Case Numbers: 2413367/2018
and 2414982/2018

EMPLOYMENT TRIBUNALS

Claimant: Ms G Hyde

Respondent: The Secretary of State for Justice

HELD AT: Manchester **ON:** 7 - 25 September 2020 inclusive, and in chambers: 28 September – 2 October 2020 inclusive.

BEFORE: Employment Judge Batten
Mr I Taylor
Mr DT Wilson

REPRESENTATION:

For the Claimant: Mr D Bunting, Counsel
For the Respondent: Mr D Tinkler, Counsel

RESERVED JUDGMENT

The unanimous judgment of the Tribunal is that:

1. the complaints of detriment and dismissal for making a protected disclosure fail and are dismissed;

2. the complaints of harassment related to disability and discrimination arising from disability fail and are dismissed; and

3. the complaint of constructive unfair dismissal is not well-founded and is dismissed.

REASONS

Introduction

1. The claimant presented her first claim form on 10 July 2018 (case number 2413367/20180) in which she brought claims of disability discrimination and detriment for making a protected disclosure. This first claim form concerned events up to 7 June 2018. The respondent entered its response on 17 August 2018.

2. On 4 September 2018, the claimant presented her second claim form (case number 2414982/2018) in which she also brought claims of constructive unfair dismissal and automatically unfair dismissal for making a protected disclosure, following her resignation from employment with the respondent. The claimant's original grounds of claim were duly amended and she also served further particulars of her claim of disability discrimination, being harassment and discrimination arising from disability.

3. After an initial case management preliminary hearing on 28 September 2018, the claimant served 2 Scott schedules setting out particulars of (1) the disability discrimination complaints, being harassment and discrimination arising from disability, and (2) the whistle-blowing detriments contended for on 12 November 2018. The respondent entered its response to the second claim on 11 December 2018.

4. On 18 April 2019, a further case management preliminary hearing took place following which, on 16 May 2019, the claimant served consolidated grounds of claim and on 3 July 2019, the respondent served its consolidated grounds of resistance. In addition, shortly before the preliminary hearing on 18 April 2018, the respondent conceded that the claimant was a disabled person pursuant to the test in the Equality Act 2010 ("EqA") section 6 and schedule 1, by reason of depression and anxiety.

5. It was then agreed with the parties that the case would require a 20-day hearing. The first 2 days of this hearing were devoted to reading the papers and evidence, with oral evidence commencing on the third day. The witness evidence was concluded in good time and submissions were delivered on the fifteenth day, affording the Tribunal 5 days in chambers, all of which were required to consider the evidence and deliberate on the numerous factual allegations and legal tests.

Evidence

6. An agreed bundle of documents, consisting of 2 lever-arch files and running to 1072 pages plus inserts, was presented at the commencement of the hearing in accordance with the case management Orders. A number of

documents were added to the bundle by agreement in the course of the hearing and were allocated page numbers. References to page numbers in these Reasons are references to the page numbers in the agreed bundle.

7. Within the bundle were copies of the claimant's diaries for 2017 and 2018. The claimant supplied the original diaries to the Tribunal for inspection and they were also on occasion referred to in the course of witness testimony.

8. In addition, the Tribunal was provided with a cast list, chronology and also a hierarchical list of the relevant personnel at the respondent by rank and job title. Counsel for the claimant submitted a skeleton argument at the start of the hearing and both Counsel provided written closing submissions.

9. The claimant gave evidence in chief from a primary witness statement. She did not call any witnesses in support of her claims. The respondent called 15 witnesses. These were, in order of appearance: Deputy Governor David Horridge, Governor Hayley Walsh, Governor Philip Robinson, Principal Officer Gerard Costello, Officer Sarah Constable, Officer Joanne Stanton, Officer Paula Dearden, Officer Helen Ogden, Officer Debra Oliver, Supervising Officer John Gilligan, Officer Stella Hesketh, Custodial Manager Robert Crowther, Officer Nesreen Lyne, former Custodial Manager Kathryn Flick and Governing Governor Robert Young. Each of the respondent's witnesses gave evidence from a primary witness statement. The parties' witness statements were taken as read and all witnesses were subject to cross-examination.

