in which it is possible that a conflict will arise between his or her duty to act solely in the interests of the Charity and any personal interest (including but not limited to any personal financial interest).*
>
> *29(3) Where a Trustee has or may have an actual or potential conflict of interest under Article 29(2) above, the remaining Trustees may, by a simple majority vote at a quorate Trustees' meeting, and under the provisions of sections 175(4) and 175(5) of the 2006 Act, authorise that Trustees to continue to act despite the conflict or potential conflict (other than a direct or indirect personal financial interest).*
>
> *…*"

126. The Claimant also went on to say:

> "*In the Board meeting minutes provided to me by you, from 22nd January 2014 to 3rd June 2015, there are no conflicts of interests declared. The June 2014 minutes mention that 'Big Assist is now looking for new bids …', but there is no record of discussion that the chair [Wynne Garnett] will be delivering this work.*

…"

127. The Claimant further went on to say in her appeal letter that the resolution that she was seeking was for the points raised in her letter to be addressed and she also asked that the appeal be held by what she referred to as an independent third party. In this regard, she made the following suggestions:

    (i) That the appeal be heard by a representative from MACCG as one of the First Respondent's main funders and the funder of the project which she worked on;
    (ii) That it otherwise be heard by a representative from NAVCA, an organisation of which the Second Respondent was a member;
    (iii) That it otherwise be heard by a representative from the Charity Commission or alternatively somebody who was not personally or professionally connected to Wynne Garnett.

128. The Second Respondent appointed Beverley Knight of Ellis Whittam, a firm of solicitors who were advising them at that time, to deal with the Claimant's appeal against the outcome of her grievance. She attended a meeting with Ms. Knight in that regard on 24th August 2015 and again on 3rd September 2015. The Claimant was accompanied at those meetings by her GMB representative, Harry Harrison.

129. Ultimately, the decision of Ms. Knight was to dismiss the Claimant's grievance and she wrote to her on 11th September 2015 to provide the outcome. That outcome letter set out the procedural history and also set out Ms. Knight's conclusions in relation to the issues that the Claimant had raised (see pages 163 to 167 of the hearing bundle).

130. The relevant parts of the outcome letter said this:

"Job Description and Person Specification

In relation to points 1 and 2 of your appeal letter, I find that you have been provided with a copy of the job description for the MD, Scintilla. You had been told at your grievance hearing by Ian Marshall that he was unaware of a job description or person specification for the MD role, however after speaking to Ian Newton on a number of occasions a job description was provided and passed to you. You asked when this had first been produced – I am unable to confirm this.

I cannot find a person specification for this role, but I understand there was a need to fill the role quickly which might account for not all paperwork being in place.

Equality Questionnaire and Comparability of the Roles

In relation to points three and four of your appeal, I find that you have now been provided with the completed equality questionnaire. As this was emailed to you on 28th August, it has been sent to you within the appropriate timescales. The questionnaire also answers point four regarding why Ian Marshall did not consider the two roles comparable.

Staff Engagement

In relation to point five of your grievance appeal letter, I find that you have already been given assurances by both Mike Longdon, Chair, and Ian Marshall, Operations Manager that staff will be allowed to have a voice and their input listened to and valued. They have both spoken to you directly, on a number of occasions, about this and in the original outcome letter it clearly confirms that Mike is prepared to meet with staff to discuss any concerns. You now need to give them an opportunity to prove this and follow it through.

Commitment from Management

In relation to point six of your grievance appeal letter, I reiterate what I have already said in point five. From my conversations with both Mike and Ian I believe there is a genuine desire to address the concerns the staff have regarding the Strategic Plan and the impact it would have on their roles and future. As you are aware the plan has not yet been implemented; it has been put to one side until Mike and Ian can sit down with all the staff and discuss their concerns, which they confirmed during my discussions with them. I understand this will move forward once this grievance has been answered. With regard to Wynne Garnett not sitting down with all the staff, I understand this is because he felt that it was the role of the Operations Manager to do this.

You acknowledge that it had been agreed that you would attend the HR sub group but felt there was a lack of commitment as you had not been notified of any meeting dates. No meeting dates have yet been set by Mike, because he is waiting for this grievance has been resolved. Mike has assured me that they will be planned in; both the HR and Finance sub groups.

Missing Board Minutes

In relation to point seven of your grievance appeal letter, I have found the following information in relation to the missing minutes. The 23rd October 2014 Board meeting became solely a Scintilla meeting due to some issue with an organisation that owed them money and having read through the handwritten notes I can confirm that they were not relevant to your grievance.

The meeting on 28th November 2014 was rearranged at the last minute which meant that Kate, who normally takes the minutes, was unable to attend as she does not work on Fridays. Ian Marshall confirmed that this meeting was to discuss the cancellations of the AGM which should have taken place on the 28th and no minutes were taken. Ian also confirmed that this was at a time when MCVS had a major financial issue with their main customer and there were concerns about the impact on the organisation, if not resolved before the AGM.

The meeting of 21st January 2015 was the AGM and the process is that these notes are not typed up until just before the next AGM when they are sent out for approval. So again they are not being held back as they have not yet been finalised as per the usual process.

With regard to no notes/minutes being taken it has been acknowledged that this is not acceptable and I believe that Kate has agreed to continue to take the minutes at these meetings in the future.

Further Points Raised

In relation to points eight and nine of your grievance appeal letter, I find that the matter of staff pay was not discussed at the meeting of the 15th April 2015, and the minutes give an accurate account of what was. Following on from our meeting of 3rd September 2015, I clarified with Ian Marshall a discussion we had had in relation to the situation with a pay review. Ian confirmed that it must have been at the HR sub group meeting and that it was he, not Wynne Garnett, who had cautioned against a pay review until September 2015 when these would be a clearer picture of the MCVS's financial position.

You appear to believe that for it to be discussed at the HR sub group the Board must have delegated it down and therefor discussed it first. However, from talking to Ian Marshall, I understand that the process is for the HR sub group to discuss any relevant HR issues first and then cascade upwards to the Board for them to consider.

In relation to point ten of your grievance appeal letter, after speaking to Ian Marshall I believe he had misunderstood what you were saying and made an assumption regarding your conversation. In the appeal hearing you said how upset you were by the implication that you had said 'items had been taken out of the minutes in order to hide a conflict of interest' when you had actually said 'that you believed that it was a conflict of interest for Wynne Garnett to receive £4500 to write the strategic plan'. Ian acknowledges this and I have asked for an amendment to be attached to the original outcome letter. It is also recorded in the notes of the grievance appeal meeting and now in this letter that you did not make that statement.

With regards to the new query in your appeal letter the possible conflict of interest is now being investigated by the Chair as he is best placed to understand the governance rules and obligations. I informed you of this at the debrief meeting on the 3rd September 2015 and you raised no objection to Mike carrying out this investigation.

With regards to the further points you raised at the appeal meeting. You asked why it had taken so long to send the outcome letter; you felt that it was to allow discussion at the Board meetings. I understand that there were a number of people on holiday at this time, including yourself and Ian Marshall, and you had been kept informed of the situation verbally by Ian. You confirmed this to me when I asked you on 3rd September 2015, so I do wonder why you raised this when you already knew the reasons.

With regard to your grievance being discussed at Board meetings, I understand that there were attempts to raise it however it was quickly made clear that it was not to be discussed as it was still ongoing. I have been unable to confirm this with Jenny Martin at this time as I am told she is away on holiday but Mike has reinforced that this is what happened.

With regards to your conversation with Mike where you believed you had been discussed at the Board meeting on 20th July 2015, and a document was handed out. Mike has confirmed to me that a document was not handed out and this supports his email response to you on 27th August 2015. You again raised it with me in an email on 28th August 2015 when you stated you had been informed by a colleague that something had been handed out. Mike has already responded this and when asked by me confirmed that nothing was handed out. You stated that you felt it is relevant to your grievance however I do note that this meeting was on 30th July 2015, seven days after the outcome letter was sent to you and I therefore believe that even if something had been handed out, it would not be relevant to your grievance."

131. That last paragraph of the outcome letter was of course incorrect given that by the First Respondent's own admission before us, his email to Ian Robinson had been handed out at the Board meeting. We have not heard any evidence from Ms. Knight as to her investigations and how she had reached that conclusion, but it appears from later communications between the Claimant and Ms. Knight on the matter (and which we refer to further below) it appears that the latter had "crossed wires" and that was the reason for the error in the appeal outcome letter.

132. On the same date as the Claimant received her grievance outcome letter she also received an email from Ian Marshall, who by that point had decided to leave the Respondent organisation. The email was entitled "*Last post*" and it said this (see page 162 of the hearing bundle):

> *"Darling, thank you for an interesting experience, I have learnt a lot in the past 20 months and I feel better equipped to move on to the next phase of my working life.*
>
> *Please try to be more laid back and stop fighting every ones battles or you will end up on the same tablets as me!!*
>
> *I wish you all the best and please include me in your xmas bash, I need someone to take me home.*
>
> *I apologise for the way it ended but it was out of my control in the end, I am mad with myself for allowing this to happen but there is not a lot you can do when talking to two brick walls*.
>
> *Very best wishes*
>
> *Love Ian xx*"

133. We accept entirely the Claimant's position that there was nothing but a professional relationship between herself and Mr. Marshall and that his

perhaps rather familiar language in that email was simply the way that he acted with people. Although we have not heard from him, his reference to how it "all ended", appears to us to be likely to be reference to the Claimant's grievance and the fact that no doubt he would be aware that the outcome had gone against her. Particularly, he had sent an earlier email, which appears at page 161 of the hearing bundle, which made it clear that he fully supported the Claimant in all aspects of the grievance which she had raised.

134. It does not appear that Mr. Garnett, or indeed the other Board members, were made aware of the outcome of the appeal at the same time as it was communicated to the Claimant. In this regard, on 24th September 2015 Mr. Garnett sent an email, which we presume to be sent to all of the Board (the distribution list is not provided on the email) and which said this:

"…

I am sorry to have to do this but I am emailing to express my continuing concerns with the way in which the grievance against me is being handled.

I was informed that the decision on an appeal made by Annette Harper would have been made by the time of the last Board Meeting. It is now two weeks later and I have heard nothing at all. Worse still, I am told that Annette has been sharing with other staff the content of her meeting with Beverley despite being advised not to do so. If this is the case, it is a clear breach of the CVS Grievance Procedure 13.2 and 13.3.

13.2 Records will be treated as confidential and kept in accordance with the Employment Practices Data Protection Code.
13.3 Parties to the grievance must maintain confidentiality, including witnesses.

My original concern that the grievance was not investigated properly or fairly still stand. Apart from submitting a copy of my email of 17th August as part of the Appeals process, I have not have had any formal opportunity to respond to the grievances raised. As I have said before there are previous Board Members who are quite prepared to substantiate the actions that I took as Chair and that these were corporate decisions. They are also happy to confirm that minutes were agreed as true records of meetings and were not altered by me. There have been no efforts to talk to these Board Members.

Given the nature of things at CVS at the moment with the resignation of Ian Marshall, I have not wanted to add to the difficulties and as requested have kept quiet awaiting the outcome. This is becoming increasingly difficult to do given the lack of information, the lapse in time and the suggestion that details of this appeals process are being leaked to a wider audience from just one perspective.

I still have had no formal answer to my email of 17th August which raised concerns about the process and I am becoming more and more aggrieved about the unsubstantiated allocations that were made during this process and which apparently are being shared and which could harm my

reputation. Could somebody please advise me as to where the appeal is currently at? If the situation is not resolved satisfactorily, I will have to consider contacting the Charity Commission for their approval to use charitable funds to support me as a Trustee in taking further action to defend myself, …

Finally, as a learning point, it seems unfair that the grievance procedure should only relate to employees. There seems little protection for Trustees who are harassment, bullied or treated inappropriately and this may be something the organisation should rectify.

…"

135. We should observe that it appears to us unlikely that if Mr. Garnett was concerned about the complaints that the Claimant had raised with regard to Red Gem and a conflict of interest that he would have countenanced contacting the Charity Commissions. Indeed, that appears to accord with the position of the Second Respondent before us that they were not concerned that there was anything untoward as to the matters that had been referred to by the Claimant in this regard.

136. Ian Robinson replied to the email from Mr. Garnett as follows:

"*…*

To say I'm amazed is an understatement. The lack of communication and total unprofessionalism in the manner and execution of the handling of this grievance is simply so amateurish it's a disgrace.

For the record, prior to me going on holiday, I was told by both Michael and Ian that they could not give me any information re the situation as the review was not complete. Furthermore the specialist who was handling the reviewed confirmed on the phone to me her judgement would be made around the Board meeting date! Ian Marshall then told me that the judgment would be made by the Board Meeting!!

As a professional HR person, I would really welcome Jennies[11] input to what should now be done!!

I suggest Michael as Chairman takes total and absolute control to resolve this pitiful situation. Also with another Board member or senior member of MCVS, interview Ian Marshall re the situation. As Ian is still within his notice period, I suggest this is completed next week.

Furthermore I suggest if nothing is revolved within the next 7 working days, Wynne should contact the Charities Commission and demand an investigation with any costs being covered by MCVS.

Amazing that we allow a fellow director to be treated in this manner!!!

…"

[11] This is a reference to Jenny Martin, a then member of the Board who had an HR background.

137. There then followed a response to that email from another Board member, Paul Webster, who responded as follows:

> "*Is the point about contravening a grievance procedure likely to be Gross Misconduct?*
>
> *What is the delay now in releasing the report?*
>
> *Invoking the CC[12] may inevitably involve them digging deeper at MCVS. Are we comfortable with this? …*"

138. We are satisfied from his evidence that the enquiry which Mr. Webster made in his email in relation to the question of gross misconduct (a matter which does not appear to have ever been answered) was not designed as part of ongoing campaign to seek to oust the Claimant as she contends, either because she had raised an equal pay questionnaire or otherwise. It was merely an enquiry made given what Mr. Garnett had said in his email about the Claimant allegedly having breached confidentiality. We are also satisfied that his reference to the Charity Commission "digging deeper" was not such that it was significant concern that the Red Gem/Conflict of interest disclosure made by the Claimant would prove problematic for the Second Respondent.

139. On 29th September 2015, there was an exchange between Beverley Knight and the Claimant in relation to the 30th July 2015 circulation of confidential information issue. The email said this (see page 172 of the hearing bundle):

> "…
>
> *In respect of the 30 July document there appears to have been crossed wires between me and Mike. He assumed I had been asking about private correspondence which had not been circulated and which are not in any way connected to you or your grievance. This was the basis for my conclusion in the appeal outcome letter. Upon seeking further clarification from Mike, I have now had sight of the confidential document produced by Wynne at the board meeting on 30 July 2015. While this document does make reference to the fact you had raised a grievance, it does not provide any detail as to what your grievance is about or make any qualitative statement about the merits or otherwise of your grievance.*
>
> *…*"

140. The Claimant subsequently forwarded that correspondence to Mike Longdon, along with a request under the Data Protection Act for copies of the documents in question. Mr. Longdon circulated that email to Board members (see page 173 of the hearing bundle). Ian Robinson responded in a note to the Board (which was not copied to the Claimant) as follows:

[12] This is an abbreviation for the Charities Commission.

"*Hi at the board meeting I suggested you don't reply to her in any shape or form or limit the content of any correspondence because if your* [sic] *not careful you will be dragged into her Web.*
What you are reading is a perfect example of her style.
I would send it to Bev[13] *and I would start to look to the future!!*
…"

141. It is clear to us from that response and earlier communications from Mr. Robinson to which we have already referred that there was some degree of animosity on his part towards the Claimant and we have little doubt that that resulted from a frustration caused by the Claimant's vocalisation on HR and other issues over a number of years and that she was seen as something of a nuisance. We have already touched upon such matters above in the context of Mr. Garnett's "Reflections" document.

142. However, as we shall come to, Mr Robinson had no involvement in the later matters of which the Claimant complains and, particularly, he played no part in the later decision to terminate her employment by reason of redundancy or the restructuring exercise which put her at risk. We are therefore satisfied that any animosity on his part towards the Claimant did not impact upon either her dismissal or the matters of which she complains as acts of detriment before us.

Staff pay increase – September 2015

143. On 9th September 2015, there was a meeting of the management committee during which time it was agreed that a 2% pay rise would be made to both the staff of the Second Respondent and Scintilla staff and that all would also receive a bonus of £200.00.

144. The Claimant contends that that is indicative of the fact that there was no later genuine financial difficulties within the Second Respondent. Against the background of evidence to that effect to which we shall come in due course, we do not accept that a relatively modest pay rise some months earlier – and which the Claimant had been lobbying for, for some time – is suggestive of the fact that there were no later genuine financial difficulties within the Second Respondent. We deal with those matters further below.

The incident on 3rd December 2015

145. In her capacity as staff representative, the Claimant continued to discuss with staff members of the Second Respondent issues that they had concerning their employment. We accept that there was a level of frustration and dissatisfaction amongst the staff within the Second Respondent and that included concerns and uncertainties regarding pay matters.

146. A number of employees of the Second Respondent, doubtless as a result of the Claimant's role as staff representative and her ongoing vocalisation on HR matters, signed what was referred to as a mandate for the Claimant to represent them as staff representative with the Second Respondent

[13] Bev is a reference to Beverley Knight who had been dealing with the Claimant's grievance appeal.

Board.

147. Paul Webster, who was by that point acting Chair of the Second Respondent, provided an update from the Board to all staff of the Second Respondent and to Scintilla. That update was provided on 3rd December 2015 and said this (see page 179 of the hearing bundle):

> "…
>
> *As you aware in the last few months at Mansfield CVS and Scintilla we have experienced changes on both the staff team and the trustee board.[14] To develop positive working relationships we are seeking to be as open as possible with staff and share non-confidential information with you through issuing approved board meeting minutes and this update bulletin.*
>
> *1. Ian Marshall resigned from Mansfield CVS due to ill-health in October 2015. As Operations Manager, Ian played an important role in stabilising the day to day operations of the organisation that we can now build upon.*
>
> *2. The 2015-16 financial forecast for the Mansfield CVS Group is to break even. All Mansfield CVS and Scintilla staff have worked together to achieve this position and we feel confident that firm foundations have been made for 2016-17. We value the efforts of all staff which was reflected in the recent pay award. Growth can only be achieved with all staff working together as one by prioritising efficient delivery of their work programmes and being ambassadors for both organisations; internally at Community House and externally promoting our room hire, training services & facilities when meeting with partners or at events.*
>
> *3. Opportunities for new work have been forthcoming which we will share with you as soon as we are able. We continue to be involved in discussions about how the Mansfield & Ashfield CCG's Alliance Contracting Model will be delivered for the benefit of the local sector.*
>
> *4. Two recent resignations from the trustee board have meant our time and capacity has been stretched as we oversee governance of the organisation. Paul Webster is now Acting Chair until the AGM in January 2016 when we are seeking to increase trustee numbers and representation from the diverse groups across Mansfield.*
>
> *5. We share your views that additional management capacity is important to steer the organisation forward and are urgently exploring how best we can achieve this. To safeguard the roles of other staff and the organisation we are not able to commit resources for a CEO at this point. In the interim period Ian Newton will divide his time between management*

[14] The Trustee Board had a high and regular turnover.

of Scintilla & Mansfield CVS.

6. Over the last nine months we have made plans for growth in our draft Strategic Plan, however these have been knocked sideways as our time is spent on issues which we have to address first. As a board committed to the sustainability of Mansfield CVS and its role in the town we are making every effort to ensure its ongoing viability through delivery of an Agreed Strategic Plan.

We have a strong voluntary sector in Mansfield, dedicated to supporting the people of our town and working in Partnership with Mansfield CVS. Our work with Mansfield District Council, the Volunteer Awards, the Health & Wellbeing Forum and 'Food For Thought' Breakfasts are some of the incredibly powerful examples of this and all staff should feel proud of what they are achieving.

…"

148. On the same date, there was also a finance update by Patricia Shaw, the Second Respondent's Finance Officer. That update took place at a meeting at which the Claimant and other members of staff were present.

149. The update at that meeting was not going to impart glad tidings in terms of the figures and the profitability of the Second Respondent. Given that it would be evident that the terms of the update would be likely to attract criticism from the staff we have no doubt that it was a difficult meeting for Patricia Shaw, as was clear from her evidence before us.

150. During the course of that meeting, an incident occurred between Patricia Shaw and the Claimant. We accept that Patricia Shaw said to the Claimant towards the start of the meeting words to the effect of "don't you start Annette". We accept the evidence of Patricia Shaw that that was set against a background of the Claimant repeatedly asking for financial information in relation to the Second Respondent and Scintilla. Whilst that is denied by the Claimant, we prefer the evidence of Patricia Shaw in that regard and we are satisfied that that account is supported by the emphasis that the Claimant placed upon financial information and details of salaries and salary structures in her numerous items of correspondence to the Second Respondent Board and others which we have seen during the course of these proceedings.

