EMPLOYMENT TRIBUNALS

Claimant: **Mrs D Hooper**
Respondent: **Kent & Medway NHS and Social Care Partnership Trust**

Heard at: **Ashford** **On:** **12- 15 November 2019**

Before: **EMPLOYMENT JUDGE CORRIGAN**
Members: **Mrs S Dengate**
Mr N Phillips

Representation
Claimant: Mr T Pullen, Kent Law Clinic
Respondent: Mr S B Sudra, Counsel

CORRECTED REASONS

Under the provisions of Rule 69, the Reasons dated 24 January 2020 are corrected as set out in bold type at paragraph 13.

Judgment dated 28 November 2019, sent to the parties on 23 January 2020.
Written reasons provided at the Claimant's request, made at the hearing.

Claim and issues

1. The Claimant's complaint is that she was subjected to a detriment for making a protected disclosure in contravention of s47B Employment Rights Act 1996.

2. The agreed issues were set out in the Case Management Order dated 11 April 2018 and amended during the hearing to be:

3. Were either of the communications made by the Claimant and set out at

paragraphs 3 and/or 6-8 of her claim protected disclosures? Late in the hearing the Claimant's representative applied to include the communications at paragraph 10 and 11 of the claim form also. We considered this application when making our decision.

4. Did either communication amount to a communication of information?

5. Did the Claimant have a reasonable belief that either or both communications:
   5.1 was in the public interest?

   5.2 tended to show that the Respondent had failed, was failing or was likely to fail to comply with its obligations under the Data Protection Act 1998?

6. Was either of the communications made to the employer and/or a prescribed person?

7. Was the Claimant subjected to the detriment of having her work engagement at Laurel House terminated on the ground that she had made either communication?

8. To what remedy, if any, is the Claimant entitled?

9. Was the claim in time? If not, was it reasonably practicable to submit it in time?

Hearing

10. We addressed the issue of the time limit as a preliminary point. The case relates to the termination of the Claimant's working engagement via an agency. The Claimant was informed on 14 July that her placement would end on 21 July 2017. The Claimant contacted ACAS on 18 October 2017 and the ACAS certificate is dated 18 November 2017. The Claimant issued her claim on 15 December 2017. The Respondent sought to say the date of the act complained of was the date the decision was communicated (14 July 2017) and that this meant the claim was out of time.

11. Section 48(3) Employment Rights Act 1996 states:

    "An employment tribunal shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates…"

    Section 48 (4) (b) clarifies that a deliberate failure to act shall be treated as done when it was decided on.

12. We were referred to *London Borough of Harrow v Knight (*EAT/0790/01) paragraph 10 and *Unilever UK Plc v Hickinson* (UKEAT/0192/09), paragraph 22, both of which in our view confirm that the "act" is the termination itself and not the decision to terminate (unlike in the case of a failure to act, when the relevant date is the date the failure to act was decided upon). We find the act complained of occurred on 21 July 2017 and the claim was therefore in time.

13. With regards to the substantive claim, we heard evidence from the Claimant on her own behalf. On behalf of the Respondent we heard evidence from Ms Anna Planck (Deputy Head, Information Governance); Ms Sharon Hartley (Service Manager) and **read a witness statement by** Ms Helen Quinn (Social Care Team leader).

14. There was a bundle of 320 pages.

15. The Claimant's representative prepared written submissions and both representatives made oral submissions.

16. Based on the evidence heard and the documents before us we found the following facts.

Facts

17. The Claimant commenced work as a duty and screening nurse for the Respondent at Laurel House (a community mental health service) on 3 May 2017 via a recruitment agency NHSP.

18. She had been employed previously for twelve years as a band 5 Community Psychiatric Nurse and then resigned (with notice) on 29 March 2016 in circumstances where she thought she had obtained a promotion with the Respondent. The promotion did not ultimately take place as her line manager did not give a satisfactory reference and the offer was withdrawn on 7 April 2016, whilst the Claimant was still in her notice period. She sought to retract her resignation on 12 April 2016 but was not allowed to withdraw her notice therefore that employment ended on 21 June 2016.

19. In the line manager's reference there was reference to a driving issue and possible redeployment from 4 April 2016 if she was not prepared to drive. In the event this was not pursued as she had resigned.

20. The Claimant's evidence to us was that she does have a driving licence but is anxious about driving and has not driven for years. There was also an issue in relation to the cost of running a car.

21. The Claimant pursued the internal grievance process in relation to this

incident and also raised subject access requests in respect of the reference.