10. At the start of the hearing, the claimant's representatives made an application for the respondent's witnesses to be excluded from the hearing whilst the other respondent's witnesses gave evidence. The basis for this application was that the claimant's case centred on a premise that her colleagues were against her because they saw her as a "grass". It was contended that the respondent's witnesses would feel pressure to back each other up if each gave evidence in the presence of other colleagues and would be more likely to give reliable evidence if the other respondent's witnesses were excluded from the hearing – therefore it was said to be in the interests of justice to grant the application and that there would be no prejudice to the respondent in so doing. The respondent contended that the Tribunal was an open forum where all should be allowed to view the proceedings. Having heard from the parties, the Tribunal considered the matter carefully and concluded that it would be in the interests of justice to err on the side of caution and exclude the respondent's witnesses. The Tribunal also considered that because there was a suggestion of collusion, if the respondent's witnesses were excluded this would mitigate against any suggestion of collusion. The claimant's application was therefore granted.

Issues to be determined

11. At the outset of the hearing, it was confirmed that the issues to be determined by the Tribunal were as set out in a list of issues that had been drawn up and agreed between Counsel for both parties. It was accepted that the protected disclosure was the claimant's report, on 5 March 2017, of the incident on B Wing which she had witnessed the day before. During her evidence the claimant withdrew a number of allegations, sought to amend certain allegations and to introduce further allegations. The agreed list of issues, with amendments accepted, was as follows: -

<u>Limitation – section 48 Employment Rights Act 1996 ("ERA")</u>

1. **Was the claimant's whistleblowing detriment complaint submitted within three months less one day from the date of the act or failure or, where that act or failure was part of a series of similar acts or failures, the last of them, in accordance with section 48(3) of ERA?**
2. **If not, was it reasonably practicable for the complaints to be presented before the end of that period of three months?**
3. **If not, were they presented within such further period as the Tribunal considers reasonable?**

<u>Limitation – section 123 EqA</u>

1. **Did any conduct complained of extend over a period and, if so, when did that period end?**
2. **In respect of any alleged failure to do something, when did the person in question decide on it? In the event of there being no evidence to the contrary:**
   a) **when was an act done which was inconsistent with doing it? or**
   b) **if no inconsistent act was done, when did the period within which it might reasonably have been expected to have been done expire?**
3. **Was the complaint of disability discrimination, including the complaints in respect of each act or omission relied upon, presented to the Tribunal by the end of the period of three months starting with the date of each act to which the complaint relates (determined in accordance with the answers to 1 and/or 2 above as applicable)?**
4. **If not, was it brought by the end of such other period as the Tribunal thinks just and equitable?**
5. **Was the complaint of harassment, including the complaints in respect of each act or omission relied upon, presented to the Tribunal by the end of the period of three months starting with the date of each act to which the complaint relates (determined in accordance with the answers to 1 and/or 2 above as applicable)?**
6. **If not, was it brought by the end of such other period as the Tribunal thinks just and equitable?**

<u>Disability</u>

1. **For the purposes of these proceedings the respondent did not contest that the claimant was disabled within the meaning of section 6 EqA by reason of a mental impairment, namely depression.**

2. **However, the respondent did not concede that the claimant's symptoms were at any particular level or at a consistent level over any specific period. In addition, the respondent did not concede that it knew or could reasonably have been expected to know that the claimant had a disability or that disability at the material time.**

<u>Discrimination arising from disability - EqA section 15</u>

A Applicable to 1 – 6 below:

a) Was the claimant's absence from work something arising in consequence of her disability?

b) Did the respondent know or could the respondent reasonably have been expected to know that the claimant had that disability?

c) Did the respondent know that the claimant's absence from work arose in consequence of that disability?

B *The factual allegations*: -

1. **Did the respondent keep the claimant on part time hours / not permit her to resume full time hours from 1 April 2018 whether to the end of her employment or at all?**
2. **Did the respondent not tell the claimant about updates at work or vacancies which were open to her on 1 March 2018?**
3. **Did the respondent not tell the claimant about the details for the funeral of one of her colleagues on 9 April 2018?**
4. **Did the respondent not tell the claimant about updates at work or vacancies which were open to her on 12 April 2018?**
5. **Did the respondent not tell the claimant about updates at work or vacancies which were open to her on 23 April 2018?**
6. **Did the respondent tell the claimant on 7 June 2018 that she would be dismissed?**

C If the Tribunal finds any or all of 1-6 above, was this unfavourable treatment of the claimant?

