EMPLOYMENT TRIBUNALS

Claimants: Mr T Lumb

Respondent: Chief Constable of Greater Manchester Police

HELD AT: Manchester **ON:** 17 February - 2 March 2020 (in Tribunal) and 3 - 6 March 2020 (in Chambers)

BEFORE: Employment Judge Tom Ryan
Ms L Atkinson
Ms B Hillon

REPRESENTATION:
Claimants: Ms J Duane, Counsel
Respondent: Ms C Widdett, Counsel

RESERVED JUDGMENT

The judgment of the tribunal is that the claim is not well-founded and is dismissed.

REASONS

Introduction

1. By a claim presented to the tribunal on 22 March 2018 the claimant brought a complaint of unfair dismissal by reason of having made protected disclosures against the respondent as Chief Constable of Greater Manchester Police ("GMP") and two employment agencies, Reed Global Ltd and Servoca plc.

2. This claim has eventually proceeded as a complaint, against the Chief Constable as sole respondent, of having been subjected to detriments by reason of having made protected disclosures. The respondent accepted that the claimant is a worker for the purposes of the relevant parts of the Employment Rights Act 1996.

3. The determination of the claim requires the tribunal to address three fundamental questions.

   3.1. Were protected disclosures made by the claimant?

3.2. Did he suffer any detriments?

3.3. Was any such detrimental treatment motivated by his having made a protected disclosure?

Issues

4. Notwithstanding that the parties have been legally represented throughout the litigation it was only on the first day of this hearing that the tribunal was provided with a complete list of the issues ("the LOI") in the case.

5. The disclosures upon which the claimant relied were not specified in his claim form. That is in the form of a long narrative at the conclusion of which he asserted he had been unfairly dismissed "due to being a whistle-blower". The claimant attended a preliminary hearing before Employment Judge Franey on 25 May 2018. At that stage he identified two dates, 4 October 2017 (paragraph 56 of the grounds of complaint, ("GoC")) and 23 November 2017 (paragraph 72 of the GoC) as the occasions upon which he made the disclosures he was relying upon.

6. At the outset of the hearing it was apparent that in his witness statement the claimant was relying upon a third date, 16 November 2017 (paragraph 68 of the GoC), as a further occasion of the making of a disclosure. We proceeded on that basis. During the course of the hearing before us itself, and as confirmed in closing submissions by counsel for the claimant, a number of the detriments originally relied upon were not pursued. For that reason, we set out below a re-numbered list of the disclosures and detriments upon which the claimant eventually sought a determination.

7. Thus, the issues in the case were:

7.1. Did the claimant make a disclosure or disclosures of information:

7.1.1. on 4 October 2017 to Mr Alexander Millett and Sgt Jackie Watson (in respect of the matters set out at sub-paragraphs a) – g) of paragraph 1.1 in the LOI);

7.1.2. on 16 November 2017 to Detective Superintendent Debbie Dooley and Mr Millett (in respect of the matters set out at sub-paragraphs a) – g) of paragraph 1.1 and additionally sub-paragraphs a) – b) of paragraph 1.2 in the LOI);

7.1.3. on 23 November 2017 to Ms Laura Ansbro-Lee by reiteration of the matters set out at sub-paragraphs a) – g) of paragraph 1.1 in the LOI?

7.2. If so, did the claimant reasonably believe that the disclosure or disclosures tended to show that:

7.2.1. a criminal offence had been committed, was being committed or is likely to be committed;

7.2.2. a person had failed, was failing or was likely to fail to comply with a legal obligation to which he was subject;

7.2.3. that the health or safety of any individual had been, was being or is likely to be endangered?

7.3. In respect of criminal offences, the claimant relied upon:

7.3.1. section 21 of the Firearms Act 1968 which creates an offence of possession of firearms by persons previously convicted of crime;

7.3.2. section 28A(7) of the Firearms Act 1968 which creates the offence of knowingly or recklessly making a false statement for the purpose of procuring the grant renewal of a certificate;

7.3.3. the common law offence of malfeasance/misconduct in public office,

and he asserted that the Firearms Licensing - Statutory Guidance for Chief Officers of Police was relevant to the offence under section 28A(7).

7.4. The claimant's case was that all the matters set out in the sub-paragraphs to paragraphs 1.1 and 1.2 of the LOI amounted, either individually or cumulatively, to the commission of a criminal offence.

7.5. The claimant's case in respect of breach of a legal obligation was that legal obligations were created by:

7.5.1. sections 27(1)(a),(b) and (c) and sections 28(1) and (1A) of the Firearms Act 1968; and

7.5.2. the Firearms Licensing - Statutory Guidance for Chief Officers of Police.

7.6. The claimant's case in respect of health and safety being endangered was that all the matters relied upon amounted individually or cumulatively to an allegation of breach to that effect and that also that the statutory guidance was relevant because a failure to vet certificate holder applications properly could result in firearms being issued to dangerous persons "thereby compromising/or likely endangering the health and safety of an individual".

7.7. If so, did the claimant reasonably believe that a disclosure (or disclosures) was made in the public interest?

7.8. If so, was the claimant subjected to any of the following detriments:

7.8.1. being ignored completely by other researchers;

7.8.2. being given dirty looks;

7.8.3. not being given any PND ("Police National Database") checks;

7.8.4. by other researchers stopping talking when the claimant was nearby;

7.8.5. by receiving isolation/exclusionary behaviour by his peers;

7.8.6. by Debbie Collins laughing about an incident on 6 October 2017;

7.8.7. by claimant being assaulted by Lee Parkin on that date;

7.8.8. by the claimant continually being ignored by Debbie Collins, Joe Frangleton, Gary Spratt and Alan Whitten on 16 October 2017;

7.8.9. by Jerry Pointon brushing past the claimant muttering obscenities on 16 October 2017;

7.8.10. by Jackie Watson making a comment "can of worms" on 2 November 2017;

7.8.11. by Jackie Watson and Alex Millett not taking issues raised by the claimant seriously enough on that date;

7.8.12. by Debbie Dooley telling staff that the claimant had made a complaint on 16 November 2017;

7.8.13. alternatively, by Debbie Dooley identifying that a complaint had been made and that the claimant was off sick thus leading staff to believe that it was the claimant who had made the complaint;

7.8.14. by the claimant's assignment being terminated on 14 December 2017;

7.8.15. by Ms Ansbro-Lee and Debbie Oakes refusing to provide reasons for termination of the claimant's assignment at a meeting on 15 December 2017, other than to allege that the claimant was involved in a toxic office and that the claimant had "played a part";

7.8.16. by the respondent trying to "cover up" what the claimant had reported;

7.8.17. by Ms Ansbro-Lee failing to reply to the claimant's email of 17 December 2017;

7.8.18. by the respondent stating (to Reed Global Ltd) that the claimant was never to work for the respondent again;

7.8.19. by accusing the claimant of being involved in a serious incident and committing a criminal offence; and

7.8.20. by blocking the claimant from gaining access to the resources for his Subject Access Request within a 40 day period?

Evidence

8. We heard oral evidence from the claimant.

9. On behalf of the respondent we heard evidence from:

Sgt Jackie Watson
Mr Alexander Millett
Ms Laura Ansbro-Lee
Mr Andrew Taylor
PC Suzanne Collins
Inspector Daniel Clegg
Ms Patricia Hiorns
Ms Maxine Livesey
Mr Gary Botell
Mr Lee Parkin
Detective Chief Inspector Debbie Oakes
Mr Alan Whitten
Detective Supt Debbie Dooley

Mr Martin Mansley
Mr Joe Frangleton

10. The tribunal was provided with witness statements of all those witnesses. In addition, the respondent produced a witness statement for Ms Louise Band. She was not called to give evidence. The written evidence was in excess of 230 pages.

11. In addition, we were provided with a list of issues, a cast list, a brief chronology and written closing submissions from both parties.

12. The LOI provided by the claimant set out in considerable detail the particular disclosures of information which he alleged he had made. Attached to that were 2 documents, one containing quotations of various provisions of the Firearms Act 1968 and an extract from "Firearms Licensing-Statutory Guidance for Chief Officers of Police" (1st edition).

13. We were also provided with 4 files of documents consisting of over 2000 pages.

Findings of fact

14. By virtue of the provisions the Firearms Act 1968 the respondent has the statutory responsibility for determining applications for grant of certificates in respect of firearms and renewal of such certificates and for making applications for revocation of certificates in appropriate circumstances.

15. Those responsibilities can be appropriately delegated to officers who then act with the authority of the respondent.

16. A review in respect of the actions of the respondent's Firearms Licensing Unit ("FLU") was undertaken shortly before the events with which this case is concerned.

17. When, on 15 June 2015 the claimant was engaged as a civilian employee to work as an ISO or researcher in the FLU, Inspector Daniel Clegg was in charge of the operations of the unit and was supported by Sgt Jackie Watson. They in turn were supported by PC Debbie Collins. The work of the department was also undertaken and supported by firearms and explosives licensing enquiry officers, other researchers and clerical staff. As was the case with the claimant, most if not all of the enquiry officers and researchers, whether they were employed directly by the respondent or through an agency, had previously been serving police officers either within GMP or, as was the position with the claimant, another force.

18. As part of the review, the FLU staff were required not only to process current applications for certificates and renewals but also to vet historic files to ensure that they contained all relevant information going forward. The magnitude of the task was significant, there were then in being in the order of 10,000 certificates in respect of firearms, shotguns, explosives or registered firearms dealers. At the time of the review the files were all held in paper form. As part of the review process it was intended that the record keeping should be computerised.

19. In terms of such applications, a file would be allocated to a researcher for vetting. The researcher would have access to the databases held by GMP. Access to other databases such as the PND and the Police National Computer ("PNC") was limited to individuals within the department. For example, Mr Mansley was, during the

claimant's engagement, initially the only researcher who could access the PND. However, the stage came when the claimant was also able to access the PND. The claimant was also accredited as the person within the unit who had a higher level of security access also.

20. If in the course of additional research of that type information came to light which was relevant to a particular file it would be added by Mr Mansley or the claimant or the file referred back to the researcher for that task to be undertaken. The file would then be referred to the "gatekeepers", Jackie Watson or Daniel Clegg. If there were no issues with the application Jackie Watson could recommend grant or renewal. If there were matters of concern they would be referred to Inspector Clegg. He would either determine the application or refer it to his senior officers.