22. After receipt of a copy the reference, the Claimant then raised a complaint with the Information Commissioner on 17 May 2016 about whether there had been any verbal communication in respect of the reference.

23. The ICO took up the complaint and wrote with questions to the Respondent as they take an overview of all concerns that are raised about an organisation with a view to improving its compliance with the Data Protection Act 1998 (Pages 124-125). The Respondent replied on page 133.

24. By 3 August 2016 the Claimant also raised the issue with the ICO that her reference had included confidential information which would have needed her consent (p136).

25. On 26 August 2016 the Information Commissioner's Office wrote further about the data protection concerns, asking the Respondent a number of questions which go into detail of the actual content of the reference. The letter asked the Respondent whether they would revisit the reference to ensure it is accurate, referring to information that could be considered excessive, and to consider whether the Respondent believe they have processed the data fairly and lawfully.

26. The first response from the Respondent on 8 September 2016 did not accept that there was an issue with the reference or the processing of the Claimant's data. However, there was further correspondence on pages 291-297 which led to the Information Commissioner's Office writing to the Claimant on 5 October 2016 saying that it was unlikely that the Trust had complied with data protection requirements in this case because of the way that the reference was handled, including that the Trust agreed that the reference was excessive and that sensitive information had been disclosed without consent. The reference was to be amended.

27. The Information Commissioner indicated that they agreed that her data had not been processed fairly and lawfully. The letter also said that the Information Commissioner's Office does not take up every complaint but put most effort into dealing with those matters that give the best opportunity to make significant difference to an organisation's information rights practices. In the Claimant's case, it was considered that there were multiple data protection principles at issue (pages 155-159).

28. We were not shown an amended reference, only an annotated reference which in our view did not rectify these issues.

29. The Claimant then obtained work via the recruitment agency NHS Professionals but it took some time and this case is about her first placement at the Respondent with them which commenced on 3 May 2017.

30. The Trust accepts that they do make data protection errors in respect of patients from time to time and send out information incorrectly due to human error and these incidents would be logged as a serious incident and would be a training matter. The Trust would have to write to the person concerned and Information Governance would be involved. Staff have regular e-learning on data protection/information governance issues.

31. On 8 June 2017 the Claimant received two calls from two different PCs about two different ex-patients' clinical notes. She had concerns about the lawfulness of providing the information (despite patient consent, because of their vulnerability) without the involvement of Information Governance. She therefore raised the matter with a colleague, a Band 7 Nurse.

32. The colleague informed the Claimant that the matter had been resolved as she had made arrangements with the administrative staff to send the information out. The Claimant remained concerned about the legality of this.

33. On 12 June 2017 she said to the same colleague that if staff were giving out confidential personal data about service users this was against her understanding of data protection. She asked to speak directly to the Information Governance team to seek guidance. The colleague agreed. The colleague did not say that Information Governance had already been involved in this matter. She did not give any information to reassure the Claimant that there were further steps that had already been taken in relation to the two specific requests.

34. The Claimant then spoke with the Information Governance Officer. She explained her concern and was advised that outside enquirers should be directed to the Information Governance Department. The Claimant then emailed the Band 7 colleague mentioned above, her line manager Ms Quinn, and the two administrators involved in respect of the 8 June query, informing them all about the guidance given. Her email is at page 201 and states:

> *'As you are aware, I took a phone call from [the two PCs concerned] on 8th June 2017 each requesting Patient's clinical notes.*
>
> *I was concern [sic] about them just requesting patients' confidential information, and they both sounded insistent over the phone that we*

> *should provide them with the requested information, and said that the patients… have given their consent…*

She discussed the fact that the consents were to be emailed but went on to say

> *'However, as I informed you on the day, we should not just send them information as the Trust can potentially be fined £500k for breach of Data protection.*
>
> *As a result and following discussion with you again this morning, I have contacted the [Information] Governance team …., who suggested that the police should divert their request to the [Information] governance department.'*

35. The implication is that the Trust risk being fined for breach of data protection if the material was just sent out without going to Information Governance. We find that she was therefore raising with the Respondent that she was concerned that they should not just send out the information in respect of a request and that requests should be diverted to Information Governance.

36. An email was sent from Information Governance on 29 June 2017 to Sharon Hartley saying that they had received a request for information, which was the procedure that the Claimant was saying was proper, and were checking whether anyone had already provided the information to the external agency. This was forwarded to Helen Quinn and ultimately the Claimant and another colleague were asked if they had sent any information. The Claimant said that she had not and that was the end of that matter (pp202 and 220).