151. As a result of questions asked at the meeting, a number of which we accept emanated from the Claimant, it is common ground that Patricia Shaw became extremely upset and we accept that she eventually left the meeting in tears. We are satisfied that that most likely followed an emotional outburst from her directed towards the Claimant who she perceived as being the main protagonist as far as questioning about the figures and the financial update was concerned and who had somewhat badgered her previously for information as we have already observed above.

152. Whilst the evidence of Mr. Mallaburn was that he had not heard the Claimant say anything adverse - and indeed he told us that it was he who had raised questions of Patricia Shaw at a later stage - it is clear that Mr. Mallaburn was one of the last to be seated during the course of the meeting. It is entirely feasible therefore that whatever the Claimant had said to provoke the reaction from Patricia Shaw – and whether that justified her reaction or not - this was said before Mr. Mallaburn got there. In all events, as we have already set out above, we considered Mr. Mallaburn to ultimately be a poor historian and like other elements upon which he was questioned at the hearing, it is simply possible that he does not fully remember this particular incident.

153. We make no finding that whatever the Claimant said or did was inappropriate but we accept that Patricia Shaw say it as being aggressive and it did of course result in her leaving the meeting in tears. Whatever occurred obviously therefore caused her distress, even if that was not intended.

154. Following that incident and after she returned home that evening, we accept that Patricia Shaw wrote an email of complaint to the First Respondent who was by that time acting as her line manager. By that stage, the First Respondent was splitting his time between Scintilla and the Second Respondent where he had taken up the interim CEO position which, as per Mr Webster's update referred to above, the Second Respondent was not at that time financially able to fill on a permanent basis.

155. There is confusion in relation to the date upon which that email complaint was sent to the First Respondent. The copy which we have in the bundle at page 180 shows that it was sent from Patricia Shaw's Hotmail account (i.e. her private email account) on 8th December 2015. That accords with the evidence provided to us by the First Respondent. However, the position of Patricia Shaw in her evidence was that she sent this email on 3rd December 2015. We have not been taken to any email of that date. She has confirmed to us however, and we accept her evidence, that the content of the email which appears at page 180 of the bundle was identical to the email which she says she sent on 3rd December 2015.

156. The Claimant contends that that email has been manufactured by the First Respondent and that it was not sent by Ms. Shaw at all. We do not accept that and there is simply no evidence whatsoever to support the Claimant's contentions in that regard. We accept the evidence of Patricia Shaw that the content of the email which appears at page 180 of the bundle is identical to that which she sent to the First Respondent. Whilst it is clear that she recalls sending it on 3rd December, we consider it more likely than not that she has simply got the date wrong and that it was in fact sent on 8th December as the First Respondent recalls and as the email itself records. There has been a period of over two years between the point when Patricia Shaw gave evidence and the sending of this email. Since that time, she has spent a considerable period of time off sick with stress and depression following difficult personal circumstances. We do not find it unusual that she may well have got the date wrong in relation to this email and that it is more likely than not that it was sent on 8th December

2015.

157. There was a further email of exactly the same content but dated 17th December 2015. We are satisfied from the fact that the letters "FW" appears in the subject line that this was simply the forwarding of the original email which had been sent from the personal email address of Patricia Shaw. That accords with the evidence of both Patricia Shaw and the First Respondent that the latter had asked for the email to be resent from Ms. Shaw's work account.

158. The Claimant contends that this email has been doctored, presumably by the First Respondent, because it does not show the time and date of the original email trail. That email was printed by Simon Mayberry at Ellis Whittam so clearly it was forwarded again to him. Ultimately, we have no idea why the email trial does not appear as the Claimant says but we are entirely satisfied that this is not for any sinister reason and that the email has not been doctored. We are satisfied that this was a genuine complaint which was raised by Patricia Shaw to the First Respondent as her evidence confirmed and that her original complaint was sent again from her work account as had been requested by the First Respondent. It may potentially be that Ms. Shaw copied and pasted part of the email and that accounts for the lack of date and time of the original.

159. However, whatever date it was sent we are entirely satisfied that the content is as it is set at page 180 and that it was penned and sent by Ms. Shaw. The email in question said this:

> "*Hi Ian*
>
> *Following our meeting today I would like to put in writing what we talked about today and say that I feel very undermined about having my integrity and ability to do my job questioned all the time, it isn't very helpful or productive as I am always anxious and I feel tense about what will be said or happen next about confidential matters that should not concern certain members of staff.*
>
> *Annette I feel does not respect me, my opinion or has any belief in the truth of my answers and she definitely doesn't want to be part of the MCVS team.*
>
> *I find her attitude to be quite aggressive and makes the meeting atmosphere very stressful and unpleasant, and this is why I don't wish to be in any meetings or work closely with her.*
>
> *I will of course work with her on a professional basis and to the best of my ability but i don't wish to have any further interaction with her more than I have too,* [sic] *hence I don't wish to go to any meetings which she will attend.*
>
> *…*"

160. We are satisfied that was the genuine view that Ms. Shaw held about the Claimant, whether rightly or wrongly, at that particular time. What is clear

to us from spending a number of days observing the Claimant both giving her evidence and also particularly when cross-examining other witnesses, is that her passion for certain subjects in which she believes strongly often appear to overtake her and lead to emotional manifestations. In our view, it is entirely possible that such passion was demonstrable at the meeting of 3rd December 2015 and subsequently led to the complaint being made by Patricia Shaw. However, whatever the position in that regard we accept that Ms. Shaw felt strongly at that time about how she perceived that she had been treated by the Claimant and that was the basis for her email complaint to the First Respondent.

161. We accept the evidence of both Patricia Shaw and the First Respondent that there was some discussion between them after receipt of the email about how the former wanted her complaint to be dealt with. We are satisfied that Ms. Shaw understood the matter was being dealt with as a formal complaint. Whilst that was not the evidence of others before us at the Tribunal who understood that they were dealing with it informally, we are satisfied that that is borne from a rather lackadaisical attitude, as was amply demonstrated as we shall come to by the way in which this grievance was handled by members of the Respondent Board towards dealing with complaints, concerns and grievances, and that the understanding of Ms. Shaw was that it was being dealt with formally and that is how she wanted the matter to be dealt with.

162. Ms. Shaw therefore understood that her complaint was being dealt with as a formal grievance and that she was expecting the First Respondent to deal with the matter accordingly.

Meeting of 14th December 2015

163. On 14th December 2015 there was a meeting between the Claimant and Mr. Webster. Mr. Mallaburn was present at that meeting but he has not been able to materially assist us with what occurred because of a distinct lack of recollection of those events.

164. During that meeting we accept that the Claimant again made reference to the fact that there had been a conflict of interest in that Big Lottery funding had been paid to Red Gem and in turn passed to Scintilla.

165. However, the reaction that the Claimant describes Mr. Webster as having had at that meeting again reinforces our view that neither he nor the Board were particularly troubled about the situation. He did, in this regard on the Claimant's case, suggest that she made a Freedom of Information request to obtain information about the matter. It appears to us that that would be an unusual thing to do if Mr. Webster wanted to cover the matter up or close the Claimant down about her complaint.

166. Secondly, the Claimant's position is that Mr. Mallaburn commented to Mr. Webster that he had raised the conflict of interest point. We observe in that regard that Mr. Mallaburn did not suggest before us that he had been in any way targeted as a result of having raised such concerns.

Complaint of 4th January 2016

167. On 4th January 2016, there was further complaint from the Claimant following the outcome of a subject access request which she had made in October 2015. Her complaint arose in relation to content of the documents with which she had been provided as a result. She wrote to Paul Webster on 4th January 2016 (see page 187 of the hearing bundle) attaching two documents to seek to address what she referred as the inaccuracies and making what she also referred as an informal complaint about the First Respondent in respect of the same.

168. One of the attachments that the Claimant included with her email raised a complaint about Wynne Garnett and that document appears at pages 706 and 708 of the hearing bundle. In essence, that document set out the Claimant's disagreement with the criticisms which Mr. Garnett had made about her at the 30th July 2015 Board meeting in his "Reflections" document and it contained the following final paragraphs:

> "…
>
> *Unfortunately, I believe the reason that Ian Newton and Wynne Garnett circulated the defamatory information about me at the Board meeting on 30th July 2015, was to set the Board against me and discredit me, portraying me in a bad light, to influence the outcome of my grievance, which was on-going at the time. I believe their comments were uninvited and unprofessional. I believe their sole intention was to victimise me because I had submitted a grievance and an equal pay questionnaire.*
>
> *This whole process has been very upsetting for me and has had a detrimental effect on my health and wellbeing. I believe the treatment I have received as a consequence of a simple request for information, consideration of a pay increase for all staff and a meeting with staff to discuss their concerns around working practices has been disproportionate and unjustified.*"

169. The Claimant also submitted a similar document in relation to the First Respondent and that attachment appears at page 907 of the hearing bundle. She made similar criticisms to those which she had set out in the attachment relating to Wynne Garnett and she concluded by saying that she believed the First Respondent's actions to be malicious and the content of his email untrue and that she accordingly wanted to raise a formal complaint in respect of him.

Investigation of Patricia Shaw's complaint

170. In the meantime, the First Respondent had set about the process of interviewing other members of staff who had also been present at the time that the incident of 3rd December 2015 had taken place so as to deal with the complaint that had been made by Patricia Shaw about the Claimant. He did not at this time inform the Claimant of the fact that Patricia Shaw

had raised a complaint about her and, indeed, she did not become aware of that until very much later in the process. Gossip, which we consider was likely to be rife at that time within the Second Respondent organisation, had led the Claimant to be aware that there had been a complaint about her and that this may lead to disciplinary action but she was provided, entirely unsatisfactorily in our view, with no substance in respect of that complaint (see page 197 of the hearing bundle). That in our view was a mistake. The Claimant should have been spoken to in respect of these matters at the same time, at the very least, as other members of staff who the First Respondent was interviewing.

171. Whilst there is a reference in the meeting notes to which we have been taken with those who were interviewed by the First Respondent in connection with the complaint made about the Claimant as to confidentiality being maintained, it is clear to us that that simply did not occur and thus the Claimant came to know via gossip that she was the subject of a complaint.

172. It would have been much better for the First Respondent to have explained to the Claimant that there had been a complaint, the nature of that complaint and that he was investigating it. It was a most unsatisfactory state of affairs that the Claimant had to find out about those matters second-hand and we have no doubt that this caused her a significant degree of anxiety, particularly given the amount of time that matters dragged on – a matter to which we shall come further in due course.

173. However, we are satisfied that whilst this was a failing on the First Respondent's part, there was nothing malicious or deliberate about that particular issue. It was simply an error of judgment on his part.

174. As part of his investigations, the First Respondent interviewed Patricia Shaw, Lesley Watkins, Charlotte Wright, Philip Taylor, Kate Broughton, Linda Heslop and Alison Waring, all of whom had been present at the meeting. We have not found ourselves able to rely upon any of those meeting notes as being accurate records of what was said at those meetings. We say that on the basis that none of them are signed and in relation to the position with the notes provided with regard to Charlotte Wright there is a concerning exchange of text messages between the Claimant and Miss. Wright which appear at page 712 of the hearing bundle in which Miss. Wright described her original statement as being incorrect; that she had made alterations and signed that altered statement but that that had been destroyed as the evidence was "too questionable to count to anything so it was useless and irrelevant" to the complaint. We have not, however, heard from Miss. Wright as to exactly what she meant by that.

175. The Second Respondent has not been able to trace a copy of that signed statement and it appears likely from the text message correspondence that it had been destroyed. We have no way of knowing on the basis of the evidence before us who destroyed it or their reasons for doing so. Whilst that is clearly a concerning position, ultimately nothing turns on it given that we have had the account of Patricia Shaw of the meeting before us in live evidence and we have made our findings in respect of that

matter above.

176. On 11th January 2016, Mr. Webster acknowledged receipt of the Claimant's complaints about the First Respondent and Mr. Garnett (see page 200 of the hearing bundle). The Claimant responded referencing the complaint or grievance which had been made against her and what she termed as the First Respondent's refusal to tell her who had made the complaint or what it was about. She asked for a copy of the complaint and the witness statements that had been taken. Mr. Webster responded to say that in due course the Claimant would be asked for a statement in relation to the complaint which had been raised and in reply the Claimant complained that the processes which were being followed for her and the First Respondent were very different as Mr. Webster had provided a copy of her informal complaint to the him at the outset. Mr. Webster replied on 26th January 2016 to say that the process was not different; that he would be investigating the Claimant's complaint against the First Respondent and the First Respondent would continue to investigate the complaint against the Claimant. The Claimant continued to complain about that issue and it is fair to say that during this time, and in fact as matters went on, email traffic from the Claimant on issues with which she was dissatisfied continued at a considerable pace.

177. Whilst Mr. Webster had set out his position that the method of investigation of the complaints did not differ, clearly there was a marked difference in that the Claimant had no idea about the substance of the complaint made against her, or indeed who had made it, whilst the same was not the case in respect of her own complaint about the First Respondent. It is of little surprise to us that the Claimant was upset about that particular matter.

<u>Investigation of the Claimant's complaints</u>

178. Further correspondence took place between Mr. Webster and the Claimant in February 2016 with Mr. Webster indicating that he wished to meet with the Claimant to discuss her informal complaint against the First Respondent. The Claimant responded to confirm that she wanted the matter to now be looked at by the most senior Board member who was not present at the Board meeting on 30th July 2015 when the First Respondent's email had been circulated (see pages 208 to 210 of the hearing bundle). The Claimant's request was agreed and the task of dealing with the complaint was subsequently delegated to Peter Clarke joined the Second Respondent Board at a Board meeting on 18th February 2016.

179. Following that point, Mr. Clarke wrote to the Claimant by email on 15th March 2016 (see page 211 of the hearing bundle) to arrange a meeting to discuss the informal complaint against the First Respondent.

180. The Claimant accordingly met with Mr. Clarke to discuss her complaint. The notes of that meeting are at pages 214 and 214A of the hearing bundle and we accept that they are a broadly accurate description of what occurred during the meeting. During the meeting, Mr. Clarke asked the Claimant what she would like the outcome of her complaint to be and she

indicated she would like it to be resolved informally.

181. We accept that during the course of that meeting, the Claimant also made reference to the fact that she believed that Mr. Garnett had been paid through Big Assist to write a strategic plan for the Second Respondent earlier in the year. The extract of the meeting in this regard said this:

> "…
>
> *I believe Wynne had been paid through Big Assist to write the strategic plan earlier in the year, although I'm not sure of the exact date.*
>
> …"

182. Given the fact that the Claimant had raised a complaint against the First Respondent, it was determined by the Second Respondent that it was inappropriate for him to continue with the investigation in relation to Patricia Shaw's grievance. Frankly, it is difficult to see why that decision had not been taken at a rather earlier juncture given that any complaint against him from the Claimant had the ability to conflict the First Respondent in his dealings with Ms. Shaw's complaint about the Claimant.

183. Nevertheless, investigation of the complaint was therefore passed to Heather Rabett as the incoming Chief Executive Officer to deal with. As we shall come to, however, she did in fact come to leave the Second Respondent organisation shortly after her appointment and at that stage, the matter then stalled considerably.

184. Heather Rabett met with the Claimant on 25th February 2016 to discuss the complaint. Notes of the meeting were taken but those were not provided to the Claimant by Ms. Rabett. Only 19th July 2016, the Claimant was finally provided with a copy of the notes of her meeting with Heather Rabett which had taken place on 25th February 2016 (see pages 352 to 358 of the hearing bundle). We find that somewhat unusual but we have not heard from Ms. Rabett to provide an explanation in respect of those matters although there is detailed email correspondence on those particular matters which appears at pages 220 to 224 of the hearing bundle.

185. Thereafter, there was a further meeting between Heather Rabett and the Claimant on 21st March 2016. That was of course some 3 months after the complaint had first been raised. We have not heard from Ms. Rabett as to the reasons for the delay in respect of that matter but we find them to be quite inexcusable, both in relation to the position with Patricia Shaw who had raised the complaint and for the Claimant who was still in the dark about what it was that she was supposed to have done. It is, given such circumstances, little wonder that morale within the Second Respondent's organisation was somewhat low. It is clear that that meeting did not go smoothly. Indeed, a later email between Ms. Rabett and the Claimant referred to the Claimant's allegedly confrontational approach, a criticism which the Claimant did not accept. It was perhaps a further inflaming of the situation that even at this stage Ms. Rabett still refused to provide any

details regarding the complaint.

186. There was a further meeting, albeit one that was unscheduled, between Heather Rabett and the Claimant on 31st March 2016. Again, as can be seen from page 218 of the hearing bundle, that did not go particularly well and it was largely unproductive. As a result, matters did not advance at all.

187. Thereafter, a further meeting had been scheduled for 4th April 2016. That meeting did not take place, however, as by that point there had been further rather unhelpful email communication between Ms. Rabett and the Claimant (see pages 230 to 231 of the hearing bundle) with the Claimant requesting that somebody else be appointed to conclude the investigation of the complaint against her.

188. However, Mr Clarke continued to deal with the Claimant's informal grievance against the First Respondent. He accordingly met with the First Respondent on 13th April 2016 to discuss the matter. Mr. Clarke, not unreasonably given the Claimant's response when he had asked her at their meeting what she wanted as an outcome, confirmed to the First Respondent that she would like to resolve the matter informally. We accept that the First Respondent indicated that he was willing to write a letter apologising for any stress that his email had caused to the Claimant and that he had not expected that to be shared with all Board members.

Meeting on 20th April 2016

189. Mr. Clarke undertook to go back to the Claimant in respect of that matter and indeed he did so on 20th April 2016. Although the Claimant disputes the accuracy of the meeting note, we accept that Mr Clarke conveyed to the Claimant that the First Respondent would be willing to provide her with an apology and that the Claimant indicated in response that she would accept an apology from the Board but would not accept an apology from the First Respondent and would want a retraction of what he had said. Whilst the Claimant disputes that, we find that it is in keeping with earlier communications to which we have been taken and also the degree of animosity which we accept that the Claimant by that stage - and continuing even now - felt in relation to the First Respondent.

190. During that meeting we accept the Claimant's evidence that she again raised the issue about Red Gem and the conflict of interest. That was in keeping with previous meetings when the Claimant continued to raise that particular issue. In this regard, we accept that the Claimant said words to the effect that Big Assist funding had been paid to Wynne Garnett and that some of that money had been passed back to the First Respondent. There is no suggestion in the Claimant's witness statement that Mr. Clarke acted negatively to her issues and, indeed, her evidence was that he said that he would investigate and that he sympathised with her. Again, that does not suggest to us that Mr. Clarke had any axe to grind as a result of the Claimant having raised those matters with him.

191. On 3rd May 2016, the Claimant notified Mr. Clarke that she wanted to progress her grievance against the First Respondent to the formal stage and she attached a detailed letter of complaint accordingly. That was acknowledged by Mr. Clarke on 10th May 2016. The delay in acknowledgment was as a result of the fact that he had been on holiday.

SLA Contract extension

192. On 4th February 2016, the contract on which the Claimant worked was extended to 31 March 2017 by the MACCG (see page 203 and 203A of the hearing bundle). That was communicated by the MACCG both to the Claimant and also to Heather Rabett who at that stage still held the role of Chief Officer, albeit as it transpired that only lasted for a brief period of time.

18th February 2016 Board meeting

193. On 18th February 2016, there was a Board meeting. At that meeting Peter Clarke took a place on the Second Respondent Board. At the same meeting Patricia Shaw presented a finance report in her capacity as Finance Officer. We accept that such a presentation would be the norm at Board meetings. During the presentation, Ms. Shaw explained to the Board that cashflow was tight on a month by month basis and that a consultation needed to be held with staff around changing their pay dates from the 24th to the 31st of each month to assist with cash flow. That consultation did later take place and we accept that this is demonstrative of the fact that the Second Respondent was at that time in financial difficulties.

194. On 16th March 2016, there was a further Board meeting where cashflow issues were again discussed. In addition, during that meeting it was agreed that an investigation should start into the steps that the Second Respondent would need to take to begin a consultation process with staff about the restructuring of roles. We are satisfied that that was as a result of the aforementioned cashflow problems and that the Second Respondent had determined that there was a need to restructure operations in order to make cost savings.

Request for budgetary information

195. On 1st April 2016, the Claimant requested some details of the Second Respondent's budget for the year 2016/2017 so that she would have an idea of the budget which she had in relation to her particular project. Given the difficulties which had occurred at the 3rd December meeting and Ms. Shaw's concerns generally in relation to the Claimant asking for financial information, she checked the position with the Board. Ms. Shaw was also alive of course from her position as Finance Officer and her financial updates to the Board about the difficulties in relation to the financial circumstances of the Second Respondent and she therefore asked the Board how to respond to the Claimant. Mr. Webster replied to say that in his view there was no need or reason to share any budget information other than in limited terms and that Ms. Shaw should not feel pressured by the Claimant into sharing any overall costs and budget for

the Second Respondent.