21. When a researcher joined the unit, it was necessary for them to be given the ability to log onto the relevant computer systems. It was common ground that the process of granting computer access to a new researcher took a few weeks. It was often the case that the claimant would be asked to train a new researcher in the processes. This included the use of the computer system. In order to afford the new researcher access to the system the claimant was instructed to share his login details with them until they obtained their own login and password. This "management workaround" was understood not to be best practice in terms of security. Although this was raised by Ms Ansbro-Lee with the claimant as a concern at what was to be the claimant's final meeting on 15 December 2017, on the evidence we are satisfied that it was never a matter upon which the claimant could reasonably have been criticised since he was following the instructions of his managers.

22. Although the claimant in his witness statement set out an account of the matters that occurred between the date of his joining the unit and the date when he made what he alleges was a protected disclosure we do not consider it necessary to set out that history in detail. However, we do record matters which give context to our findings in respect of the latter period the claimant's engagement.

23. In about November 2015 the unit moved to an office in the respondent's premises at Nexus House.

24. In January 2016 Jerry Pointon, a former GMP officer, joined the unit as a researcher.

25. In the same month the claimant began keeping a diary because he considered that PC Debbie Collins was making "unusual" comments.

26. The claimant recounted in paragraphs 74 to 89 of his witness statement a range of concerns he had with regard to the standard of work of other staff and also their attitude towards him.

27. The claimant said that at the end of that month he was contemplating resigning over the poor standard of work he was bringing to the attention supervision as he felt he was "being dismissed as a 'trouble causer'". He recorded in the weeks that followed examples of Suzanne Collins and Debbie Collins exhibiting "exclusionary behaviour" towards him.

28. The claimant stated that he informed DI Clegg on 9 February 2016 that Jerry Pointon had been submitting false timesheets, claiming payment for hours he did

not work and in consequence an instruction was given that nobody was to start work before 6 a.m.

29. On 15 February 2016 the claimant said that he observed a number of instances where other members of staff had made significant omissions in research. As a result he spoke to Mr Mansley who confirmed that he had also found information missing. On 17 February 2016 they had a meeting with Daniel Clegg.

30. The claimant alleged that he told DI Clegg that if someone got hurt as a result of such oversight it would come back to haunt him. According to the claimant DI Clegg said the blame would not be on him as he had a "get-out clause" and went on to state that he would endorse every file he sent onwards for consideration "to the best of my knowledge and with the information provided to me". In cross-examination Mr Clegg acknowledged that was the form of endorsement he used but denied that he ever said he had a "get-out clause". He gave a clear explanation of the duties upon him and Sgt Watson to review the files that were referred to them and, in so doing, to ensure that the information was complete. He described a robust process. Whilst recognising his responsibility he denied that he considered that he had a get-out clause. We were not satisfied that he had said such a thing to the claimant.

31. However, at this time Jackie Watson was away from the unit on an extended period of leave. It therefore fell to DI Clegg to review not only the files that would normally be passed to him but also the files that she would deal with on a day-to-day basis. He described how in that period he would work long hours and take files to work on at home as well.

32. As a result, he acknowledged that on the morning of 18 February 2016 he had placed piles of files on or in the vicinity of the desks of individual researchers in respect of matters that he considered they needed to correct.

33. The claimant described problems of this sort continuing and numerous incidents of unpleasant comments made by certain researchers to others within the team.

34. In September 2016 the claimant informed Ms Watson that he was going to give notice. He describes a meeting with Ms Watson and DI Clegg at their request. They reassured him that he was a valued member of staff and that there were likely to be permanent research jobs available at the end of the review. He stated that they said he had an excellent chance of getting one of those. They encouraged him to "just hang in there" and as a result he decided to stay but reduce his hours to 18 hours a week. There was a dispute between the parties as to the reason for the claimant stating he was going to resign. The respondent's case was that it was because the claimant's son was due to sit exams he was in year 11. The claimant disputed this saying that the exams would not have been until May 2017 some 8 months later. Ms Watson confirmed that the claimant gave her the reason of resigning to spend more time with his family. She accepted that she said words the effect that he was a valued member of staff and it would be a shame to lose him. Both witnesses denied that the claimant was told to hang in with a view to getting a permanent job.

35. On balance we considered that it is not likely that the claimant would have tendered his resignation at that point if he was hopeful of getting a permanent job at the end of the review for family reasons. We therefore prefer his evidence as to the reason.

36. Whilst this supports the claimant's case that he had long-standing concerns over the standards of work, we do not accept that he was bringing that to the attention of his supervisors in the focused way that he alleges.

37. In April 2017 Mr Millett who had recently retired as a Superintendent with GMP joined the department, as a researcher, and was trained by the claimant in the systems as set out above. Mr Millett's evidence was that he was headhunted with a view to becoming the manager of the department when Daniel Clegg moved on. He took over from Daniel Clegg on 3 July 2017.

38. On 29 September 2017 Debbie Collins was not at work. In order to give the claimant access to the duty management system Jackie Watson used Ms Collins' login details to log on to Ms Collins' computer in order that the claimant could work on that system.

39. When Ms Collins returned to work on 3 October 2017 and realised that somebody had logged onto her computer she, "went off like a bottle of pop" according to the claimant. He explained to her that it was Ms Watson who had given him access to the computer and initially it was against Ms Watson that Debbie Collins vented her spleen. However, shortly afterwards she directed it also towards the claimant to such an extent that he was permitted to leave work early.

40. At 7.30 a.m. on 4 October 2017 the claimant had a meeting with Mr Millett and Ms Watson which lasted until 9 a.m. It was the claimant's case that during this meeting he made his first protected disclosure.

41. There were no substantive contemporaneous notes of this meeting. The claimant said that he had prepared some "trigger notes" of the matters that he wanted to raise at the meeting. Although prepared in manuscript these were transcribed by the claimant afterwards. The typescript appears at pages 1014A & B.

42. Mr Millett's daybook records that meetings were held with the claimant and then with Lee Parkin, Alan Whitten, Debbie Collins and Jerry Pointon. According to that entry the subsequent meetings continued between 9 a.m. and 12 noon. No individual notes were recorded by Mr Millett but at the conclusion of the list he wrote:

> "Aforementioned were instigated as a result of identified issues which required management interdiction but did not require consideration of discipline."

43. Jackie Watson's note at page 1012 records:

> "0730 meeting with Tim Lumb and Mr Millett
> List of addresses
> Send for merging
> Security vetting
> NOM - edit needs DOB. Tim will send guide again."

44. The claimant's account of this meeting as set out in paragraph 56 of his GoC ("GOC") is as follows:

> "I had made some notes about all the issues over the previous 18 months or so, and took them with me to the meeting. … These notes included examples of other researchers not checking the files properly and in the meeting I again voiced my concerns over

> potentially dangerous people having access to firearms. I reminded AM of the implications for the department should somebody get hurt, or worse, from a firearm which got into the wrong hands and that, as manager, it was ultimately his responsibility to make sure that did not happen. I explained that my role had changed, and it was virtually impossible for me to do any research now (which is what I was contracted to do) because I was constantly being given other researchers files to check and discovering issues with most of them. I was also discovering an increasing amount of files with things missing when they came to me for PND checks. AM listened to what I had say (sic) and said it was totally unacceptable and promised that things would be changing and for the better. For the first time I actually believed that something would get done. AM then went on to warn me that DC was 'on the warpath' for me and to 'watch my back'. In addition, I also told him that HD had recently started vetting a certificate holder who was a senior police officer with GMP; she told me that JP had snatched the file from her, saying that 'corrupt senior officers needed special attention' and that he was 'supposed to be given those files for research'. A fact I knew to be untrue."

45. In his witness statement at paragraphs 243-249 the claimant described the events of that meeting. He referred to the notes that he had made that we have described in paragraph 41 above. He said that he took them with him to the meeting. He also referred to an explanation document to accompany those notes (pages 1015-1021). In oral evidence the claimant said that the explanation document was produced some time later for the purposes of these proceedings. We were not referred to them in evidence, nor were they relied upon by either counsel.

46. The claimant said this:

> "244. These notes included examples of how some researchers were not checking all the information available to them. In the meeting I again explained the potential of firearms licences being issued to unsuitable individuals due to the lack of proper vetting procedures. I explained to AM about the implications for the department should somebody get hurt or, worse, from a firearm which got into the wrong hands due to poor and inadequate research, and that, as manager, it was ultimately his responsibility to make sure that did not happen.
>
> 245. The examples in this statement of persons CH/1, CH/2, CH/3, CH/4 and CH/7 were brought to AM's attention (and JW reminded) during this meeting along with the issue of GPs reports not being checked.
>
> 246. The meeting was from 0730 hrs to 0900 hours that day. I explained that my role had changed, and it was virtually impossible for me to do any research now (which is what I was contracted to do) because I was constantly being given other researchers' files to check and discovering issues with most of them. I was also discovering an increasing amount of files with things missing when they came to me for PND checks.
>
> 247. AM listened to what I had say (sic) and said it was totally unacceptable and promised the things would be changing and for the better, AM stated that he was going to take the issues I raised to a higher chain of command and asked if I would like to make an official complaint. I stated that I did. For the first time I actually believed that something would get done."

47. We observe that, except for paragraph 245, the claimant repeats there almost word for word the passages from his GoC.

48. In paragraph 410 of his witness statement, under the heading "disclosure summary (non-exhaustive)", the claimant stated:

> "On 4/10/17 I disclosed AM and JW information that:
>
> - TEL items were not being researched;
> - Business ADDs were not being researched;
> - NOM records and duplicate records were not being researched;
> - Certificate holders' written files were not being researched; and
> - Certificate holders' associates and duplicate ADDs were not being researched.
> - Examples CH1, CH2, CH3, CH4 and CH7 were referred to."

49. The claimant did not assert in any of these written documents, even in the most general terms, that he had mentioned the commission of any criminal offence, or breach of any legal obligation. Moreover, the issue of the common law offence of misconduct in public office appeared for the first time in the LOI on the first day of the hearing.

50. When the claimant was asked to explain how he had stated that the actions or omissions of his colleagues might amount to misconduct in public office he said he had mentioned it in the meeting because he thought it applied to all those in police service whether officers or civilians.

51. The claimant relied upon what he called his "trigger notes" (pages 1014A & B) as evidencing what he had said in the meeting. He accepted that he had not provided a copy of the notes to Mr Millett or Ms Watson either at the meeting or thereafter. Although the notes covered a multiplicity of matters the claimant identified the following entries as supporting his assertion that he had disclosed information to them which amounted to protected disclosures.