37. On 6 July 2017 there was a complaint by a service user about the Claimant. It came via the Patient Advisory Liaison Service to Sharon Hartley. She did not open it but passed it straight to Ms Quinn to look into. This would normally involve speaking to the service user again and could involve speaking to the Claimant. There is no evidence that Helen Quinn had done this prior to a further call with the Patient Advisory Liaison Service in which the service user agreed that the complaint could be closed. There was no decision as to whether or not the complaint was upheld.

38. Ms Hartley in her evidence says that the Trust gets this kind of complaint several times a week and all staff would be subject to such complaints from time to time. There was nothing in that complaint of concern in respect of the Claimant save possibly a training point about communication (pp244-245).

39. On 7 July 2017 the Claimant handled a request from Canterbury Council,

also for information in respect of a patient. She emailed Ms Quinn twice about this. These were at pages 206-207 and 213-214. In the first email she asked for the protocol for external agencies, despite herself having informed Ms Quinn that these should be referred to Information Governance. Approximately twenty minutes later Ms Quinn replied that Information Rights could help them (ie Information Governance) which is what the Claimant had suggested. Meanwhile the Claimant sent the second message timed at 12.14, forwarding the consent but repeating the point that just because there was consent, did not mean the information should be sent out, repeating the reference to a fine for a data protection breach and asking if she could refer the person at the Council to Information Governance. She suggested Information Governance training.

40. The Claimant considers Ms Quinn's reply terse, which is at page 213. However, we find that Ms Quinn agreed with the referral to Information Governance and does not appear to have had an issue about that. It is not clear given the Claimant's previous email why she felt that she had to ask the question.

41. The Service was at this time in crisis. This is a term used by both the Claimant and the Respondent. Ms Hartley said that she was barely at the Claimant's workplace during this time as she was at Trust meetings for this reason. Patients were waiting two years to be seen by 'anyone'.

42. Shortly before 12 July 2017 Ms Hartley was informed that she was to implement CAPA immediately to tackle the crisis, with the aim that it would be fully implemented within a year and the impact on the patients would be measurable. CAPA involved the same person doing initial assessments and then following patients through and providing care coordination, ideally with particular needs matched to particular specialities from the start. This was to replace the existing system of a duty nurse, such as the Claimant, seeing whoever came through the door and then referring on and not doing care coordination. This was the role the Claimant had been doing. Whereas the Claimant could do the role of duty nurse from the workplace without needing to drive going forward the post holder needed to be able to drive around the community. All relevant staff were to be able to do assessments and care coordination. The care coordination was the aspect of the role that required a car. There were three duty nurses at the time of the decision and Ms Hartley was told that the change in conducting assessments had to start immediately. The two other duty nurses were employees and their role evolved to that that was required, namely conducting assessments and doing care coordination.

43. In respect of the Claimant, although she was on a long-term assignment, her days were approved on a three-day basis so the Respondent could swiftly dispense with her services under the agreement with the agency.

No notice was required, nor justification.

44. Ms Hartley instructed Ms Quinn to give the Claimant one weeks' notice with the aim of giving her a week to obtain alternative agency work. They also did need a transition period of a few days to deal with existing appointments that were already booked.

45. Ms Hartley says that nothing else was a factor in her decision and we accept this.

46. The engagement terminated with one week's notice on 21 July 2017. Both Ms Quinn and the Claimant gave evidence that, in fact, three reasons were given for the termination: a patient complaint, a complaint from an administrative colleague about a failure to provide a same day appointment and a change to CAPA.

47. Ms Hartley accepts that the complaints were no basis to terminate an engagement. The Claimant was upset at the sudden termination, there having been no prior discussions about any of these matters. The Claimant had missed the recent meeting about CAPA and the minutes do not make clear that there would be an immediate change to her role.

48. She spoke with one of her colleagues (One of the "Seniors", herself an agency worker) who then spoke to the Band 7 nurse mentioned above. The agency worker Senior colleague then spoke to the Claimant again on the evening of 17 July 2017, when the Claimant says the Senior told her that the Band 7 Nurse had told her that the Claimant had been black-listed from being employed directly by the Trust and that it had recently come to light that in her previous employment she had sought to retract her notice and the Trust had refused. She also said that the Band 7 Nurse had said that the Claimant was "obsessed with doing things the right way because of her culture". The Claimant made a contemporaneous note of that call in an email to her representative at page 234. This confirms the reference to the black-listed comment and the attempt to rescind her resignation, and that managers had refused. She did not mention the comment about being obsessed with doing things the right way. She also emailed the Senior agency colleague reiterating the black-listed comment but not the comment about being obsessed with doing things the right way. We therefore accept that the conversation with the Senior agency worker colleague happened as recorded in those emails but we are not satisfied on the balance of probability that it was said 'she was obsessed with doing things the right way because of her culture'. If that had been said we consider that she would have included it in her emails.