196. In relation to the health budget (i.e. the project that the Claimant worked upon) he also said the following:

> "…
> *As we are still agreeing the Health budget with the funder I would also be reluctant to share this information at this stage as it may change. Currently if you share the budget it would show that the project doesn't have anything to spend on training & printing as it isn't making a full contribution towards these costs!*
>
> …"

197. We are satisfied that at that time, the budget position was being explored as Mr. Webster's email indicated because, as we shall come to, there was a later meeting with the MACCG at which the Second Respondent, knowing the difficult financial position which they were in, sought to see if there may be any additional funds which may be available for the completion of that project.

198. By this stage we also accept that the Second Respondent was in a dire financial situation and as such there was a sensitivity around financial information.

199. Ms. Shaw replied to say that she could not release the information as the Board were negotiating budgets for that financial year (see page 854 of the hearing bundle). The Claimant replied on 23rd May 2016 again asking for documentation relating to the budget for the project. The Claimant was told that Ms. Shaw would need permission from the Board and the Claimant replied to query that as she had been given the information in previous years.

200. Ms. Shaw forwarded the exchange to Peter Clarke who replied to the Claimant's original email to Patricia Shaw n 31st May 2016. His email said this:-

> "…
>
> *Trish forwarded your email to me regarding budget. As you know the Board are doing a full review of the budget and we see the CCG contract funding as part of our general fund and it isn't ring-fenced or protected. Our SLA just requires for us to deliver on the project agreed outcomes.*
>
> *Is there any reason you are requesting this?*
>
> …"

201. There was thereafter a number of email communications regarding the budget with Mr. Clarke confirming that the CCG project had overspent by £1,500.00 in the previous year. He arranged a meeting with the Claimant to discuss her grievance against the First Respondent and offered to

discuss the budget position with the Claimant at the end of that meeting (see page 857 of the hearing bundle). To that end, there was no refusal by Mr. Clarke to provide the Claimant with information and he clearly indicated that he was prepared to do so.

Commencement of the consultation process

202. As we have already observed, given the financial position in which we accept that the Second Respondent found itself the Board had determined that steps needed to be taken which involved not only restructuring but also consideration of amendment to the date for payment of staff salaries. Having made those determinations, the Second Respondent set about a process of consultation with affected staff.

203. As part of that process on 20th April 2016 the Second Respondent held a meeting with both their own staff and staff employed by the trading arm, Scintilla. The Claimant was in attendance. The minutes of that meeting are somewhat lengthy and are contained at pages 242 to 248 of the hearing bundle points. However, the relevant points of note are as follows:

> "…
>
> *HR[15] explained that we have not as an organisation received the income we were expecting to this month, and that this is a challenging time for everyone. This means that it is physically impossible to pay staff by the 24th of this month, as there is no cash at hand in the bank. HR said that as an emergency measure, staff were being asked as an act of goodwill towards the organisation to accept one week's pay on 22nd April, with the remainder of their month's salary to follow on Friday the 29th April 2016. …*"

204. It was also explained that there would be a Board meeting the following day to make urgent decisions and that staff suggestions and feedback were welcome.

205. The Claimant took a lead role at the meeting in making comments and asking questions. That was perhaps not unusual given her position as staff representative and the fact that she had openly been vocal in relation to human resources matters previously, as set out above.

206. As part of her taking the lead, the Claimant queried the reason for the cashflow problems and who had not paid the Second Respondent. One of the debtors in this regard was said to be an organisation by the name of Enable. Enable had been due to pay Scintilla for work done and in turn, profit received in that regard would be gifted by Scintilla to the Second Respondent. It is perhaps fair to say that the position with Enable has taken a central part in the Claimant's views that Scintilla should have faced some sort of repercussions in the Second Respondent's later cost cutting exercise.

[15] A reference to Heather Rabett.

207. Another issue raised by the Claimant at the meeting was with reference to the Charity Commissions Standards Guidance which recommended that if a charity's trading arm was not bringing in an income after two years operation, then it should be dissolved (see page 254 of the hearing bundle). The Claimant raised this issue in the context of Scintilla. The response was that the Second Respondent did not wish to lose its trading arm. Despite the Claimant's obvious antipathy towards Scintilla – both now and at the time of the meeting - we find that a perfectly understandable position for the Second Respondent to have taken. In fact, it is clear to us from the evidence to which we have been taken Scintilla was the only part of the organisation that was actually bringing in any real money and to close that trading arm down in those circumstances would have been absolutely disastrous for the Second Respondent.

208. A further meeting took place on 26th April 2016 for those who had not been present at the previous meeting with largely the same discussions taking place that had been had six days previously.

209. On 21st April 2016, there was a Board meeting as had been explained to staff at the initial consultation meeting. The following information regarding finances, which we are entirely satisfied from the evidence which we have seen as to the financial position during the course of this hearing was accurately represented, was set out as follows:

> "…
>
> *Trish and Peter[16] presented two scenarios for the future of CVS, this involved cuts to salaries or hours across the whole organisation:-*
>
> *i. The current situation with no changes showed a predicated deficit of £49,921 at the end of 16/17;*
>
> *ii. A streamlined scenario with cost savings to staff salaries by reducing hours by 15% across the board leaving a predicated deficit of £19;492 at the end of 16/17…*
>
> *General discussion about the impact if we tried to impose these reductions.*
> *The attached sheet shows that on a salary budget of around £250,000 neither a 15% or 18% reduction bridges the shortfall which overall is around £50,000.*
>
> *The figures are:-*
>
> | | | |
> |---|---|---|
> | *Present* | *-* | *£257,321* |
> | *15% reduction* | *-* | *£218.722* |
> | *18% reduction* | *-* | *£211,003* |
>
> *It was decided that this approach was not a viable proposition, if staff decided they were going to leave we would have no control*

[16] This being Ms. Shaw and Mr. Clarke.

over the process and that we needed to look at a restructured organisation.

…"

210. The Board elected that a restructuring - and thus potential redundancies - would be the way forward given the foregoing. We accept that that was, given the circumstances, a necessary course given that the main overhead of the Second Respondent was in relation to salaries. In the circumstances, a restructuring of the organisation was, we accept, the only viable way forward given the dire financial situation in which the Second Respondent found themselves.

211. It was agreed at that stage that Mr. Clarke would start the redundancy consultation process on behalf of the Board by sending what we will refer to as 'at risk' letters to all staff to detail the situation, the options under consideration and the actions which were being taken, along with a request to staff to put forward and solutions that they may have had.

212. A Trustee by the name of Nicola Roberts was tasked, along with Heather Rabett, in dealing with the restructuring of the organisation and how it was expected to look post restructure. We have seen several incarnations of that proposed structure and it is ultimately difficult to get to the bottom of which was the final version. However, we accept that in essence this involved combining duties within specific roles to reduce the overall head count and thus bring about economic savings by way of a salary reduction.

213. It is the Claimant's case that the whole restructure in this regard was designed simply to target her so as to remove her from the Second Respondent organisation. We do not accept that and there is no evidence to substantiate that contention. It is beyond doubt that the Second Respondent was predicting a huge deficit for the financial year and that drastic measures were required to seek to prevent that. It is also clear that significant work went into looking at the restructuring process and that a number of members of staff were put at risk as we shall come to. We consider it highly unlikely to say the least that that effort would have been gone to and the risk of destabilising the workforce and demoralising them further would have been taken for the sole purpose of creating a sham redundancy situation so as to bring about the Claimant's dismissal.

214. On 26th April 2016, Mr Clarke carried out the exercise referred to above in relation to the sending of "at risk" letters to a number of members of staff at the Second Respondent organisation. The Claimant received one such letter, which read as follows:

"*…*

I regret to inform you that our organisation is encountering, like many other Community and Voluntary Organisations, very difficult times with regards to funding and income. You will note from separate correspondence that we are looking to change your salary pay date to assist with our cash-flow. However, we need to decrease our outgoings in order to continue to operate, and as part

of this process we need to review all of our costs including staffing costs.

While we are not yet in a position to confirm the extent of the changes that will be necessary to continue to operate, we consider it best to advise you that we may have to make the decision to make compulsory redundancies. Please be assured this decision will only be taken as a last resort and after every other option is explored. Further, we are not yet in a position to determine which roles may be affected by this.[17] *At present we are looking at the following options:-*

a) Reducing our general running costs
b) Maximising income generation including looking at any appropriate funds that we could submit applications to – (we would appreciate any ideas that you might have to increase income generation)
c) Increasing our room rental income and increasing our tenant base
d) Potential Partnerships which would include sharing some services and costs.

Another area that could be explored is for staff to agree to reduce their hours or accept reduced pay for the same hours, again we would only look at this option if there was no other way of resolving this situation.

I fully appreciate that this letter might come as a shock and will be upsetting but as a Board we feel that you should and will be kept up to date throughout this difficult time. As I have said we welcome any ideas or suggestions that you might have, please talk to your line manager or feel free to contact me direct [18]*…*

As a board we are fully committed to ensure the long term future of Mansfield CVS and will do all that is possible to achieve tis.

…"

215. On the same day, the Claimant also received a letter in relation to the proposed change of pay date to the 31st of every month as had been discussed at the first consultation meeting. The Claimant signed and returned that letter accepting the proposal immediately.

216. On 28th April 2016, there was a further Board meeting. At that meeting, a guest by the name of John Kraft was invited. We understand Mr. Kraft to be a human resources consultant. There is a reference in the minutes of that meeting to the First Respondent and Peter Clarke liaising with Mr. Kraft on the issue of the redundancy process. However, we are satisfied

[17] That is as a result of the fact that there was an ongoing project by Nicola Roberts and Heather Rabett to identify how the Second Respondent organisation should look after a proposed restructure.
[18] A personal email address was provided. We do not set that address out here for obvious reasons.

that the redundancy process itself was not undertaken by the First Respondent but by Mr. Clarke and in fact the Second Respondent chose not to go ahead with the services of Mr. Kraft for cost reasons. However, it was agreed that the first step now for the Second Respondent would be to look at a strategic plan and develop a new staffing structure identifying the posts needed to meet the aims and ensure job descriptions were fit for purpose. The actions from that meeting were that Nicola Roberts and Heather Rabett were to continue to develop the new structure based on what was necessary to deliver the strategic plan and what cost savings could be made and to make any necessary updates to job descriptions.

217. We are satisfied from the evidence of Mr. Clarke that that is what occurred. As we have already said, we have seen several incarnations of the restructure plans developed by Ms. Roberts and Ms. Rabett. The evidence of Mr. Clarke was that the one which appears at page 264 of the hearing bundle was the one which was eventually implemented. Ultimately, we cannot be sure of that. There a number of different versions of the structure, all of which appear to differ from each other in some way and the dates set out on the documents do not easily allow us to determine which was the final version. We have not heard from Ms. Rabett or Ms. Roberts to assist us on that issue but we are satisfied that not a great deal in all events turns on it.

218. There was a further Board meeting on 4th May 2016 at which discussions as to the work undertaken by Nicola Roberts and Heather Rabett were had. The relevant parts of the Board meeting minutes in this regard said this:

> "…
>
> *Heather and Nic have spent time developing a proposed restructure based on the needs and outcomes within the strategic plan. The whole of MCVS had been looked at. The Board agreed that the proposal should affect the minimum of staff and also that we couldn't risk cutting staff from the Trading Arm[19] as our proposed projections are reliant on them hitting their given target for this financial year (£45k profit). The Board were in agreement with implementing the proposed new structure which will involve a streamlining of staff and generation of new job descriptions … A budget to support these changes was produced and needs to be amended to take into account potential redundancy payments of up to £15,000. Once Job Descriptions had been finalised a proposal including what roles would be at risk will be signed off.*
>
> *…*"

219. Again, Heather Rabett and Nicola Roberts were to develop those job descriptions and look at the pooling of existing staff for the new proposed roles.

[19] That is a reference to Scintilla.

220. As set out in the extract above, we are satisfied the Second Respondent considered the position of Scintilla and whether to cut resources from that trading arm. We are satisfied that they took the decision not to do so on the basis that at that stage an estimated projection of profit of £45,000, which would in turn be gifted by Scintilla to the Second Respondent. The Claimant is extremely critical of that decision and points, amongst other things, to the fact that the estimated £45,000 of profit was not in fact generated and a lesser sum than that which had been envisaged was gifted over to the Second Respondent.

221. Whilst we accept that the Claimant feels very strongly about that issue, we accept from the evidence before us that the Second Respondent had considered the position but had determined that it was not in their interests to reduce resources at Scintilla given that it was in fact at that time the only profitable part of the Second Respondent's organisation and that, even if it did not eventually come to fruition, at the time that the decision was made they had envisaged a healthy cash injection would be forthcoming from Scintilla for that financial year. We therefore accept that in the view of the Second Respondent at that time it made commercial sense not to cut Scintilla's resources. That was, given the circumstances, not an unreasonable position for the Second Respondent to have taken.

222. There was another Board meeting on 25th May 2016 at which there was a further discussion as to the finance position. Again, it is clear that the Second Respondent was by this time in some financial difficulty and they had looked at options such as securing a bank loan and even the sale of the building occupied by the Second Respondent to try to alleviate those financial pressures.

223. An HR update was also provided at the Board meeting and the relevant parts of the record of the meeting said this (see page 281 of the hearing bundle):

> "…
>
> *Ian[20] has been liaising with Sal at Ellis Witham regarding the restructuring process, the business case needs to be clear and transparent – the financial situation is a clear rationale… The board favours an interview process for the recruitment to new posts.*
>
> *…*
>
> *Ian has confirmed with Ellis Whitham that no one member of staff is protected under any ring-fenced funding as contracts are with MCVS not individual projects and it has never been told to any staff member that they are protected.*
>
> *…*"

224. The issue of ringfencing had been raised by the Claimant in the earlier consultation meeting and had doubtless prompted the issue to be raised by the First Respondent with Ellis Whitham.

[20] This being a reference to the First Respondent, Ian Newton.

225. We should perhaps observe here that the Claimant later made her own enquiries of the MACCG regarding whether it was correct that her post was not ringfenced. The Claimant contends in this regard that her post was ringfenced – that is ringfenced to her and her alone – and she says that the response that she received from the MACCG confirmed that. However, that is not the case when one reads properly and objectively the response from Julie Andrews, Community and Engagement Manager at the MACCG, upon which the Claimant relies. That response simply said as follows:-

> "…
>
> *Discussions didn't go into that level of detail other than an assurance was provided by MCVS that the organisation would continue to deliver the project* (that is the SLA) *within the current financial envelope.*
>
> …"

226. Whilst the Claimant has been at pains to seek to ascertain which version of the SLA Ellis Whitham had advised on in the terms referred to during the HR update on 4th May 2016, ultimately she has not been able to take us to anything whatsoever in the various incarnations of the SLA that we have - or from her own records - which show at all any ringfencing of her post. We are satisfied that what was recorded in a later email from Mr. Clarke on the subject regarding his discussions with the MACCG was therefore accurate.

227. We repeat here our earlier observations about ringfencing and the fact that it is clear that provided that an Authorised Officer was appointed, that person could simply be changed on notice to the PCT. We have not seen anything that required that Authorised Officer (or indeed any other position) to remain as the Claimant.

228. We are also satisfied that whilst it is clear that the First Respondent was liaising with Ellis Whitham about the process, which may ultimately have been unwise given that he was the subject of complaints by the Claimant and even at that stage it was possible that she may be affected by the redundancy process, this was for the purposes of obtaining general advice only and that he was to take and indeed took no part in either the decision on the restructuring or who was eventually to be retained. The former was a matter which Heather Rabett and Nicola Roberts were dealing with for approval by the Board and the latter was determined by Mr. Clarke and the later interview process to which we shall come in due course.

229. There was a further Board meeting on 1st June 2016 at which it was indicated that the Board would need to formally agree the new structure developed by Heather Rabett and Nicola Roberts at the next meeting.

230. By that point, it had also been agreed that Mr. Clarke would step down from the Board so that he was able to commence a new position as Change Manager and Interim CEO for the Second Respondent.

231. There was a further Board meeting on 9th June 2016 at which the position with regard to the bank loan was raised (see page 288 of the hearing bundle). The proposed structure developed by Heather Rabett and Nicola Roberts was discussed and agreed by the Board and a schedule for consultation on the redundancy process was to commence.

21st June 2016 meeting

232. On 17th June 2016, Charlotte Wright, the Business Administrator at the Second Respondent wrote to the Claimant and others affected by the restructure proposals to invite them to a meeting, which was referred to as an invitation to a staff update. Both the Claimant and Lesley Watkins expressed concern that no agenda for the meeting had been produced. However, the meeting went ahead on 21st June 2016. Present were Lesley Watkins, the Claimant, Bill Cashmore, Sharron Emm, Charlotte Wright, Patricia Shaw and Alison Waring. Philip Taylor, who had also been invited, was not present but we understand that he was brought up to speed with matters separately after the meeting.

233. The notes of the meeting are at page 310 of the hearing bundle. Mr. Webster, Mr. Clarke and another then Board member, Dean Lupton, were present on behalf of the Second Respondent. The lead at the meeting was taken by Mr. Webster. He explained the following to those present at the meeting:

- That the current structure was unsustainable and a restructure had to be considered;
- That the new structure had been produced and meant that some posts would go or be merged to form new posts;
- That in some cases staff would be interviewed for new posts;
- That eight posts would be going and that four new posts would be created;
- That there would also be changes to terms and conditions of employment around pensions, life assurance and the health scheme;
- That eight people were now in a “redundancy situation”;
- That the meeting was an announcement rather than the beginning of a consultation process and that correspondence would follow where representations could be made at further meetings;
- That the process would continue for around two to three months and that interviews for the new posts would take place within that timeframe;
- That no staffing cuts were being made to Scintilla and that this was as a result of their gifting of their profits to the Second Respondent meaning that Scintilla staff covered their costs;
- That other scenarios, such as a reduction in hours and pay scales had been looked at, in addition to the possibility of raising capital on the building;
- That Peter Clarke would be taking on the new Change Manager and Interim CEO post in the interim until a new appointee was found – Heather Rabett had by that time left the organisation – and

that he would working a 3 day week but being paid only for one and that there was no money for a new CEO post at that time;

- That if more than one staff member applied for a role, then that would be dealt with by way of interview;
- That the roles of Lesley Watkins and the Claimant were to be merged and that the Claimant's post had "gone"; and
- That other suggestions such as voluntary redundancy and a reduction in hours could be considered and that the Board were open to suggestions.

234. Bill Cashmore asked at the meeting to take voluntary redundancy and that was subsequently agreed by the Second Respondent. We understand that Mr. Cashmore may have been motivated in doing so by reason of health issues given that he was on long-term sick leave at the time.

235. A scheduled staff briefing took place later that day. Details of the proposed restructure was provided to those present. During the course of the meeting, staff were informed that the Health & Social Care manager and the Volunteering & Group Support posts would no longer exist after the restructure and that a new post of Partnerships & Engagement Co-ordinator would be created. Staff were also informed that under the new structure the Health Development post would no longer exist and a new post of Partnership & Engagement Assistant would be created in its place. The Health and Development post was a role held at that time by Lesley Watkins.

236. Other posts affected would be finance positions and those present were informed that under the proposed new structure the Finance Officer and Trainee Finance & HR Support posts would be deleted and a new post of Office and Facilities Manager would be created. The Finance Officer post was the role held by Patricia Shaw and the Trainee Finance & HR Support position was held by Charlotte Wright.

237. There would be further structural changes under the proposed new structure in that the maintenance worker and two part-time cleaner posts would be deleted and a Caretaker/Cleaner post would be created in their place. These were the roles affecting Bill Cashmore, Sharron Emm and Phillip Taylor. The former were part time cleaners and Mr. Taylor was the maintenance worker at the material time.

238. At the meeting, the Claimant asked for confirmation that her post was redundant and that was confirmed. Clearly, that was far too soon for that confirmation to be given. At that stage there had been no consultation whatsoever on the mechanics of the new structure or whether any alternatives might have been able to be suggested by any of those present to avoid the need for redundancies or by looking at the proposed structure again. We consider that to have been an error on the Second Respondent's part and that it caused unfairness in the process.

239. A staff briefing took place later that afternoon with the discussion centring around the possibility of opting for voluntary redundancy.