D If so, was that treatment because of the claimant's absence from work (i.e. Did the claimant's absence from work have at least a significant or more than trivial influence on the unfavourable treatment)?

E If so, can the respondent show that that treatment was a proportionate means of achieving a legitimate aim? The legitimate aims contended for being:

(1) the requirement that the claimant return to work as soon as reasonably practicable along with the appropriate management of the respondent's resources; and/or

(2) the avoidance of causing the claimant unnecessary stress (during the welfare/attendance meetings); and/or

(3) the requirement that the claimant was aware that it would be necessary to consider dismissal if the claimant was unable to return to work in any capacity.

<u>Harassment related to disability - EqA section 26</u>

A Was the following unwanted conduct?

1. **Did the respondent make an unannounced visit to the claimant at home on 22 February 2018?**
2. **Did the respondent telephone the claimant on 1 March 2018?**

3. **The respondent telephoned the claimant to make a further home visit between 2 March 2018 and 7 March 2018.**
4. **The respondent made a visit to the claimant at home on 8 March 2018.**
5. **The respondent suggested to the claimant on 21 March 2018 that she could move to another location.**
6. **Did the respondent suggest to the claimant on 21 March 2018 that she was being overly sensitive about the Facebook comments?**
7. **Did the respondent tell the claimant on 7 June 2018 that she would be dismissed?**

B If so:

a) **Did that conduct or any of it listed at 1-7 above relate to the claimant's disability?**

b) **Did that conduct have the purpose or, having regard to the perception of the claimant, all the circumstances and whether it is was reasonable for the conduct to have had the effect complained of, the effect of—**

i) **violating the claimant's dignity, or**

ii) **creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?**

iii) **In this respect, the respondent will ask the tribunal to consider the following issues:**

Allegations 1 – 4: **Was this more frequent a visit/contact than was acceptable under the absence management policy? and**

Was this done in a manner suggestive that the respondent was keen for the claimant to be dismissed (a) for capability reasons and (b) in breach of the absence management procedure?

Allegation 5: **Was it clear that the situation had become known throughout the prison service?**

Protected disclosure - ERA sections 43A-D and 43L

1. **It was not disputed that the claimant attended the respondent's Corruption Prevention Unit ("CPU") on 5 March 2017 and reported to the CPU through Governor Robinson that Officer Woodhulme and/or Officer Henderson had assaulted a prisoner on 4 March 2017 and/or reported the same on Mercury in accordance with s43C ERA.**
2. **The above was agreed to be a protected disclosure, namely of information within the meaning of s43B ERA which it was the claimant's reasonably held belief was made in the public interest and tended to show that a criminal offence had been committed and/or that a person had failed to comply with a legal obligation to which he was subject and/or that the health or safety of an individual had been endangered.**

Detriment on the ground of the claimant having made a protected disclosure - ERA s47B

A *The factual allegations:*

1. **Was the claimant side-lined, ostracised or ignored by colleagues in any of the following respects:**

i) **by Officer Henderson not engaging in conversation with her or glaring at her on 6 March 2017?**

ii) **by wing staff (none identified) not speaking to the claimant as previously or walking out of offices or making her presence uncomfortable on or around 29 March 2017?**

iii) **by Officer Constable telling the claimant to go away and preventing her from entering a cell on arrival at an incident in April 2017?**

iv) **by Officer Lyne distancing herself from the claimant?**

v) [deleted on day 4]

vi) **by other colleagues ignoring the claimant?**

vii) **by Officer Hesketh questioning her as to why she was at an incident on 1 or 2 October 2017 and/or telling staff not to discuss anything with the claimant?**

viii) **by other colleagues 'sticking together' during the criminal trial from 5 February 2018?**

ix) **by a colleague or others refusing to lend the claimant a pen on 16 February 2018?**

x) **by colleagues not getting in touch with the claimant during her absence from 20 February 2018?**

xi) **by the claimant being cut off from communications during her absence from 20February 2018?**

