



EMPLOYMENT TRIBUNALS

Claimant: Ms E Mwape

Respondent: University Hospitals of Derby & Burton NHS Foundation Trust

Heard at: Nottingham

On: 14 – 18 October 2019
Tribunal sat in chambers on 6 – 7 January 2020

Before: Employment Judge Victoria Butler
Mr R Loynes
Mr M Pavey

Representation

Claimant: In person

Respondents: Mr R Fitzpatrick, of Counsel

RESERVED JUDGMENT

The unanimous decision of the Employment Tribunal is that:

1. The Claimant's claim that she was subjected to detriments following making protected disclosures is not well-founded and is dismissed.
2. The Claimant's claim that she was automatically unfairly dismissed is not well-founded and is dismissed.
3. The Claimant's claim that she was constructively unfairly dismissed is not well-founded and is dismissed.

Background to this claim

1. The Claimant presented her claim to the Tribunal on 10 July 2018. She initially pleaded claims of age and race discrimination under the Equality Act 2010 ("EQA"). On application by the Respondent, an attended preliminary hearing took place on 13 November 2018 before Employment Judge Britton ("EJ Britton") to determine whether the claims should be struck out, either because they are out time or because they have no reasonable prospect of success. Alternatively, if they are not out of time, whether he should order a deposit on the basis that her arguments or allegations had little reasonable prospect of success.
2. EJ Britton struck out the claims of age and race discrimination as having no reasonable prospect of success, but allowed the Claimant to amend the claim to proceed with a claim of whistleblowing and constructive unfair dismissal. He agreed the classification of detriments that the Claimant wished to rely on with her, in order that the Respondent knew the case it had to meet. These were:
 - *"Post raising of the grievance viz Michelle Graham on 2 March 2017, in the period up to the Claimant going off sick in September her being kept in the data team office but isolated and excluded, the principal perpetrator being Annabel Shaw ("**Detriment 1**")*.
 - *Following the Claimant's return to work from sick leave in November and despite the occupational health reports, being further isolated and excluded; and at this stage being placed in a side room off Ward 408, the principal perpetrator being Annabel Shaw, with the additional aggravating factor says the Claimant, that she was wrongly being placed under pressure by a human resources team including Donna Brown to re-join working in the team despite there having been no removal of Annabel Shaw or indeed having being notified as to what was happening with Michelle Graham, the latter still working in the same building ("**Detriment 2**").*
 - *Being wrongly placed on the redeployment register rather than being placed back in the data team with the removal of Annabel Shaw and assurances that Michelle Graham would be removed from any prospect of working in the vicinity to the Claimants, i.e. the main building in which the Claimant was situate ("**Detriment 3**").*
 - *Furthermore, that being placed on the redeployment register, not only was the Claimant therefore wrongfully put at risk to her detriment, but*

she was not provided with pro-active support in terms of securing employment with the Respondent, and her request for feedback in terms of interviews that she had undertaken was ignored” (“Detriment 4”).

3. EJ Britton advised the Claimant that if she wished to add anything to the above, then she should do so within 14 days of receiving his order. If she did not, it would be taken as being a definitive list.
4. Consequently, the Claimant wrote to the Tribunal on 12 December 2018 wishing to add further detriments. She also indicated that she wished to further amend the claim to pursue one of wrongful dismissal. Following a further closed preliminary hearing before EJ Britton, he saw the two further detriments advanced as factual allegations, rather than claims in themselves, but allowed the Claimant to make an application to amend to include a claim of each of contract.
5. Ultimately, the Claimant’s claim for breach of contract was withdrawn prior to this hearing and the remaining claims for this Tribunal to determine are:
 - Whistleblowing detriments under section 47B Employment Rights Act 1996 (“ERA”) and automatically unfair dismissal; and
 - Constructive unfair dismissal under s.95(1)(c) ERA.
6. A further attended preliminary hearing took place on 27 August 2019 before Employment Judge Batten (“EJ Batten”). EJ Batten clarified the claims and the protected disclosures relied upon, which we set out below. The Claimant made an application to add a further protected disclosure, which was refused. Any outstanding issues relating to disclosure were resolved, and additional documents that the Claimant wish to be included in the bundle were ordered to be so.

The issues

7. The issues to be determined by the tribunal were as follows:

Protected disclosures

The Claimant relies upon:

- i. Her first grievance which was intimated informally at a meeting on 8 March 2017 and later put into writing in a letter dated 24 April 2017 (“**PID 1**”);

- ii. Her grievance letter dated 16 November 2017 (“**PID 2**”); and
- iii. Her grievance email dated 5 February 2018 (“**PID 3**”).

In respect of the grievances:

- iv. Did the Claimant make a disclosure of information?
- v. In the reasonable belief of the Claimant, was the disclosure made in the public interest?
- vi. In the reasonable belief of the Claimant, did the disclosure tend to show one of the matters set out in section 43B(1)(b) – (d)?

Detriment

- ix. Was the Claimant subjected to any detriment by the Respondent because she had made the above protected disclosures? The Claimant relies on the detriments listed in the judgement of EJ Britton dated 3 December 2018 at paragraph 47 (as set out above).

Constructive unfair dismissal

- x. Did the Respondent act in breach of the implied term of mutual trust and confidence? The Claimant relies on the same detriments as in her whistleblowing claim as collectively constituting a breach of the implied term.
- xi. If so, did the Claimant resign in response to any such breach?
- xii. If so, did the Claimant waive any such breach prior to resignation?
- xiii. The Respondent also submits that the detriments relied upon are outside the three-month time limit meaning the Tribunal does not have jurisdiction to hear them.

The hearing

- 8. This case was heard on 14, 15, 16, 17 & 18 October 2019. The first day was a reading day and the hearing commenced on 15 October 2019. We heard evidence over the remaining four days and had to reserve our decision. The parties submitted written submissions for our consideration, and we met in chambers to deliberate and arrive at our conclusions on 6 & 7 January 2020.
- 9. Prior to the hearing we were presented with:

- Bundles of documents
- Witness statements
- Supplemental statements for the Claimant
- A chronology (drafted by the Respondent)

10. At the start of the hearing, the Claimant raised further issues regarding the bundle. One of her ex-colleagues, Ms Samantha Tolley-Debruyne, raised a grievance about the same line manager and the Claimant wanted her investigation documents included in the bundle. After hearing the parties' submissions, we declined to make an order for disclosure because Ms Tolley-Debruyne's grievance was not relevant to the Claimant's issues in this case, and it was not proportionate to do so.
11. The Claimant also claimed that the Respondent had failed to include her occupational health report and the associated consultation notes in the bundle. Employment Judge Victoria Butler ("EJ Butler") explained to the Claimant that if she had wanted them included, the onus was on her to request them, not the Respondent.
12. The Claimant filed supplemental witness statements after mutual exchange on 20 September 2019 and the Respondent objected to them being referred to. EJ Britton had ordered at the preliminary hearing on 11 February 2019 that "*the Claimant has liberty to file (copying to the Respondent's solicitors) supplemental statements limited only to replying to matters raised in the Respondents witness statements which she did not appreciate were engaged or were new to her*". The Respondent submitted that the matters raised in these statements were simply responses to the Respondent's statements, not matters that the Claimant had not appreciated were engaged all were new to her.
13. Although we had read the supplemental statements, we agreed with the Respondent's submission, and confirmed that we would not take them as evidence in chief. EJ Butler advised the Claimant that she should use cross-examination to cover the points she raises in her supplemental statements.

The evidence

14. The Claimant gave evidence and produced no further witnesses.
15. For the Respondent we heard from:

Michelle Graham – Data Entry Manager

Annabel Shaw – Deputy General Manager, Specialist Medicine Unit

Darren Gillott – Senior Human Resources Advisor
Lee Doyle – General Manager, Acute Medicine
Donna Brown – HR Business Partner, Medicine Division
Liz Ryalls – Deputy Divisional Director for Medicine
Grace Pearn – Therapy Professional Lead
Adam Race – Deputy Director of Workforce

16. We were satisfied that each of the Respondent's witnesses were consistent, credible and reliable. Conversely, we did not find the same for the Claimant. Her evidence would often change to suit, even when her inconsistencies were highlighted to her. She was at times confused and, consequently, her evidence was confusing. On other occasions she refused to acknowledge facts that were clearly contained in documents before her. Much of her evidence was contradicted by the contemporaneous documents and as such, we were satisfied that, overall, her evidence was not credible and was designed to bolster her case.