240. On 22nd June 2016, the Claimant and the others affected by the potential redundancy situation was sent a letter entitled "Redundancy Warning" (see pages 318 and 319 of the hearing bundle). This letter referred to the Claimant's role as Health and Social Care Manager as being one which the Respondent intended to replace within the new structure with the new proposed role of Partnership and Engagement Co-ordinator. The job description was enclosed for the new role. It was also made clear that the Claimant was entitled to apply for any of the other available posts, namely Caretaker/Cleaner, Office and Facilities Manager and Partnership and Engagement Assistant. She was not provided with job descriptions for those roles but we are satisfied that had the Claimant been interested in them, she could have made that enquiry and the Second Respondent would have provided them.

241. The letter talked in less strident terms than had been the case at the 21st June 2016 meeting about the fact that the decision had already been made to implement the new structure and to delete the existing posts and replace them with four other positions. We are satisfied, however, that the decision in that regard had been taken and indeed no consultation or feedback in relation to the new structures was invited by the Respondent. It was therefore something of a fait accompli that there was to be the deletion of posts and the introduction of new job roles.

242. The position in relation to voluntary redundancy was also set out in the letter with any individual interested in voluntary redundancy being asked to let the Respondent know of their interest by 1st July 2016 at the latest. Details of the further consultation process and further consultation meetings which were to take place were also set out in the letter.

243. In July 2016, Mr. Clarke took up the position of Change Manager and Interim CEO at the Second Respondent. He then appears to have taken over the mantel of dealing with the Claimant's grievance in relation to the First Respondent in addition to the complaint which had been raised against the Claimant by Patricia Shaw (which was previously being dealt with, albeit rather shambolically, by Heather Rabett). By that time, Ms. Shaw's complaint had been raised as long ago as seven months previously and little or nothing at all had been done to progress the matter any further. Again, that was clearly a wholly unacceptable state of affairs, not only for the Claimant but clearly also to Patricia Shaw.

244. The Claimant met with Mr Clarke on 6th July 2016 (see page 328 of the hearing bundle). The minutes of the meeting are contentious and are disputed by the Claimant.

245. The Claimant attended an individual one to one consultation meeting with Mr Clarke in the presence of her trade union representative on 13th July 2016 (see pages 336 to 338 of the hearing bundle). That meeting focussed on the Claimant's contention that her post was ringfenced, the question of voluntary redundancy and the fact that Scintilla was unaffected. That latter point has, as we have already observed, been a bone of some considerable contention for the Claimant.

The IT virus issue

246. In or around May 2016, a virus had entered the Second Respondent's IT system. We accept that the most likely cause for that, on the basis of the evidence that we have heard from Mark Whaler who dealt with the Second Respondent's IT systems, was that the Claimant had clicked on a link contained in an email which had allowed the virus access into the system. We accept that that was the information that the Claimant herself provided to Mr. Whaler at the time although her position on that now is perhaps less clear. Nevertheless, whatever means by which the virus found it's way into the Second Respondent's IT systems it went on to corrupt the files of users of the system, including the Claimant.

247. We do not go into the complexities of what happened as a result of that matter but suffice it to say that there was a difficulty in restoring some of the Claimant's files to the system and that it took longer to restore her files than for some other staff. We accept the evidence of Mr. Whaler that that was as a result of the fact that the Claimant had files in two separate locations and, further, that restoration of her files was in all events more difficult given that the virus had corrupted her files before those of others as she had, in all likelihood, been the one who downloaded the virus.

248. The Claimant's position in relation to the restoration of files issue is that what Mr. Whaler says by way of explanation for not restoring some of the files and what he could restore taking longer than for other members of staff is either inaccurate or untrue. She contends instead that the First Respondent had in some way instructed Mr. Whaler, or someone else within his business, QNS who provided IT services to the Second Respondent, not to restore the Claimant's files or otherwise to delay them.

249. Whilst it is not disputed that the Claimant's files took some time to be restored, unlike some other members of staff, and that some files could not be restored at all, we accept the explanation of Mr. Whaler as to the reasons for that. The Claimant has no evidence, expert or otherwise, to suggest to the contrary. It is simply supposition on her part and the equating of an otherwise relatively innocuous event with a conspiracy taking in all of those remotely connected with the First and Second Respondents.

250. There is in our view nothing in the Claimant's suggestion that the First Respondent had instructed Mr. Whaler or someone else to delay restoration of her files and we accept the evidence of both of them that no such instruction was ever given. The explanation for what happened with the restoration of the files is as set out above.

The SLA meeting of 27th May 2016

251. On 27th May 2016 there was a discussion between Paul Webster, the First Respondent and members of the MACCG. It is common ground that the Claimant was not in attendance and she takes issue with that given that she was the lead under the SLA.

252. However, we accept the evidence of Mr. Webster that this was a high level meeting at which the intention was to discuss with the MACCG whether there was a possibility of the Second Respondent obtaining any additional monies for services being provided under the SLA.

253. In short, it was Mr. Webster and the First Respondent seeking to see if they might re-negotiate the monetary aspects of the SLA given the financial difficulties that the Second Respondent was in. It was not therefore a meeting that the Claimant needed to be involved in with regard to the services that she assisted in providing under the SLA. It was a discussion which, we accept, would have been sensitive and accordingly needed to be dealt with at a high level. In short terms, there was no need to invite the Claimant.

The printer toner issue

254. During the time that the consultation process rumbled on, the Claimant had requested a toner for her printer. That request was refused, apparently on the instruction of Patricia Shaw. The Claimant was concerned about that position and wrote to Mr. Clarke as follows (see page 302 of the hearing bundle):-

> "*… Yesterday, I tried to order a toner for my office's printer from reception, the receptionist was told by Trish not to order it, and "it will all become clear next week". So, I'm thinking will I not be here after next week to need a printer?*
>
> *…"*

255. Mr. Clarke responded as follows:-

> "*Not at all it's probably Trish being overzealous about cutbacks. I'm in tomorrow will have a word with her.*
>
> *…*"

256. We accept the evidence of Mr. Clarke that the reason the Claimant was not given a toner was as a result of the cutbacks which Patricia Shaw and others had been instructed to implement at that time. Such cutbacks would, of course, hardly be unusual in an organisation which was having the type of financial difficulties that we accept that the Second Respondent was having.

257. One of those cutbacks was that the Claimant and others would not use desktop printers any more but would use what the Second Respondent considered to be a more cost-effective solution of use of one general printer in the reception area of the building. The Claimant sought to argue before us in cross examination of Ms. Shaw that the use of one single printer was not more cost effective than use of desktop printers. We have no way of knowing whether she is right or wrong about that but ultimately it seems to us that the Second Respondent, having determined that it would remove desk top printers and replace them with a single use printer and having

done that for all other members of its staff other than the Claimant by that time, would have a not unreasonable expectation that it would be a cheaper alternative for the Claimant to use the same printer as everyone else rather than ordering her further toner for an individual desk top printer. We accept that that was their view and it was for that reason that Patricia Shaw was concerned about ordering toner when the main machine in reception could be used for the purpose of any printing that the Claimant had to do.

258. Whilst the Claimant appears to accept that no other member of staff at that time within the Second Respondent had a desktop printer, she nevertheless compares herself with amember of staff within Scintilla who had a desktop printer and that, as far as the Claimant was aware, did not experience difficulties in ordering toner. However, that is comparing apples with oranges. The budget for Scintilla was operated by the First Respondent and not Patricia Shaw. She had no responsibility for what could and could not be ordered by Scintilla staff. She therefore had no input into the ordering or otherwise of toner at Scintilla nor, for the avoidance of doubt, did the First Respondent have any input into the decision not to order a toner for the Claimant.

259. Moreover, nobody else in the Second Respondent had a desktop printer or had their orders for toner accepted during the time of austerity measures within that organisation. Scintilla had no such austerity measures in place.

260. Therefore, we are entirely satisfied that there was a reasonable explanation as to why the Claimant was refused a toner for her desk top printer and this was not as a result of the fact that Patricia Shaw was aware, as she contends before us, that she would be made redundant and would therefore not need one. In fact, as we shall come to, the Claimant's eventual redundancy did not take place until some considerable months later so there could be no issue about matters "becoming clear" a week later as her email had suggested and if such a comment was made, it was far more likely made in the context of the fact that there was to be a continuation of the austerity measures that Ms. Shaw was implementing.

The Board meeting of 14th July 2016

261. There was a further Board meeting on 14th July 2016. At that meeting, it was confirmed that the possible bank loan which had been discussed previously by the Board had fallen through and a second valuation was needed in relation to the building owned by the Second Respondent if that was to be sold. That was also an option, as touched upon already above, that the Second Respondent had been considering in order to try to find a way out of the financial predicament that they had found themselves in. At the same meeting, there was also an update provided to the Board on the restructuring process.

262. As it transpired, this particular Board meeting turned out to be a somewhat eventful one. In this regard, it is common ground that at the point when the Second Respondent was discussing an issue regarding the Claimant, she entered the Board meeting unexpectedly and without prior announcement.

263. The Respondents both contend that the Claimant burst into the meeting. The Claimant contends that that is not an accurate description and that she had knocked on the door and then entered. We consider that the reality is probably somewhere between those two positions. Certainly, the Claimant accepts that she did not wait for anybody to say 'come in' or otherwise notify her that she could enter the meeting. In all likelihood she entered swiftly after knocking given that no-one had time to respond and that could well have appeared to be the Claimant "bursting in".

264. We found the Claimant's evidence on this particular incident somewhat unconvincing. In this regard, she maintained that she had every right to be at a Board meeting if she wanted to, despite the fact that she was not a Board member. Board meetings discussed confidential information and there is nothing at all that we have seen that entitled any member of staff to simply walk in unannounced and address the meeting or otherwise attend it. We would not expect anyone who was not a Board member to attend at a Board meeting unless they had been expressly invited to do so. We did not accept the Claimant's evidence that she was entitled to attend the Board meeting as she did and we are satisfied that she knew full well that it was a confidential meeting.

265. We have to say that the Claimant also gave to us a somewhat unconvincing explanation as to the reasons why she came to enter the Board meeting. In this regard, her evidence was that she had overheard the First Respondent talking about her whilst she was about to exit the building into the car park. That was despite the fact that the Board meeting in question was taking place on a completely different floor to the one that the Claimant would have been on when she was leaving the building. Unless the First Respondent had been shouting, we consider it highly unlikely that the Claimant would have heard anything from the ground floor where the exit to the building was and we accept the Respondents evidence on that point. That is not least given the Claimant contends that she had overheard quite clearly, whilst on a completely different floor, exactly what she says that the key parts of what First Respondent had said were. We accept the evidence of the Respondents that had the Claimant genuinely been on the ground floor exiting the building, that quite simply would not have been possible. That is a matter of logic and it is less plausible in our view that a person on a different floor of a building would overhear precisely the contents of a meeting taking place behind closed doors.

266. Following her entry to the meeting, the Claimant said words to the First Respondent to the effect of *"I don't appreciate you speaking about me in a Board meeting. I thought the information was supposed to be confidential and I also don't appreciate hearing you speak about me when I was walking out of the door"* before leaving the meeting immediately thereafter. We accept that those present were, not surprisingly, shocked at the Claimant's entrance to the meeting and her outburst thereat.

267. It was decided at the meeting following the Claimant's somewhat swift exit that disciplinary action against her would be considered. Whilst we consider that to have been somewhat heavy handed given the circumstances, we accept that the Claimant did enter a confidential meeting and have an inappropriate outburst towards Board members. Whilst it can

perhaps be said that not every employer would have dealt with matters in the same way and that an informal reprimand might have been seen as a more a proportionate way forward, we are satisfied that the Second Respondent's decision to consider disciplinary action, which in all events did not eventually come to fruition, was not indicative of any desire to remove her from the organisation or otherwise punish her for anything which she had done previously, other than her unexpected entry into the meeting and her conduct thereat. As we have said, whilst an informal caution or reprimand may have been the better way to deal with that particular matter, we are satisfied that there was nothing sinister in the way in which the Second Respondent went about that matter and that their genuine view was that what the Claimant had done warranted disciplinary action.

268. Perhaps somewhat unfortunately given the circumstances, the Claimant did not appear to have any form of regret about her actions at the meeting and she wrote to the Board on 15th July 2016 in fairly strident terms setting out what she contended she had heard at the Board meeting; submitting that the First Respondent's discussion of her at that Board meeting had been bullying and requesting a copy of the minutes of the meeting. She also requested confirmation from the Second Respondent as to why the First Respondent had been contacting Mark Whaler at QNS to "go through her files" and whether that was legal.

269. That latter issue is relevant to the Claimant's contention that her files were not restored during the earlier virus affecting the Second Respondent's IT systems – a matter with which we have already dealt with above - on the basis that she says that the First Respondent had instructed QNS to go through her files and, thus, the delay. We do not accept that.

270. Firstly, on the Claimant's account that she was on a different floor when the comment was made, we do not consider that she could possibly have heard properly what the First Respondent was saying. Secondly, we accept the evidence of the First Respondent and Mr. Whaler that no such instruction was given and that the only time that QNS were contacted about looking through the Claimant's files were as a result of a subject access request that she had made on 20th October 2015 (see pages 171, 172 and 482 of the hearing bundle). In that communication the Claimant requested, amongst other things, "copies of any records or files with my name on them, electronically or hardcopy….". It would make sense that QNS might well therefore be asked to assist in dealing with a trawl for files with the Claimant's name on them so as to comply with her request.

271. The evidence that we heard in that regard is consistent with the explanation on the issue set out in correspondence to the Claimant from Su Hallam on 28th September 2016. We should observe that although that letter refers to the contact with QNS by the First Respondent being in October 2016, that is clearly a typographical error given that the letter itself pre-dated October 2016 and the Claimant had made her subject access request in October 2015.

The Claimant's ill health absence

272. Following the incident on 14th July 2016 the Claimant returned to work but only briefly. In this regard, she did not return to work again after 15th July 2018 and thereafter she was certified by her General practitioner as being unfit for work on account of the fact that she was suffering from stress and anxiety.

273. Mr. Clarke became aware of that position on 20th July 2016 and wrote to the Claimant in the following terms:

> "…
>
> *I am writing further to the incident on Thursday 14th July 2016, when at approximately 5.15pm you unannounced suddenly entered the confidential Board Meeting and addressed the Board about a discussion that had just taken place within this Board meeting. Due to the shock of your sudden entrance, and your immediate departure after your 'address', I did not have the opportunity to talk to you about the incident.*
>
> *I had intended to discuss this with you on return on Friday 15th July 2016 so that this incident could be investigated. Unfortunately, you left work on Friday before I was able to arrange to meet with you. I checked but no one knew your whereabouts on Friday. On Monday 18th July, we received your message left on the answering service that you were sick and that a Fit Note will follow. In confirm safe receipt of the Fit Note, which cites 'work stress'. I would like to learn more about this when we next meet, so that I can better understand and offer any necessary support, at which time we can also discuss the terms of you leaving the office on Friday.*
>
> *The incident of Thursday 14th July is a very serious incident and potentially gross misconduct. On your return to work the circumstances around you walking into the confidential Board meeting will be fully investigated with a view to assessing if this incident should progress to disciplinary stage.*
>
> *Turning to your email dated 15th July 2016 addressed to all of the Board, in which you request copies of the board minutes, you are not entitled to view the confidential minutes. Your email also alleges that you feel that what you overheard Ian Newton say in the Board meeting amounts to bullying. I would like to reassure you that Ian Newton was just relaying the fact of an email that you had sent to him and his understanding of the background. This was not bullying.*
>
> *In response to your other questions in your email:*
>
> - *Ian Newton ceased being the investigating officer into your grievance against you, after you raised an informal*

complaint against him in January 2016. As you are aware due to changes Heather Rabett took over but she left too, after which I took over both the grievance against you and your informal complaint against Ian (which recently you informed you informed you would like to be treated as a formal grievance). Therefore, Ian Newton was not placed to be able to address your queries in relation to the grievance against you.

- *I have made enquiries of the employee who raised a grievance against you and I have been informed that the colleague wishes to withdraw the grievance because of the current redundancy exercise. Accordingly the grievance is withdrawn and the matter is closed. I apologise for the time that has elapsed since the grievance was lodged, but as previously discussed the changes in personnel had an impact on this. I am aware you want a copy of the minutes of your meeting with Heather Rabett which was held on 25th February 2016. Now that the grievance is withdraw, the minutes will not have any relevance. However, for your record, I have forwarded you a copy.*
- *Turning to the issue of your information complaint against Ian Newton, which you recently informed that you wish to lodge as a formal grievance, I enclose a copy of the grievance policy and ask that you please put in writing the grounds of your grievance, so that they may be fully investigated.*
- *Finally, in response to your question about Ian Newton contracting Mark at QNS and whether this is 'legal', I do not know what this refers too. I will make inquiries of Ian. I will follow up with you when you are back at work.*

I appreciate that there are a number of issues covered in this letter and I'm conscious of your health too, but in light of the serious incident and the need to clarify the above points, I felt it important to write to you. Please note that I will also be writing to you under separate cover regarding the issues of benefits and the redundancy consultation.

If you have any questions about the content of this letter, please let me know. If you feel well enough to attend an investigation meeting, equally please let me know and I'll arrange this.

In the meantime, I hope that your current health improves.

…"

274. There are a number of issues which arise from that letter. Firstly, the Claimant's position is that during the course of her ill health absence she was unsupported by the Respondent. Whilst it is ultimately unclear what support the Claimant has in mind - and she has not been able to articulate during the course of these proceedings what else it was that she says should have been done - it is clear that Mr. Clarke did write expressing what

we accept to have been genuine concern in relation to her health; proposing a meeting and specifically indicating that he wanted to discuss her health so as to offer any necessary support.

275. Secondly, it has to be said that the reference to the incident on 14th July 2016 potentially amounting, in the Respondent's eyes, to gross misconduct was perhaps not particularly helpful given that the Claimant was suffering from stress and anxiety. Whilst we accept that the Respondent had to make some mention of the incident in order that the Claimant was aware of how seriously they viewed the matter, this could have been more tactfully handled given the circumstances.

276. Thirdly, the letter from Mr. Clarke did of course make mention of the Claimant having left work on 15th July 2016 without anyone being aware of her whereabouts. We accept the Claimant's evidence that she had in fact told at least one member of staff at the Second Respondent that she was leaving work to visit the doctor but we equally accept that Mr. Clarke was at that stage unaware of that position and hence the reference to that matter in his letter.

277. Fourthly, we are satisfied that the information in Mr. Clarke's letter about Patricia Shaw wanting to withdraw her grievance because of the redundancy exercise was inaccurate and resulted from a misunderstanding on his part. In fact, this caused a significant difficulty in relation to the evidence of Patricia Shaw at the hearing before us given that, as we have already observed above, late on during the course of that evidence it was discovered that the wrong witness statement had been provided to the Claimant by Ellis Whittam at the point of exchange. This had been an earlier draft which Patricia Shaw had subsequently made changes to and we accept her evidence that the reason for the withdrawal of her grievance was not the redundancy process but the amount of time that this had been going on for and the fact it continued to remain unresolved. We accept her evidence that the redundancy exercise had nothing to do with that matter.

278. However, the fact that this suggestion appeared both in Ms. Shaw's witness statement as originally provided to the Claimant and in the letter from Mr. Clarke clearly and understandably caused the Claimant to further speculate that she had already been targeted for dismissal by reason of redundancy and that was the reason that the grievance had been withdrawn on the basis that it was pointless in pursuing it further as the Claimant would be leaving the Second Respondent organisation. However, we accept that that was not the case and it appears likely to us that the witness statement was drafted on the basis of what was contained in the documents by those instructed by the First Respondent and they failed to exchange the correct statement incorporating the changes that had been made by Ms. Shaw.

<u>The consultation process and voluntary redundancy</u>

279. During this time, the redundancy consultation process continued to rumble on and the question of voluntary redundancy again arose.

280. In this regard on 26th July 2016, Lesley Watkins wrote to Mr. Clarke – who was by that time in charge of overseeing the redundancy consultation

process - in the following terms:

> "…
>
> *Further to your letter dated 21st July 2016, in point 3 of the section responses to One-to-One, you refer to voluntary redundancy applications in the present tense. Can you therefore please confirm if the offer of voluntary redundancy is still on the table?*
>
> *Having considered all of the options, it is with the deepest regret that I can confirm that I would like to be considered for Voluntary Redundancy.*
>
> *I look forward to a response ASAP, in order that I can consider my position before the deadline of 29th July for alternative job applications.*
>
> *…*"

281. In regard to the latter point, those who's posts were affected by the restructure had of course been notified of the new positions which had been created in the alternative structure designed by Ms. Rabett and Ms. Roberts and had been informed that they could apply for any of the posts that they felt might be suitable for them. Ms. Watkins therefore obviously wanted to obtain a definitive answer as to the possibility of voluntary redundancy before considering making any applications for any of the new vacant posts.