2. **Was the claimant made to feel deliberately unwelcome and uncomfortable by colleagues in any of the following respects:**

i) **by Officer Henderson not engaging in conversation with the claimant or glaring at her on 6 March 2017?**

ii) **by wing staff (none identified) not speaking to her as previously or walking out of offices or making the claimant's presence uncomfortable on or around 29 March 2017?**

iii) **by colleagues not accompanying her to the hospital to deliver eggs and toys on 12th April 2017?**

iv) **by Officer Costello approaching the claimant on 1st May 2017 and asking her why she had reported her colleagues and/or telling her that the staff consensus was that she was a grass?**

v) **by the claimant's chair going missing and being replaced with a broken one and/or by her being given soap as a 'Secret Santa' gift between October and about December 2017?**

vi) **by Officer Ogden not telling the claimant in December 2017 that she had been granted annual leave for a shift which the claimant had agreed to cover?**

vii) **by Officer Ogden telling an estate agent that no one of the claimant's name worked at the prison?**

viii) **by a colleague removing the claimant's medication from her drawer and/or by Officer Lyne refusing to take the Claimant home on 6 January 2018?**

ix) **by other colleagues 'sticking together' during the criminal trial from 5 February 2018?**

x) **by a colleague or others refusing to lend the claimant a pen on 16 February 2018?**

3. **Was the Claimant unsupported or unprotected in any of the following respects:**

   i) **by Officer Costello approaching her on 1 May 2017 and asking the claimant why she had reported her colleagues and/or telling her that the staff consensus was that she was a grass?**

   ii) **by Governor Robinson in respect of her conversation with Officer Stanton?**

   iii) **by Governor Young declining to allow the claimant to go on detached duty on or around 18 September 2017?**

   iv) **by other colleagues 'sticking together' during the criminal trial from 5 February 2018?**

   v) **by the respondent not providing staff support for the claimant during the criminal trial from 5 February 2018?**

   vi) **by Officer Crowther stating that he would not support the claimant's return to full time work unless she returned physically?**

   vii) **by colleagues not getting in touch with the claimant during her absence from 20 February 2018?**

4. **Was the claimant labelled a grass by 'Keema Nan' in Facebook posts at any time from 29 March 2017?**

5. **Was the claimant not invited for meals with Officer Lyne or Officer Ogden from April 2017?**

6. **Was the claimant told by Officer Constable to go away and prevented by her from entering a cell on arrival at an incident in April 2017?**

7. **Did Officer Lyne and/or Officer Ogden not accompany the claimant to the hospital to deliver eggs and toys on 12 April 2017?**

8. **Did Officer Costello approach the claimant on 1 May 2017 and ask her why she had reported her colleagues?**

9. **Did Officer Flick remove the claimant from the Care Team without notice in or around April/May 2017?**

10. **Did named individuals post inflammatory and offensive comments relating to the claimant on Facebook from March 2017?**

11. **Did Officer Stanton address the claimant in a hostile, aggressive or demanding manner on or around 13 September 2017 concerning an alleged conversation about a terrorism incident?**

12. **Did Officer Gibbons question the claimant in an aggressive manner on or around 13 September 2017 concerning an alleged conversation about a terrorism incident?**

13. **Did Governor Robinson falsely advise Officer Gibbons on or around 13 September 2017 that she had been reported by the claimant as having been involved in an alleged conversation about a terrorism incident?**

14. **Did Governor Robinson invite the claimant to attend meetings by leaving notes on her computer keyboard such as to breach her confidentiality on or around 13 September 2017?**

15. **Did Governor Young refuse to allow the claimant to go on detached duty on or around 12 October 2018?** [amended day 4]

16. **Did Governor Horridge tell the claimant on or about 18 September 2017 and Governor Young tell the claimant on or about 12 October 2017 that she should ignore the offensive comments on Facebook?**

17. **Did an individual replace the claimant's chair with a broken one between October and about December 2017?**

18. **Did Officer Hesketh question the claimant as to why she was at an incident on 1 or 2 October 2017 and/or tell staff not to discuss anything with her?**