The facts

17. The Claimant was employed as a data entry clerk by the Respondent's Royal Derby Hospital. She commenced employment on 28 October 2015 until her resignation with effect from 11 April 2018.

18. The data entry team is responsible for various audits within the specialist medicine unit. The Claimant's duties involved collecting patient notes; retrieving information relating to audits; completing pro forma; visiting wards to retrieve data from inpatient notes; and attending meetings with multidisciplinary teams to determine the interpretation of such data and identify ways to understand and report on it.

19. In October 2015, the Claimant and two of her colleagues raised concerns about another colleague. Following an investigation and disciplinary hearing, this colleague was redeployed to another department. For a period thereafter, the Claimant's team, comprising circa five data entry clerks, was without a manager. On 15 August 2016, Michelle Graham, Data Entry Manager, was appointed as the Claimant's manager. Ms Graham had worked for the Respondent for approximately 15 years, but had limited management experience.

20. Ms Graham was line-managed by Annabel Shaw (Deputy General Manager, Specialist Medicine Business Unit). Prior to starting the role, Ms Graham met with Miss Shaw who explained that the data entry team struggled with internal issues. The previous manager had moved following a disciplinary process and some poor behaviours had developed which she wanted Ms Graham to try and resolve. In Ms Shaw's view, there was a lack of control over hours worked and leave

requests, which she felt was having a negative impact on the performance of the team. Ms Graham was tasked with introducing core hours, stopping the practice of team members swapping and changing hours at short notice and improving the atmosphere and morale generally. Miss Graham was also advised that one of the Claimant's colleagues, Samantha Tolley-Debruyne, was off sick and she was to facilitate her return to work.

21. When Ms Graham introduced herself to the team, the Claimant kept her head down and refused to acknowledge her. She found that the atmosphere in the office to be hostile and uncomfortable. It became obvious to Ms Graham quite quickly that the Claimant was a very difficult employee to manage. Regardless, she worked hard to establish a positive working relationship with her.
22. Very early on in the relationship, the Claimant was aggrieved when Ms Graham moved her desk within the office. Ms Graham felt it was important that her desk was situated in a place that was accessible to both her team and colleagues from other departments. She made the desk move with the express approval from Ms Shaw and Lauren Townsend (Information Manager for Medicine and Cancer Division) and with the best of intentions. She had tried to telephone the Claimant whilst she was on annual leave to let her know, albeit could not reach her. On her return to the office, the Claimant called Ms Graham a bully and refused to accept her apology. She was stand-offish towards Ms Graham for a while, but became good humoured about it over time.
23. During her first few weeks in role, Ms Graham had 1:1s with each team member to better understand the work they were doing. The Claimant told Ms Graham in their 1:1 that she did not believe it was her job to interpret clinical information and that one of the doctors, Dr Selby, was very rude and difficult to work with. She also said there were several errors with the database that the team worked with. Ms Graham said she would explore her concerns further and invited the Claimant to several training sessions to gain a better understanding of the data. The Claimant refused to attend the training, as she had done under previous line management
24. After this discussion, Ms Graham met with Dr Selby who told her that he was frustrated by the inaccurate data he was receiving from the data entry team and the lack of presence on the ward of certain individuals, including the Claimant. He requested a daily presence for collection of HDU data and for the entry clerk to actively ask questions of the nursing staff to ensure that the data was accurate. Recognising the Claimant's concerns about this audit and her experience of Dr Selby, Ms Graham asked the Claimant if she would be happy to learn a new audit and train up a new member of staff to work on the current audit in her place. The Claimant appeared happy with this suggestion and expressed no objection.

25. During these 1:1s, the Claimant confirmed to Ms Graham that she had sufficient work to do to fill her contracted 20 hours per week. This was still the case after she had trained her new colleague, Sophie Pollard, on the audit and she was happy.
26. Thereafter, Ms Graham struggled with the Claimant's behaviour which she believed was divisive. On one occasion, the Claimant was asked by a colleague for help with some work and in response, the Claimant threw a piece of paper at her saying words to the effect of "*I'm not your assistant*". She also refused reasonable requests from Ms Graham to assist with other work. Ms Graham ultimately had to address this with the Claimant and advised her that if she continued to refuse to assist with other work, she would need to start a capability process. The Claimant told Ms Graham that she was "ready" for HR.
27. The Claimant continued to be hostile towards Ms Graham which, in turn, led Ms Graham feeling uncomfortable speaking to her. This ultimately resulted in an incident during a meeting on 21 February 2017 in which Ms Graham wagged her finger at the Claimant and told her that she did not fit in with the team. This was borne out of months of hostile and intimidating behaviour by the Claimant, and which Ms Graham regretted and was appropriately disciplined for.
28. On 23 February 2017, the Claimant e-mailed Ms Shaw requesting a transfer out of the department. She said: "*I am finding it very difficult to work with Michelle my line manager*". She felt she had been ignored and side-lined for audit work duties and found herself with hardly any work to do. She accused Ms Graham of ignoring her and referred to the meeting two days prior in which Ms Graham wagged her finger. She went on to say: "*the issue of being overlooked/side-lined within the Department has occurred before and I think it is time management took it seriously*" (p.326-327).
29. Ms Shaw responded that same day saying "*I'm really sorry to hear that you feel like this. This is the first time since Michelle started that I received concerns from yourself. I suggest what we do is meet in the first instance with HR? Would you be willing to do this?*" (p.328).
30. A meeting was arranged between the Claimant, Ms Shaw and Jodie Steemson (Senior HR Advisor) on 8 March 2017. During this meeting, the Claimant complained that she was not being involved with the team and was always having to ask Ms Graham for things to do. The Claimant felt like she had been dragged into Ms Graham's personal life and raised complaints about her behaviour, including making personal phone calls and talking about her private life openly (p.332 – 334).

31. Thereafter, a decision was made to investigate the Claimant's concerns about Ms Graham, who was advised of the same (p.335).

32. The following day, 9 March 2017, the Claimant emailed Ms Shaw and said she wished to submit an official complaint against Ms Graham saying, *"I was quite happy to leave this for a bit, to allow you time to deal with the concerns I raised, in order to find the best way forward, but Michelle's behaviour against me is causing concern. When I walked in this morning, she started saying things that I know are indirectly being aimed at me."* (p.179). Ms Shaw asked the Claimant to provide the detail, which she duly did on 13 March 2017 (p180). Ms Shaw confirmed that the Respondent was investigating the points raised at the meeting on 8 March and the Claimant should submit any evidence in support by the end of that week (p.181).

33. However, on 16 March 2017, the Claimant emailed Ms Shaw to let her know that things had:

".....definitely improved this week. Sophie did not speak to me for about two days following our meeting. She is alright now and is talking to me. So is Michelle.

I am more than happy for mediation, because I do not wish to face the situation/mediation again.

I just want to come in and do what I am here for, whilst treating everyone with respect. I am expecting to be treated the same too" (p.182).

34. Throughout this period, the Claimant had also had several short-term absences, so Ms Graham held a meeting with her on 10 April 2017 in accordance with the Respondent's short-term absence procedure. During this meeting, Ms Graham confirmed that she would complete a referral to occupational health to ensure that the Claimant was supported and that she (Ms Graham) was guided by the appropriate medical advice (p.169).

35. Ms Shaw was on annual leave from 5 – 24 April 2018. On her return on 24 April 2018, the Claimant submitted a formal grievance against Ms Graham. She stated *"I wish to submit an official complaint, against my manager, Michelle Graham, because I am finding it very difficult to cope with her inappropriate behaviour towards me."* She goes on to cite a number of examples of Ms Graham's alleged conduct. She stated *"I think in the past, management has been very efficient in handling these cases, as I feel that they have a duty to not only prevent bullying and harassment within the workplace, but to protect victimisation and harassment*

towards staff who raise concerns. I do feel like Michelle Graham has subjected me to months of harassment, victimisation and inappropriate conduct, ever since I raised concerns about what has been taking place in our office. The Equality Act 2010, legally protects staff from victimisation and harassment and also provides protection from discrimination in the workplace.” The Claimant also mentions her friend and colleague, Ms Tolley-Debruyne, as also being on the receiving end of inappropriate behaviour. She concluded by saying *“I am trusting that management will look into these issues urgently, with a view to resolving the situation, with the best possible outcome, because this is the second time that I am being subjected to this”* (p.343–346). Ms Shaw forwarded her grievance to HR that day.