282. Peter Clarke responded to Ms. Watkins to offer to arrange a meeting to discuss the matter. There was thereafter a somewhat protracted email discussion on the matter with Lesley Watkins asking if a written response could be provided rather than attending a meeting and whether, if not, she could bring a trade union representative to the meeting. Mr. Clarke, it has to be said, was somewhat evasive around his responses to those matters. Ms. Watkins eventually indicated that she was simply wanting to know whether voluntary redundancy was on the table and if so whether she was able to apply for it. It appears to us that that was an entirely straightforward question which was capable of response by Mr. Clarke – who was of course now overseeing the whole process – without the need for a meeting or protracted communication on the subject.

283. We do not have a copy of a response from Mr. Clarke to the latter email from Ms. Watkins but there was eventually a meeting in respect of that matter on 27th July 2016. That was not something which was disclosed to the Claimant at the time and indeed it only transpired before us during the course of the hearing on 28th June 2017.

284. During the course of that meeting, Mr. Clarke confirmed that voluntary redundancy was no longer on offer as at that stage in the process they may not have had anyone expressing an interest in the new posts and they could not afford to be in that position. The rationale in this regard appeared to be that they could not afford to pay redundancy payments and not have anyone interested in the new roles created by way of the restructure. In response, Lesley Watkins asked if two people applied for one post and,

providing they were both suitable candidates, could there be an option at that stage to say that they did not want to take the role and take voluntary redundancy. Mr. Clarke said that he would get clarification. We are not aware as to whether he did in fact revert to Ms. Watkins on that issue or, if he did, what she was told about the matter.

285. There are a number of concerns that we have about the way in which the request from Ms. Watkins was dealt with. The first of those is that if the position had been as simple as Mr. Clarke had made it out to be in the meeting of 27th July, there is no reason that that could not have been made clear to Ms. Watkins in the initial email chain rather than having her attend a meeting about it.

286. Secondly, whilst we accept that the position of Mr. Clarke was that the closing date for voluntary redundancies had passed by the time that Ms. Watkins made her enquiry – it having passed on 1st July 2016 – we have not had any convincing explanation about why that date had to be set in stone and no applications thereafter could be countenanced. It seems to us that the rationale given by Mr. Clarke at the meeting with Ms. Watkins was no different as at 1st July than it was three weeks later when the enquiry about voluntary redundancy was made.

287. Thirdly, the proposal made by Ms. Watkins did in fact represent a very effective way forward to deal with the Partnership and Engagement Coordinator post. In reality, there were two likely candidates for that post – Ms. Watkins and the Claimant – given the positions that they had held under the old structure. Given that Ms. Watkins wanted to voluntarily take herself out of the running, if the Claimant was to apply for the position then allowing Ms. Watkins to take voluntary redundancy would not only have avoided the need for the later interview process but it would have avoided the need to make one of the pair compulsorily redundant.

288. Whilst the Second Respondent has been at pains to argue that there was a risk that the Claimant would not apply for the role (and indeed they point out that she did not do so before the very deadline for applications) this is not a large organisation. Nothing in our view would have been simpler than for Mr. Clarke to have asked Lesley Watkins if she objected to him telling the Claimant that she had expressed an interest in voluntary redundancy and asking the Claimant accordingly if she wanted to be slotted into the Partnership and Engagement Co-ordinator post. The Claimant, who we accept wanted to stay working for the Second Respondent and did later apply for that same post, would clearly have answered in the affirmative and that would have avoided the need for compulsory redundancies at all and would have given Lesley Watkins the voluntary redundancy that she had requested.

289. There is no rhyme nor reason in our view as to why that could and should not have been done in these circumstances. As it was, the way in which Mr. Clarke dealt with this matter resulted, as we shall come to, in Ms. Watkins being appointed to the Co-Ordinator role which she did not, it seems from her email of 26th July particularly want, and the Claimant who did want the role being made compulsorily redundant.

290. The way in which Mr. Clarke rigidly dealt with the voluntary redundancy request was not, for the reasons set out above, a decision which was in the band of reasonable responses open to a reasonable employer and it caused unfairness not only to the Claimant but also to Lesley Watkins.

Applications and the interview process

291. By letter of 28th July 2016 (received on 29th July 2016 which was the deadline set by the Second Respondent for applications for the new posts), the Claimant applied for the Partnership and Engagement Co-ordinator post. Lesley Watkins applied for the post of both Partnership and Engagement Co-ordinator and Partnership and Engagement Assistant. She of course had little viable option but to apply given that her request for voluntary redundancy had been refused by Mr. Clarke.

292. As we have already observed above, we have not been able to ascertain whether Mr. Clarke at any point reverted to Ms. Watkins to confirm if she could take voluntary redundancy if two people applied for the same post. Again, given the Claimant's application for the Partnership & Engagement Co-Ordinator post, revisiting the matter at that time would have avoided the need for the Claimant's later compulsory redundancy. That would also have allowed the Second Respondent to simply slot Alison Waring into the Partnership and Engagement Assistant post for which she had also applied and leave Ms. Watkins free to take voluntary redundancy so there would at this stage have been no risk at all that the Second Respondent would be left with unfilled vacancies. It was in our view an error and unfair not to explore the voluntary redundancy position once again with Ms. Watkins as she had specifically requested.

293. It might well be the case that given recent events of "bursting" into the Board meeting, Mr. Clarke may not have been particularly disposed to finding ways to retain the Claimant in preference to the rather less controversial Ms. Watkins.

294. As set out above, the Second Respondent elected that they would conduct interviews to ascertain who should be appointed to the new roles in the revised structure rather than adopting a selection matrix or similar system. The interview panel for the positions was comprised of Mr. Clarke and two Board members – Su Hallam and Nicola Roberts.

295. Mr. Clarke's evidence before us was that he considered an interview process to be the fairer way to conduct the selection exercise, in view in part of experience that he had previously had of being involved in redundancy exercises in the public sector.

296. Whilst we accept that that might have been his view, we have to say that we have a number of concerns about the interview process in this situation. The Second Respondent contends that the Claimant performed in interview very badly and that Lesley Watkin's performed considerably better and, as such and as we shall come to, was offered the post. The Claimant denies that she was asked all of the questions in a sufficient amount of detail to allow her to answer fully and that her interview lasted for a much shorter period than Ms. Watkins – only some fifteen minutes or so. She also

maintains that some of her answers were not correctly recorded.

297. That may well be a matter of perception on the Claimant's part given that she was not actually present at Ms. Watkin's interview and we remark again that the Claimant is of course deeply mistrustful of the Second Respondent and their dealings with her during the course of the latter months of her employment.

298. However, that being said we have concerns over the approach taken in this regard by the Second Respondent as to the reliance on interviews alone, particularly one of the apparently short duration of some fifteen minutes or so that we accept was afforded to the Claimant. Firstly, Mr. Clarke was in our view relatively vague when dealing with the areas in which the Claimant did not come up to scratch at interview. This largely appeared to be limited to the Claimant asking questions and not appearing that interested in the position. The Claimant disputes that the content of a note setting out what are purported to be her answers during the interview were accurate in a number of material ways and it is clear that what is recorded was not a verbatim account.

299. Secondly, Mr. Clarke was equally vague in relation to the scoring system used to allocate points on each answer during the interviews. We have not been provided with a copy of that scoring which was apparently used by the interview panel nor their individual scorings which we understand from Mr. Clarke were then compared for each of the candidates. We considered Mr. Clarke's evidence and the documentation before us to be insufficient to conclude that any proper objective assessment had been undertaken.

300. Thirdly, the Claimant had principally dealt with the services under the SLA for a number of years – taking the lead and with Lesley Watkins acting as her deputy. It is accepted by the Second Respondent that the majority of the Partnerships and Engagement Co-ordinator post was made up of the duties that the Claimant already carried out in her existing position.

301. In addition, Mr. Clarke confirmed in his evidence before us that he saw the Claimant and Lesley Watkins as being of equal qualification and experience for the role. Despite this, on the Second Respondent's account the Claimant appears to have scored extremely poorly.

302. The Claimant's scoring should have rung alarm bells for the Second Respondent, particularly given that at the time of the interview she was absent suffering from work related stress and anxiety; she still had unresolved grievances outstanding and she had recently been told that she might face disciplinary action for gross misconduct. Her relationship with the Second Respondent was clearly not as it should have been and that was bound to affect her performance at interview. Given the Second Respondent's knowledge about her skills and experience working under the SLA and Peter Clarke's view of her competencies, we find it surprising in view of such matters that the selection process did not take into account more objective evidence of core skills and abilities.

303. The fact that the Claimant had been successfully completing a very similar role to the Partnership and Engagement Co-ordinator post for some time; was at least equally matched in skills and experience as Lesley Watkins if not more so given her more senior position and the fact that was off sick suffering from work related stress was not something that the Second Respondent appears to have taken into account at all. It is suggested, although the Claimant denies this, that Nicola Roberts asked her if she was "ok" to continue during the course of the interview, but even if that did occur there is a huge difference between the Claimant replying that she was to her being in a position to fairly participate in an interview process which would be the sole decider on whether she was to be offered the position. None of those matters were properly taken into account by the Second Respondent at all. No objective information, past history or achievements were looked at and nothing was taken into account to question what Mr. Clarke must have considered to be an obvious and unexpected gulf between the Claimant's scores and those of Lesley Watkins and what the reasons for that might be.

304. This method of selection without reference to anything more, and in view of the issues raised above, in our view caused considerable unfairness to the process, and was not something that fell within the actions of a reasonable employer.

The decision and termination of employment

305. Mr. Clarke wrote to the Claimant on 10th March 2016 asking to meet with her to discuss the outcome of the interview. The Claimant said in her reply in response that she had found the interview extremely stressful and that she wanted her union representative to be present at any further meetings. Alternatively, she indicated that the Second Respondent could let her know the outcome in writing (see page 394 of the hearing bundle).

306. The Respondent elected to inform the Claimant of the outcome in writing and confirmed that they would not be offering her the post of Partnership and Engagement Co-ordinator. That was done on 12th August 2016 and she was invited to another meeting on 17th August 2016 to discuss matters further. Lesley Watkins was later informed that she had been successful and was to be offered the Co-Ordinator position. Alison Waring accordingly was appointed to the Assistant post.

307. The Claimant attended the meeting of 17th August 2016 and it was again confirmed to her that she had not been successful in her application for the Co-Ordinator position. The result of that as the Claimant had only applied for the Co-ordinator post was that she was redundant. The Claimant again contended at this meeting that her post was ringfenced for her and thus she should be retained in the same position as required under the SLA. We have already dealt above with the fact that we consider that the Claimant was wrong about that.

308. The position in relation to an appeal was discussed and the Claimant requested someone external to hear the appeal and that she wanted to nominate the minute taker. She referred to a previous male colleague, which transpired to be the First Respondent, who during a previous redundancy exercise had been offered the option at appeal stage of an external Appeal Officer. The Claimant had in fact assisted the First Respondent with that process in her capacity as staff representative and before their working relationship became troublesome. She said that the same opportunity for an external appeal officer should be provided to her.

309. However, we are satisfied from the evidence given on behalf of the Second Respondent that this request was not agreed on the basis that the finances of the organisation simply did not allow for it at that time. It was also not considered by the Second Respondent to be necessary as there were Board members available to deal with the appeal who had not been involved in the redundancy consultation process and the interview and decision process and so who were able to view the matter afresh.

310. The Claimant did seek thereafter to nominate a proposed appeal officer with links to the Second Respondent who would conduct the appeal without any charge to the organisation but that was not advanced by the Second Respondent. We do not consider it unreasonable in the circumstances for the Second Respondent not to have agreed to allow the Claimant to effectively cherry pick an appeal officer or to otherwise go to the expense of appointing someone external to deal with this when there were available Board members who had not been involved in taking the decision not to offer the Claimant the Co-ordinator post and thus to make her redundant. That decision had been one made by those who conducted the interview.

311. The Second Respondent wrote to the Claimant on 17th August 2016 after the meeting setting out the position in relation to the termination of her employment, the benefits that she would receive on termination and her right of appeal. The Claimant was placed upon garden leave, to expire on 18th October 2016, which was said to be the final day of employment. It was made clear in the letter that the Claimant's final salary and redundancy payment would be paid to her on 18th October 2016.

312. The Claimant contends before us that the decision to terminate her employment did not take into account alternative employment that could have been offered to her and that included the vacant position of Chief Executive Officer. It is common ground that the Claimant was not offered that particular post.

313. However, we accept that the Second Respondent was not in a financial position at that time to fill such a role other than on an interim basis. Moreover, we would observe that such a position was the most senior and strategic role in the Second Respondent organisation and the Claimant had no previous experience of undertaking in any capacity. It is clear to us that it was entirely unreasonable for the Claimant to have expected the Second Respondent to have offered her the Chief Executive Officer position in such circumstances.

314. Remaining on the topic of suitable alternative employment, the Claimant also contends that the Second Respondent and Scintilla delayed an announcement of their securing of the Building Better Opportunities project, which in turn created five new vacancies within Scintilla, until after the termination of her employment. We do not accept that the announcement in respect of those matters was delayed simply to avoid offering the Claimant a role and we accept the evidence of the First Respondent that the reason for that was as a result of an embargo on announcing the successful bidder for that particular work. There was, therefore, no vacancy for the Claimant to have been offered in Scintilla at that particular time.

Appointments to available roles under the revised structure

315. As it transpired, the Claimant was the only individual made compulsorily redundant.

316. One of the cleaners, Bill Cashmore, took voluntary redundancy as we have already touched upon above and the remaining two individuals in the cleaning and caretaking posts (Sharon Emm and Philip Taylor) agreed to reduce their hours to undertake the Caretaker/Cleaner post on a job share basis. Alison Waring was appointed to the Partnership and Engagement Assistant position and of course Lesley Watkins was offered and accepted the role of Partnership and Engagement Co-Ordinator. Patricia Shaw was offered the Office and Facilities Manager post on the basis that Charlotte Watkins resigned from the organisation.

317. That left only the Claimant without a position under the new structure.

Investigation into the incident on 14th July 2016 and subsequent disciplinary action

318. Rather oddly, at the conclusion of the final redundancy consultation meeting on 17th August 2016, there had then been an investigatory meeting which had taken place in relation to the incident on 14th July 2016. Given that the Claimant was at that time under notice of termination of her employment on the grounds of redundancy (subject of course to any successful appeal) it is somewhat difficult to fathom what the point or purpose of this investigatory meeting was. Given the Second Respondent's rather lax approach to completing investigations in a timely fashion, the likelihood of any decision being reached on whether the Claimant should instead be dismissed as a result of the 14th July incident would appear rather unlikely. Indeed, it never did conclude as we shall come to further below.

319. We have no doubt that it served to cause the Claimant more stress, particularly in view of the fact that the investigatory meeting immediately followed the earlier meeting at which the Claimant had been told that she was being made redundant from the job that she loved.

320. Whilst we consider the timing and decision to advance the investigation in the circumstances to have been ill advised and relatively fruitless (and it clearly did nothing to assist the Claimant's faith in the Second Respondent) we do not accept that there was any ill motive in the matter being dealt with as it was and it was not part of any campaign against the Claimant. It was

simply continuing a process that the Second Respondent, albeit perhaps ill advisedly, believed needed to be advanced.

321. The Claimant attended the investigatory meeting and she was accompanied by Harry Harrison, her then trade union representative. Quite sensibly in our view Mr. Harrison raised the question of whether an apology from the Claimant might suffice to stop the process. That suggestion was not taken up by the Second Respondent.

322. Instead, Mr. Clarke wrote to the Claimant on 1st September 2016 to say that the Second Respondent Board had decided to carry out a disciplinary investigation; that statements were being obtained and that the Claimant would be called to a disciplinary hearing in due course. She was called to that disciplinary hearing by way of a letter of 14th September 2016 from Su Hallam, a member of the Board who had been tasked with dealing with the matter. The letter invited her to a disciplinary hearing on 29th September 2016 to consider the following allegations:

(i) That on Thursday 14th July 2016 the Claimant had arrived unannounced and uninvited and entered a confidential Board Meeting and addressed the Board about discussion that had taken place, suggesting that she had been wrongly listening into the meeting content;
(ii) That her actions had breached the trust and confidence placed in her as an employee; and
(iii) That on 15 July 2016, she was absent from her place of work.

323. There was reference in the letter to the view of the Second Respondent that those allegations, if proven, may amount to gross misconduct and one of the outcomes of the meeting might be the Claimant's dismissal. Again, given that the Claimant's employment with the Respondent was due to terminate in all events on 18th October 2016, it is difficult to see what possible purpose it was envisaged would be served by the continuation of the disciplinary process, particularly as late in the day as 29th September 2016.

324. The disciplinary hearing nevertheless went ahead on 29th September 2016 (see pages 484 to 493 of the hearing bundle). We say no more about that matter, however, given that there was never any outcome provided to the Claimant regarding that process before her employment terminated by reason of redundancy the following month. That, as we understood it, arose as a result of the subsequent illness of Su Hallam who did not return until after the Claimant's employment had already come to an end. Again, this seems to us to have been simply a somewhat ill-fated and ill thought out process given the circumstances and one which we have no doubt simply served to cause the Claimant additional stress and mistrust in the Second Respondent.

Appeal against dismissal

325. The Claimant appealed against the decision to make her redundant on 22nd August 2016 (see pages 408 and 409 of the hearing bundle). Her grounds for appeal were unfair selection; that she contended her role was ringfenced; that customary arrangements had not been followed; that the consultation process was not meaningful and that there had been a failure to consider voluntary redundancies in order to avoid compulsory redundancy situation. She again reiterated her request for an independent third party to deal with the appeal and she subsequently requested a significant number of documents be provided to her by the Second Respondent prior to the appeal hearing.

326. Paul Webster replied to the Claimant on 30th August 2016 confirming that he would be dealing with the appeal and inviting her to an appeal meeting on 9th September 2016. That letter set out that in his view circumstances did not justify appointing an external chair or panel and further that the Respondent's financial position was such that it could not afford to do so. As well as setting out his understanding of the grounds of appeal, Mr. Webster also replied to the Claimant's request for documents, asking, where he felt it necessary to do so, for additional information. He also set out the Claimant's right of accompaniment at the meeting by a trade union representative or work colleague.

327. The Claimant replied to that letter setting out further details in relation to her appeal on 5th September 2016 (see pages 428 to 431 of the hearing bundle).

328. The Claimant attended the appeal meeting with Mr. Webster and another member of the Board, Dean Lupton, on 20th September 2016. Neither Mr. Webster nor Mr. Lupton had been involved in the decision not to offer the Claimant the Partnership and Engagement Coordinator role nor, as a result, to make her redundant.

329. The appeal meeting was a long and detailed meeting and we have read carefully the minutes of that meeting which are contained at pages 454 to 475 of the hearing bundle. We accept those minutes to be an accurate reflection of what took place during the meeting.

330. During the course of the meeting, the Claimant was again accompanied by Mr. Harry Harrison who expressed thanks to Mr. Webster for the way that he dealt with matters and opined that he considered that he had been fair and respectful (see page 473 of the hearing bundle).

331. Mr. Webster communicated the outcome of the Claimant's appeal to her on 12th October 2016 and he upheld the decision to terminate her employment by reason of redundancy.

332. We are satisfied that he carefully considered the Claimant's appeal grounds and he comprehensively addressed each of them in his outcome letter. The relevant parts of the letter in this regard said this:

> "…
>
> *Appeal ground number 1: unfair selection*
>
> *You said that you believed that the role of Health Partnerships Officer should not have been included in the redundancy pool as the funding for this role is restricted funding provided by Mansfield and Ashfield Clinical Commissioning Group (CCG) to deliver the outcomes as specified in a service level agreement which names you as the project lead. You submitted that there has been no reduction in this funding and no diminishment in your workload and therefore your role cannot be redundant.*
>
> *We would like to remind you, as explained at the outset of the consultation process, Mansfield CVS (MCVS) was in serious financial difficulty and needed to cut its costs by approximately £55,000. MCVS is a small organisation and it was necessary to assess how this cost saving might be achieved, whilst maximising the opportunity for generating income for its future survival. The extracts of board minutes dated 21st April 2016 and 4th May 2016 were shared with you, which summarised that cuts to salaries/hours of all employees were considered. However, this would not achieve the necessary savings and risked being detrimental to staff retention/morale. Therefore, the potential for a restructure was considered. Cost savings were made on some back-office services (accountancy and utilities) and as you are aware, cuts to certain benefits were also made across all staff members with the relevant benefits. We are continuing to look at how we can save costs and we are currently assessing printing and internet expenditure, but these are additional savings that need to be achieved and would not have impacted on avoiding redundancies.*
>
> *Our Chief Executive at the time, Heather Rabett (who subsequently left at the end of May) and one of the trustees, Nicola Roberts explored all parts of MCVS to assess a rationale for which elements could be potentially restructured in order to achieve the necessary financial savings. MCVS was (and remains) reliant on its trading arm, Scintilla, achieving its financial target of generating £45,000 profit/income so each of their roles were required as they stood and therefore not apt for restructure. Reception staff and Communication were already streamlined and the need for those roles to remained* (sic) *as they stood.*
>
> *It was assessed that the remaining parts of MCVS were suitable for restructure as the work could be restructured to reduce 8 roles down to 4 roles, achieving the necessary cost saving:*

1. *Cleaning and Caretaker roles: 3 roles, with 2 at risk of redundancy: Roles at risk Maintenance Worker and Cleaners;*[21]
2. *Front-facing roles: 3 roles, all at risk of redundancy with the proposed replacement with 2 new roles (with 1 potential redundancy). Roles at risk: Health Partnership Officer, Volunteer & Group Support Officer and Health Development Worker;*[22]
3. *Finance, Office and HR role: 2 roles at risk with the replacement of 1 new role (with 1 potential redundancy). Roles at risk: Finance Officer & Trainee Finance and HR Support Assistant.*[23]

None of the roles identified as apt for restructure were ring-fenced. MCVS was not and is not restricted by any third party in how it organises its contracted work. Whilst I can clarify that MCVS needs to provide a 'lead name' to the CCG, it is free to change that lead name. MCVS made a business decision to propose that the work/duties of the roles above were restructured to achieve efficiencies and reduce the number of employees/roles needed, whilst still meeting the required outputs of service level agreements. MCVS will continue to use funding streams for their intended purpose; which in case of funding from the CCG means it will continue to be used for the health project work.