19. **Did Officer Ogden not tell the claimant in December 2017 that she had been granted annual leave for a shift which the claimant had agreed to cover?**

20. **Did Officer Ogden give the claimant soap as a 'Secret Santa' gift in December 2017 in order to upset her?**

21. **Did Officer Lyne refuse an instruction to take the claimant home on 6 January 2018?**

21A Did Governor Robinson ignore the claimant on 17 January 2018? [added day 5]

22. **Did Officer Ogden tell an estate agent on 2 February 2018 that no one of the claimant's name worked at the prison?**

23. **Did Officer Crowther, Governor Young, Governor Robinson or Officer Flick not provide staff support for the claimant during the criminal trial from 5 February 2018?**

23A After the trial verdict, did Officer Gilligan ask the claimant what had happened in the incident on B Wing? [added day 5]

23B After the trial verdict, did Officer Gilligan tell the claimant that he was pleased with the verdict? [added day 5]

23C After the trial verdict, did Officer Oliver say to the claimant that she was not "flavour of the month"? [added day 5]

24. **Did named individuals post abusive comments relating to the claimant on Facebook from March 2017? If they did, did Governor Young, Officer Crowther or Governor Robinson not intervene in this?**

24A Was Governor Fisher unsupportive of the claimant in respect of the Facebook posts during the internal investigation?

25. **Did a colleague, 'James', refuse to lend the claimant a pen on 16 February 2018?**

26. **Did Officer Crowther and/or Officer Flick visit the claimant unannounced on 22 February 2018 and, if so, was such visit done in a manner suggestive that the respondent was keen for the claimant to be dismissed (a) for capability reasons and (b) in breach of the absence management procedure?**

27. **Did Officer Crowther, Governor Robinson or Governor Young not tell the claimant about updates at work or vacancies which were open to her on 1 March 2018?**

28. **Did Officer Crowther telephone the claimant on 26 February, 1 March and 6 March 2018 and, if so, was this more frequent a contact than was acceptable under the Absence Management policy and was this done in a manner suggestive that the respondent was keen for the claimant to be dismissed (a) for capability reasons and (b) in breach of the Absence Management procedure?**

29. **Did Governor Young or Officer Crowther keep the claimant on part time hours / not permit her to resume full time hours from 1 April 2018 whether to the end of her employment or at all?**

30. **Did Officer Crowther telephone the claimant to make a further home visit between 2 March 2018 and 7 March 2018 and, if so, was this more frequent a contact than was acceptable under the Absence Management policy and was this done in a manner suggestive that the respondent was keen for the claimant to be dismissed (a) for capability reasons and (b) in breach of the Absence Management procedure?**

31. **Did Officer Crowther make a visit to the claimant at home on 8 March 2018 and, if so, was this more frequent a contact than was acceptable under the Absence Management policy and was this done in a manner suggestive that the respondent was keen for the claimant to be dismissed (a) for capability reasons and (b) in breach of the Absence Management procedure?**

32. **Did Officer Crowther or Governor Young not support the claimant through the internal investigation between 8 March 2018 and 16 March 2018 and/or not provide her with relevant information prior to her meeting in that process?**

33. **Did Governor Young suggest to the claimant on 21 March 2018 that she move to another location and, if so, was it clear that the situation had become well known throughout the Prison Service?**

34. **Did Governor Young suggest to the claimant on 21 March 2018 that she was being overly sensitive about the Facebook comments?**

35. **Did an unidentified individual tell the claimant on or about 1 April 2018 that she should make sure her home CCTV was working as her home was being targeted?**

36. **Did Officer Crowther, Governor Young or Governor Robinson not tell the claimant about updates at work on 9 April 2018?**

37. **Did Officer Crowther, Governor Young or Governor Robinson not tell the claimant about updates at work or vacancies which were open to her on 12 April 2018?**

38. **Did Governor Robinson send out personal details of the claimant and details of her grievance to another employee on 18 April 2018?**

39. **Did Officer Crowther, Governor Young or Governor Robinson not tell the claimant about updates at work or vacancies which were open to her on 23 April 2018?**