> "Merging - led to - never given any by Jerry, Gary, Alan, Lee – DCCs orders - all told + PND ….
>
> Covering the last 18 months, advising, helping - led to hostility from all ….
>
> Alan … Misses/does not even bother with several checks - virtually every file ….
>
> Summary …
>
> Going on for 18 months - nothing being done ….
>
> Jerry deleting PND results"

52. In his witness statement Mr Millett stated that he did not recall many of the things that the claimant had alleged he had said. On a number of occasions he said that the claimant might have mentioned some of those things.

53. In paragraph 42 of his statement Mr Millett said he recalled that issues were discussed "around standards of research, merging of nominals and vetting addresses".

54. In his oral evidence Mr Millett accepted additionally that:

    54.1. the claimant voiced concerns over potentially dangerous people having access to firearms;

54.2. the claimant reminded him of the implications for the department if someone should get hurt, or worse, from a firearm which got into the wrong hands; and

54.3. that as he was the FLU manager it was ultimately his responsibility to make sure this did not happen;

54.4. he told the claimant that it was totally unacceptable and that things would be changing for the better;

54.5. the claimant may have alluded to the risk to public safety.

55. The thrust of Mr Millett's evidence was that if the claimant had raised anything of significance he would have expected to have documented the facts within his daybook but if it was generic and lower-level attention to detail that he and Ms Watson would have reiterated the requirements and standards.

56. The claimant's case is that immediately after the meeting he went to the lavatory and then made himself a drink. He left his briefcase on his desk and so that when he returned his "trigger notes" were poking out of his briefcase and that Debbie Collins and other researchers were out of the room having an impromptu meeting. At paragraph 251 of his statement the claimant said that he noticed that Debbie Collins was holding such a meeting with Jerry Pointon, Gary Spratt, Alan Whitten, Lee Parkin and Wendy McCormick. Both Mr Whitten and Mr Parkin denied that any such meeting had taken place. Those allegations, as incidents of detriment, were not pursued by the conclusion of the hearing. Moreover, Mr Millett's notes indicate that immediately after the claimant's meeting Mr Parkin had a meeting with him lasting 20 minutes and that Mr Whitten had a half-hour meeting immediately after that. The timing of those meetings as recorded by Mr Millett lends a degree of support to the respondent's case that there was no such impromptu meeting at which both Mr Parkin and Mr Whitten were present at the same time.

57. It was the claimant's case that by reading his trigger notes Debbie Collins and others were able to discern that he had made protected disclosures to Mr Millett and Sgt Watson. There was no positive evidence to support the claimant's case of the rifling of his briefcase or any evidence that his notes had been read by any other person. Even if the briefcase had been opened and the notes taken out and read, whilst a reader could discern that the claimant was dissatisfied with the conduct or performance of certain of his colleagues, it would be extremely unlikely that they could have inferred what he had communicated to the managers.

58. The claimant's case was that he was then subjected to the following detriments (as set out in paragraph 7.8.1 to 7.8.5 above: being ignored completely by other researchers; being given dirty looks; not being given any PND ("Police National Database") checks; not being given any PND checks; by other researchers stopping talking when the claimant was nearby and that he received "isolation/exclusionary behaviour" from his peers. We set out our finding as to whether those detriments are established below.

59. In his witness statement the claimant said that after the meeting Debbie Collins had a smug smile on her face and that all the researchers refused to speak to him or hand any work to him for checking. The claimant further alleged in his statement that at 9.47 a.m. that same day Ms Watson sent out an email to all researchers, as

a result of the meeting, listing the matters he had highlighted. The email he referenced (page 1022) was in fact an email from him to Ms Watson concerning merging. It sets out guidance for how researchers should deal with duplicate nominals or addresses. It was not copied, at least at that point, to the researchers. It lends support to the respondent's case that what the claimant was raising principally at the meeting was the way in which work should be carried out within the department. It is consistent with the brief description of the matters raised in these meetings noted by Mr Millett i.e. matters requiring "management interdiction". The contents of the email are also consistent with the note made by Ms Watson of the meeting ending with the words "Tim will send guide again." In oral evidence Ms Watson said that she thought she would have sent the guide out to the staff at some point.

60. At 10 a.m. the claimant sent Ms Watson a further email (page 1024). He was asking her to request that everybody enter details of warning letters on files that they had vetted. Again, it is consistent with the tenor of the meeting as described by Mr Millett and Ms Watson. There was another email later that morning (page 1025) from the claimant to Ms Watson and Mr Millett concerning a specific case. In none of those emails does the claimant hint at any lack of cooperation or unpleasantness being directed at him by other staff.

61. However, we note that on the following day, 5 October 2017, the claimant sent a text message to his wife (page 1026) at 1048 a.m. saying:

> "Atmosphere is so negative. Alex has gone fsor a meeting and Jackie has gone away for the weekend. Debbie now playing the crying game to garner sympathy and, if I am reading the situation correctly, has made an allegation of criminal behaviour against Jackie. In the meantime Alan has told Hannah that Alex told him…… that someone made a bogus complaint of homophobia against him but Alex sided with him and he was in order to say that……"

62. It is clear that the claimant's description of the atmosphere was correct. There was no dispute by the respondent that relationships within the office were not good. Indeed, in his trigger notes the claimant, in addition to the matters that we have set out above, referred to Jerry Pointon's poor behaviour and attitude. He noted that Mr Pointon had described Ms Watson as a "useless supervisor"; that when she spoke to him it was "like being told off by my big sister" and that Mr Pointon had made sexually inappropriate comments to Wendy McCormick and a young male researcher. The claimant referred to Mr Pointon saying to Hannah Davies that he should be the one to deal with an application for a certificate from a family member of a senior GMP officer using the expression, "I deal with these. They need special treatment". He stated that Mr Pointon described the Firearms Enquiry Officers' job as "a grazing ground for retired cops before they die". The claimant also alleged that Mr Pointon had "fiddled" his timesheets.

63. Those reports were consistent with the evidence of Mr Millett and Ms Watson which was that, as far as performance was concerned, whilst Mr Pointon was neither unintelligent nor unable to do the job, he was lazy and made numerous errors.

64. In the same trigger notes the claimant referred to Mr Whitten having made inappropriate/homophobic comments to Hannah Davies and he described Mr Whitten as someone who, "misses/does not even bother with several checks-

virtually every file". The reference to homophobic comments is consistent with the text message.

65. The claimant referred to "Gary", clarified in evidence as being a reference to Gary Spratt, spending time on his mobile phone running his own business, saying "slow it down boys, there is some mileage in it yet" and being described by Ms Watson as the "puppetmaster".

66. In the text message the reference to Debbie Collins having made an allegation of criminal behaviour against Ms Watson was a reference to her having logged onto Ms Collins' computer as described above.

67. The respondent agreed that on that day Mr Mansley spoke to Mr Millett about the situation in the office. According to the claimant, Mr Mansley said, "all this should have been sorted out 18 months before you started and half the staff got rid of". Mr Mansley accepted that he did say that. The respondent also admits that Mr Millett had a meeting with Ms Collins that day and that emotions were running high.

68. We record here that Mr Mansley did not sit in the same office of the rest of the team but in a library office on a different floor. For that reason, we find he was not a witness to the vast majority of matters that were alleged to have occurred.

69. The claimant alleged that on 6 October 2017 he arrived to find that Ms Collins had moved her workstation away from the position next to him, to another part of the room with the assistance of Mr Frangleton. He described Ms Collins as still not speaking to him

70. The claimant stated that as he approached Ms Collins to give her file to her noticed that Mr Parkin was near her speaking to somebody else. The claimant said that as he claimant walked past Mr Parkin, who had his back to him, "out of the corner of my eye I noticed LP's foot suddenly flick backwards it connected with my right shin". The claimant said that he stumbled forward and his hands broke his fall. He described Mr Parkin ignoring him and Ms Collins trying not to laugh. The claimant said he passed Ms Collins the file and said to Mr Parkin, "that hurt, you just kicked me" to which Mr Parkin replied nonchalantly that the claimant had walked into his foot. According to the claimant this exchange was repeated. The claimant then said that he accused Mr Parkin of kicking him causing him to fall over and Mr Parkin walked away. This incident came to be described by those in the office as "Shingate". It forms the basis for the detriments alleged at paragraph 7.8.6 and 7.8.7 above.

71. The claimant said that he informed Mr Millett about the incident. Mr Millett asked him who could have witnessed it and the claimant said only Debbie Collins could have done so. The claimant's evidence was that everybody else's view was obstructed by desks and office furniture. He said that he showed a red mark on his leg to Mr Millett at his request and alleged that Lee Parkin had deliberately kicked him, had not offered any apology nor showed any concern and had been aggressive and had asserted it was the claimant's fault.

72. At Mr Millett's suggestion the claimant went home. Mr Millett then conducted an investigation and, according to the claimant, telephoned him a little later and said that nobody had really seen what happened but they all thought it would have been an accident. The claimant's account was that he told Mr Millett it was no accident

and that the resentment towards him had been brewing since they found out he had made disclosures about their work standards by opening his briefcase.

73. Mr Millett recorded the incident in his daybook (page 1021C). Mr Millett asked Mr Parkin for his account. Mr Parkin recorded a note which in evidence he said he had written straight away (page 1029):

> "0915hr 6-10-2017 Whilst talking to Wendy, Tim walked behind me clipping my left foot with one of his feet making him fall forward slightly. Walked away and returned and said, 'that hurt'. I replied, 'You should not have walked into me'."

74. In a text message to his wife at 9.26 a.m. the claimant wrote (page 1030), "walking across the room Lee stuck his foot out and kicked my shin … he said 'you walked into my foot not my fault!' I told him he should not have done that at which he just smiled. Debbie was pissing herself laughing."

75. Mr Millett recorded his investigation in his daybook (pages 1037A-B). He said that immediately after speaking to the claimant he spoke to Mr Parkin who denied the allegation indicating, "he had inadvertently kicked him whilst walking past as he was talking to Wendy McCormick". In answer to a question from the tribunal Mr Parkin explained that this was a reference to the claimant kicking him inadvertently. Mr Millett instructed Mr Parkin not to discuss the matter. He then spoke to Wendy McCormick who he recorded was adamant that the claimant "tripping was purely an accident" and that Mr Parkin "had done nothing wrong".