In respect of your role, Health Partnerships Officer, elements of this were combined with elements of the role of Volunteer & Support Group Officer, in the form of the new role of Partnerships & Engagement Coordinator, which is supported by the new role, Partnerships & Engagement Assistant (including administrative work). The work done between three roles previously will be done by the two new roles under the new structure. Some of the marketing and communication work will be done by making better use of the Communications Role & Office Manager Role.[24] *The way in which the work is restructured will enable MCVS to meet the outputs under its service level agreements. This means that MCVS has a reduced need for employees to do a particular kind of work (front-facing work); the 'health' work and 'generic/volunteer work' has been reduced into one new role, removing duplication, administrative tasks and better resourcing existing use of staff to reduce the workload/duties of the two original roles.*

This restructure was necessary to achieve the cost savings, achieved through reorganising the work and the reduced roles/fewer employees.

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[21] As set out above, one individual, Bill Cashmore, took voluntary redundancy and the remaining two individuals agreed to reduce their hours to work the existing role on a job share basis.
[22] These were the roles of the Claimant, Alison Waring and Lesley Watkins
[23] Patricia Shaw retained the Finance Officer post on the basis that Charlotte Watkins resigned from the organisation.
[24] This was a role at the time undertaken by Kate Broughton and upon her leaving the Second Respondent organisation was subsequently contracted out to a third party.

Unfortunately, you were not successful in your interview for the new post of Partnerships & Engagement Coordinator and were therefore selected for redundancy.

You asked for 'other notes' which documented the business rationale to identify your role for 'pooling' (i.e. roles which were apt for restructure). I have made enquiries and Nicola Roberts informs me that she only made some handwritten working notes at the time, a copy of which are included. The rationale of the roles apt for restructure were presented verbally to the Board in the form of a proposal. This was followed by the production of draft job descriptions for the new proposed roles, which subsequently formed part of the consultation process.

Your union representative submitted that the rationale for 'pooling' had not been provided by Peter Clarke during the consultation process, despite requests. I have looked into this and found that the business rationale identifying roles which could be restructured was explained during the consultation meetings and extracts of the board meetings were provided.

In answer to your other questions under this head:

- *Restricted Funding: funding is provided to meet the outcomes of 'Health' project work. MCVS will continue to use the funding for this purpose. This funding does not mean that MCVS is prohibited in how it structures internal work and roles.*

- *The meeting on 31st March 2016 with John Krafts was a business meeting. It was not a board meeting. There was an EGM also held on this date, and minutes of this EGM were approved at the board meeting on 21st April.*

- *CCG meeting on 27th May 2016: I have checked my diary and the only date I visited the CCG was 27th May. I did not visit the CCG on 25th May; that date was a typing error in the letter. The health contract is loss making and the purpose of the meeting was to ask if the funding could be increased. This was another avenue MCVS was looking into improve the financial situation. As outlined above, MCVS is not restricted in how its delivers the outputs against the SLA with the CCG; it is for MCVS to organise its work whilst maintaining its agreement with the CCG. The new combined role of Partnerships and Engagement Coordinator will deliver the outputs of both health work and volunteer/generic work.*

For the reasons set out above, our finding is that your first ground of appeal is not upheld. MCVS had a valid business rationale in identifying the areas apt for restructure, which included your role. You were selected for redundancy following your unsuccessful interview for the new role, Partnerships and Engagement Coordinator.

Appeal ground number 2: customary arrangements have not been followed

You stated that the redundancy process in 2012 was a similar situation which means it is a customary arrangement, and suggested that roles should have been ring-fenced.

Having made inquiries, I understand that a restructure took place in 2012 to achieve costs savings, based on an assessment of what was necessary within the business restructure at that time in those particular circumstances. That situation did not follow any custom and practice. It did not set a precedent.

There is no previous custom and practice to be adhered to which has established that roles should be ring-fenced according to funding. Nor is MCVS subject to any such contractual obligations under any applicable service level agreements with funders. MCVS was (and remains) free to organise its structure and its workforce in the best interests of the organisation, adapting to its financial needs and after due consultation with affected staff (which took place in the current situation). As explained during the consultation process it was necessary to restructure the way in which the work is delivered by reducing roles in order to achieve the necessary cost savings.

You also stated that you believed it was custom and practice for an independent third party to chair a redundancy appeal hearing. There is no such custom and practice. There was one instance in 2009 and it was particular to that set of individual circumstances. Your request for an independent chair was considered and you were informed by a letter dated 30th August that your request for declined. MCVS is a small organisation and it was appropriate for Dean and myself to chair the appeal.

For the reasons set out above, our finding in respect of your second ground of appeal is that it is not upheld.

Appeal ground number 2: the consultation process was not meaningful

You said that 'the consultation process was not meaningful because at a meeting on 21st June 2016, you were told that your role was to be made redundant, before any consultation had taken place, making this out to be fait accompli'.

I was present at the meeting on 21st June 2016. As stated at the start of the meeting, this was the first stage of a proposed restructuring to notify the eight members of staff that it was proposed their roles were at risk of redundancy and that a redundancy consultation process would commence. Any mention of redundancies at this meeting was in the context of the proposed restructure and potential redundancies. Subsequently the job

descriptions and proposed restructure was shared and discussed as part of the consultation process. The consultation invitation letters made clear that this was an opportunity for you challenge the proposal and to put forward any ideas that you might have that would help us avoid or reduce job losses.

I understand that there was an initial delay in scheduling the one-to-one consultation meetings to enable companion availability, but that when your one-to-one took place (on 13th July 2016) the new job description was discussed and you were given the opportunity to raise issues, which were looked into and responses provides provide by Peter Clarke in his letter dated 21st July 2016. The minutes record that you wanted to appeal your selection for redundancy, but there was no right to appeal redundancy until after notification of redundancy. You expressed your interest in the role of Partnerships and Engagement Coordinator on 29th July, attended an interview on 10th August 2016 and subsequently attended your final consultation meeting on 17th August 2016. You were notified of that your role was redundant on 17th August 2016, which then entitled you to appeal.

I have checked the Organisational Restructuring Policy (ORP) and also the Redundancy Policy (RP). Paragraph 4(b) of the ORP applies to appealing the content of new job description/person specifications. The right of appeal applicable in respect of redundancy is outlined in the RP, which is what you have exercised now.

For the reasons set out above, our finding in respect of your third appeal ground is that there was meaningful consultation.

<u>Appeal ground number 4: failure to consider voluntary redundancy to avoid compulsory redundancy</u>

You said that there had been a failure to consider voluntary redundancy as an alternative to compulsory redundancy.

All members of staff were made aware of the ability to apply for voluntary redundancy.

I can confirm that one member of staff applied for voluntary redundancy early on the process and this was agreed. Another member of staff resigned. The consultation with the cleaning and maintenance staff resulted in agreement changes so that the maintenance role reduced to 15 hours per week (instead of 20 hours, thereby allowing 5 hours to be transferrable toward a cleaning post), enabling one cleaning role to remain at 8 hours per week which was also influenced by additional building rentals and the corresponding cleaning need. This left the need for one redundancy from the three front-facing roles, which were reducing down to two new roles.

As the appeal hearing you said that you thought Cath (receptionist

who works 9 hours a week) had requested voluntary redundancy – MCVS did not receive any such application.

I can confirm that a late application for voluntary redundancy was submitted by your competitor for the new role, Lesley Watkins, but at that time sufficient expressions of interest in the new roles had not been received and therefore it was not financially viable to accept the request. Lesley subsequently applied for two vacancies and was successful in her application for the role of Partnerships & Engagement Coordinator.

As you know Alison Waring was successful in her application for the role of Partnership and Engagement Assistant.

Unfortunately, this meant that there was the need for your compulsory redundancy.

For the reasons set out above our finding in respect of your fourth ground of appeal is not upheld.

Appeal ground number 5: You do not believe that the decision to make your post redundant was made by a quorate board

You said that you did not believe that the decision to make your role redundant was decided by a quorate board.

I have looked into all the points that you raised and I confirm that all board meetings were quorate. All board members were properly appointed and present. There were more general board members present that individual members.

It may be the case that the website sources you used were not up to date with the correct information as agreed at board meetings. I am aware that there is a delay in websites being updated.

For the reasons set out above, our finding in respect of your fifth ground of appeal is that that [sic] *it is not upheld.*

Conclusion

In summary, the business rationale identified the roles apt for restructure in order to achieve cost savings. A new structure with a reduced number of new roles was proposed and you were consulted. Once the job descriptions for the new roles were finalised, you, along with the other employees at risk were invited to apply for the posts. The interview panel determined the successful candidate for the posts based on the interview process.

You asked about Peter Clarke's authority to dismiss. In his role as Change Manager, he was authorised by the Board to lead the consultation and conclude it, including holding the final redundancy consultation meeting after which you were notified of your redundancy.

For completeness, in response to your union representative's submission that your role was stand-alone and therefore cannot be redundant as the work still needs to be done, your role was not stand-alone. It was grouped with the other front-facing roles, which were restructured so that the reorganised work could be delivered more efficiently as outlined above. This was a necessary reorganisation to achieve financial savings, which was fairly implemented.

If on your analysis you still feel it was not a redundancy it would still be a fair dismissal for 'some other substantial reason'. A dismissal for 'some other substantial reason' would not entitle you to a redundancy payment. However, as set out above, MCVS has a reduced need for employees to do a particular kind of work (front-facing) and this is a genuine redundancy entitling the redundant employee to a redundancy payment.

It is therefore our decision that the decision to dismiss you on the grounds of redundancy stands. This concludes the appeal process.

The Charity very much regrets that it has become necessary to make these redundancies and that you have been affected. I would like to thank you for your hard work for the Charity over the last 9 years and wish you all the best for your future career.

…"

333. That exhausted the Claimant's right of appeal and subsequently she issued the proceedings which now come before us for determination.

334. However, shortly before the Claimant's notice expired Kate Broughton resigned from employment with the Second Respondent. She had been employed as the Second Respondent's Communications, Training and Volunteering Co-ordinator. It is common ground that the Claimant was not offered that vacant role upon the departure of Kate Broughton and the Claimant contends that this was suitable alternative employment and it should accordingly have been offered to her. However, we are satisfied that there was in fact no vacant role left in that regard given that the Second Respondent elected not to fill that vacancy and instead outsourced the function to a sub-contractor. As such, there was no role to offer to the Claimant in that regard.

Redundancy payment

335. However, prior to that point there had been an issue in relation to the Claimant's receipt of her redundancy payment. The letter from Peter Clarke of 17th August 2016 to which we have already referred above had of course informed the Claimant that she would receive her redundancy payment on 18th October 2016.

336. On 5th October 2016, the Claimant wrote to Peter Clarke by email, with a copy to Patricia Shaw, indicating that she believed that her date of termination of employment was incorrect. This email was subsequently sent on to Mr. Webster on 17th October 2016 when the Claimant became aware that Peter Clarke was away from the organisation. Mr. Webster replied on the same day and he said as follows:

> *"Hello Annette*
>
> *I'm e-mailing you on behalf of Peter Clarke who is on leave.*
>
> *As set out in the 'Termination of Employment – Redundancy' letter dated 17th August, tomorrow is the final day of your redundancy notice period. Please could you arrange for any items of equipment, documents or keys that are the property of Mansfield CVS to be returned to the MCVS office if possible by 5pm on the 18th October or as soon as possible on 19th October. If there are items of property that belong to you which are in the MCVS office, please could you arrange for these to be collected.*
>
> *I would once again like to thank you for all the work you have done for both Mansfield CVS and with the many communities across the district and I wish you all the best for the future.*
>
> *…*"

337. It was subsequently accepted by the Second Respondent, however, that the calculation of the Claimant's termination date should have been up to 19th October 2016 rather than 18th October 2016 as had been set out by Mr. Clarke. This was confirmed by Patricia Shaw who provided to the Claimant with a revised salary calculation up to and including 19th October 2016. Patricia Shaw's email set out that the termination payments would be paid into the Claimant's bank account on 31st October 2016. We are satisfied that that was the date on which the payment was in fact due under the terms of the Claimant's contract of employment and there is nothing to suggest that Patricia Shaw was aware of the fact that Mr. Clarke had indicated an earlier date payment for payment in his letter of 17th August 2016. There is equally nothing before us to suggest that the Claimant contacted Patricia Shaw at that time to notify her that she considered payment on 31st October to be incorrect.

338. However, on 21st October 2016, the Claimant wrote to Paul Webster pointing out that Mr. Clarke's letter had said that the redundancy payment would be paid on 18th October 2016 and requesting it to be paid immediately in full. That was actioned immediately by Patricia Shaw who confirmed that the payment had left the Second Respondent's bank account and suggested that the Claimant check with her bank as it should have cleared. However, as the Claimant's employment had ended on 19th October 2016 (that being the agreed revised termination date) the redundancy payment had been received into her account three days later than the date that had been set out in Mr. Clarke's letter[25].

[25] Although as he was envisaging payment upon the date of termination of employment, it is arguable as Mr. Tinnion points out that the payment was in fact only two days late.

339. The Claimant contends that that was done deliberately in order to subject her to detriment. We do not accept that analysis and there is no evidence at all to support it. The fact is, we accept, that Patricia Shaw was working from the date that payment would be made under the Claimant's contract of employment whilst Mr. Clarke was assuming that payment would be made on the actual termination date. There is nothing to suggest that Patricia Shaw knew what Mr. Clarke had said about the date for payment and had decided to somehow go against that. The Claimant did not contact Patricia Shaw at the time to bring to her attention what Mr. Clarke had said about the date for payment and as soon as the Second Respondent was put on notice of that position on 21st October, Ms. Shaw took immediate steps to rectify the matter and to arrange a bank transfer to the Claimant the same day. We accept the submissions of Mr. Tinnion that had the Second Respondent genuinely been minded to seek to inconvenience and upset the Claimant then the response would not have been to arrange that immediate transfer but to instead inform her that under the terms of her contract of employment she would have to wait a further ten days to 31st October to receive payment.

340. We are therefore satisfied that this was a simple mistake arising from a miscommunication as to when payment would be made. As soon as the matter was pointed out by the Claimant, it was immediately rectified and, indeed, the Claimant thanked Ms. Shaw for doing so.

Letter to the Claimant from Peter Webster

341. On 16th September 2016, prior to the termination of her employment but during the time that she was on garden leave, a gentleman by the name of Peter Robinson from the MACCG wrote to Peter Webster concerning a letter that he had left for the Claimant at the Second Respondent's premises and which, the Claimant says, had been sent on to her but in a state that when she received it the envelope had been opened - and thus presumably the contents had been read by someone at the Second Respondent organisation. She contends that the letter had been marked "Private & Confidential" and thus should not in any circumstances have been opened by the Second Respondent.

342. Mr. Clarke told us that he saw the letter and had been responsible for passing it onto the Claimant. His evidence was that after the envelope was passed to him he placed it in an envelope for onward transmission to the Claimant. He thought that the letter from Mr. Robinson had been sealed when he put it in the envelope.

343. The Claimant's evidence was that it had already been opened and that she had remarked so to her partner, who also gave evidence to that effect, when she received it. The evidence of Mr. Clarke was that he did not think that the envelope was marked "Private & Confidential". The Claimant's evidence was that it was. Her partner's evidence was that he did not believe that it had been marked "Private & Confidential" either and that it had just been the Claimant's name on the envelope.

344. Although the Claimant tells us that she had retained that envelope, we have not seen it and so it is difficult to resolve what precisely it said on it given the different accounts that we have heard. It is possible, however, that it was marked "Private & Confidential" given that that was the way that Mr. Robinson described his communication to the Claimant in his letter to Mr. Webster (see page 452 of the hearing bundle).

345. Whilst we accept the evidence of the Claimant and her partner that the envelope had been opened when she received it, we equally accept the evidence of Mr. Clarke that it was not he that opened it. As he posted it straight onto the Claimant, it must have been opened before that. We accept, however, that Mr. Clarke did not notice that the letter had been opened. We have not seen the envelope (it was not disclosed by the Claimant or mentioned until a very late stage in the hearing) to determine whether it was completely ripped open or whether it had been opened carefully and then re-sealed. The latter would of course be much more difficult to spot and it appears to us to simply be that Mr. Clarke did not notice that the letter had been opened.

346. As we understand it, the letter was left by or on behalf of Mr. Robinson on the Second Respondent's reception desk. It appears to us that it is entirely likely that the letter was opened by someone before it was passed to Mr. Clarke. That may have been on the basis that, having been delivered to the Claimant's work address, it was assumed that the content of the letter was work related. Even if marked "Private & Confidential" that does not mean that the content may not have been related to the Claimant's work at the Second Respondent and there is no suggestion, for example, that it was marked "Personal" so as to distinguish it from business communications. The Claimant was of course on garden leave and in such circumstances we can see why the letter might have been opened in her absence in the event that it may have related to her work. There is nothing to suggest that whoever it was who opened the letter intended to do so for any sinister motive as the Claimant contends.

Personal property

347. As at the termination of her employment, the Claimant had some items of personal property which remained on the Second Respondent's premises. Mr. Webster's letter of 17th October 2016 had of course set out that the Claimant should return all of the Second Respondent's property and arrange for the collection of her own possessions. The former occurred with the Claimant's partner, Mr. Cawthorne, attending at the Second Respondent to hand in her keys and other property belonging to the organisation. The Claimant herself did not feel able to attend the premises to hand over the Second Respondent's property or collect her own and she did not ask Mr. Cawthorne to attend to the latter as she did not feel that he would know what did and did not belong to her of the items on her desk.

348. Instead, she asked Alison Waring to attend to that matter on her behalf. However, Alison Waring was then absent on the grounds of her own ill health for a period of time and we accept that this resulted in a delay in the return of the Claimant's personal items along with some confusion as to where the belongings were located (see page 830 of the hearing bundle).

349. Had there been an issue in this regard, however, we are satisfied that the Claimant could have attended or have instructed her partner or someone else to have attended on her behalf to go and collect the items in question. Insofar as there was any delay after the return of Alison Waring from sickness leave in returning the items in question, we are satisfied there was no sinister motive for that nor has the Claimant any evidence to suggest to the contrary. Indeed, Mr. Clarke asked Ms. Waring to apologise to the Claimant for the delay.

350. Whilst matters could perhaps have been dealt with more expeditiously, ultimately the responsibility for collecting the Claimant's property lay with her – as Mr. Webster's letter indeed suggested – and we accept that there is nothing to suggest that this was deliberately delayed or otherwise thwarted by the Second Respondent so as to disadvantage the Claimant.

CONCLUSIONS

351. Insofar as we have not already done so in our findings of fact above, we deal here with our conclusions in respect of each of the allegations that the Claimant makes in these proceedings.

352. However, we say a word beforehand specifically about the Claimant's overarching case that the First and Second Respondents and those within the latter organisation had a common purpose to remove her from her role and to seek to subject her to detriment on account of her having submitted an Equal Pay Questionnaire and/or make protected disclosures. That general position underpins much of the Claimant's complaints.

353. For the reasons that we have already set out in our findings of fact above, we are satisfied that there was no overall conspiracy against the Claimant and that the redundancy situation was not engendered with the sole purpose of removing her from the organisation. We are satisfied, as we have already observed, that the Second Respondent was in serious financial difficulties and that had the process been a sham as the Claimant contends, it is difficult to see why they would have risked potentially seriously damaging relations with other employees by making changes to terms and conditions of employment and putting seven other people at risk of redundancy.