40. **On 26 April 2018, did Governor Young appoint an officer to investigate the claimant's grievance who was more junior than some of the named subjects of her grievance?**

41. [not pursued – claimant's submissions, paragraph 76]

42. **Did Officer Crowther tell the claimant on 7 June 2018 that Governor Young was looking at dismissal of the claimant and was this at a time when she had not been invited to a capability hearing?** [amended day 7]

43. [not pursued – claimant's submissions, paragraph 76]

44. [not pursued – claimant's submissions, paragraph 76]

B **In each of the above matters, was there either an act or a deliberate failure to act by the Officers identified?**

C **If so:**

a) **was that act or deliberate failure to act done on the ground that the claimant had made a protected disclosure? and**

b) **was the claimant subjected to any detriment by that act or deliberate failure to act?**

D If and insofar as the act or deliberate failure to act may be alleged to have been done by another worker of the respondent:

a) **was it done in the course of that worker's employment?**

b) **can the respondent show that it took all reasonable steps to prevent the other worker—**

a. from doing that thing, or

b. from doing anything of that description?

Constructive unfair dismissal - ERA sections 94(1), 95(1)(c) & 96

1. **There was an implied term of the claimant's contract of employment that the respondent would not, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of mutual trust and confidence between it and the claimant.**

2. **There was an implied term of the claimant's contract of employment that the respondent would take reasonable care of the claimant's health, safety and well-being.**

3. **Did the respondent fundamentally breach the implied duty of trust and confidence and/or the implied duty to take reasonable care of the claimant's health, thus entitling the claimant to resign? This will include consideration of the following issues:**

   a. Did the respondent's servant's or agents conduct themselves in a manner calculated or likely to destroy trust and confidence (the claimant relies upon the same factual matters as set out above in respect of whistleblowing detriment, disability discrimination and harassment)?

   b. Is the respondent vicariously liable for the actions of employees and/or potential former employees in respect of their posting on the relevant Facebook groups?

4. **If the respondent's actions had the effect of undermining trust and confidence, did the respondent have reasonable and proper cause for its actions (including those actions for which it is vicariously liable)?**

5. **Did the claimant resign in response to that breach or for some other reason, i.e. Did the repudiatory breach of contract play a part in the claimant's decision to resign?**

6. **What was the last straw and did that last straw contribute to the breach of trust and confidence in a manner that was more than trivial?**

7. **Did the claimant affirm the contract, thus accepting any breach?**

8. **Should any compensation be reduced / increased because of any breaches of the ACAS code and, if so, in either case, to what extent?**

Automatically unfair constructive dismissal - ERA section 103A

1. **The claimant had made a protected disclosure.**

2. **Was the claimant constructively dismissed (issues under the heading 'Constructive unfair dismissal' above)?**

3. **If so, was the reason (or, if more than one, the principal reason) for the dismissal that the claimant had made a protected disclosure (i.e. Was the sole or principal reason for actions which are said to amount to the repudiatory breach of contract the claimant's disclosure)?**

Findings of fact

12. The Tribunal made its findings of fact on the basis of the material before it taking into account contemporaneous documents where they exist and the conduct of those concerned at the time. The Tribunal resolved such conflicts of evidence as arose on the balance of probabilities. The Tribunal has taken into account its assessment of the credibility of witnesses and the consistency of their evidence with surrounding facts.

13. Having made findings of primary fact, the Tribunal considered what inferences it should draw from them for the purpose of making further findings of fact. The Tribunal has not simply considered each particular allegation, but has also stood back to look at the totality of the circumstances to consider whether, taken together, they may represent an ongoing regime of discrimination.

14. The findings of fact relevant to the issues which have been determined are as follows.

15. The claimant was employed by the respondent from 1 January 1992. On 1 January 2017, the claimant commenced a period of part-time working, 19 hours per week, as a temporary measure initially for 6 months, following her successful application to do so under the Respondent's Work Life Balance policy. After a number of extensions to her application, the claimant was due to return to full-time working on 1 April 2018.