36. The Respondent appointed Ms Mariska Faint-Uffen (Quality Manager MFU) to investigate the issues raised by the Claimant and Ms Tolley-Debruyne, who had also raised a grievance.
37. On 2 May 2017, the Claimant recorded a conversation between Ms Graham and a colleague, without their knowledge, in which Ms Graham spoke about the investigation against her (p.183-186).
38. In the meantime, Ms Faint-Uffen was undertaking her investigation into the allegations against Ms Graham. She concluded that there was a case to answer in respect of the following allegations made, relevant to the Claimant:

“Allegation 1

That you have bullied and harassed [the Claimant], between February 2017 to April 27 by creating a hostile workplace environment.

Allegation 2

That on 21 February 2017 you made inappropriate comments of an intimidating nature.

Allegation 3

That on 20 April 2017 you sent an email to [the Claimant] which she found upsetting.

Allegation 4

That on 2 May 2017 you breached confidentiality of an ongoing investigation by talking in the shared office and made derogatory remarks about [the Claimant].

Allegation 5

That your behaviour is not in line with standard expected of trust employees” (p.141).

She went on to say, "It is my believe (sic) that there is a prima facie case to answer on all of the five allegations based on the evidence gathered and all five allegations have been fully proven on the balance of probability. I therefore recommend that Michelle Graham be referred to a disciplinary hearing in respect of allegations one, two, three, four and five" (p.141).

39. Ms Faint-Uffen's report was thorough and ran to 236 pages (p.83-322). The report was, however, only a recommendation that the matters complained of were the subject of a disciplinary hearing, rather than being determinative in itself.
40. On 24 May 2017, the Claimant emailed Ms Shaw enquiring about the procedure for removing Ms Graham as her line manager (p.352). Ms Shaw replied promptly (nine minutes later) confirming that she would line manage the Claimant whilst the investigation was ongoing. However, she would need to be guided by Ms Graham on the work itself and, Ms Graham would be kept up-to-date regarding annual leave and sickness. Ms Shaw confirmed that she would also undertake the Claimant's return to work after a period of sickness absence, and that she would not be required to meet Ms Graham unless it was agreed to be in the best interests of the work, in which case someone else would be present (p.352). Thereafter, Ms Shaw acted as a go-between between the Claimant and Ms Graham. The Claimant would e-mail Ms Shaw to advise on work progress and other administrative matters and, in turn, she would relay this to Ms Graham (p.1138-1149).
41. During week commencing 22 May 2017, the Claimant moved out of the data entry office, at her request, to the medical records office on the management corridor to avoid contact with Ms Graham. However, on 31 May 2017, the Claimant emailed Ms Faint-Uffen directly to complain that Ms Graham was coming into the office (p.354). Ms Faint-Uffen made enquiries and confirmed that Ms Graham was required to frequent the management corridor as part of her duties. She asked Ms Graham, however, to avoid going into the office for the time being (p.356).
42. On 17 August 2017, Ms Graham attended a disciplinary hearing which was chaired by Mr Lee Doyle, General Manager, Acute Medicine. He was supported by Darren Gillott, Senior HR Adviser. Mr Doyle did not uphold the allegation that Ms Graham had bullied and harassed the Claimant, or that she sent an email on 20 April 2017 that the Claimant found upsetting. He did, however, uphold the allegations that Ms Graham had made inappropriate comments in the meeting on 21 February 2017, that she had breached confidentiality by talking about the investigation with a colleague and that her behaviour was not in line with the standards expected of Trust employees. Mr Doyle concluded that:

“in mitigation the panel accepted that it was your first management role and you were managing a difficult team in which there had been previous issues. The panel also took into account that your induction has been sub optimal and there was also no development programme in place for you at the time.

The panel also took into account the fact that at the hearing you had admitted full responsibility for your actions and owned up to your mistakes. The panel believed that part of the role of the disciplinary process is to allow employees who have made mistakes to learn from them as part of their rehabilitation process”.

Accordingly, he issued Ms Graham with a 12-month written warning (p.416-421).

43. On 1 September 2017, Ms Donna Brown (HR Business Partner) spoke with the Claimant and told her that Ms Graham would be returning to her role and that she (the Claimant) would be re-integrated back into her role. Thereafter, the Claimant emailed Sue Chambers, Macmillan Transformation Lead Nurse, and said *“my main concern is being returned back to an office where I was made to feel very uncomfortable and I nearly suffered a mental breakdown. It was very hard having to move to a completely new office and having to start again. I was on the mend, I can never return back to that office. Michelle might make my life unbearable ... I do not wish to return back there. I need to see someone urgently. I cannot return back to walking around the hospital to avoid the office.....”* (p.425/4). Ms Brown felt it appropriate that Ms Shaw meet with the Claimant to discuss her concerns (p.422), which she duly did.
44. On 4 September 2017, the Claimant emailed Kat Palladino (HR Advisor) saying *“I wish to make enquiries for to (sic) a voluntary redeployment is processed within the Trust. Following two incidents relating to bullying, harassment and victimisation, I feel like I am struggling to cope mentally with the Department where I have been based for the past 2 years”* (p.426/7). Ms Palladino responded suggesting that the Claimant speak to Ms Shaw to discuss her concerns and enquire about redeployment. That same day, Ms Shaw emailed the Claimant and suggested that they meet on Wednesday of that week (p.430).
45. On 5 September 2017, Ms Shaw was made aware of concerns expressed by colleagues in the same office as the Claimant regarding her timekeeping and productivity (p. 432).
46. On 6 September 2017, Ms Shaw met with the Claimant as suggested (p. 437-443). She was accompanied by Mr Gillott because he had attended Ms Graham’s disciplinary hearing and was fully informed of the detail and outcome.

Accordingly, he would be able to answer any questions that the Claimant, or Ms Shaw, may have.

47. Ms Shaw began by discussing the outcome of the Claimant's grievance, but explained that the outcome of Ms Graham's disciplinary hearing was confidential. She also explained that the Respondent wanted to agree how to move forward and integrate her back into the team. However, the Claimant was adamant that she would not work with Ms Graham again, and told Ms Shaw that she had taken advice and would be taking the Respondent to an employment tribunal.
48. Ms Shaw also raised the Claimant's timekeeping and absence from work with her, and did so in a calm and professional manner. The Claimant became abrupt and aggressive and, ultimately, the meeting concluded without resolution. The Claimant remained adamant that she would not return to the data entry team. Ms Shaw remarked to Mr Gillott that she did not know how to resolve the situation given the Claimant's refusal to return to the data entry office. However, at no time did Ms Shaw or Mr Gillett act inappropriately or unprofessionally during this meeting.
49. Later that morning, the Claimant emailed Ms Chambers saying she was disappointed that she had not received anything in writing confirming the outcome of Ms Graham's disciplinary hearing. She said that she would be taking the next formal steps "*with a view to bringing my case before an employment tribunal*". She complained about the treatment she believed she had been subject to, and confirmed that she had contacted HR about the possibility of applying for redeployment because she was not prepared to work with Ms Graham (p. 450–451). Ms Chambers acknowledged the e-mail and said that she would respond in detail when she had opportunity to speak with a colleague who was on annual leave at the time.
50. The Claimant sent a further e-mail to Ms Chambers that day requesting a move away from the medical records office because Mr Gillott had "*walked into the office where I am based this morning at 1013. This gave me a real fright and brought back so much horrible memories from that day. I really want to move away from here*" (p.452).
51. On 7 September 2017, the Claimant emailed Ms Chambers again, complaining that Mr Gillott had attended the meeting the previous day with Ms Shaw. She alleged that he had used inappropriate language and that Ms Shaw was angry with her. She finished the email stating that she felt suicidal (p. 455 – 457). Ms Chambers forwarded the email to Ms Liz Ryalls (General Manager for Specialist Medicine) who immediately contacted HR. She spoke with Ms Brown who agreed to contact occupational health immediately and asked them to contact the

Claimant to check on her well-being. She also asked occupational health to alert the Claimant's GP to their concerns and agreed that they would call and ask her GP to make contact.