354. Moreover, it appears to us that the Second Respondent was not remotely concerned by the disclosures relied upon by the Claimant. They did not see any wrongdoing or conflict of interest and that continued to be the position before us. No-one attempted to stymie the Claimant from raising the matter – indeed Mr. Webster recommended that she submit a Freedom of Information request – and they had no reason to, as the Claimant terms it, want to seek "revenge" as a result.

355. Insofar as the position with the Equal pay questionnaire was concerned, again that was not a matter that troubled the Second Respondent. They had replied to the issues in full and the Claimant had said nothing more about it. As at July 2015, the matter was to all intents and purposes over. Again, the Second Respondent had no reason to be concerned over the

submission of that questionnaire.

Protected disclosures

356. We turn not to consider whether the four remaining disclosures relied upon by the Claimant amounted to protected disclosures within the meaning of Section 47B Employment Rights Act 1996. We need not resolve the question of whether the Equal Pay Questionnaire represented the doing of a protected act for the purposes of Section 27 Equality Act 2010 given the concession to that end which has now been sensibly been made on behalf of the Respondents.

357. The first of the disclosures relied upon by the Claimant is her grievance presented against Wynne Garnett on 27th May 2015. Of itself, nothing in that document raises anything close to being a protected disclosure. The words relied on by the Claimant in this regard were said to be on day 11 of the hearing the following:

"My grievance is against Wynne Garnett, Chair Mansfield CVS (MCVS), Vice Chair Scintilla and Big Assist provider to MCVS".

358. Nothing within that section or the document as a whole comes close to what the Claimant told Employment Judge Hutchinson she had said within that grievance. Of itself, it is not a protected disclosure.

359. However, we have viewed the information provided by the Claimant as a whole having regard to what was said in the Claimant's grievance meeting with Mr. Marshall and in her appeal against the outcome. We have set out the relevant extracts in that regard above. It is clear to us that the Claimant disclosed information that she reasonably believed showed or tended to show that there had been a failure to comply with a legal obligation to which the Second Respondent and/or Mr. Garnett were subject. In this regard, the Claimant reasonably believed that public money (i.e. lottery funding) was being misused in a situation where Mr. Garnett as Managing Director of Red Gem was receiving money for work done for the Second Respondent where he sat as Chair of that organisation. The receipt of such monies, in the Claimant's belief and as set out particularly in her appeal, represented a conflict of interest and was contrary to the Second Respondent's own memorandum and articles of association.

360. For those reasons, we accept that the Claimant made a protected disclosure taking into account the wider ambit of what she said during the grievance meeting and at the point of her appeal. Her grievance document alone, however, was woefully insufficient to be reasonably suggested to be a protected disclosure.

361. The second disclosure relied upon by the Claimant was that made in a meeting with Paul Webster on 14th December 2015. We accept that this was substantially a re-hashing of the information already provided by the Claimant and for the same reasons as we have found there to have been a protected disclosure in respect of what was said at the point of the grievance meeting and appeal letter, we are satisfied that the information provided to Mr. Clarke on 14th December also amounted to a protected

disclosure.

362. The third disclosure relied upon by the Claimant was what was said in a a meeting with Peter Clarke on 22nd March 2016. Again, this was simply a repeat of the information already disclosed at the point of the grievance meeting, appeal letter and on 14th December. For the same reasons as given in respect of those communications, we are also satisfied that this amounted to a protected disclosure.

363. The final disclosure relied upon was that on 20th April 2016 in a meeting with Peter Clarke, the Claimant reiterated her concerns regarding the funding and conflict of interest. It will perhaps come as little surprise that given that those matters were again a further rehearsal of the exact same points already made by the Claimant, we are satisfied that they too amounted to a protected disclosure for the same reasons as we have already set out above.

364. We then turn to each of the separate complaints made by the Claimant which correspond to each of the matters set out at paragraphs 9.1 to 9.13 of the Order of Employment Judge Hutchinson of 1st February 2017 (see pages 41 and 42 of the hearing bundle).

Allegation 9.1

365. This allegation concerns the two documents circulated at the 30th July 2015 Board meeting of the Second Respondent about the Claimant.

366. We start by considering if the content of those documents subjected the Claimant to detriment. We are not satisfied that they did. They were confidential documents that were not to be shared outside the confines of the Board. There is no evidence that the views or concerns expressed in those documents were either not the genuine views of the authors or that the content somehow pitched the Board against the Claimant as she contends.

367. However, even if we had not made that determination and we had taken the view that the Claimant had been subjected to detriment, then we are satisfied – for the reasons that we have already set out in our findings of fact above, that those matters had nothing at all to do with any disclosure that the Claimant had made. Indeed, the grievance itself was not a protected disclosure and the only information that did constitute a disclosure which had been made by this time was the Claimant's comments at the grievance meeting on 2nd July. Everything else post-dated that point. There is nothing to suggest that the First Respondent or Mr. Garnett even knew what had been said thereat.

368. Moreover, as the First Respondent did not know that the Claimant had submitted an equal pay questionnaire that cannot have been a motivating factor for him to have written his email which was shared with the Board. Similarly, there is nothing at all to suggest that Mr. Garnett's document was penned with that in mind given that despite the detail there is nothing at all about that questionnaire referenced in the "Reflections" document.

369. This element of the complaints of detriment and of victimisation therefore fails and is dismissed.

Allegation 9.2

370. This allegation concerns the fact that the Claimant alleges that on 26th January 2016 the First Respondent had fabricated a grievance against the her, interviewing her colleagues in an attempt to gather evidence against her. This of course relates to the complaint made about the Claimant by Patricia Shaw and we are able to dispose of this allegation in very short terms given that, for the reasons given in our findings of fact above, we accept the evidence of both Ms. Shaw and the First Respondent that the complaint was genuinely raised by the former.

371. The allegation that the First Respondent fabricated the complaint about the Claimant is therefore factually inaccurate and we able to dispose of both the detriment complaint and the complaint of victimisation accordingly.

Allegation 9.3

372. This allegation relates to the delay and/or failure to restore the Claimant's files to the Second Respondent's systems after the virus had been released into their systems in or around April/May 2016. The Claimant contends that the First Respondent instructed Mark Whaler and/or QNS to delay or fail to restore the files.

373. Again, we are entirely satisfied that the basis of this allegation is factually inaccurate and that accordingly it can be disposed of in relatively short terms. For the reasons that we have given, we are satisfied from the evidence of Mr. Whaler and the First Respondent that no such instruction was given and there is not one shred of evidence to the contrary. The reason why there was delay and difficulty in restoring the Claimant's files was because they were stored in two different locations and in all likelihood it was she who had released the virus into the system and her files had therefore been corrupted before anyone else's.

374. The allegation that the First Respondent has therefore instructed QNS to delay matters or is therefore factually inaccurate and we able to dispose of both the detriment complaint and the complaint of victimisation accordingly. There was no deliberate delay or inaction on the part of QNS in restoring files for the Claimant and we accept that Mr. Whaler did his best to do so, but there were simply some files that could not be restored to the system. However, that had nothing to do with the First Respondent or the Claimant's disclosures or Equal Pay Questionnaire.

Allegation 9.4

375. This allegation relates to an assertion that on 27th May 2016 the Claimant was excluded from a meeting that was held between Paul Webster, the First Respondent and members of the Mansfield and Ashfield Clinical Commissioning Group.

376. We have to say that we can quite appreciate why the Claimant held concerns about not being invited to this meeting. However, we accept the evidence of Mr. Webster that this was a high level meeting at which the intention was to sound out the MACCG to determine if there was any additional monies which could be offered for services under the SLA. It was not therefore a meeting that the Claimant needed to be involved in with regard to the services that she assisted in providing under the SLA. It was a discussion which, we accept, would have been sensitive and accordingly needed to be dealt with at a high level. In short terms, there was no need to invite the Claimant.

377. In view of the fact that the Claimant did not need to be at the meeting, we are satisfied that not inviting her did not amount to a detriment. The Claimant suffered no disadvantage at all in not being present.

378. Furthermore, it is clear to us that the sole reason why the Claimant was not invited to the meeting was on account of the fact that it was a high-level discussion to deal with funding. There is nothing at all to suggest that the Claimant was excluded because of the disclosures upon which she relies or the fact that she had submitted the Equal Pay questionnaire almost a year previously.

379. The complaint of detriment and victimisation in respect of this element of the claim therefore fail and are dismissed.

Allegation 9.5

380. This allegation concerns the fact that on 1st April 2016 the Claimant requested sight of the Mansfield and Ashfield Clinical Commissioning Group budget and that was refused. Although the Claimant frames this complaint as being a decision taken by Patricia Shaw and Peter Clarke we are satisfied from the communications which we have set out above in relation to this issue that the request was in fact refused by Mr. Webster.

381. We are equally satisfied from both the evidence of Mr. Webster and the content of his reply to Patricia Shaw at the time that the reason that he had decided that the information should not be shared with the Claimant was on account of the fact that Mr. Webster did not feel it necessary to provide the information to the Claimant and there were still ongoing negotiations with regard to the budget with the MACCG. That is clear from his responses to Ms. Shaw.

382. When the matter was pressed again by the Claimant, Mr. Clarke offered to discuss the budget with her.

383. There is nothing at all to suggest that the delay in providing that information to the Claimant related to either the disclosures upon which she relies or her historic equal pay questionnaire had any bearing on those matters and the reason why the information was not provided was for the reason set out in Mr. Webster's message to Patricia Shaw.

Allegation 9.6

384. This allegation related to the fact that on 15th June 2016 the Claimant tried to order a toner for her office printer and that was refused.

385. We begin by considering whether the refusal by Patricia Shaw to order a toner for the Claimant's printer subjected her to a detriment. We are entirely satisfied that it did not and this is simply an unjustified sense of grievance on the Claimant's part. She was not without a printer to use if she needed one – she had access as did all of the other staff at the Second Respondent organisation to the central printer. She may well have preferred to use her own desk top printer but a preference to do so when she had access to a perfectly usable printer which was utilised without apparent difficulty by all other members of staff does not amount to a detriment or disadvantage to her. It was an entirely trivial matter.

386. However, even if we had made the finding that the failure to order a toner for the Claimant's printer had amounted to a detriment, we were nevertheless satisfied that that had nothing at all to do with the disclosures upon which the Claimant relies or the submission of her Equal pay questionnaire. We are satisfied that the decision maker in this regard was Patricia Shaw and she had no axe to grind at all with the Claimant as a result of her having made her disclosures or submitting the questionnaire. We are satisfied that the reason that she refused the Claimant the toner was because the Second Respondent had put in place austerity measures and her view was that the Claimant could use the central printer the same as all other members of staff.

387. Therefore, the decision not to order the toner was made on that basis and was in no way materially influenced by the disclosures relied upon or the Equal pay questionnaire.

388. The claim of detriment and victimisation in respect of this aspect of the claim therefore fail and are dismissed.

Allegation 9.7

389. This allegation relates to the Claimant's assertion that in a period up to 14th July 2016 and at the behest of the First Respondent her files were covertly gone through.

390. Again, we are entirely satisfied that the basis of this allegation is factually inaccurate and that therefore it too can be disposed of in relatively short terms. For the reasons that we have given, we are satisfied from the evidence of Mr. Whaler and the First Respondent that no such instruction was given and there is not one shred of evidence to the contrary. Whilst the Claimant contends that she overheard words to that effect during the controversial Board meeting of 14th July 2016, we do not accept that she could possibly have heard accurately what was being said if, as she says, she was on a completely different floor at the time. We accept the evidence of the First Respondent that no such comment was made and that at no time did he instruct QNS to covertly review her files.

391. We are satisfied that the only time that the Claimant's emails and files were accessed by QNS at the request of the First Respondent was by way of necessity in order to enable the Second Respondent to reply to a subject access request that the Claimant had made in October 2015.

392. We do not therefore accept the factual basis of this complaint and it fails a both a claim of detriment and victimisation.

Allegation 9.8

393. This allegation concerns the fact that the Claimant contends that after she commenced a period of sickness absence on 15th July 2016 she was not contacted by anyone from the Second Respondent and she was isolated by them in respect of sickness absence.

394. Again, we are satisfied that the basis of this allegation is factually inaccurate. Mr. Clarke wrote to the Claimant on 20th July 2016 expressing concern in relation to her health; proposing a meeting and specifically indicating that he wanted to discuss her health so as to offer any necessary support. The Claimant, as far as we are aware, did not contact Mr. Clarke to take him up on his offer in that regard and neither has she been able to tell us what else precisely it is said that the Second Respondent did not do that they should have done.

395. We are therefore satisfied that the basis of the allegation is inaccurate but, in all events, if the Claimant contends that she should have had some other contact with the Second Respondent then we do not find that that amounts to detriment. In this regard, firstly the Claimant has again not been able to say what else should have been done and secondly, the evidence of both the Claimant and Mr. Cawthorne was that every time she received a communication from the Second Respondent this would cause her a great deal of stress, anxiety and upset – such that on occasions when post was received on a Friday it would ruin their entire weekend. It is difficult to see, therefore, how not receiving additional communications might be seen to be a detriment to the Claimant against that background and, indeed, it could be said that the converse was the case.

Allegation 9.9

396. This allegation concerns the Claimant being required to attend a disciplinary hearing for alleged gross misconduct relating to the "bursting in" to the Board meeting issue.

397. Dealing firstly with the complaint of detriment, we are satisfied that requiring the Claimant to attend a disciplinary hearing was a detriment to her. It caused her a considerable amount of further anxiety and was in our view somewhat heavy handed.

398. However, we are entirely satisfied that the reason that the Claimant was called to attend the disciplinary hearing had nothing at all to do with the disclosures upon which she relies but was as a direct result of her having entered a confidential Board meeting in the manner that she did and her subsequent somewhat abrupt address to the Board members. The Board

saw that as equating to insubordination and we accept that it was that matter and nothing else that saw the Claimant being required to attend the hearing.

399. The complaint of detriment and of victimisation in respect of this aspect of the claim therefore fails and is dismissed.

Allegation 9.10

400. This allegation concerns the letter from Peter Robinson having been opened and sent to the Claimant on 14th September 2016.

401. Whilst we accept, on balance, that the letter was probably opened before it was sent to the Claimant, we do not find that that amounted to a detriment. We have not heard that the opening of that letter in any way disadvantaged the Claimant due to its content and any action taken in respect of it. It did, we accept, rankle the Claimant but it is a matter too trivial in our view to properly amount to a detriment.

402. However, even had we found to the contrary we simply have no way of knowing who opened the letter. We accept that it was not Mr. Clarke and that he was the one rather than Su Hallam who sent the letter onto the Claimant. We cannot know if the person who opened the letter had any knowledge that the Claimant had made the disclosures relied on or that she had submitted the Equal Pay Questionnaire less still that their reasons for doing so were motivated in any way by those matters. It appears more likely to us that the letter was opened because it had been delivered to the Claimant at work; was therefore thought to be a work matter and was opened because the Claimant was off sick at the time.

403. The complaint of detriment and of victimisation in respect of this aspect of the claim therefore fails and is dismissed.

Allegation 9.11

404. This allegation concerns the Claimant's dismissal. We remind ourselves of course that this complaint is advanced only as one of victimisation and we have dealt with the automatically unfair dismissal complaint under Section 103A ERA 1996 under the "Unfair dismissal" section below.

405. The questions which we are required to ask ourselves in relation to this complaint begins with whether the alleged victimisation arose in any of the prohibited circumstances covered by Section 39(3) and/or Section 39(4) EqA 2010. Clearly, given that the Claimant was dismissed that is a question to be answered in the affirmative and there can equally be no question that that was such as to subject the Claimant to a detriment.

406. However, we then deal with the question of whether the dismissal was because the Claimant had done a protected act and we remind ourselves that that is to be considered in light of whether the fact that the Claimant had submitted the Equality Act Questionnaire was a "significant influence" on the decision to terminate her employment.

407. We are satisfied that there is no evidence at all before us to suggest that that was the case. For the reasons that we have given both above and below we are satisfied that the reason for the termination of the Claimant was redundancy. The Second Respondent was in serious financial difficulties and the Claimant's suggestion that the whole process was manufactured simply to target her and remove her from the organisation simply does not bear scrutiny.

408. The Claimant's Equal Pay Questionnaire was submitted a significant number of months before the commencement of the redundancy exercise. The Second Respondent had replied to the Questionnaire and nothing had since been mentioned by the Claimant in that regard. No proceedings had been brought or even threatened and no further reference had been made to the matter after the reply from the Second Respondent. To all intents and purposes, the matter was done and dusted. There is quite simply no link between the historic Equal Pay Questionnaire and the commencement of a genuine redundancy process some months later. Whilst, as we shall come to, there are areas of the process which were unfair to the Claimant, there is no evidence at all that those matters were in any way influenced by the Claimant having submitted the historic Equal Pay Questionnaire.

409. The complaint of victimisation in respect of this aspect of the claim therefore fails and is dismissed.

Allegation 9.12

410. This allegation relates to the assertion that the Second Respondent deliberately delayed the payment of the Claimant's redundancy payment and concerns, as set out above, that she had been told that it would be received on 18th October when it in fact was not received in her account until 21st October.

411. We begin by considering whether the delay in that regard amounted to a detriment. The Claimant tells us that it caused some degree of financial difficulty but we have not been directed to any evidence to that effect and when the situation is viewed in context, we are not satisfied that the Claimant was placed at any detriment by a short delay in payment. Given that the background was that there was a misunderstanding about when the payment was to be made – Mr. Clarke believing that it would be on termination and Ms. Shaw applying the usual date of the pay roll run under the Claimant's contractual terms - we consider that the Claimant's concern about this matter amounted to an unjustified sense of grievance. In fact, it was of course open to the Second Respondent to stick to the letter of her employment contract and not to make payment to her until 31st October, some ten days after her receipt of her redundancy monies. When viewed against that background, we do not consider that the delay from when she was erroneously informed by Mr. Clarke that payment would be made of some two days amounted to a detriment.

412. However, even had we determined that the delay did amount to a detriment to the Claimant then we are entirely satisfied that the reason for that delay had nothing at all to do with any of the disclosures upon which the Claimant relies. We are satisfied from the evidence of Patricia Shaw and Mr.

Webster (at whose door the Claimant lays fault for the delay) that neither were motivated by the disclosures. There was simply a misunderstanding and as soon as the Claimant raised that matter with Mr. Webster and Ms. Shaw, immediate steps were taken to rectify the situation and pay the monies over to the Claimant by bank transfer. Again, had the position been that the Second Respondent wanted to inconvenience the Claimant, they would no doubt have stuck to the letter of the contract of employment and delayed payment until 31st October.

413. Furthermore, we are also satisfied that this situation had nothing whatsoever to do with the Equal Pay Questionnaire that the Claimant had lodged some 15 months earlier. We accept that that was of no consequence to either Mr. Webster or Ms. Shaw and had nothing at all to do with any delay in payment of the Claimant's redundancy pay. Other than the Claimant's assertion that that is the case, there is nothing at all to support that contention.

Allegation 9.13

414. This allegation relates to the assertion that the Second Respondent did not return her personal belongings after the termination of her employment. It is in fact perhaps more accurate to describe this as a delay in doing so given that the items were returned to the Claimant in or around December 2016 and there is no suggestion that the Second Respondent has permanently retained them.

415. We begin by considering whether the delay in returning the Claimant's property to her amounted to a detriment. We are not satisfied that it was. Again, we consider that the Claimant's concern about this particular situation amounted to nothing but an unjustified sense of grievance. The Claimant had been told to collect her personal property by Mr. Webster but she had not done so and neither had Mr. Cawthorne when he attended to return her keys. There was nothing to prevent him from having done so other than the Claimant's personal preference. Equally, the Claimant was not prevented at any time thereafter if she felt that the return of her property was being delayed from attending at the Second Respondent or despatching someone else (other than Ms. Waring who she had asked to assist but who was absent on sick leave) to collect it.

416. However, even if we had found the delay in returning the Claimant's belongings to be a detriment, we are satisfied that the Second Respondent has demonstrated that this was in no way linked to the disclosures upon which the Claimant relies. The Claimant blames the delay in this regard on Peter Clarke and Patricia Shaw but we are satisfied from their evidence that neither were materially influenced – or indeed influenced at all – in this regard by the concerns that the Claimant had raised about Mr. Garnett and the First Respondent. There had been no mention of any of those matters for six months before the Claimant's employment terminated and the question of return of her property arose. The reason why there was a delay was on account of the Claimant having determined that Alison Waring should collect her property and the sickness absence of Ms. Waring thereafter. We are satisfied that it was in no way connected with the disclosures on which the Claimant relies.