16. Employment with the respondent is subject to the provisions of the Civil Service Code which forms part of the contract of employment. In addition, the respondent has a number of relevant policies and procedures for staff as follows:

17. There is an Attendance Management Policy in the bundle at page 905 – 934. This provides that a line manager must keep in touch with the employee during their sickness absence. For periods of continuous absence lasting in excess of 14 calendar days, informal reviews are to be carried out on a monthly basis during which the line manager should keep the employee up-to-date with key developments at work. After 28 days of continuous sickness, a first Formal Attendance Review meeting shall take place. If a return to work is not likely within a reasonable timescale and the absence cannot continue to be supported, consideration should be given to a number of options. A "Decision Manager" then has to conduct a formal meeting with the employee concerned before a final decision is made, which may include dismissal.

18. There is a Keeping in Touch Scheme in the bundle at pages 934A – D, which covers staff on sickness absence for a period in excess of 4 weeks, and is designed to ensure that an absent employee is provided with access to corporate news and internally advertised vacancies. Local line management has a responsibility to provide hard copies of the relevant information and vacancies to those employees without internet access outside of work. In practice, and for consistency, this was done through HR posting out the relevant information to absent employees.

19. There is a Grievance policy in the bundle at pages 935 – 940, with an updated version at pages 958 - 968. Grievances should be put in writing within 3 months of the event complained of and submitted to the relevant line manager. In particular, the grievance policy provides at section 3.3 that:

> *If the grievance is about the actions or decisions of somebody who is outside the direct line management chain (that is, not the person's manager or their manager's manager) and is more senior, then this person should respond to the grievance (and not their line manager). …*

20. There is a 'Reporting Wrongdoing' policy in the bundle at pages 943 – 954, which is designed to encourage the respondent's staff to raise concerns about possible wrongdoing at work in an appropriate way, with line management or as appropriate to the circumstances. HMP Manchester had a Corruption Prevention Unit ("CPU") led by Governor Robinson, to which serious misconduct was to be reported, and the respondent also had a Reporting Wrongdoing Hotline telephone number. The policy makes clear that a member of staff who makes a report of wrongdoing must not be bullied harassed or victimised as a result. In addition, the respondent's Conduct and Discipline policy, provides that a failure to report potential misconduct by other members of the respondent's staff is itself considered to be misconduct and liable to disciplinary action.

21. The respondent has produced Social Media Guidance, in the bundle at pages 969 – 975, to assist its staff to ensure that their online activity does not conflict with their professional role and for keeping themselves and colleagues safe. Inappropriate posts on social media can lead to dismissal. The guidance states that if an employee comes across a member of staff using social media inappropriately the matter should be reported. Employees are clearly told that they should not become an investigator but should report the matter, for example to their line manager, the CPU or the Reporting Wrongdoing Hotline.

22. On Saturday 4 March 2017, there was a "potting" incident on B Wing at the prison, whereby a prisoner had thrown the contents of a slop bucket at 2 prison Officers, Henderson and Woodhulme. The prisoner was moved into a cell. The claimant came to the cell as the incident took place and witnessed it.

She was shocked by what she saw. Immediately after the incident, Officers Henderson and Woodhulme were sent home until Monday.

23. The next morning, 5 March 2017, the claimant attended work and made a formal report of the incident as an assault on a prisoner, to the respondent's CPU. The parties have agreed that this report by the claimant constitutes a protected disclosure for the purposes of the claimant's whistle-blowing complaints.

24. In the interim, Officer Terry Mooney had reported to the duty Governor, Mr Robinson, that he had been approached by Officer Woodhulme who had asked him to delete the CCTV footage of the incident on B Wing.

25. On Monday 6 March 2017, Officers Henderson and Woodhulme were formally suspended from duty and the incident was reported to the police who commenced an investigation.

26. Officer Henderson was later released from suspension and put on restricted contact with prisoners. He was later sent on detached duty to HMP Buckley Hall. The claimant was not told that Officer Henderson was back at work. In the course of his restricted duties, Officer Henderson was seen by the claimant around the prison. He did not speak to the claimant but, on one occasion, he glared at her from afar.