52. The Claimant declined to speak to the nurse who contacted her and, therefore, Ms Brown advised Ms Ryalls that they should make an urgent referral to occupational health, which was done (p. 467). The Respondent acted with care, compassion and haste when the Claimant said she felt suicidal.
53. On 13 September 2017, Ms Chambers replied in detail to the Claimant's email dated 6 September 2017 (p. 469). She advised that the outcome of Ms Graham's disciplinary hearing was confidential to her and there '*will be times when Michelle Graham and the gentleman from the disciplinary panel, within their roles, will be required to visit the management offices on level 4, and there will be an expectation that both you and they will act professionally and in line with the Trust's CARE standards...*'.
54. The Claimant saw occupational health nurse on 13 September 2017 about her continued absence who referred her to a physician (p. 473). The Claimant attended this appointment on 29 September 2017. The subsequent report confirmed that the Claimant had been prescribed antidepressants by her GP, although she had not taken them for fear of side effects. Further, he confirmed that she was happy to engage in a redeployment (p. 479).
55. On 11 October 2017, the Claimant emailed Ms Shaw opening with "*following with my enquiries relating to my redeployment, as recommended by the occupational health consultant, I have received your text message in which you have stated that I should meet with Donna Brown and another general manager.*" She also requested that Mr Gillott was not involved in the redeployment process
56. The Claimant met with Ms Brown and Ms Ryalls on 13 October 2017 to discuss the occupational health report and redeployment. During this meeting, the Claimant refused to make eye contact with Ms Brown and accused her of being cold and insensitive, having failed to enquire about the Claimant's health when they spoke earlier in the day. Ms Brown apologised confirming that their earlier chat was brief and was only to confirm the meeting arrangements with her. Once this had been aired, Ms Ryalls explained the redeployment process to the Claimant and gave her a copy of the policy and relevant form to complete. She asked the Claimant if she would be happy to work in a temporary alternative role whilst permanent redeployment was sought, and the Claimant agreed that would be good. The Claimant declined Ms Ryalls' initial suggestion of a role in Treatment Case Notes Services for reasons relating to her asthma.

57. Ms Ryalls queried what skills the Claimant had to assist her in seeking an alternative role, but she did not answer. Ms Ryalls went on to offer a number of alternative roles with fairly generic skills and Claimant indicated that a role in Pay Services might be an option. Ms Ryalls said that she would look into it, and also seek to find her an alternative place to sit in the meantime. Ms Ryalls confirmed that another redeployment meeting would take place the following week and advised the Claimant she could bring someone to accompany her. (p.491)
58. Later that day, Ms Ryalls emailed the Claimant to confirm that she had found an alternative desk for her just off ward 408 which she would share with a finance colleague, Mike Greatbatch (p.493). She also confirmed that Grace Pearn (Deputy General Manager, Specialist Medicine) would meet with her the following week to progress the redeployment process.
59. The Claimant moved into the office off ward 408 and initially shared it with Mr Mike Greatbatch. Not long after she moved in, Mr Greatbatch requested a move to sit with his finance colleagues after a desk had become free, so the Claimant was alone in the office.
60. On 16 October 2017, the Claimant was off sick but confirmed that she would be able to attend the redeployment meeting on 20 October 2017 (p.494). However, she subsequently e-mailed Ms Shaw and said she was not attending because she had only received the formal invite letter via post on 19 October 2017 and had insufficient time to contact a representative to accompany her (p.501). This was despite being fully aware that the meeting was taking place a few days earlier and confirming her attendance. The Claimant also complained that Ms Brown had not been compassionate towards her in the previous meeting.
61. Ms Ryalls wrote to the Claimant about her failure to attend the redeployment meeting and also her failure to adhere to the sickness absence reporting procedures (p.506–507). Ms Ryalls confirmed that the Respondent would do “*all we can do to support you, but you need to engage with us*”. She also said that Ms Pearn would be enacting the ‘Management of Stress in the Workplace Policy and it was important that an individual stress risk assessment action plan was completed.
62. The Claimant was referred to occupational health again on 24 October 2017 (p. 522 – 527). The basis of the referral was her absence due to work-related stress and to further assist with the redeployment process (p. 535).
63. On 25 October 2017, Ms Pearn wrote to the Claimant confirming that she had been asked to commence the redeployment process with her and that the most recent occupational health report had been requested so that “*we are well*

advised from an occupational health perspective in carrying out the redeployment process and also in supporting your return to work, as well as ensuring we provide an appropriate response in terms of possible interventions in managing your work related stress. The referral is also seeking advice on your fitness to engage in the redeployment process” (p. 357 – 538).

64. On 30 October 2017, the Claimant emailed Ms Ryalls to advise that she was “*in the process of lodging a grievance against the following members of staff, who I feel have treated me unfairly before and after the period that I was signed off sick by my GP – Annabel Shaw, Donna Brown, Darren Gillett, Michelle Graham. I will be submitting my grievance under the Trust’s policy and procedures for managing work related stress and preventing stressful situations from deteriorating” (p.541–542).*
65. Ms Pearn arranged a redeployment meeting with the Claimant on 15 November 2017 (p. 543) and asked her to bring both the redeployment form and individual risk assessment with her (p. 545). The Claimant attended unaccompanied and Ms Pearn was supported by Ms Palladino. Ms Pearn explained the redeployment process to the Claimant again, discussed the stress risk assessment (which the Claimant had failed to complete but committed to do so prior to the next meeting) and the Claimant’s skillset. The Claimant was told that she would need to register on the redeployment system and filter the jobs to find the appropriate vacancies that matched her skillset. Ms Palladino also committed to sending a list of vacancies to her on a weekly basis.
66. Ms Pearn asked the Claimant what support she might need with applying for jobs. The Claimant said that she was competent in applying for jobs and, although she did not like interviews, believed that she would do well. At the close of the meeting, the Claimant agreed that any concerns had been discussed (p.552–553). The meeting was summarised in a letter dated 16 November 2017 (p.562-564) and the Claimant registered on the redeployment system on 15 November 2017.
67. On 17 November 2017, the Claimant emailed Ms Shaw complaining that Ms Graham was victimising and bullying her with constant criticism. She closed the email by saying “*I have just returned from a long episode of sickness, due to work-related stress I wish to get back to normal, while the redeployment process (where I am receiving very good support) is taking place” (p. 565 – 566).* Ms Shaw responded promptly confirming that she would be happy to receive notes from the Claimant with her answers to any of Ms Graham’s queries. However, she commented that it was difficult for her being the ‘go-between’, but would try to work with them both to get the best quality data (p. 567D).

68. The same day, the Claimant submitted her grievance against Ms Shaw, Ms Graham, Mr Gillott and Ms Brown. She alleged “*months of bullying, harassment, victimisation, humiliation and unfair treatment, causing huge distress to myself and this has left me suffering mentally and physically.*” She complained again about Ms Graham and alleged that Ms Shaw had failed to take the necessary steps to deal with her concerns. She also complained about the meeting with Ms Brown and Mr Gillott. The Claimant also confirmed that she was “*planning to use this grievance, as part of [her] employment tribunal against the trust*”. (p.559–574). The grievance was submitted to Mr Adam Race, Deputy Director Workforce, who acknowledged receipt.
69. On 22 November 2017, the Claimant visited A&E due to pain in her arm. She advised Ms Ryalls accordingly, who thanked her for the update and hoped that she felt better soon (p.595). The following day, the Claimant confirmed that she would not be able to collect and return notes back to files herself for about ‘two weeks or so’ because of the pain in her arm (p.593).
70. On 24 November 2017, Mr Race invited Ms Graham to a disciplinary investigation to discuss the matters raised by the Claimant in her most recent grievance (p.598–599). That same day, Ms Palladino emailed the Claimant a list of administrative/clerical roles under the redeployment process (p.685). In response, the Claimant said that she would be applying for a role of Discharge Support Officer but due to illness she “*probably missed the deadline*”. Ms Palladino spoke to the hiring manager who confirmed that they would be happy to accept a late application. However, the Claimant chose not to apply (p. 604 – 606).
71. The Claimant applied for a role as a Patient Systems Data Coordinator but was not successful due to her lack of experience. The hiring manager said that she was “*a little surprised at [the Claimant’s] lack of understanding based on her application. I think she would struggle with the role and I didn’t get the impression that she was particularly interested which did worry me*” (p.629). Ms Palladino liaised with the hiring manager who agreed to re-interview the Claimant. However, despite the hiring manager contacting the Claimant on several occasions to arrange this, she declined to attend a further interview (p.627– 628).
72. On 27 November 2017, the Claimant emailed Ms Ryalls requesting that Ms Shaw be removed as her line manager with immediate effect. She claimed that she had been “*let down ever since the period when [she] raised concerns about bullying, harassment and victimisation towards [her]*.” She alleged that Ms Shaw had acted “*inappropriately and unfairly*” in a return to work meeting with Mr Gillott, after which she felt ‘*victimised, patronised and degraded*’ (p. 600).