49. We also accept that the Claimant had not disclosed the information about the resignation and unsuccessfully attempting to retract it. Therefore, the Senior agency colleague did not know this information

directly from the Claimant. What we cannot say is more likely than not, is that the Band 7 nurse herself used the word blacklist or what exactly she said. All we find is that two seniors were discussing inappropriately personal information about the Claimant having resigned and unsuccessfully having tried to retract it, which they should not have been privy to. Essentially, they were gossiping.

50. The Claimant clearly has not been black-listed from working with the Trust as she still worked for the Trust in other locations via an agency after the termination of this engagement. We do not agree with the Claimant that we can assume that the black-list reference was a reference to the 'no' to reemploying the Claimant that was on her reference. However, in any event, the reason for that (the 'no' in the reference) was the Claimant's issue with driving and nothing to do with the later disclosures.

51. On 20 July 2017 the Claimant asked to meet with Ms Quinn to discuss the complaint and Ms Quinn was happy to do so. The Claimant tried to obtain further information about the termination of her engagement, writing to the Assistant Director on 21 July 2017 (p238). There she said the circumstances were unclear but she suspected that it was because of her "previous issues", without further elaboration.

52. The Assistant Director asked her to wait and speak to Sharon Hartley. She also said that she was no longer the relevant Assistant Director. She forwarded the Claimant elsewhere, but the Claimant never heard back from that line of enquiry. Eventually on 31 August 2017 she received a telephone call from Ms Hartley. This was followed up by an email from the Claimant in which she records that Ms Hartley had said that the reason for the termination was the change in the approach to CAPA, which was consistent with what Ms Hartley told us. She said that Ms Hartley had said that duty nurses now need to act as care coordinators and the Claimant would be hampered as she does not wish to drive. In her email the Claimant alleges that this is a flimsy excuse given the crisis (p247).

53. We therefore find that Ms Hartley's evidence that the reason was CAPA, and CAPA alone, is somewhat substantiated by the email from the Claimant herself.

54. Ms Hartley then replied to the Claimant as set out on page 248. The first paragraph summarises the evidence that was given to us. She then added the detail of the complaints and the issue with the administrative colleague which she now says were not the reason and were insignificant. She says that she nevertheless included them there as it was the heat of the moment and the call with the Claimant had been difficult, which is supported by her own email to a colleague on the same day. She did refer to the Claimant's email and the fact that the Claimant

appeared to be making an assumption that she knew something else about the Claimant. She assured the Claimant that she did not have other issues of concern but invited the Claimant to let her know if there were any other issues. She records in her email to the Claimant that the call had been challenging.

55. The Claimant replied making her own allegations on page 252. HR suggested to Ms Hartley that she raised the Claimant's attitude there with the agency. However, she decided not to complain formally as she felt that the Claimant was just letting off steam about her engagement ending. She therefore did not take that opportunity to have a negative impact on the Claimant's employment with the agency.

Relevant law

56. A protected disclosure is defined in sections 43A and 43B Employment Rights Act 1996. Section 43B defines a protected disclosure as:

"any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show…

…

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

57. We considered the case of *Chesterton Global Ltd v Nurmohamed* [2018] ICR 731 on the phrase "in the public interest". In that case there is exploration of the responsible minister's thinking behind the amendment and he is quoted as saying …"although our aim is to prevent the opportunistic use of breaches of an individual's contract that are of a personal nature, there are also likely to be instances where a worker should be able to rely on breaches of his own contract where those engage wider public interest issues. In other words, in a worker's complaint about a breach of their contract, the breach in itself might have wider public interest implications".

58. Underhill LJ then went on to say (emphasis added):

"It is in my view clear that the question whether a disclosure is in the public interest depends on the character of the interest served by it rather than simply on the numbers of people sharing that interest….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 be believed to be. I am not prepared to rule out the possibility that the disclosure of a breach of a worker's contract…may nevertheless be in

the public interest, or reasonably be so regarded, if a sufficiently large number of other employees share the same interest.