76. Mr Millett next worked on 9 October 2017 and he recorded that he continued his investigation by speaking to other staff. Hannah Davies and Jerry Pointon did not witness the incident. Mr Whitten and Ms Collins supported Mr Parkin's account.

77. Mr Millett informed DCI Dooley of the incident. Mr Millett recorded that he contacted the claimant and told her that Mr Parkin maintained that the claimant tripped over his foot and that he had no malicious intent but was willing to sit down with or without an arbitrator to resolve their differences. Mr Millett recorded that the claimant was not in a position to say how he wished to proceed at that point. For that reason, Mr Millett emphasised that he needed to know within a couple of days because, if there was to be a formal complaint, it would need to be referred to the Professional Standards Branch otherwise internal resolution could be explored.

78. In his witness statement the claimant stated that Mr Millett said that Mr Parkin's new role would be jeopardised if a formal complaint were made and in addition Mr Parkin had recently lost his mother and his son was seriously ill and he was about to go on holiday. According to the claimant he decided, for those reasons, it would be better if the matter were dealt with informally. He therefore agreed to attend the mediation meeting with Mr Millett, Ms Watson and Mr Parkin the following day.

79. The claimant's account of this meeting was that Mr Parkin said he had no issue with the claimant and thought he was an excellent researcher but claimed that the claimant had walked into the back of his foot. The claimant said that after his injuries were explained to Mr Parkin, the claimant having sent a photograph of his reddened shin to Mr Millett previously, it was suggested that Mr Parkin's foot might have flicked up accidentally, Mr Parkin accepted that this might have been the case. However, he had no explanation for not having apologised at the time.

According to the claimant, the meeting went round in circles and eventually Mr Millett requested the matter be dropped. The claimant stated he thought the matter was not being taken seriously. He decided not to pursue the matter further after consideration because of Mr Parkin's circumstances and the already negative feelings towards him in the office.

80. On the balance of probabilities, we conclude that the claimant has established both these detriments. The position of the red mark on his shin shown in the photographs and the account given by Mr Parkin to the effect that his foot was on the floor suggests that he caused his foot to come into contact with the claimant's leg in some manner, either by placing it in the claimant's path to cause a trip or flicking it up so that it came into contact with the claimant's leg in the manner the claimant described. The evidence of Mr Whitten and Mr Frangleton that in some way the claimant engineered the trip in a "staged" way or as a "pratfall" was unconvincing. The claimant's evidence that by this stage he sensed animosity towards him from other staff suggests that he would be unlikely to be the instigator of such an incident. Mr Parkin's first response to Mr Millett, that the claimant had inadvertently kicked him, does not appear to have been repeated by any witness.

81. Mr Frangleton said that he had spoken to Ms Collins after the incident and that she had said to him that she had laughed when the incident occurred.

82. Although he had come into the office for the mediation meeting the claimant remained off work until 16 October 2017. At paragraphs 7.8.8 and 7.8.9 above the claimant alleges detriments that he was continually ignored by Debbie Collins, Joe Frangleton, Gary Spratt and Alan Whitten on his return to work and that Jerry Pointon brushed past his desk repeatedly muttering obscenities to him: "fucking twat" and "fucking knobhead" quietly or often under the disguise of a cough.

83. On 19 October 2017 the claimant had a meeting with Ms Watson and Mr Millett (which she recorded in her daybook (page 1072)) and reported those matters to them. Mr Millett's statement was that he and Ms Watson immediately addressed this. Ms Watson records a meeting with Mr Pointon in which he denied swearing or calling the claimant names. Ms Watson's note shows that a number of matters were mentioned by Mr Pointon who stated he, "has an issue with Tim checking his files, monitoring internet usage".

84. We did not hear any evidence from Ms Collins, Mr Spratt or Mr Pointon. The history thus far suggests that it is likely that the claimant was ignored by the other researchers. In the absence of any evidence from Mr Pointon, the claimant has established the allegation of being called obscene names.

85. On 22 October 2017 Ms Watson recorded in her daybook that the claimant had texted her to say that he would not return to work until Alan Whitten and Lee Parkin had left the following week (pages 1074 & 1075).

86. The claimant returned to work on 30 October 2017.

87. In paragraph 65 of his GoC the claimant alleges that he had a meeting with Ms Watson on 2 November 2017 to discuss "the continued dangers of intelligence being missed and the growing uncomfortable atmosphere in the office". He alleges that he told her he was considering making an official complaint but that she warned him to be careful because, if he did, it would, "open a right can of worms".

That last comment forms the basis of the detriment alleged at paragraph 7.8.10 above.

88. The response asserts that Ms Watson had no recollection of making the comment. In her witness statement Ms Watson states that she does not recall the claimant asking for a meeting and did not record any meeting in her daybook. She said that on reflection she did not make the "can of worms" comment. It is not language she would use and the only time the claimant told her he was going to make a complaint was on the day his engagement ended.

89. The claimant also alleges at paragraph 7.8.11 that he was subjected to a detriment by both Ms Watson and Mr Millett on that day because they were not taking the issues raised by him seriously enough. The claimant's witness statement contains no evidence in relation to that allegation. Nor does he suggest that the meeting on that day was attended by Mr Millett.

90. On the evidence as set out in the two preceding paragraphs we are unable to conclude on the balance of probabilities that either of these detriments occurred.

91. On 9 November 2017 the claimant emailed Ms Watson (page 1117) because it appeared that Mr Pointon was at that stage communicating with him by email about normal department matters rather than speaking to him. After that the claimant placed a file on her desk which had a post-it note he had written stuck to the top. In her witness statement Ms Watson describes the claimant as doing this, "in an exaggerated manner," so as to convey to others that he had found fault with the file and was bringing it to her attention.

92. Ms Watson put the file to one side and covered it with another document. Mr Pointon approached and asked her if she had the file. When she confirmed that she did have it, Mr Pointon asked for it back and then snatched the file from her and she had to retrieve it from him. Ms Watson recorded the information in her daybook. In consequence of his behaviour Ms Watson and Mr Millett spoke to Mr Pointon and Ms Watson made a note of that conversation (page 1107).

93. She recorded that Mr Pointon was very angry and expressed annoyance at the claimant checking his work and going behind his back to highlight his errors to Ms Watson. He acknowledged that he did make mistakes and said that he was happy to have them pointed out to him but said that he took exception to the claimant. Ms Watson recorded that it was pointed out to Mr Pointon that since he was not speaking to the claimant it made it awkward for the claimant to approach him. The managers pointed out that everyone needed to be professional and personal feelings put aside. She then recorded this:

> "Jerry was still very bitter and expressed a dislike to Tim. He again made reference to the key incident with Lee, the alleged homophobic comments by Alan stating that in his opinion Tim had made the kicking incident up to be malicious and the homophobic comments were not homophobic all at (sic). He was asked again about the kicking incident and again he admitted that he had not actually seen exactly what occurred but maintained it was his opinion that it had not occurred as described by Tim. Jerry was informed that both these incidents had been addressed and dealt with, therefore we should move on."

94. The tribunal had no reason to doubt the accuracy of this note. It demonstrates again the degree to which the relationship between the claimant and Mr Pointon and probably other researchers within the department had broken down.

95. In paragraph 226 of her witness statement Ms Watson described that in the following way,

> "It was apparent that the claimant and Mr Pointon and just simply did not get along. They 'rubbed each other up the wrong way. The claimant would take the 'moral high ground' regarding matters such as Mr Pointon standard of work and Mr Pointon took objection to this. They simply did not like one another."

96. After the meeting with Mr Pointon, Ms Watson and Mr Millett spoke to the claimant. Ms Watson recorded in her daybook (page 1108) that the claimant said he was coming to work, working hard, and hopefully doing a good job but he was fed up with finding missing items on vetting sheets and that this was frustrating. He did not feel able to return files to Mr Pointon because he and Debbie Collins had sent him to Coventry, were ignoring him or just plain rude. He said that he had had enough and could not cope with the way he was being treated by them.

97. The claimant went home at the end of the meeting because he was upset. Except for attending meetings which we describe below and returning to work in a different office for 2 days during the course of an investigation the claimant remained off sick from 10 November 2017 to 12 December 2017.

98. On 9 November 2017 Ms Watson also recorded that during the rest of the day she made a number of contacts with the claimant concerning his welfare.

99. The claimant produced a document the same day (page 1121-1122) which she gave to Ms Watson who in turn provided to Mr Millett. In this document the claimant recounts a number of previous matters. He described Mr Pointon's email communication of that morning as the icing on the cake. He said that he had tolerated poor behaviour mostly from Mr Pointon and said:

> "In addition I am sick of him creating more work for me as I am the person who is always given his poorly-done files to remedy (a fact I reported to supervision 18 months ago, and it has carried on since). He is paid to do the same job as me, and only this morning I have found yet more poorly presented work and had to pass it to Jackie as I am afraid of what the reaction will be from him and Debbie if I approached him with it. This continues on from two files only last week I had to bring to your attention due to several items missing."

100. The claimant then continued talking about how he was looking forward to applying for a possible permanent position in the office and then said:

> "I mention these facts as I do not want it said I left due to a lack of hard work, conducting selfish behaviour or any other discipline-related matter.
>
> The job itself I have thoroughly enjoyed, and I will miss everyone in here; it is a shame it has ended like this, but I have put up with it for weeks and am under no illusions it would ever change.

> I would like to thank you, and most of the other staff for the positive aspects of my experience, and I wish you the very best of luck in taking the department through the rest of the review and beyond
>
> However I do not feel I can currently be a part of this for the reasons outlined above."

101. Mr Millett decided that he should inform DCI Dooley of this letter since she was his line manager. It appears that he forwarded it to her by email (page 1125) that afternoon.

102. On 10 November 2017 Mr Millett emailed Ms Dooley (page 1127) informing her of the decision to send the claimant home the previous day and about his welfare. He continued by speaking about the attempts he and Ms Watson had made to manage what he described as a series of internal spats by mediation. He described them as having obviously failed and therefore he asked for a meeting to discuss how best to proceed both to seek a resolution for the Department and "those deemed as being potential victim(s)."

103. Ms Dooley recorded in her daybook (page 1132) that she had a meeting with Ms Watson and Mr Millett at 10 a.m. on 14 November 2017 in respect of the claimant's "resignation letter" and recorded that she would have a meeting with the claimant to see whether he was seeking to make a formal complaint and whether the letter was in fact a resignation. Although the claimant does not use that term in his letter it obviously bears that construction which was the reason why it was referred onwards by Mr Millett.