73. Ms Pearn, accompanied by Ms Palladino, held a further redeployment meeting with the Claimant on 28 November 2017. They discussed the Claimant's most recent absence and the individual stress risk assessment, which she had still failed to complete and bring along. Ms Pearn reiterated the importance of completing the assessment and the Claimant committed to doing so and bringing it to the next meeting.
74. Ms Palladino advised the Claimant to follow up a meeting she had had with the hiring manager for a role as a Patient Systems Data Coordinator to find out if a permanent redeployment could be considered, or a trial period offered. She also advised the Claimant that, if the job was deemed unsuitable, she should ask the hiring manager for feedback.
75. The Claimant confirmed that there two further roles she was considering applying for and she was confident in the process of doing so. She also said that she had applied, and been offered interviews for, two jobs in the London area and was considering the possibility of working in London Monday to Thursday and returning to Derby at the weekends.
76. Ms Pearn asked the Claimant if she had read the redeployment guidance to which she said she had, and that she understood the content. Ms Pearn explained the process to the Claimant again and the Claimant was aware that a possible outcome of the process was that her contract of employment may be terminated. Ms Pearn followed up the meeting in writing by letter dated 5 December 2017 and said that she "*was pleased to hear that you feel you have had good support so far during this process and that you are in agreement to continue with the current support in place..... You confirmed that you understand the redeployment process and that you are willing to continue with pursuing opportunities for a suitable role in the Trust. You could not think of any questions at present*" (p. 613 – 615).
77. On 4 December 2017, the Claimant was offered a temporary redeployment opportunity in recruitment which she declined because it was only a temporary option (p.625). Ms Palladino sent a vacancy update to the Claimant the following day (p.616).
78. The next redeployment meeting was arranged for 13 December 2017. Ms Pearn asked the Claimant if she had spoken to the hiring manager about the Patient Systems Data Coordinator role. The Claimant explained that she cancelled the appointment because her son, who was in China, had been ill and she was not in the right frame of mind to attend an interview. She had cancelled two other interviews around this time too. Ms Pearn raised the offer of a temporary

redeployment into the recruitment team again, but the Claimant declined it. She also explained once more that she was looking for jobs in London.

79. Ms Pearn talked the Claimant through the redeployment process again and was clear that if an alternative role could not be secured after a certain period, a possible outcome could be the termination of her employment on the grounds of ill health capability. Ms Pearn also committed to assist the Claimant in completing the stress risk assessment (p. 639 – 641, 662-664).
80. On 13 December 2017, Ms Ryalls responded to the Claimant's request to remove Ms Shaw as her line manager. She explained that she was unable to meet a further request for a change in line manager. She also confirmed her understanding that the Claimant had declined a temporary redeployment and asked her to complete the stress risk assessment. The Claimant replied that she had never wanted to explore a temporary position and re-confirmed her request to remove Ms Shaw as her line manager (p.646 – 647). The same day, the investigating officer into the Claimant's grievance, Jane Lacey-Hatton (external HR Consultant) contacted her to introduce herself (p.649 – 650).
81. On 14 December 2017, Ms Palladino became aware that the Claimant had applied for a role within the Respondent but had not been treated as a priority candidate as per the redeployment guidelines. Accordingly, she contacted the hiring manager to explain what she should have done correctly. Ms Palladino was championing the Claimant's search for alternative employment (p.657). Thereafter, Ms Palladino continued to liaise with the Claimant about available roles and offered support.
82. On 15 December 27, occupational health produced its report which confirmed that the Claimant was "fit to be redeployed in the clerical role away from the current Department and from her current line manager....I can confirm that she is fit to remain at work and continue her duties and also look for new roles" (p. 665).
83. A further redeployment meeting was arranged for 4 January 2018, but the Claimant declined to attend and failed to respond with alternative dates to meet (p. 605). Accordingly, Ms Pearn wrote to the Claimant inviting her to attend a further meeting on 15 January 2018 (p.686).
84. On 10 January 2018, a colleague from a different department, called Fiona, joined the Claimant in the office off ward 408. The Claimant e-mailed Mike Greatbatch to let him know (p.695).
85. The Claimant also met with Ms Lacey-Hatton on 10 January 2018 to discuss her grievance. Shortly thereafter, the Claimant emailed Ms Lacey-Hatton confirming

that she had decided to commence the procedure to lodge her employment tribunal claim via ACAS. She said that *"I do feel that I finally would like to have my voice heard at an unemployment (sic) tribunal"* (p. 698). Thereafter, Ms Lacey-Hatton commenced her investigation and interviewed: Ms Shaw, Ms Graham, Mr Gillott, Ms Brown and Liz Ryalls (p.270).

86. On 15 January 2018, Ms Palladino was advised that the Claimant had applied for a vacant role through the wrong website resulting in her not getting a priority interview (p.701).

87. Throughout this period, the Claimant continued to be line managed by Ms Shaw, who was still acting as a go-between between her and Ms Graham. However, on 18 January 2018, Ms Graham contacted the Claimant directly by e-mail because Ms Shaw was in meetings all day. The purpose of the e-mail was to remind the Claimant about a deadline for an audit, however, the Claimant responded saying *"You might want to improve your communication with your manager, instead of jumping to conclusions, that are only motivated by your desire to undermine my work. I would ask that you do not make any contact with me, because your e-mailed has caused me upset and stress"* (p.711).

88. That same day, Claimant contacted Mr Race saying *"It has been very difficult returning back from sick leave, to come and work under the same managers who caused my work-related stress. I have received absolutely no support from them and this has affected my ability to perform in interviews relating to my redeployment. I am therefore, putting in an urgent request, to work elsewhere and I am also willing to be an extra pair of hands, in other departments too, while waiting for further decisions from you..."*(p.731).

89. Mr Race replied confirming that the Respondent could urgently look to redeploy her, although she would likely need to be flexible in terms of the work she did or *"we can look to conclude your grievance swiftly following which we can consider the implications of that for you and your team. Please advise of your preference and if it is that you are redeployed pending the outcome of your grievance, I will seek to facilitate this"* (p.729). The Claimant confirmed that she wished to work elsewhere and that she had contacted ACAS because she had been advised that she had to lodge her Tribunal claim within a certain period from her grievance being submitted (p.731).

90. Throughout January, Ms Palladino was still supporting the Claimant with the redeployment process. Ms Shaw also chased the Claimant on 19 January 2018 about the stress risk assessment, as follows: *"as you know I would like to meet with you to discuss your individual stress assessment so that we can work out how to lower your stress level and I would be grateful if you could inform me of*

your availability" (p.744). The Claimant responded and she said that she would prefer to discuss it with someone from *'outside the unit'* (p. 743-4).