Against that background, in my view the correct approach is as follows. In a whistleblower case where the disclosure relates to a breach of the worker's own contract of employment (or some other matter under section 43B ([1]) where the interest in question is personal in character) there may nevertheless be features of the case that make it reasonable to regard disclosure as being in the public interest as well as the personal interest of the worker…The question is one to be answered by the tribunal on a consideration of all the circumstances of the particular case.

59. A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure (s47B Employment Rights Act 1996). It is for the employer to show the ground on which the act or deliberate failure to act was done (s48 (2)).

Conclusions

60. Turning then to the issues we had to consider at pages 42-43.

Were either of the communications made by the Claimant and set out at paragraphs 3 and/or 6-8 of her claim protected disclosures? Late in the hearing the Claimant's representative applied to include the communications at paragraph 10 and 11 of the claim form also.

61. The first issue that we had to consider was whether to allow the Claimant to extend the claim to include the communications on 29 June and 7 July, paragraph 10-11 of her claim form, as they were not recorded in the issues although they were originally in the claim. We find that they were not listed in the issues and should have been if the Claimant wanted to rely upon them. The Claimant should have raised the omission sooner if she wanted to expand the issues but we also took into account that the Respondent had not ensured that the time limit points were recorded in those issues and we nevertheless determined those as a preliminary issue. In any event, we did not consider that it makes a material difference to the outcome given the reasons set out below, so we considered all of the communications.

Did either communication amount to a communication of information? Did the Claimant have a reasonable belief that either or both communications was in the public interest and tended to show that the Respondent had failed, was failing or was likely to fail to comply with its obligations under the Data Protection Act 1998?

62. We find that the disclosures to the Information Commissioner were a disclosure of information, across a number of emails, about the Claimant's information rights being breached (paragraph 3).

63. In respect of those, we had to consider whether the Claimant had a reasonable belief that they were in the public interest and tended to show that the Respondent had failed, was failing or was likely to fail to comply with its obligations under the Data Protection Act 1998.

64. Firstly, we did find that the Claimant had a reasonable belief that it was in the public interest. We do consider it is objectively in the public interest. The Information Commissioner's Office devoted resources to it and they only do so, they say, for cases where they think it will give them the best opportunity to make a significant difference to an organisation and their compliance with information rights (as set out in their email on page 155).

65. Moreover, this is an NHS employer and the way that the NHS process staff data has an impact on all staff, including medical staff, and their careers can be affected if information is handled in breach of the Data Protection Act.

66. Nevertheless, we find the Claimant herself was motivated more by her own private interests in resolving the issues with her reference and to find out all the information relevant to that. The public interest was not her motivation but we read the case of *Chesterton* as meaning that where there is nevertheless an objective public interest, it can be considered that the Claimant had a reasonable belief in that public interest even if, in fact, personal interest was her motivation. So, we do find that the Claimant had a reasonable belief that it was in the public interest.

67. We also find that she had a reasonable belief that the disclosures tended to show the Respondent had failed to comply with its obligations under the Data Protection Act. We find that that reasonable belief is supported by the fact that ultimately the Information Commissioner's Office found such a breach and the Trust has accepted that there was such a breach.

68. In respect of the matters of 8-12 June 2017, we find that the Claimant did disclose information which was that two administrators had or were about to give sensitive information to the police in circumstances where the consent might not be sufficient which breach the Data Protection Act 1998. The Claimant involved Information Governance.

69. We find in respect of that disclosure that it was clearly made with a reasonable belief that it was in the public interest. The Claimant was very aware of her duty of care to her patients and was concerned that requests were being made regularly in respect of patients in the context

of vulnerable patients who might not be giving adequate consent. She was concerned that if the department itself sent out the information without the appropriate checks by Information Governance, that there would be a data protection breach. We find that is sufficient to amount to a reasonable belief that a breach had either occurred or would occur, or was likely to occur. The breach being the data protection breach in respect of a patient's sensitive information. We have taken into account that Ms Hartley herself believed that the Claimant's concerns were legitimate and she took the right steps. We also find that informing the Claimant's reasonable belief was her experience of there already having been a breach of her own information rights in respect of the reference.

70. We find that both disclosures of information are public interest disclosures within the meaning of section 43B. We do not find that there was any real issue taken in respect of whether the communications were made to the employer and/or a prescribed person and we find that that requirement was complied with.

71. In respect of the 29 June 2017 (paragraph 10 of the claim), we find that this was a non-event. The Claimant simply answered "no" to a question about whether she had sent out any information. There was no disclosure of information that would be a protected disclosure within the meaning of section 43B.