104. That meeting took place between Ms Dooley and the claimant on 16 November 2017. This was the occasion that the claimant alleged comprised his second protected disclosure, albeit it was not identified as such until the exchange of witness statements.

105. The claimant's case was that this meeting was attended by Mr Millett as well. Ms Dooley's notes (page 1146-1149) comprise the only contemporaneous record of the meeting. They do not suggest that Mr Millett was present. Her earlier note does not suggest that she would arrange for the meeting to be attended by Mr Millett. We consider that if Mr Millett had attended, it is likely he and/or Ms Dooley would have recorded that fact. Neither the GoC nor grounds of response suggest that Mr Millett was present. For that reason, we reject the claimant's evidence that Mr Millett was present.

106. In the GoC at paragraph 68 (page 61) the claimant provided this account:

> "I attended this meeting which was also attended by Detective Chief Inspector Debbie Dooley (DD). This was the first time I had been given the opportunity to voice my concerns to senior management. In this meeting I went over everything that had transpired over the previous 18 months and was under the impression that neither person was aware of most of it. *This focused on my concerns over researching standards* and the potential danger of firearms being issued to unsuitable persons, my concern over expired explosive licences, and *the increasingly hostile behaviour, and the bullying and harassment I had endured*. I told her that I believe there had been a distinct lack of effective supervision and management to date. DD listened and made several notes and *told me I had done the right thing in bringing it to her attention*. She told me that she had recently been made aware of growing concerns from AM. She

> assured me that a full investigation would commence that I would be issued with a copy of it when it concluded. She stated she wanted me to return to work in a safe happy office. *I told her that all I ever wanted was to do my job well, everyone to work hard, be polite with each other, get paid, and go home content*. I told her my concerns that it would only be a matter of time before someone would get hurt by the failings made in the vetting process. DD stated she would record this and would be in touch with some forms to fill in. She also asked me what staff I felt should be removed from the office to help calm the situation. I told her I felt JP had been nothing but a problem since he started and should not be doing that role, and *that it was my opinion DCs emotional outbursts and divisive games were worrying for a serving police officer*. She said it was unlikely both would be moved but she would see what could be done. She said that she had spoken to AM prior to the meeting and confirmed that they would like me to return to work under different circumstances. I agreed but said the whole situation had taken its toll on me. It was agreed that I needed some time off whilst the investigation took place." [italics and underlining added to indicate passages Ms Dooley *accepted* or denied]

107. In the grounds of response at paragraph 152 (page 142) the respondent pleads that the account of the meeting was accepted save that it was denied that Ms Dooley said to the claimant: "what staff I (the claimant) felt should be removed from the office to help calm the situation". The pleading went on positively to say:

> "DD recalls saying to the claimant 'in order to get you back to work and feeling comfortable, who could you work in the office with and who could you definitely work with' or words to that effect. During the meeting DD discussed with the claimant the options him returning to work and been based on a different office, the same office with the team as it was or with or without certain individuals."

108. Although not canvassed in the evidence we suspect that the words "who could you definitely work with" was probably intended to read "definitely not work with".

109. We record these passages from the pleadings because the claimant relies upon the respondent's acceptance of the account pleaded as supporting his case that at this meeting he made the second protected disclosure referred to, according to the claimant's case, by the words:

> "In this meeting I went over everything that had transpired over the previous 18 months and was under the impression that neither person was aware of most of it. This focused on my concerns over researching standards and the potential danger of firearms being issued to unsuitable persons, my concern over expired explosive licences."

110. The claimant also relied upon the fact that the respondent could have amended its pleading in the amended grounds of response or thereafter but did not do so. It became apparent from reading Ms Dooley's witness statement that she factually did not agree entirely with the account set out by the claimant. On behalf of the respondent, Ms Widdett did not apply to amend the pleading at this late stage of the case.

111. In those, relatively unusual, circumstances Ms Dooley explained that she was asked about the GoC when it was initially received. We asked her to explain how the apparent admission had been made. She said that until she was asked to compile a statement she was under the impression that the complaint was one of workplace bullying.

112. However, we record also that in her note of the meeting set out in her daybook there is no suggestion that Ms Dooley was informed by the claimant of what had occurred in the preceding 18 months in any detail save in respect of the behaviour towards him of other members of the department. She clarified with the claimant whether the letter was intended to be a letter of resignation at the outset of the meeting and the claimant said that it was not. At the conclusion of her note Ms Dooley recorded that the claimant wished to make an official complaint about being bullied in the workplace.

113. To the extent that we are bound by the respondent's admission we must find that the claimant did repeat to Ms Dooley, in some terms, the matters that he had raised with Mr Millett and Ms Watson on 4 October 2017. However, in the absence of clear, particular evidence from the claimant it is impossible for the tribunal to discern what specific information the claimant disclosed save that she records the following passages:

> "Culmination of incidents
> Most of issues
> Told Dan re sloppy work of Jerry and others
> Gave files back to redo
> Staff won't send me material to merge
> Martin M keeps saying Jerry misses things
> hostility towards me for identifying errors."

114. In his witness statement at paragraph 316 the claimant stated that had prepared further handwritten notes to take to the meeting. He provided the page references 1141 and 1142. In fact, there were two versions of notes both of which were given these page references. The first notes included in the bundle at this point were the manuscript version of the notes that the claimant prepared for the 4 October 2017 meeting, the trigger notes. The second version of those notes appear to be a different document. However, these are not dated or endorsed and were not referred to in evidence specifically by the claimant and neither was Ms Dooley asked about them. We are not therefore able to conclude that they were referred to in the meeting.

115. In his witness statement the claimant also stated that those notes focused on his disclosures over researching standards, the potential danger of firearms certificates being granted to unsuitable persons, his concern over expired explosive licences and the hostile behaviour and bullying and harassment he had endured. He said he had referred to CH/3, CH/13 and the further specific examples of CH/5 and CH/14. Although the claimant referenced Ms Dooley's daybook in relation to CH/3 and CH/13 and his own notes, we are unable, doing the best we can by reading them to discern precisely what information the claimant is indicating he provided other than to suggest that matters were missed and there was "sloppy work".

116. In evidence Ms Dooley accepted that she used the term "whistleblowing" in her notes. She explained that by that she was referring to bullying in the workplace. She accepted the claimant had raised concerns about standards of work and that information was missing from files but not that information had been deleted. Ms Dooley was adamant the claimant never said that he thought a firearms certificate

had been granted or renewed inappropriately because of poor standards of work or that the claimant said it was likely that such a thing had occurred.

117. It was put to Ms Dooley that the claimant was saying it was only a matter of time before somebody was hurt as a result of the way in which the work was being carried out. She responded,

> "If I thought for one minute he said that and knowing that we were doing a review I would have noted it and brought it to Mary Doyle's attention and we would have had to start the review again."

118. Ms Dooley also said that she did not get any sense that the claimant was alluding to such a thing.

119. Notwithstanding the admission of the matters set out in the grounds of claim we are unable to conclude on the evidence that the claimant has established to the requisite standard that he provided information to Ms Dooley on 16 November 2017 that tended to show one of the protected matters.

120. We accept her evidence that had the claimant raised specific concerns or provided the examples that he alleges he did, she would have noted and escalated the matter to Chief Superintendent Doyle her superior. We note that the general thrust of the claimant's concerns as recorded by Ms Dooley in her daybook concerns his treatment at the hands of the other researchers. There was no reason for Ms Dooley in our judgment to believe that the claimant had previously made a protected disclosure in the way he now alleges he did on 4 October 2017. We do not consider that her considering that the bullying allegations might amount to whistleblowing supports a factual finding that another form of protected disclosure had occurred. We are not satisfied on the evidence that Mr Millett was present at the meeting. To the extent that the evidence of the claimant goes beyond the pleaded case and is not accepted by Ms Dooley, we do not accept it for these reasons.

121. On 17 November 2017 Ms Dooley sent an email to Chief Supt Doyle and Ms Ansbro-Lee concerning the meeting she had with the claimant (page 1157). She recorded that she had met with the claimant (without naming him) on the previous day and that he was wishing to make an official complaint. She was waiting for HR to confirm a caseworker and on which procedure they were going to investigate the complaint. She stated that she was going to have a meeting to address the staff in the office as a group, both to state the expectations of the organisation and to say that there had been a complaint made which would be investigated. Ms Dooley also informed Ms Doyle that the claimant was prepared to return to work in the office provided one of the 2 persons about whom he was complaining was moved out of the office. It is clear from the email that one of those two was Ms Collins. It was she whom Ms Dooley was contemplating moving. We infer that the other person was Mr Pointon.

122. Human resources were provided within the respondent in different ways at different times. Some functions had been outsourced and become a shared service with Trafford Borough Council prior to these matters. Those functions included the recruitment and retention of agency staff. As a result, consultations in respect of HR matters in this case took place with HR staff in that shared service. In order to access that support it was necessary to make an online referral.

123. Within the section of the respondent that comprised the FLU Ms Ansbro-Lee was the operational support manager and it was in that capacity that Ms Dooley included her in the communication.

124. On 20 November 2017, whilst the claimant was still off work, Ms Dooley held a meeting in the FLU office with all the researchers. The claimant alleges that he was subjected to a further detriment (paragraph 7.8.12 above) by Ms Dooley telling the staff in the office that the claimant had made a complaint.

125. The claimant was not present at the meeting and so there was no direct evidence that Ms Dooley had made a statement to that effect that to the staff. In her evidence she stated that she had asked those present whether they were aware of the reason for the meeting. Ms McCormick told her that the meeting had been called because the claimant had made a complaint. Ms Dooley said that she did not confirm that to be the case. She said that she reiterated the expectations of the organisation and asked those present of their awareness of the Code of Ethics. She said that there would be an investigation which would be resolved as soon as possible and there was a possibility that some staff would be relocated during the investigation. She then left and Mr Millett took over the meeting.

126. In her daybook (page 1150) Ms Dooley made a record to the same effect. She added further detail that there had been a number of complaints, one official and some unofficial and they were being investigated by reference to PSB and human resources. She also recorded that there was no acknowledgement by the staff of awareness of the Code of Ethics. Neither in her daybook or in her witness statement is there a record of informing the staff of the claimant was off sick.