91. The next redeployment meeting was held on 24 January 2018. Ms Pearn recapped on progress which, to date, had been limited despite Ms Palladino's ongoing support. The Claimant told Ms Pearn she felt that she would have more opportunity for career development outside of the Trust and had been successful in getting to the interview stage in equivalent posts. Ms Pearn ran through the potential outcomes of the redeployment process again and advised the Claimant that if there was any other support that the Respondent could offer, then she should let her know (p.764/767).
92. On 5 February 2018, the Claimant emailed Mr Race complaining about Ms Shaw. She alleged that Ms Shaw had let her down in the past and continued to do so - she had hardly had any support from her or interaction, and had had to work in total isolation months. She said that the situation was affecting her health and was putting in a further urgent request to have Ms Shaw removed as her line manager (p.769 –770). Mr Race replied on 7 February 2018 and offered her a temporary redeployment to the Medical Recruitment team, which she accepted (p.799/81).
93. In the meantime, the Claimant had still failed to complete her stress risk assessment and confirmed that she preferred not to discuss it with anyone connected with the business unit, including Ms Pearn. The Claimant emailed Ms Pearn on 8 February 2018 saying "*thanks for getting back to me. You are a very nice person and I respect you a lot. I also appreciate everything that you have done for me and in a very professional manner too. All I can say is, I do not feel comfortable talking about my stress risk assessment with anyone recommended or has any connections with Annabel Shaw, who I view as my main stressor*" (p.796).
94. On 13 February 2018, the Claimant advised Ms Pearn that she had received two provisional offers of employment and quite a few other interview invitations (p.808). She was, however, excited about the temporary redeployment to the Medical Recruitment team (p. 810).
95. A further redeployment and sickness absence meeting was scheduled to take place on 21 February 2018, but the Claimant failed to attend (p.831–832). She also insisted that she wanted to self-refer to occupational health to complete the stress risk assessment and her request was facilitated by Ms Shaw (p.835). Thereafter, the Claimant continued to receive notifications of job opportunities.

96. On 22 February 2018, the Claimant emailed Ms Pearn, copying in Ms Palladino, alleging that there had been no support with the redeployment process. She said *"we have been meeting once a month, but it's down to me and my own efforts when it comes to all interview invitations and job searches. I saw my then line manager only once in a few months and she did not at any point offer support or advice. She only turned up to put work on my desk..... I have had three interviews here at the hospital and in all cases, none of the employing managers even have the decency to inform you of an outcome, as per trust policies on recruitment and hiring..... I do not understand what you mean by handling my sickness management, as I have now been back at work for months, without a single sickness episode. Again, I have received absolutely no support with this, none of the senior managers even bother to ask how I am/getting on..."* (p. 833).
97. On 23 February 2018, Ms Shaw received a request from Derbyshire Healthcare NHS Foundation Trust for a reference for the Claimant (p.820).
98. On 26 February 2018, Ms Shaw contacted Ms Ryalls raising concerns about emails the Claimant was sending her alleging bullying behaviours, saying *'these e-mails need to stop'* (p.849).
99. In March 2018, Ms Lacey-Hatton completed her investigation into the Claimant's grievance. During her interview with Ms Brown on 27 March 2018, Ms Brown said she thought the Claimant suffered with 'chronic embitterment' which she described as an emotional reaction where a person perceives individuals or a group of people as the cause of their embitterment.
100. Ms Lacey-Hatton concluded that *"Based on the above findings the IO (investigating officer) does not believe that there is a case to answer for any of the individuals identified in respect of the allegations set out in the terms of reference..."* (p.277, 268-323). She submitted her investigation to Mr Race on 5 April 2018. He wrote to the Claimant the same day advising that he wished to feed back on the outcome of the investigation and also congratulated her on her new job (p.855). The Claimant did not respond to Mr Race's invitation.
101. The Claimant continued to be absent from work citing stress until she resigned on 5 April 2018 with a week's notice (p.854). She confirmed her effective date of termination would be 11 April 2018 and she was starting a new role outside the Respondent two days later (p.5, 861).

The law

Whistleblowing – detriment

102. The relevant law is to be found in the Employment Rights Act 1996. Section 43A provides: -

“Meaning of “protected disclosure”

“In this act a “protected disclosure” means a qualifying disclosure (as defined by Section 43B) which is made by work in accordance with any of Sections 43C to 43H.

103. “Section 43B - disclosures qualifying for protection: -

(1) In this part a “qualifying disclosure” means any disclosure of information which in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following: -

.....

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

.....

.....

.....

.....

104. Section 47B – protected disclosures: -

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

105. We were referred to the following cases: London Borough of Harrow v Knight 2003 IRLR 104 EAT; Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11; Fecitt v NHS Manchester 2012 ICR 372 CA. We also considered Ibrahim v HCA International Limited 2019 EWCA Civ 2007; and Chesterton Global Ltd and anor v Nurmohamed 2018 ICR 731.

Constructive dismissal

106. Section 95(1)(c) which provides that an employee is dismissed by his employer if:

“the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer’s conduct.”

107. In Western Excavating (ECC) Ltd v Sharp 1978 ICR 221 it was held that in order to claim constructive dismissal an employee must establish:

- i. that there was a fundamental breach of contract on the part of the employer or a course of conduct on the employer’s part that cumulatively amounted to a fundamental breach entitling the employee to resign, (whether or not one of the events in the course of conduct was serious enough in itself to amount to a repudiatory breach); Whether there is breach of contract, having regard to the impact of the employer’s behaviour on the employee (rather than what the employer intended) must be viewed objectively: Nottinghamshire CC v Meikle [2005] ICR 1.
- ii. that the breach caused the employee to resign – or was the last in a series of events which was the last straw; (an employee may have multiple reasons which play a part in the decision to resign from their position). The fact they do so will not prevent them from being able to plead constructive unfair dismissal, as long as it can be shown that they at least partially resigned in response to conduct which was a material breach of contract; see Logan v Celyyn House UKEAT/2012/0069. Indeed, once a repudiatory breach is established if the employee leaves and even if he may have done so for a whole host of reasons, he can claim that he has been constructively dismissed if the repudiatory breach is one of the factors relied upon; see: Wright v North Ayrshire Council EATS/0017/13/BI; and
- iii. that the employee did not delay too long before resigning, thus affirming the contract and losing the right to claim constructive dismissal.

108. All contracts of employment contain an implied term that an employer shall not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee: Malik v BCCI [1997] IRLR 462. A breach of this term will inevitably be a fundamental breach of contract; see Morrow v Safeway Stores plc [2002] IRLR 9.

109. We were also referred to the following cases: Woods v WM Car Services (Peterborough) Ltd [1981] ICR 666; Pressurefast Limited v Turner EAT 175/93; and Iceland Frozen Foods Ltd v Jones {1982} IRLR 68.

Conclusions

Whistleblowing

PID 1

110. The first issue we must determine is whether the Claimant made a qualifying disclosure. The first disclosure she relies on is her grievance intimated informally at a meeting on 8 March 2017, and later put into writing in a letter dated 24 April 2017.
111. Our first consideration was whether there the Claimant disclosed information and we are satisfied that she did. She describes her perception of her treatment by Ms Graham, citing specific details. By way of example, she describes an incident where Ms Graham allegedly said on 4 April 2017 *“nobody messes with me, they have to be on my side....If anyone is not on my side, they will have problems, even my sister used to say that. She said this in the presence of the team”*. A further example being *“two weeks ago, she was having a discussion about interviews due to take place for recruiting a staff member to the team. She then informed the team that she had been asked to give consideration to a staff member within the hospital, who had been deployed. A colleague then asked her what a deployment meant, she then responded by saying that, Sam Tolley-Debruyne is a perfect example of someone who could have been considered for a deployment for bad work performance”*.
112. The Claimant goes on to say that *“I do feel like Michelle Graham has subjected me to months of harassment, victimisation and inappropriate conduct, ever since I raised concerns about what had been taking place in our office. The Equality Act 2010, legally protects staff from victimisation and harassment and also provides protection from discrimination in the workplace”*.
113. We considered whether the disclosure of that information was, in the reasonable belief of the Claimant, tending to show that one or more of the six specified types of malpractice has taken place, is taking place or is likely to take place. We are satisfied that the that the Claimant disclosed information that in her view, amounted to a breach of a legal obligation, namely a breach of the Equality Act 2010. Whilst, on the face of it, there could not have been a breach of the Equality Act because she does not link her treatment to a protected characteristic, we are satisfied that the Claimant held the belief that there was.
114. Did the Claimant have a reasonable belief that her disclosure was in the public interest? We spent considerable time examining and debating whether the Claimant had that reasonable belief. In our deliberations we considered whose

interests the disclosure served; the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed; the nature of the wrongdoing disclosed; and the identity of the alleged wrongdoer.

115. Mr Fitzpatrick asked the Claimant in cross examination whether her disclosures could be summarised as being a dispute between her and her managers (rather than in the public interest). The Claimant did not accept that it was a dispute, but rather, it was that the 'mutual trust and confidence between her and her managers' had broken down.