417. Equally, we are entirely satisfied that there is nothing at all to suggest that the failure to return property earlier had anything to do with the submission of the Claimant's Equal Pay Questionnaire well over a year previously. Nothing further had been said about that position after the Second Respondent's detailed reply and there is nothing at all to support the Claimant's contention that the submission of that Questionnaire had anything to do with the delay in returning her personal items. The reasons for that delay are as set out above.

418. The complaint of detriment contrary to Section 47B ERA 1996 and the complaint of victimisation therefore fail in respect of this allegation.

Unfair dismissal

419. We begin with consideration as to whether the Second Respondent has persuaded us that the reason for the Claimant's dismissal was redundancy or SOSR as they contend.

420. We remind ourselves in this regard that the onus is upon the Second Respondent to satisfy us on that question. We also remind ourselves that the Claimant contends that the Second Respondent manufactured the entire restructuring exercise simply to target her for dismissal and we have considered that point carefully.

421. Whilst we have no doubt that the Claimant holds that genuine and strident belief, we are satisfied from the evidence before us from the Second Respondent that there was a genuine redundancy situation and that that was the reason for the Claimant's dismissal. We come below to consideration of whether that process was fair but for now we concern ourselves purely with the reason for dismissal.

422. In this regard, we are satisfied for the reasons that we have already given that the Second Respondent was in a dire financial state. It is clear that their outgoings were significantly more than their incoming funds and that that situation was only going to get worse unless some action was taken. Savings of around £55,000 were needed and the severity of the situation was evident from not only the financial documentation which we have seen but the fact that the Second Respondent was unable to pay wages on time; had to subsequently alter the payment date with all members of staff; were taking steps to seek to vary terms and conditions of employment, were seeking to try and secure a substantial bank loan and had taken steps to have their office premises valued for the purposes of a potential sale. None of that was the sign of a financially healthy organisation.

423. We accept, as above, that the biggest overhead for the Second Respondent was salaries and that as a result the decision taken was to restructure the organisation in order to make salary savings. Whilst the Claimant takes the view that the Second Respondent should have taken a different path – such as requiring Scintilla to immediately repay the loan previously made to them by the Second Respondent – we accept that that would only have been a short term solution and that in all events the Second Respondent was reliant on Scintilla continuing to generate income and gift it to them.

424. The Second Respondent was entitled to take the business decision to make the necessary costs savings that they badly needed by way of a restructure of the organisation and we accept that that was the reason for the redundancy exercise.

425. Whilst the Claimant points to the fact that she was the only individual made compulsorily redundant, we accept that the reason for that was on the basis that Bill Cashmore elected at an early stage to take voluntary redundancy and that the cleaning/maintenance position was resolved without the need for redundancies as a result of an agreement to reduce hours and work on a job share arrangement. Similarly, the resignation of Charlotte Wright resulted in there being no need to make any redundancies from the finance positions.

426. However, the restructure did affect the health team in that there was to be a reduction in the number of posts in that role from three to two. There was, as such a diminished requirement for employees to do work of the type for which the Claimant was employed. We are also satisfied that it was that diminution which resulted in the termination of the Claimant's employment and we are satisfied that that was the issue which was operating in the mind of the Second Respondent at the time of termination of employment.

427. Whilst the Claimant of course contends that it was her disclosures (and/or alternatively the submission of her Equal Pay questionnaire) which were the real reason for her dismissal as we have already observed above if that was the case, the Second Respondent went to extraordinary lengths to conceal it. Particularly, they risked a further erosion in staff morale by embarking on what, on the Claimant's case, would be a sham redundancy exercise with seven other employees; expended time and costs seeking legal advice on the process; expended considerable time by two Board members devising what, again, would have to be sham restructuring documents and either spent time discussing the proposals at Board level or have doctored minutes to suggest that that was the case. Whilst, again, we recognise the strength of feeling that the Claimant has in respect of that matter, the facts simply do not lend themselves to the redundancy process having been a sham exercise designed to solely target the Claimant on account of her having made protected disclosures or, for that matter, having submitted an Equal Pay Questionnaire some considerable period of time earlier.

428. We note also in this regard that the first disclosure relied upon by the Claimant was made on 2nd July 2015[26] and those that followed simply repeated substantially the same points. If the Second Respondent was so concerned about the substance of those disclosures that they elected to target the Claimant for dismissal, either in retaliation as to what she had said or in an attempt to silence her, then the process of dealing with that would clearly have been commenced much earlier than March 2016 when the first discussions as to a restructure began to be had.

[26] Given that we have found that the grievance of 27th May 2018 itself was not a protected disclosure.

429. We are therefore satisfied that the reason that the Claimant was dismissed was due to the fact that there was a diminished need, as a result of the restructure exercise, for employees to do work of the type for which she was employed. We are therefore accordingly also satisfied that the Second Respondent has persuaded us that the reason for dismissal was redundancy.

430. However, that is not the end of the matter. We must now go on to consider whether the dismissal was fair having regard to the provisions of Section 98 Employment Rights Act 1996. We remind ourselves that there is a neutral burden on this question with neither party being required to satisfy us on that point.

431. We deal with each of the challenges to fairness raised by the Claimant in turn and begin that with the question of pooling. We are satisfied that the Second Respondent did turn their mind to the question of pooling with Scintilla staff but that it made no commercial sense to disrupt the operations of the successful subsidiary company who were, in essence, to be the cash cow for the Second Respondent. Moreover, we have nothing at all before us to suggest that there were comparable roles to those that were to be eliminated by the agreed restructure of the Second Respondent's operations. It was not, in our view, outside the band of reasonable responses for the Second Respondent to have limited the pool for redundancy to those areas of their operations where there was to be a reduced requirement for employees doing that particular work.

432. Although not a reason for dismissing this challenge to the fairness of the decision, we would also observe that given the clear feelings of animosity that the Claimant has towards the First Respondent and Scintilla (as evidenced by her discussions and communications on the subject of the latter during the consultation process) it would appear to us highly unlikely that she would have countenanced taking up any vacant position with Scintilla in all events.

433. We also do not accept, for the reasons that we have already given, that the Claimant should not have been placed in the redundancy exercise on the basis of her assertion that she should have been slotted into the post because she was ringfenced under the SLA. We have dealt comprehensively with the reasons for that finding above and so we do not rehearse them again her save as to say that we are satisfied that the Claimant was not ringfenced under the SLA such that the Second Respondent was not in a position to make her redundant.

434. We turn then to the question of consultation. Here, we do find that the process adopted by the Second Respondent was unfair. Firstly, at the very first meeting it was made clear that the existing job roles of the Claimant and others were redundant. That in our view is indicative of the fact that the Second Respondent had adopted a mindset that there were to be redundancies and the restructure was going to be implemented. We are not satisfied that there was any consultation on the actual proposals to restructure the organisation and the fact that that was going to happen was something of a fait accompli from the outset.

435. Moving then to the issue of voluntary redundancy. The way in which this issue was dealt with by the Second Respondent in our view fell squarely outside the band of reasonable responses. As we have observed above, the Second Respondent had received a request to take voluntary redundancy from Lesley Watkins. Nothing would have been simpler to have asked the Claimant if she wanted to be slotted into the Partnership & Engagement Co-Ordinator post in view of that.

436. She would clearly have answered in the affirmative given her later application for that role and thus Lesley Watkins could have taken the voluntary redundancy that she had requested. Given that in Mr. Clarke's assessment both were equally matched in terms of skills and experience, this would not have resulted in any detriment to the Second Respondent and they would have avoided the need to make compulsory redundancies at all.

437. Moreover, Ms. Watkins expressly raised whether voluntary redundancy could be open as an option if there were sufficient applications to fill the posts. As a matter of clear fact, there were and given that that issue had been expressly raised with him it was outside the band of reasonable responses for the Second Respondent to not have explored the issue again at that stage. Again, that would have avoided the need for compulsory redundancies and would have seen the Claimant slotted into the role that she clearly wanted instead of it being provided to someone who had requested that they exit the organisation.

438. We are also satisfied that the selection process operated by the Second Respondent was flawed and fell outside the band of reasonable responses open to a reasonable employer. In this regard, the Second Respondent relied entirely on a short interview for selecting between the Claimant and Lesley Watkins. We find that adopting a simple interview process in these circumstances caused unfairness. Firstly, the Second Respondent failed to take into account any evidence of past performance, skill and experience and to utilise in this regard any objective criteria and data which would have been available to them.

439. They relied only on a relatively brief interview with questions which did not allow for an accurate assessment of skills and experience to deliver under the SLA or any indication – certainly none that we have seen – about how the questions asked correlated to the new job description for the Co-Ordinator post. We are not satisfied that the interview notes accurately record responses given and we, in line perhaps with the significant problems with disclosure in this case on the Second Respondent's part, have no documentation evidencing the scores allocated by each of the panel and a rationale for that.

440. The process in our view was too subjective to be fair to the Claimant, who we have little doubt was not the Second Respondent's preferred candidate, and was capable of being easily skewed by personal preferences with little or no transparency as to how the assessments had been conducted. Moreover, the Second Respondent failed entirely to appreciate that the Claimant was suffering from stress and anxiety and had been certified as unfit for work when using a short interview system as the sole decider for

who to select for redundancy. The fact that the Claimant apparently scored so badly and the issue of her health should have rung a huge alarm bell for Mr. Clarke, particularly given his evidence that he saw the Claimant and Lesley Watkins as being equally matched and the fact that she had been the senior of the two of them in terms of responsibilities under the SLA.

441. The selection method and criteria used were, in our view, too subjective to be fair and to enable an accurate and objective assessment of those interviewed to be undertaken. Moreover, they were not in all events applied fairly in the Claimant's case given that she was at the material time unfit for work suffering with stress and anxiety. The Second Respondent could and should have realised that such matters would invariably affect the Claimant's ability to perform in a redundancy exercise based solely on one relatively short interview.

442. We turn then to the question of suitable alternative employment. The Claimant points to the fact that she should have been offered the role of Communications, Training and Volunteering Co-ordinator upon the departure of Kate Broughton shortly before her employment terminated. This suggestion, however, misses the point that for costs reasons the Second Respondent elected not to fill that vacancy and instead outsourced the function to a sub-contractor. As such, there was no ongoing role to offer to the Claimant in that regard.

443. The Claimant also points to the fact that she was not offered the role of Chief Executive Officer. Aside from the fact that the Second Respondent was not in a financial position at that time to fill such a role other than on an interim basis, the Claimant overlooks the point that the Second Respondent was only obliged to consider *suitable* alternative employment, not anything at all that might have existed. There can be no unfairness in not offering the Claimant the most senior and strategic role in the Second Respondent organisation when she had no previous experience of undertaking in any capacity.

444. Finally, the Claimant contends that she could and should have been offered alternative employment within Scintilla as part of their securing of the Building Better Opportunities project. We do not accept that the announcement in respect of those matters was delayed simply to avoid offering the Claimant a role and, as we have already observed, we find it highly unlikely to say the least that she would have countenanced working in Scintilla and, particularly, for the First Respondent.

445. The last challenge to fairness from the Claimant is that she did not receive an independent appeal. We do not agree. Mr. Webster dealt with the appeal and he had had no involvement in the Claimant's selection for redundancy following the interview process. There was no obligation on the Second Respondent nor any custom and practice which dictated that the Claimant was entitled to an outside third party to deal with her appeal nor that she was entitled to otherwise select someone of her choosing. There was no unfairness created by Mr. Webster dealing with the appeal and, indeed the Claimant's own trade union representative was seen to observe that he had handled matters fairly.

446. However, for the reasons that we have already given the Second Respondent did not act fairly and reasonably in selecting the Claimant for redundancy given the defects in the consultation process; the method of selection and, most crucially, the way in which the issue of voluntary redundancy was handled. For all of those reasons, the Claimant's complaint of unfair dismissal contrary to Section 94 Employment Rights Act 1996 is therefore well founded and succeeds.

447. We have considered whether, if a fair procedure had been carried out, the Claimant would nevertheless have been made redundant – and if not at that time whether that would have occurred at some slightly later point. We are not satisfied that she would. If the Second Respondent had acted fairly and reasonably in dealing with the voluntary redundancy issue then Lesley Watkins would have left the organisation and the Claimant would have been slotted into the vacant Co-Ordinator post. There is nothing at all to say that she would not have accepted the role if offered to her - indeed, she not only applied for it but spent a considerable amount of effort and time during the consultation process arguing that it should be ringfenced to her. Accordingly, we are satisfied that had the Second Respondent acted fairly in respect of the voluntary redundancy issue there is no question that the Claimant would have remained in the Co-Ordinator post and that there was no likelihood that irrespective of the process adopted she would still have been made redundant.

JURISDICTION

448. Given the determination that we have made in respect of the detriment and victimisation complaints, it is not strictly necessary for us to deal with the question of jurisdiction.

449. However, had we had to do so we would not have extended time for any complaint not presented within the time limit set out in Section 48(3) ERA 1996 given that the Claimant advanced no explanation at all in evidence before us as to why she could not have presented the claim sooner. Indeed, we also take into account in that regard the Claimant's status as employee representative and thus the fact that she is perhaps rather more aware of employment rights and how to enforce them than the "typical" employee. She also had the assistance throughout of Mr. Harrison of the GMB to whom she could have turned for assistance with presenting an earlier claim.

450. The only explanation advanced by the Claimant at all in this regard was at the stage of submissions when she asserted that she had not presented a claim earlier on the basis that she was seeking to save her job. Whilst in all events that would not be sufficient to render if not reasonably practicable to present the claim in time, that explanation somewhat flies in the face of the Claimant's overall stance that the Second Respondent was out to get her and never had any intention of allowing her to stay within the organisation.

451. However, a different test would apply to any complaint of victimisation that we had found to have been made out but presented outside the time limit provided for by Section 123 EqA 2010. Although we would still observe that the Claimant has not advanced any reasonable explanation for any delay,

that is not in our view necessarily fatal to extending time under the just and equitable principles. We take into account that there is no real suggestion that the cogency of the evidence in respect of those allegations has diminished as both the Claimant and Respondents have been able to provide all necessary documentation and witness evidence on those issues in this aspect of the claim. The real issue is one of prejudice. Other than having to defend the complaints, the Respondents are put to no real prejudice by any late submission of the claim. However, had we found the complaints to be made out then clearly the Claimant would have suffered considerable prejudice in time not been extended given that she would not have been able to obtain a remedy for any acts of discrimination complained of.

452. We would therefore have extended time for any out of time victimisation complaint to be heard.

REMEDY

453. We have not heard evidence in respect of the matter of remedy and given that the unfair dismissal claim has succeeded there will shortly be listed a Preliminary hearing to make Orders for the preparation of the claim for a Remedy hearing and to list that hearing accordingly.

454. We would observe, however, that given that the Claimant has received the equivalent of a basic award by dint of receipt of her statutory redundancy payment and she would appear to have modest loss of earnings given her securing of alternative employment within a reasonably short period after the termination of employment, this ought to be a matter capable of resolution between the parties.

455. They of course have the continued use of the services of ACAS but if they are not able to resolve the matter of remedy between them, the matter will be set down for a Remedy hearing in the manner described above.

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Employment Judge Heap
Date: 2nd October 2018

JUDGMENT SENT TO THE PARTIES ON

....
FOR THE TRIBUNAL OFFICE

RESERVED **Case No: 2602081/2016**

MS. A HARPHAM

Claimant

v

IAN NEWTON SERVICES (R1)
MANSFIELD COMMUNITY VOLUNTARY (R2)

Respondents

LIST OF ISSUES

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1. Public interest disclosure

1.1 The Claimant relies upon the following as protected disclosures for the purposes of her claims under Section 47B and Section 103A Employment Rights Act 1996 (see paragraphs 7.1 to 7.5 of the Order of Employment Judge Hutchinson of 1st February 2017 ("The Order"):

1.1.1 Her grievance presented on 27th May 2015 regarding a conflict of interest.
1.1.2 An oral disclosure of 14th December 2015 relating to the aforementioned conflict of interest.
1.1.3 A complaint made on 4th January 2016 regarding the Second Respondent.
1.1.4 An oral disclosure of 22nd March 2016.
1.1.5 An oral disclosure of 20th April 2016.

1.2 In any or all of these, was the information disclosed to her employer which in the Claimant's reasonable belief tended to show one of the matters set out in Section 43B Employment Rights Act 1996 i.e. that it showed or tended to show one or more of the following –

(a) that a criminal office 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, is being or is likely to be deliberately concealed.

1.3 If so, did the Claimant reasonably believe that the disclosure or disclosures were made in the public interest?

2. Detriment complaints

2.1 If a protected disclosure or disclosures are proved by the Claimant, was the Claimant, on the ground of any protected disclosure found, subject to detriment by the employer or another worker in respect of all or any of complaints 9.1 to 9.10 and 9.12 to 9.13 inclusive of the Order.

2.2 The burden will initially be on the Claimant to prove on the balance of probabilities that:

2.2.1 she made a protected disclosure;
2.2.2 there was a detriment (some disadvantage) caused to her; and
2.2.3 that the Respondent (or one of its employees) subjected her to that detriment.

2.3 If the Claimant does so, does the Respondent prove that the Claimant was not subject to the detriment on the grounds that she had made a protected disclosure of disclosures (i.e. that the disclosures did not materially influence the treatment of the Claimant).

3. Unfair dismissal complaint – Sections 94 and 103A Employment Rights Act 1996

3.1 What was the reason for the dismissal? The First Respondent asserts that it was redundancy or, alternatively, some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the Claimant held. The burden will be upon the Respondent to satisfy the Tribunal on that question. Particularly, is the Respondent able to show that the circumstances were such that a statutory definition of redundancy provided from by Section 139 Employment Rights Act 1996 was met?

3.2 Alternatively, if the Respondent cannot satisfy the Tribunal that there was a potentially fair reason for dismissal, was the making of any proven protected disclosure the reason or principal reason for the dismissal? In this regard, the Tribunal will need to consider:

3.2.1 Has the Claimant produced sufficient evidence to raise the question whether the reason for the dismissal was the protected disclosure(s)?

3.2.2 If the Respondent has not proved its reason for the dismissal (namely redundancy or “SOSR”) does the Tribunal accept the reason put forward by the Claimant or does it decide that there was a different reason for the dismissal?

3.3 If the Respondent shows that the reason for dismissal was redundancy (or in the alternative for "some other substantial reason"), was the process fair or unfair having regard to Section 98(4) Employment Rights Act 1996 and, particularly did the Respondent:

3.3.1 identify the correct pool for selection for redundancy or reasonably conclude that there was no pool for selection;

3.3.2 apply fair and reasonably to that pool fair and objective selection criteria (if appropriate); and

3.3.3 undertake appropriate consultation with the Claimant on the method for selection and the process adopted (including consideration and consultation on the question of suitable alternative employment)?

The burden is no longer solely on the Respondent on this question; it is a neutral burden.

3.4 Was the decision and the process adopted within a reasonable range of responses open to a reasonable employer?

3.5 If the dismissal was unfair having regard to Section 98(4) Employment Rights Act 1996, does the Respondent prove that if it had adopted a fair procedure the Claimant would have been fairly dismissed in any event? If so, to what extent and when?

4. Section 27 Equality Act 2010: Victimisation

4.1 Did the Claimant do a protected act by serving the Equal Pay Questionnaire on the Respondent on 2nd July 2015, including whether that act was done in good faith (Section 27(2) and (3) Equality Act 2010.

4.2 Has the Respondent subjected the Claimant to the following treatment falling within Section 39 Equality Act 2010, namely*:*

4.1.1 Dismissing the Claimant (paragraph 9.11 of the Order)?

It is not in dispute that the Respondent terminated the Claimant's employment.

4.1.2 Subjecting the Claimant to the treatment complained of at complaints 9.1 to 9.10 and complaints 9.12 to 9.13 as set out in the Order.

a. Has the Respondent subjected the Claimant to detriment in dismissing her and as treating her as complained of at 4.1.2 above?

b. If so, did the Respondent subject the Claimant to any proven detriment because she had done a protected act?

5. Jurisdiction

5.1 Has any part of the Claimant's claim of detriment contrary to Section 47B Employment Rights Act 1996 or victimisation contrary to Section 27 Equality Act 2010 been presented outside of the relevant time limit? Particularly, are the acts which pre-date 14th July 2016[27] part of a continuing course of conduct?

5.2 If not and any part of the claim has been presented out of time, does the Tribunal have jurisdiction to entertain that complaint and:

5.2.1 In the case of the complaints of detriment was it reasonably practicable for the claim to have been presented in time; and

5.2.2 In the case of the complaints of victimisation, is it just and equitable to allow them to proceed out of time.

The burden is on the Claimant to persuade the Tribunal on that question.

[27] The Claimant commenced early conciliation on 9th December 2016 in respect of the First Respondent and 15th December 2016 in respect of the Second Respondent and thus anything occurring more than 3 months earlier may have been presented "out of time" unless it forms part of a "continuing act".