127. The alternative formulation of this detriment, set out at paragraph 7.8.13 above, was put forward as an application for amendment during the course of final submissions by Ms Duane. It was opposed by Ms Widdett.

128. We were not prepared to allow the amendment. Principally we did not do so on the ground that the claimant had not clearly formulated his allegations until the list of issues at the outset of the hearing. At that point the parties were well aware of the state of the evidence and had every opportunity to cast the list of issues in the way best suited for their clients. We do not consider that the claimant has suffered any disadvantage thereby.

129. On the evidence we are satisfied that it was Ms McCormick who referred to the claimant having made a complaint and not Ms Dooley. Given all that had gone before it is hardly surprising that the staff would not have been aware that the claimant might complain about his treatment. Be that as it may the detriment alleged against Ms Dooley was not, on the evidence, established.

130. On 20 November 2017 Ms Ansbro-Lee was given HR specialist advice that she should have a meeting to discuss a return to work plan (page 1164). On the same day Ms Dooley replied (page 1165) saying that she had copied Ms Ansbro-Lee into her email because Ms Livesey of HR had told her that both the officer and the agency member of staff could be moved to allow the claimant to come back to work. In her email she wrote:

> "I am still waiting confirmation from HR as to whether this is being dealt with as a bullying complaint and therefore we can fill the Stage I documentation in, or as a "whistleblower" process for which I'm assuming there is a different form."

131. The claimant placed reliance upon this passage as suggesting Ms Dooley was aware that the claimant was making the protected disclosures he alleges in this case. On the contrary, we considered that Ms Dooley's oral evidence as to her understanding of the substance of the claimant's complaints was persuasive. We think that this email is wholly consistent with that understanding and does not support the claimant's case.

132. On 21 November 2017 Ms Dooley emailed Mr Millett and Ms Watson (page 1168) to say that she had been told that day that she was about to start a new role on the following Monday. She explained that Chief Superintendent Doyle had agreed that Ms Ansbro-Lee would take over the complaint made by the claimant. In a further email to Ms Ansbro-Lee, to which she attached the claimant's letter of 9 November 2017, Ms Dooley set out a list of actions that had been taken to date and passed the matter over to her.

133. On 22 November 2017 Ms Ansbro-Lee telephoned the claimant and arranged to meet him on the following day. Her daybook notes were produced during the course of the hearing. We inserted them at pages 1175A to F. Ms Ansbro-Lee confirmed that pages 1175A and B were notes she had taken of a meeting the day before with Mr Millett and Ms Watson and that pages 1175C – F were the notes she took of her meeting with the claimant on 23 November 2017.

134. In the claimant's witness statement, he asserted that he had made a further protected disclosure at this meeting with Ms Ansbro-Lee on 23 November 2017. In his LOI he identified that he had reiterated the matters that he had raised previously on 4 October 2017.

135. In paragraphs 335 to 338 of his witness statement the claimant gave evidence of a number of things that were said at the meeting. At no point in those paragraphs does he identify any information that could amount to a qualifying disclosure. At paragraph 412 of the witness statement he stated, "On 23/11/17, I disclosed all of the above, again, to LAL [i.e. Ms Ansbro-Lee] in HR."

136. We have considered the entries in Ms Ansbro-Lee's daybook carefully. There was nothing in her daybook notes or in her evidence that supported the claimant's assertion that he had disclosed information to her in the way he alleged he had done to Mr Millett and Ms Watson on 4 October 2017. By way of illustration we can summarise the daybook entries as follows. The claimant began by saying that Jerry and Debbie were the 2 main people. He described the incident about being logged onto Debbie Collins' computer. He described where Debbie Collins said to him, "You will find people do not last very long if they do not get on with me". He said that she met with Jerry Pointon, Lee Parkin and Alan Whitten on the landing and since then none of them had spoken to him. He described the kicking incident. He said that Jerry and Debbie were the only ones to ignore him. He described Jerry Pointon's obscenities as he walked past him. He stated that since the incidents they had not been sending PND checks to him. Only 2 comments are recorded that are consistent with the claimant's case. They are:

> "merge – Gerry (sic) files loads missing

…
Tim and Jackie went to Dan to raise concerns Alan 90% wrong"

137. The claimant is also recorded as having described an incident when he took a phone call for Debbie Collins and she turned on him with a "twisted smile on her face" and finally he reiterated that he believed she had looked in his briefcase, but he could not prove it, and he expressed the view that it explained why they had stopped speaking to him.

138. On the basis of that evidence we are unable to conclude that the claimant disclosed to Ms Ansbro-Lee on that day information that could amount to the qualifying disclosures on which he now relies.

139. In her witness statement, Ms Ansbro-Lee accepted that she told the claimant he had done the right thing in coming forward to make a complaint. She also stated that at no point in the meeting did the claimant inform her that he would make any complaint about health and safety matters regarding legal obligations to Mr Millett or Ms Watson on 4 October 2017.

140. At numerous points in her witness statement, paragraphs 18, 25, 32, 33 and 36, Ms Ansbro-Lee says that she discussed with the claimant the issue of him checking his colleagues' work and that she told him that this was likely to have led to a feeling of resentment towards him by his colleagues. There is not one single mention of this in the daybook notes. We do not accept that this was mentioned by Ms Ansbro-Lee to the claimant at the meeting. We make that finding for the following reasons. If it had been said, it is likely that it would have been recorded at least once. If it had been said, the claimant would be very likely to have protested. Up until that point Ms Ansbro-Lee had been asked to investigate the claimant's complaints and no other person had raised this suggestion, either Ms Dooley or either of the claimant's managers.

141. The claimant pointed out to Ms Ansbro-Lee at the meeting the financial implications of not being at work. As an agency worker he was not receiving sick pay. To try to restore the claimant to work, and thus pay, she informed him that a case conference team in the Child Protection Unit needed assistance with their workload. The claimant said that he was prepared to undertake that work until he felt able to return to the FLU.

142. On 27 and 28 November 2017 the claimant did work in that unit. However, he did not wish to continue to do so. He remained away from work until 13 December 2017.

143. In the intervening period the respondent had agreed to continue the contracts of the agency worker researchers until the end of March 2018. The claimant was told on 30 November 2017 by an email from Ms Watson that his contract would be extended to the end of that month (page 1223).

144. On 11 December 2017 Ms Ansbro-Lee concluded her investigation and informed the claimant of that fact. There were a number of disputes between the claimant and Ms Ansbro-Lee as to what was said. We do not need to resolve those disputes. One of the matters in dispute was the reason why Ms Collins was transferred to another unit or department. There was no dispute that she was

transferred. To the extent that has any bearing on what occurred thereafter we deal with it below.

145. On 12 December 2017 Ms Ansbro-Lee met the claimant. Before that she also met with Mr Millett. She produced a note (page 1240) of what had been said. Redacted words are identified thus "[ ]". She recorded:

> "Spoke with Alex and provided him with an update to all of the above, we discussed the future of [ ] and Tim and whilst neither of them have been innocent in any of the issues it was felt that as it have (sic) been going on for so long with a lack of management of the issues and in addition due to the demand within the unit it was fair that both TL and [ ] be given another chance.
>
> I met with TL on Tuesday 12th at Nexus House. I updated him as to who I had spoken to and that DC had moved on to another team.
>
> I discussed with TL at length about how his actions may have been perceived by others and how it is not his responsibility to check other people's work and feed this back. I explained that issues like that should be tracked by management so that the appropriate support can be put in place. Tim understood this and agreed that his previous actions may have led to others seeing him in a negative way.
>
> We also discussed the basics of the code of ethics that he has a duty to adhere to them.
>
> I informed TL that providing he agrees to the above that a line is drawn and that he moves on working in a professional manner.
>
> TL understood that any additional incidents may result in the termination of his employment.
>
> TL - Tim appeared to accept some responsibility and reflected upon his actions throughout our discussions."

146. We quote this note in full so far as it relates to the claimant. Other passages have been redacted. It is important in our view because it indicates that the respondent had decided to give the claimant and, as we infer, Jerry Pointon (whose name we consider has been redacted out), the opportunity to continue working in the department. We consider it is likely that it was on this occasion and not in her earlier meeting that the question about how the claimant's actions were perceived by others was raised. By this time as part of her investigation Ms Ansbro-Lee had spoken to a number of the claimant's colleagues. It is more likely that this the time was when she was informed about their view of the claimant's criticising their work than at the earlier meeting. Although the claimant disputed that he acknowledged any responsibility for this as a cause of disagreement, we still consider that this note is likely to be accurate. The claimant wanted to go back to the unit. He had hopes of obtaining a permanent position. He knew that not everybody in the unit was going to be moved and he had at an initial stage of the investigation indicated that he was willing to return to the unit provided one of those with whom he did not get on was moved elsewhere. All of this is consistent in our judgment with the claimant expressing himself in the way that Ms Ansbro-Lee suggests he did by this note.

147. The conclusion of this meeting was that the claimant was to return to work in the unit the next day.

148. The claimant, Mr Millett and Ms Watson all agreed that the claimant worked in the unit on 13 December 2017 without incident. In cross-examination Mr Millett and Ms Watson also agreed that there was no incident before the middle of the day on 14 December 2017.

149. In her witness statement at paragraphs 78 and 79 Ms Ansbro-Lee said that at some point after the claimant's return to work she was contacted by Mr Millett to update her on how things were going. According to her statement she was told that there had been no change in the claimant's behaviour and that the claimant "continued to involve himself in matters that were no concern of his and to 'bitch' and 'snipe' at colleagues."

150. Ms Ansbro-Lee said that Mr Millett informed her of a specific example concerning Ms Collins. He said that although Ms Collins had by then transferred to another unit she had had a change of heart as a result of which her husband had contacted him regarding the matter. Mr Millett allegedly reported that the claimant was involving himself by trying to find out where Ms Collins had transferred to and what had been said by Mr Millett to her husband.

151. Ms Ansbro-Lee formed the view from what she was being told that the claimant was still trying to involve himself in matters that were of not his concern.

152. Mr Millett's evidence about the claimant's return to work was set out in paragraphs 70 to 72 of his witness statement. He stated that at the beginning of the day on 13 December 2017, together with DS Watson he had a meeting with the claimant outlining expectations upon his return to the unit. He said they then held a meeting with the other investigative support officers concerning protocol and engagement with the claimant. He said that some of the other researchers were astounded by the claimant's return and expressed concern but that the managers emphasised the need for respect and professionalism. Mr Millett said that they both informed the claimant of that meeting and offered reassurance and support. Mr Millett said, "it was made very clear to the claimant should there be any issues he was to bring them to our attention immediately."