116. The Claimant subsequently said in her written submissions that her disclosures "*were not made out of self or personal interest, I followed the procedure and policies for reporting needs. I witnessed and heard about injustices and wrongdoing against staff members and the information was documented by both Annabel Shaw and Jodie Steemson on 08/3/2019. I thought the acts involved and being planned as illegal and unjust under employment law*".

117. Having examined the notes of the informal meeting on 8 March 2017 and the Claimant's grievance dated 24 April 2017, we are satisfied that its dominant purpose was about the treatment she alleged she was receiving by Ms Graham. The Claimant also refers to her colleague and friend, Ms Tolley-Debruyne, but she herself had also raised a grievance against Ms Graham. Whilst mindful that the Claimant refers to her wider team in this grievance, we are satisfied that it was not in their interests, only that of the Claimant and Ms Tolley-Debruyne.

118. We accept Mr Fitzpatrick's submission that her grievance was about her personal employment situation and that the breach of the implied term, giving rise to the right to claim constructive unfair dismissal, is quintessentially a matter of a private employment dispute, rather than a matter of public interest. The Claimant's complaints related to interpersonal issues that, in our view, did not extend beyond the Claimant and Ms Tolley Debruyne's interests and, therefore, we are satisfied that the Claimant did not have a subjective belief at the time that her disclosure was in the public interest. Even if she did, we are satisfied that any such belief was not objectively reasonable. For these reasons, we find that the Claimant's first disclosure did not amount to a qualifying disclosure.

PID 2

119. The Claimant's second grievance dated 16 November 27 was, again, a private matter relating to her individual circumstances in the workplace. Whilst the Claimant disclosed information that *might* amount to a breach of the Equality Act 2010, we are satisfied that this disclosure was not made in the public interest. The grievance in its entirety was about the Claimant's perception of her treatment

by various individuals across the Respondent. The Claimant's comments in cross-examination that her grievances were about the breakdown of mutual trust and confidence between her and her managers applied to all three disclosures. Accordingly, we are satisfied that at the time of making the second disclosure the Claimant did not have a subjective belief that she was making it in the public interest. Even if she did, we are satisfied that, viewed objectively, it was not a reasonable one.

PID 3

120. In the Claimant's grievance dated 5 February 2018, she requests a change of line manager and describes how she is 'underloaded with work' saying "*last month (January) I was only provided with five forms to fill in for the audit that I do, a job that took me only an hour to complete. This is an hours work in a work (sic). I see this as an issue that is of detriment under employment law*". This does not, however, disclose information that tends to show that there has been, or is likely to be a breach of any legal obligation. Nor can it be said that the Claimant conceivably believed that there was, has been, or was likely to be a breach. Her complaint is simply about the lack of support from Ms Shaw in her capacity of line manager and as such, there is no public interest. We are satisfied that even if it was the Claimant's belief that she was making a disclosure in the public interest, viewed objectively, any such belief was not reasonable.

121. In conclusion, we are satisfied that none of the Claimant's three grievances amounted to protected disclosures. Of course, it follows that she was not subjected to any detriment following the making of one or more of them. For these reasons, the Claimant's claim that she was subjected to a detriment/s by the Respondent is not well-founded and must fail.

122. Her claim of automatically unfair dismissal must also fail.

Constructive dismissal

123. The Claimant relies on the detriments set out at paragraph 2 above as fundamental breaches of contract entitling her to resign and claim constructive dismissal. We have considered each allegation and whether they amount to a fundamental breach of contract, either singularly or cumulatively, entitling the Claimant to resign.

Detriment 1

124. The first allegation by the Claimant's is that post her raising the grievance on 8 March 2017, in the period up to her going off sick in September 2017, she was

kept in the data team office but isolated and excluded, the principal perpetrator being Annabel Shaw. The Claimant explains in her witness statement that Ms Shaw was not communicating with her and ignoring her. Further, after a period of illness, Ms Shaw did not make any efforts to check on her. She also alleges at paragraph 47 that '*over two months since raising my concerns, there was still no feedback from Annabel*'.

125. We are satisfied that Ms Shaw did not ignore the Claimant or fail to communicate with her and the evidence shows that there is no substance to this complaint.
126. On 14 March 2017, Ms Shaw e-mailed the Claimant confirming that the Respondent was investigating her concerns and would remain in contact, and requesting her to submit all evidence by the end of that week (p.337).
127. On 16 March 2017, the Claimant e-mailed Ms Shaw to say that things were improving with Ms Graham. Thereafter, Ms Shaw was on leave between 5 and 24 April 2017.
128. The Claimant submitted her formal grievance on 24 April 2017 and Ms Shaw passed it on to HR without delay.
129. The Claimant e-mailed Ms Shaw on 2 May 2017, complaining that Ms Graham had become angry with her in the meeting on 23 February 2017. Ms Shaw responded to her within minutes, confirming that she had spoken to Ms Graham to advise that her behaviour had not been appropriate and should not happen again. (p. 348).
130. The Claimant emailed Ms Shaw again on 24 May 2017, asking for a change of line manager. Again, Ms Shaw acted promptly, and it was arranged that she would line manage the Claimant whilst her grievance was being investigated. Ms Shaw acted as a go-between for Ms Graham and the Claimant, as well as facilitating the Claimant's request to move out of the data office. She also conducted her return to work.
131. On 31 May, the Claimant contacted Ms Shaw again to complain about Ms Graham coming into the administration office where she was then located. Ms Shaw took action by speaking to Ms Brown, and they agreed to ask Ms Graham to refrain from entering the office. There was very little need for any contact between the two thereafter, other than day to day contact. When the Claimant raised concerns about re-integrated back into the data entry team, it was Ms Shaw who conducted the meeting, with Mr Gillott in a supporting role.

132. In November 2017, the Claimant made a request to have Ms Shaw removed as her line manager with immediate effect. She alleged that she had felt let down by her. However, she did not say that Ms Shaw ignored or failed to communicate with her. Quite the contrary, she accuses Ms Shaw of behaving inappropriately and unfairly in a back to work meeting with Mr Gillott on 6 September 2018, alleging that she was victimised, patronised and degraded (p.600). This makes no sense. On the one hand she accuses Ms Shaw of ignoring and isolating her, but on the other she asks for her to be removed as her line manager, specifically referencing the return-to-work meeting. We do not find the Claimant's evidence credible on this point and were entirely satisfied that Ms Shaw did not act in the manner alleged by the Claimant.

133. Further, we note that the Claimant refused to allow Ms Shaw to support her in completing her individual stress risk assessment so was rejecting her offer of help. Ms Shaw emailed the Claimant on 19 January 2018 and said, "*as you know I would like to meet with you to discuss your individual stress assessment so that we can work out how to lower your stress level and I would be grateful if you could inform me of your availability*" (p.744). The Claimant replied on 24 January 2018 so that she would like someone from outside the unit to assist (p. 743).

134. The above highlights that Ms Shaw did not ignore the Claimant at any time. There was continued dialogue between the two, and Ms Shaw always responded to the Claimant promptly and with care.

135. The Claimant also suggested that as part of being isolated and excluded, she was not provided with enough work. She claimed that she "*spent a whole month without work. I did send quite a few emails asking for work and in most cases I was ignored*". Again, this is simply not true. The documents in the bundle demonstrate that the Claimant had sufficient work. By way of example, on 21 June 2017, the Claimant emailed Ms Shaw advising of the number of notes she had completed in the previous week and stated "*there is a huge pile of notes (completed) behind my desk, for collection*" (p. 1139). On 23 June 2017, the Claimant emailed Ms Shaw advising "*just letting you know that a further three notes have been completed today. 32 completed in a week.*" (p.1140).

136. In fact, we go as far to say that the Claimant tried to mislead the Tribunal on this point. At p.1141, the Claimant pointed to an email stating "*just to let you know that I only have a few (full) pro forma/notes to complete for May*". She tried to suggest that she only had four forms to complete in the whole of May and had written on the document "*very underworked*". However, her e-mail clearly refers to having four forms left at the end of that week for the month of May, she had completed at least 32 in the week preceding this email, and was given further work to complete.