72. In respect of 7 July 2017 (paragraph 11) the Claimant was essentially repeating what she had already said about the disclosing of patient information risking breaching the Data Protection Act 1998. She ran a suggested way forward past her manager and her manager agreed to it. We do not find that communication added anything to the previous disclosure about patient information, but we accept that it did repeat some of the information that was in the first disclosure on the 8-12 June and so taken together with that can be considered part of that protected disclosure.

Was the Claimant subjected to the detriment of having her work engagement at Laurel House terminated on the ground that she had made either communication?

73. This we find is the real issue in this case. We do not find that that was the reason why her engagement was ended. We accept the evidence of Ms Hartley that the reason was the introduction very swiftly of CAPA due to the crisis that the service faced.

74. We find that the evidence does not suggest the Respondent viewed negatively issues being raised by the Claimant about breaches of patient data protection. The staff concerned in this case agreed with the Claimant that the queries about patient data should go via Information Governance or that the Claimant could call Information Governance. Ms

Hartley said in her evidence that the Claimant had done the right thing. She accepted that breaches in respect of patient data happen and, when they do, they are treated as serious incidents. The Respondent has a department devoted to Information Governance.

75. We also find that Ms Hartley herself did not know about the disclosures made by the Claimant at the time she decided to end the engagement. There is no evidence to suggest that she knew.

76. We accept that the message that Ms Hartley gave to Ms Quinn was that the Claimant's engagement should be terminated because of CAPA. We accept that it was not about anything else. Her focus at that time was very much on the crisis of the department and the introduction of CAPA. She was also trying to help the Claimant by giving a week's notice and when she had the opportunity to report the Claimant to the agency, due to the way the Claimant had responded to her in their communication after the placement ended, she chose not to.

77. In respect of what Ms Quinn told the Claimant we accept Ms Hartley's evidence that all she asked Ms Quinn to say was that CAPA was the reason. We accept she did not have any other issues of concern, and that she personally did not have any knowledge of what Ms Quinn had said to the Claimant.

78. We find the fact that the reason was only CAPA is supported by the phone call of 31 August 2017 which the Claimant recorded in her email on the same date at page 247. There she records that Ms Hartley said that the only reason given was CAPA. It was only when the Claimant implied that there was a different reason (without specifying what it was) and said that the excuse in respect of CAPA was flimsy, that Ms Hartley then raised the other issues in her response to the Claimant.

79. In her response to the Claimant, which was two months after the termination, she repeated in detail that the reason was the implementation of CAPA and then did add reference to the service user complaints and not providing the necessary support to admin, though she did not expressly say that they are part of the reason. Adding them then does make sense in the context of her then going on to say that there was nothing else that she knew about the Claimant, in reply to the Claimant's suggestion that there was an underlying alternative reason. It does not alter our view that the reason was CAPA.

80. We also find that we cannot draw any inferences from what the Band 7 Nurse and Senior Agency worker said about the Claimant, and what was relayed to the Claimant on 17 July 2017 (paragraph 27 above). We do not find that that conversation is evidence that the reason that the Claimant's engagement came to an end was that she had made protected disclosures. If anything, the Claimant is suggesting that her

colleagues were referring back to her previous resignation and the attempt to withdraw it, which had nothing to do with the protected disclosures in any way.

81. We also note that the Claimant has continued to have agency work with the Respondent.

82. We reject the Claimant's point that Ms Hartley had been manipulated by Ms Quinn who did know about the protected disclosures. We accept the evidence of Ms Hartley that the reason for terminating the engagement was the reorganisation of work due to CAPA and there is no evidence of any manipulation by Ms Quinn.

83. The nature of agency work is that workers can be informed that an engagement is ending at short notice. We are satisfied that the Claimant was presented to the Respondent as an agency worker who did not drive (although she does have a driving licence) and was accepted in that duty nurse position because it was one which at the time could be done without driving. With the implementation of CAPA the role required someone who could drive. We accept that there are some incorrect assumptions that were made at the ending of the engagement, namely that the Claimant did not have a driving licence rather than that she chose not to drive, but there is not an obligation on the Respondent to check the details when ending an agency worker engagement. Moreover the Claimant, if she had wanted to and was prepared to drive, could have responded to Ms Hartley that she was prepared to drive and then it may well have been that she would have been included in the reorganisation.

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Employment Judge Corrigan

Date: 24 January 2020

Corrected on 25 June 2020

Important note to parties:

Any dates for the filing of appeals or reviews are not changed by these corrected reasons. These time limits still run from the dates applicable to the original judgment.

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