153. Mr Millett recorded in his daybook (page 1231C) that Mr Frangleton requested a meeting with him at 9 a.m. on 14 December 2017. Mr Frangleton said he felt extremely aggrieved and angry at the way that Ms Collins been treated. He expressed the view that all the issues in the office emanated from the claimant and he could no longer work in the same office as him. When Mr Millett sought clarification Mr Frangleton said he could not work in the same office so was going to complete his work either at Wigan or Leigh. Mr Frangleton went on to say he thought the investigations into the allegations were not thorough and that he himself was considering making a grievance. Mr Millett reiterated the need to conduct himself professionally.

154. Mr Millett also recorded that he was contacted by Debbie Collins' husband shortly after that and as a result he went looking for her and spoke to her and continued to do so after she went home from work.

155. Mr Millett made no note his daybook of any issue with the claimant himself that morning.

156. Both Mr Millett and Ms Ansbro-Lee record that there was a meeting with Detective Chief Inspector Oakes. In his daybook (page 1231F) for that day Mr Millett recorded:

> "12.30 hours – Meeting held with DCI Oakes and Laura Ansbro Lee concerning internal personnel issue with the firearms licensing unit."

157. Ms Ansbro-Lee's daybook (page 822L), although undated, records what we think was probably the same meeting in the following terms:

> "Discussion re Debbie Collins
> Alex, Debbie Oakes me
> Plan
> ….
> right decision with Debbie
> Alex to give
> Give 1 weeks notice to Tim + Jerry tomorrow
> ….
> Alex updated me re-speaking with Tim and that she (sic) has given one weeks notice."

158. Mr Millett's daybook entry for that day continues with the words: "Decision – T/L; J/P – 'C' to be terminated 1 week's notice." This is a reference to the claimant and Mr Pointon both being given notice of termination of their contracts. He also records that at 1350 hours he informed the claimant of the decision and that the claimant had requested to speak to Ms Ansbro-Lee and that arrangements were made for that to take place.

159. In her witness statement Ms Ansbro-Lee said that she spoke to Maxine Livesey of HR to ask for advice on terminating the claimant's assignment and that of Mr Pointon. She stated that she did not give any details nor identify the people she was asking about only to say that they were agency workers. She said that Ms Livesey told her that all she had to do was give one week's notice.

160. Ms Ansbro-Lee said that at the meeting with Mr Millett and DCI Oakes they had discussed the claimant's conduct since his return to work and the fact that he was not willing or able to draw a line under matters and move on. She described him as "still creating unrest within the FLU" and that they decided between them that there was no other option than to terminate his assignment.

161. In his witness statement Mr Millett said that he recalled that the claimant wanted Mr Pointon to be moved away from the office and that it was clear that the claimant did not appear willing or able to draw a line under matters and move on. He said he related that to DCI Oakes and Ms Ansbro-Lee. Mr Millett's oral evidence was that Ms Ansbro-Lee and DCI Oakes made the decision that the contracts of both the claimant and Mr Pointon would be terminated and that he agreed with it.

162. In her witness statement Ms Oakes makes no mention of this meeting. Her oral evidence was inconsistent within itself in that she first said the decision was that of Ms Ansbro-Lee and that she was not involved in it. Subsequently she said that the decision-makers were Mr Millett and Ms Ansbro-Lee and "my role was more independent". However, we should also record that Ms Oakes reported she has been suffering from post-concussion disorder and accepted that her memory was affected by that. She confirmed that she had made no notes of the meeting.

163. Given the state of the evidence that we have summarised we conclude on the balance of probabilities that, whoever first mooted the question of the termination of the assignments of the claimant and Mr Pointon, all 3 people at the meeting agreed with the proposal. However, we consider there is less clarity over the reason for the termination of the contract. The acceptance by Mr Millett and Ms Watson that nothing eventful occurred on 13 December 2017 or in the first part of the following day is clearly at odds with the suggestion that the claimant was not able to draw a line under previous matters. Neither is there any clear record by anybody who was present at the meeting as to the reasons for the decision to terminate the contracts.

164. The claimant relies upon the termination of his assignment as a detriment, see paragraph 7.8.14 above. The respondent accepts that the termination was a detriment.

165. A meeting then took place on 15 December 2017 between the claimant, Ms Ansbro-Lee and DCI Oakes. This is the one meeting in the entire saga in respect of which we can be reasonably sure that we know what was said. The claimant made a covert recording of the meeting. He prepared a transcript (pages 1317-1332) and the respondent has agreed that the transcript is an accurate record.

166. At the outset of the meeting Ms Ansbro-Lee introduced DCI Oakes to the claimant saying that she had asked her to join them because she had been involved with "the other side of it as well, the Debbie Collins side". Ms Oakes confirmed evidence that she was in fact Ms Collins' Police Federation representative.

167. Arising out of this meeting claimant asserts that he was subjected to a detriment by Ms Ansbro-Lee and Ms Oakes by refusing to provide reasons for the termination of his assignment other than to allege that he was involved in a toxic office and that he had "played a part". The record plainly supports the factual allegation of detriment made in paragraph 7.8.15 above. For that reason, we recite only those parts of this lengthy meeting in which there was a discussion as to the reason for the termination of his assignment. The relevant passages are these:

> "LA: I do not have to give you a reason because you are an agency worker, so… So I do not have to give you a reason, but I the think the number of incidents that have gone on in that unit over the last 12-18 months,… with a number of different people involved, it's completely toxic unit (sic), and I do not think it is going to be helpful to anybody to remain in there.
>
> …
>
> TL: why me especially?
>
> LA: it is not you especially, there is you and others that…
>
> TL: well me and Jerry yeah?
>
> LA: … have been removed.
>
> …
>
> There has been feedback about your behaviour which, your, the way you come across which we discussed the other day…. So that is one of the reasons..

Obviously there was the incident over the kicking incident, which everybody seems to think that did not happen, and you deliberately instigated that fall.

….

… there's the using of other people's logon even though you were asked to by a supervisor.

….

TL: So, the complaint about Lee, the logging on, and the other one was the… being patronising… So that is them there then, the reasons there.… I am more confused than anything given the conversation we had on Tuesday where it was discussed, you know all along since I have made the … for want of a better word, 'whistleblown' about the situation that showing on (sic) in that office I think that is probably a fair sort of summary of what I've said… since that incident.

LA: Right, if we say about whistleblowing, each of the incidents that were logged in your report, every single one of those incidents had already been raised to management level within that unit, and supposedly dealt with.…

Hadn't they? There was not an incident in your last report that had not already been flagged to management?

TL: I have no idea what people have told management or not, I mean obviously, I am not privy to that information.

…

LA: … It is just at this minute that it, it's a toxic team, there is not much work being progressed, people aren't happy in there and we need to do something about it. If you and Jerry were permanent police staff members, both of you would be taken down some form of disciplinary or conduct procedures, based on the same thing.

TL: Basically, so I've, because I've made a complaint about somebody… which I feel was justified and if I pushed it, … [the claimant here describes pressing to have Lee Parkin prosecuted] … so had I done that, then I would be viewed differently, but because I've shown compassion…

LA: … I feel probably like you're putting a few words in my mouth here,…

…

TL: I don't mean to. As far as I see it…. my contracts being ended basically, because I have made a complaint about Lee, because I've been instructed to log onto a computer and because some people in there think I have been a bit patronising in how I've spoken to them….

DO: I think it has been sort of part and parcel of the issues

…

LA: … that teams toxic and I think it needs to be completely broken up

TL: I agree there are elements of toxicity in there … and I think you know, it's quite obvious, certainly who two of those elements are, in my opinion…

…

TL: …. why am I now, the message I was given by Alex yesterday, yet on Tuesday our discussion was the whole team had been spoken to by Alex, and 'everything is set for your return'? ….

And then 48 hours later, what's, what has changed?

LA: Well, we've had to continually review it because other things that have been coming out, so we've… tried to do, which is what was explained to everybody is to keep it in-house and try and move forward but is not going to work, and we know that now. It is not going to work. And that's the sad thing, we have tried to do that

…..

… more information has been coming in.

TL: because obviously I am aware but yesterday that Debbie has 'had a meltdown' I think the words were and has …

And also that I am aware the husband has rang up saying that he is going to make a complaint, and also I am aware that Joe Frangleton, … The FEO in their has said that he is going to 'kick-off' and he is going to basically have a 'rant and rave' if I am not sacked. And then a few hours later I am sacked.

LA: I can categorically tell you that you are not been taken out of this contract, you know, this employment here because Joe Frangleton has spat his dummy out. And I think that myself and Debbie are, being senior leaders in the police, you know I give myself a little bit more credit than that."

168. Towards the end of this conversation the claimant asked for the reasons in writing and Ms Ansbro-Lee reiterated that they did not have to provide them.

169. As the passages we have quoted show, some reasons were given. His involvement in a toxic office was stated as part of those reasons. In addition it appears that Ms Ansbro-Lee prayed in aid the claimant having unauthorised computer access and had fabricated the kicking incident allegation. We acknowledge that there was some mention of whistleblowing. But we note also that the claimant did not make a clear assertion to Ms Ansbro-Lee and Ms Oakes that he was being dismissed because he had been a whistleblower. However, we address the issue of whether the respondent has discharged the burden of showing the reason for the treatment below.

170. Insofar as the reasons that he was given were confusing and inadequate we accept was a legitimate criticism by the claimant. That being said, we do not consider that the content of the meeting provided any support for the allegation of detriment (paragraph 7.8.16) that the respondent was trying to cover up what the claimant had allegedly reported.

171. On 17 December 2017 the claimant sent an email to Ms Ansbro-Lee to which she did not reply. The respondent accepted that the failure to reply to that email was a detriment (paragraph 7.8.17). The email was a reiteration of the request for reasons for the termination of his engagement. Ms Ansbro-Lee's explanation for not replying was that she had been advised by Ms Livesey of HR to send the email to her and she would forward it to the claimant's agency and on that basis Ms Ansbro-Lee assumed that the agency would reply. Although we can understand that that would not assist the claimant, we have no reason to doubt this was the reason Ms Ansbro-Lee failed to respond.