137. The Claimant provided no evidence whatsoever to show that she has been underworked or, if she had, that this was a deliberate attempt to isolate and/or exclude her. If the Claimant had been underworked, it was incumbent on her to request more to do. She also failed to provide evidence to demonstrate that she asked for more, but was refused it. The Claimant also acknowledged in evidence that any lack of work in early 2017 was consequent of her training her new colleague, Sophie Pollard, to undertake her audit work.
138. The Claimant also alleged as part of this detriment that she was excluded by colleagues and left out of the team emails, meetings and training. However, there is no evidence to support this allegation either. The Claimant clearly had a rocky relationship with many people she worked with, more particularly line management, but she herself acknowledged to Ms Shaw in March 2017 that 'things had definitely improved', and that Sophie Pollard and Ms Graham were both talking to her again. Thereafter, she moved out of the data team office at her request and refused any contact with Ms Graham. If the Claimant felt excluded by her team at this point, it was not the fault of the Respondent. The Respondent facilitated her request to be removed from her team environment so it is perhaps inevitable that she might feel excluded by virtue of not being in the same office. However, there is nothing to substantiate her allegation that she was being excluded from e-mails etc. The Claimant also gave evidence that she had feelings of exclusion prior to Ms Graham becoming her line manager so her feelings in this regard pre-date her first grievance.
139. We are satisfied that Ms Shaw did not isolate or exclude the Claimant. Rather, Ms Shaw did everything within her gift to support the Claimant, as demonstrated by her dealings with Ms Graham, acting as her line manager and facilitating an office move – all at the Claimant's request.
140. We are satisfied that the Respondent more generally did not isolate or exclude the Claimant as she complains. Rather, the Respondent tried to support the Claimant with every complaint and request that she made, even when it was unfounded. Accordingly, we are satisfied that the Respondent did not breach any term of the Claimant's contract of employment, either express or implied.
141. For completeness, if we had found that the Claimant had made a protected disclosure, we would not have found that she was subject to detriment 1 for the reasons set out above.

Detriment 2

142. The second detriment/fundamental breach of contract relied on by the Claimant is that she was placed in a side room off Ward 408 to carry out her duties. She says that the principal perpetrator was again Ms Shaw, and the aggravating factor was that she was wrongly being placed under pressure by a human resources team, including Donna Brown, to re-join working in the team despite Ms Shaw still being her manager or indeed having been notified as to what was happening with Ms Graham.
143. The Claimant states at paragraph 84 in her witness statement that *"I was to be left isolated all alone, in a room off a ward, with no one to interact or talk to, from October 2017 until February 2018. I found it tough being isolated in a room as the senior managers were not sending me enough work as agreed. I spent many days a week sitting in isolation and with nothing to do"*. We are satisfied that this is simply not an accurate version of events.
144. The Claimant was initially moved out of the data team office at her request and sat in the medical records office. She subsequently refused to return to the data entry office and, on 6 September 2017, requested a move away from the medical records office (p.452). The reason for her request was because Mr Gillott *"walked into the office where I am based this morning at 1013. This gave me a real fright and brought back so much horrible memories from that day. I really want to move away from here"*. It was this further request that led to her being placed in the side room off Ward 408, which she shared at first with Mr Greatbatch, and the Claimant raised no complaint about it at the time.
145. Not long after moving to this office, Mr Greatbatch made a request to move to sit with his colleagues when a desk became free. His move was not linked to the Claimant in any way, and the Claimant has not directly asserted that it was, although seemed to imply it. The fact that the Claimant was alone for a period was entirely a result of circumstance. The Claimant also declined the offer of temporary redeployment to the recruitment team in early 2018. Had she accepted that offer she would have been in the company of colleagues again. From early January 2018, a colleague called Fiona moved into the office and remained there until the Claimant moved to medical recruitment in February 2018. Further, as set out in our conclusions in respect of detriment one, we are satisfied that the Claimant had sufficient work to do.
146. We are satisfied that there was no breach of contract, fundamental or otherwise, on the part of the Respondent in it finding the Claimant an alternative office, at her request.
147. The Claimant also claimed that she was *"wrongly being placed under pressure"* to re-join the data team. We are satisfied that at no time was the Claimant put

under pressure to return to the office at all. The Claimant refused to return so an alternative was found for her. Accordingly, we are satisfied that there was no breach of the Claimant's contract, either express or implied, on the part of the Respondent in this regard.

148. For completeness, if we had found that the Claimant had made a protected disclosure, we would not have found that she was subject to detriment 2 for the reasons set out above.

Detriment 3

149. The third detriment relied on by Claimant is being "*wrongly placed on the redeployment register rather than being placed back in the data team with the removal of Annabel Shaw and assurances that Michelle Graham would be removed from any prospect of working in the vicinity to the Claimant's i.e. the main building in which the Claimant was situates*".

150. We are perplexed by this assertion when, clearly, the Claimant was placed on the redeployment register at her request. She initially requested voluntary redeployment on 23 February 2017 when she contacted Ms Shaw saying she wanted "*to get a transfer from the Department*" (p.326). Nothing happened at that time because of the Claimant's subsequent email to Ms Shaw stating that things had improved in the department.

151. In September 2017, the Claimant emailed Ms Palladino saying she wanted to make enquiries about voluntary redeployment. Thereafter, the Claimant attended redeployment meetings as well as occupational health to assess that she was fit to undergo the process. At no point in this process did the Claimant state that she was unhappy being on the redeployment register. In evidence, the Claimant suggested that she had not requested redeployment, but the contemporaneous documentary evidence shows this to be untrue.

152. We are satisfied that the Respondent did not wrongly place the Claimant on the redeployment register. Further, the Claimant's view that Ms Shaw and Ms Graham should be removed from the data team and, in the case of Ms Graham, from the building, to allow her to return to the data team is an entirely unreasonable proposition. Accordingly, the Respondent did not breach any term of the Claimant's contract of employment, either express or implied, by agreeing to place her on the register.

153. For completeness, even if we had found that the Claimant had made a protected disclosure, we would not have found that she was subject to detriment 3 for the reasons set out above.

Detriment 4

154. The final detriment relied on by the Claimant is that she was wrongly put at risk to her detriment by being placed on the redeployment register, but also that she was not provided with proactive support in terms of securing employment with the Respondent and her requests for feedback on interviews was ignored.
155. Firstly, as confirmed above, we were entirely satisfied that the Claimant was placed on the redeployment register at her request. She cannot, therefore, subsequently allege that she was wrongly placed on it. Secondly, we are satisfied that the Claimant fully understood the redeployment process and the consequence if alternative employment could not be secured i.e. a capability dismissal, but at no time did she say that she wished to come off the register or explore other alternatives.
156. Further, the Claimant was in an advantageous position to an employee applying for new roles within the Respondent of their own volition, as redeployees received preferential treatment and support.
157. The Claimant was fully supported by Ms Pearn and Ms Palladino throughout the redeployment process. Indeed, the Claimant acknowledged this in November 2017 in an email to Ms Shaw where she says, "*I wish to get back to normal, while the redeployment process (where I am receiving very good support) is taking place*" (p. 566)". We are satisfied that the Respondent did its utmost to support the Claimant and we are further satisfied that she herself failed to engage with the process and was not actively seeking a redeployment. The Claimant was open with the Respondent that she was seeking employment outside the hospital for some time prior to her resignation and it is doubtful that the Claimant would have accepted a role within the Respondent even if she had been offered one.
158. We are satisfied that the Claimant was not wrongly put at risk to her detriment by being placed on the redeployment register. Accordingly, the Respondent has not breached any term of the Claimant's contract of employment, either express or implied.
159. For completeness, even if we had found that the Claimant had made a protected disclosure, we would not have found that she was subject to detriment 3 for the reasons set out above.

General

160. The Claimant appears to have had difficulty with line management since starting with the Respondent but despite this, it sought to support her at every turn. Ms Brown’s comment that the Claimant suffers from chronic embitterment seems apt. She was habitually unhappy in her employment with the Respondent and was in a continual state of grievance. Even when her issues were unfounded/unreasonable, the Respondent always treated the Claimant with concern and respect.

161. We are entirely satisfied that the detriments relied on by the Claimant did not amount, either singularly or cumulatively, to a fundamental breach of contract entitling the Claimant to resign.

162. In view of our conclusions, we do not need to consider whether the detriments relied on are out of time.

163. For the above reasons, the Claimant’s claim of constructive unfair dismissal is not well-founded and is dismissed.

Employment Judge **Victoria Butler**

Date: 18 March 2020

JUDGMENT SENT TO THE PARTIES ON

Date:
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FOR THE TRIBUNAL OFFICE

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