172. The claimant alleges that he was subjected to further detriments as set out in paragraphs 7.8.18 and 7.8.19 above. The first of these was a statement by Ms Livesey to the agencies that the claimant was never to work for GMP again. The second was accusing the claimant of involvement in a "serious incident and a criminal offence". Ms Livesey explained that the serious incident was the allegation of bullying/conduct within the Department and the criminal offence, she believed from what she was told by a police officer, was the covert recording of the meeting with Ms Ansbro-Lee and DCI Oakes. We have no reason to find that Ms Livesey did this for any other reason than that which she gave. We are unable to find she was aware of any disclosure by the claimant. Whether it was a fair or appropriate thing to do, as to which we make no finding, is beside the point. We consider the respondent has shown the reason was not on because of any disclosure.

173. There was no dispute that this information was communicated to the agencies. The respondent sought to argue that it was only a restriction on the claimant working for the respondent again as an agency employee and it would not preclude him applying for permanent employment. The argument was unpersuasive. In any event Ms Widdett accepted that the claimant was subjected to these detriments.

174. The claimant's final allegation of detriment, see paragraph 7.8.20 above, was that he had not received a response to a subject access request within the 40 days prescribed by the relevant regulations. There was no dispute that the request was not responded to within the relevant period. The evidence suggested that the respondent attempted to collate the information within a reasonable period after receiving the request. The respondent was not able to call the relevant member of staff who was responsible for responding to the request. Ms Hiorns, the manager of the relevant unit gave evidence to the effect that the scale of the requests received by the respondent was such that caseworkers had a heavy and varied workload. The case officer, Mr Broadbent, had explained that the response was delayed for a number of reasons, including waiting for responses from witnesses and a very large amount of emails and data to read through and assess for redaction.

175. To the extent that this amounts to a detriment, and we are not persuaded that there was any significant disadvantage to the claimant by the delay, we have in mind that there was no evidence to suggest that the delay was deliberate and there was no evidence to suggest that it was connected to any of the alleged disclosures**.**

Submissions

176. Both parties made substantial written submissions. They were amplified by brief oral argument. There was no substantive dispute between counsel as to the applicable law.

Relevant law

177. The statutory framework is found in the Employment Rights Act 1996.

177.1. Section 43B defines a qualifying disclosure;

177.2. Section 43C by which a qualifying disclosure to the worker's employer is protected;

177.3. Section 43KA places the chief officer of a police force in the position of "employer" for the purpose of the other relevant provisions;

177.4. Section 48 (1) which gives the tribunal jurisdiction to determine a complaint by an employee that he has been subjected to a detriment;

177.5. Section 48 (2) which provides that "on a complaint under subsection (1)… it is for the employer to show the ground on which any act, or deliberate failure to act, was done.";

177.6. Section 48 (3) which provides for the time in which proceedings must be presented for the tribunal to have jurisdiction; and

177.7. Section 49 sets out the tribunal's powers in respect of remedy.

178. The parties referred to a number of cases. The principal authorities to which our attention was drawn were:

Blackbay Ventures Ltd v Gahir [2014] ICR 747

Chesterton Global Ltd & Anor v Nurmohamed & Anor (Rev 1) [2017] EWCA Civ 979

Cavendish Munro Professional Risk Management Ltd v Geduld [2010] IRLR 38, EAT

Kilraine v London Borough of Wandsworth [2018] EWCA Civ 1436

Fecitt v NHS Manchester [2012] IRLR 64, CA

179. Additionally we considered also the judgment of the Court of Appeal in **Ibrahim v HCA International Ltd** [2019] EWCA Civ 20, it is clear from that judgment the test to be applied by the tribunal as to public interest is whether the disclosure was in the public interest and, if so, whether the person making the disclosure can be found objectively to have reasonably believe that it was in the public interest. To that extent the guidance in **Blackbay Ventures** should, we believe be considered varied.

180. In the course of her written submissions Ms Duane referred to a number of other authorities by way of footnotes.

181. Although the expression employed in **Blackbay** was used throughout the case as a form of shorthand, the tribunal and counsel clearly had in mind the test, namely, whether the person disclosing the information *had a reasonable belief that* the disclosure was made in the public interest.

182. We identified only one instance in which the Court of Appeal considered the expression: see **Chesterton Global Ltd v Nurmohamed [2017] EWCA Civ 979**. Having earlier recited (paragraph 12) a passage from the speech of the responsible minister at the committee stage in which Parliament was debating this change to the legislation at paragraph 36 Underhill LJ continued:

> "The statutory criterion of what is "in the public interest" does not lend itself to absolute rules, still less when the decisive question is not what is in fact in the public interest but

what could reasonably believed to be… The question is one to be answered by the Tribunal on a consideration of all the circumstances of the particular case."

Conclusions

183. The fundamental difficulty in resolving this case is that the evidence of neither side creates a coherent, consistent narrative. A great many of the disputes of fact concern matters that are not central or relevant to the issues the tribunal has to decide. Even on matters central to the issues there are anomalies and inconsistencies even within the evidence adduced by each party.

184. By way of example, we make some comments illustrative of this difficulty.

185. The claimant's case was that over a prolonged period of time he had concerns and reservations about the quality of the work done by his colleagues and also their treatment of him. However, he broke off keeping a diary in which some of those matters were recorded in an earlier period and was unable to offer any explanation why he had not resumed it when matters came to a head. He repeatedly referred to text messages that he had sent his wife which he relied upon as evidence of matters of importance but on examination many of the messages were not explicitly about the matters he sought to establish but were, typical messages about leaving work late and matters of that sort.

186. The claimant produced only one document that was a clearly contemporaneous account of a relevant meeting. That was his transcription of an audio recording that he had made covertly in his meeting with Ms Ansbro-Lee and Ms Dooley on 15 December 2017. His "trigger notes" upon which he relied as establishing the first protected disclosure were more consistent with notes that one might make when going into a one-to-one meeting with a manager. They contained very little support for the proposition that he had previously communicated information which he reasonably believed tended to show one of the protected matters in section 43B.

187. In determining the outstanding issues we have considered the evidence in detail. We have, unusually, set out the relevant passages of the evidence at great length. As we have done so, wherever possible, we have expressed our conclusion as to whether a particular matter, disclosure or detriment, has been established or not.

188. As to whether the claimant has established that he made the protected disclosures upon which he relies we remind ourselves that the pattern of disclosures is as follows. The claimant alleges that he made detailed disclosures Millett and Ms Watson on 4 October and that he repeated and expanded upon those disclosures to Ms Dooley and Mr Millett on 16 November and to Ms Ansbro-Lee on 23 November 2017.

189. For the reasons that we have set out at paragraphs 119, 120 and 138 above we have concluded that the claimant did not make disclosures on the latter two occasions. Having regard to this and also to the unspecific evidence that the claimant gave in respect of the first occasion we have concluded that we cannot say, even on the balance of probabilities, that the claimant has established that he made protected disclosures Mr Millett and Ms Watson on 4 October 2017.

190. Whilst that finding is sufficient to dispose of the case we have gone on to consider whether the various detriments have been established not. We have

previously expressed in these reasons our conclusions in respect of all the detriments alleged except for those at paragraphs 7.8.1 - 7.8.5 and 7.8.8.

191. We have upheld the the claimant's case that he was subjected to the detriments at paragraphs:

191.1. 7.8.6 Debbie Collins laughing about the kicking incident;

191.2. 7.8.7 Lee Parkin assaulting the claimant;

191.3. 7.8.9 Jerry Pointon muttering obscenities at the claimant;

191.4. 7.8.14 the termination of the claimant's assignment;

191.5. 7.8.15 Ms Ansbro-Lee and Ms Oakes refusing to provide reasons for the termination;

191.6. 7.8.17. Ms Ansbro-Lee failing to reply to the claimant's email of 17 December 2017;

191.7. 7.8.18. stating (to Reed Global Ltd) that the claimant was never to work for the respondent again;

191.8. 7.8.19. accusing the claimant of being involved in a serious incident and committing a criminal offence; and

191.9. 7.8.20. by not responding to the claimant'ss Subject Access Request within the 40 day period.

192. Having regard to our findings in respect of detriments 7.8.6, 7.8.7 and 7.8.9 and to our general findings in relation to the atmosphere in the workplace and the information provided by other staff in defence of the allegation of assault by Lee Parkin we consider that the claimant has established on the balance of probabilities that he was also subjected to the remaining detriments at 7.8.1 - 7.8.5 and 7.8.8.

193. But, as we have set out previously in order for a complaint of detriment to succeed it is not enough for the claimant to establish that is colleagues believed that he might have made a protected disclosure. He must establish that he has in fact made a protected disclosure. Only then does the task of demonstrating the reason for the treatment pass to the respondent.

194. Lest this case be considered elsewhere, we go on to express conclusions on whether we consider the respondent has discharged the burden of proof of showing that the reason for the treatment was not because of a protected disclosure.

195. We have already expressed our conclusion on this in the respondents favour in respect of the last four detriments - 7.8.17 - 7.8.20.

196. The evidence called by the witnesses in respect of the most serious allegation, that of termination of the claimant's engagement (7.8.14), was so contradictory or confused as between one witness and the other that we cannot say that the respondent has discharged the burden. We consider that the same conclusion

must be reached in relation to paragraph 7.8.15. Since we are unable to accept the respondent's explanation for the termination of the claimant's assignment as expressed by Ms Ansbro-Lee-Lee and Ms Oakes we are similarly unable to accept their explanation for refusing to provide reasons for the termination.

197. However, we are in doubt whether the alleged disclosures were ever communicated to the claimant's other colleagues at whose hands he sustained the detriments that 7.8.1 to 7.8.9. We consider there is at least a significant chance that the reason for that treatment was the animosity of his colleagues towards the claimant because of their resentment at what they at least saw was his criticism of them for their lack of work or ways of working. Nevertheless, we think this falls short of the respondent demonstrating on the balance of probabilities that this was the reason for the treatment of the claimant. Therefore, if we had come to the opposite conclusion and upheld the allegations of protected disclosure we would have felt ourselves bound to come to the conclusion that the claimant had succeeded in respect of those detriments as well.

198. We reiterate that notwithstanding all these alternative findings the claimant's case fails because of the failure to establish the making of protected disclosures.

199. Finally, we express our apologies to the parties for the delay in providing this judgement and reasons.

_____

Employment Judge Tom Ryan

Date 16 June 2020

JUDGMENT AND REASONS
SENT TO THE PARTIES ON
16 June 2020

FOR THE TRIBUNAL OFFICE