27. On 17 or 18 March 2017, the claimant gave a witness statement to the police. Officers Woodhulme and Henderson were subsequently charged with assault occasioning actual bodily harm. Following being charged with assault, Officer Henderson was once again formally suspended from duty. On the authority of Governor Jackie Gourley, Supervising Officer Gilligan was allowed to keep in touch with Officer Henderson whilst he was suspended. The claimant had been talking to a number of colleagues about the incident on B Wing and about what she had seen. On or around 20 April 2017, the claimant approached Officer Gilligan, to talk about the incident on B Wing. He told the claimant that he did not want to talk to her as the incident was subject to a Police investigation and he also told the claimant that he was in touch with Officer Henderson.

28. In previous years, the respondent's staff, including the claimant, had collected toys at Christmas, for a local children's hospital. In March or April 2017, the claimant decided to collect Easter Eggs and toys for the hospital again but colleagues suggested a local domestic violence shelter instead. The claimant therefore arranged to deliver the eggs and toys to the domestic violence shelter. The claimant had hoped that some of her colleagues would help. However, the domestic violence shelter did not want its address known and so the claimant went alone to the shelter.

29. In July 2016, the respondent had decided that those staff who volunteered for its "Post-Incident Care Team" should attend formal training to update their

skills. The Care Team members were given 12 months to attend the refresher training, after which in the absence of completion of the refresher training, they were to be removed from the Care Team. The claimant was a member of the Care Team at the time and she approached Diane Phillips, the respondent's Facilities and Services Manager, with a copy of her old training certificate in the hope that she would not need to do the refresher training. The claimant and several others failed to attend the required refresher training and therefore, in May 2017, when Officer Kathryn Flick took over the management of the Care Team, the claimant and a number of others were each notified that they could no longer be members of the Care Team.

30. On 1 May 2017, the claimant had a conversation with Officer Costello, the Custodial Manager of D Wing, about the incident on B Wing and he asked her what happened. Mr Costello considered that the claimant might be suffering from PTSD as a result of witnessing the incident and he was concerned for the claimant's welfare and mental health, and he reassured her that she had done the right thing by reporting it.

31. In July 2017, the claimant overheard a conversation between a group of Officers on C Wing, who were discussing a prisoner. The claimant believed that the colleagues were discussing information they had picked up about an impending terror attack. The claimant discussed her concerns with a probation officer, Martin Coulton, who said that he would pass on the intelligence. The claimant did not therefore report the intelligence herself.

32. In early August 2017, a colleague alerted the claimant to the fact that there were messages on Facebook, within a private group for prison officers and former officers. The posts were about the incident on B Wing in March 2017 and included comment on the claimant's part in reporting the incident. Some of the posts were distasteful. The claimant joined one closed group for serving or former prison officers and was shocked to read that some of the posts were highly critical and menacing. A number of posts were made under pseudonyms but the claimant thought that she recognised certain names of members of the group as staff at HMP Manchester.

33. On 24 August 2017, the claimant received a telephone call from Greater Manchester Police seeking further information on what the claimant had overheard about a terrorist attack.

34. On 13 September 2017, the claimant encountered Officer Joanne Stanton at work. Officer Stanton demanded to know what the claimant had said about her in terms of a terrorism report. The same day, the claimant was confronted by Officer Paula Gibbons who also wanted to know what the claimant had been saying. Both Officers had been questioned by Governor Robinson and the claimant imagined that Governor Robinson must have told Gibbons and Stanton that the claimant was the source of the intelligence about the alleged terrorist attack.

35. Shortly after 13 September 2017, Governor Robinson came to the claimant's desking hoping to have a conversation with her about her intelligence on the potential terrorist attack. He could not locate the claimant and so he left a note on her computer, asking her to come to see him in the CPU. The claimant was distressed to receive Governor Robinson's note on her computer. The claimant believed that others might have seen it and might think that she was providing CPU with intelligence or alternatively, that she had done something wrong.

36. As a result, the claimant went to Governor Walsh, with the note, to complain. Governor Walsh took the claimant to see Governor Horridge, who was the duty Governor that day. At the ensuing meeting, the claimant told Governors Walsh and Horridge about a number of matters that were then on her mind including her perception that her colleagues had ostracised her, about an incident in April 2017 when she considered that she had been prevented by a junior colleague from entering a cell, about the conversation she had had with Officer Costello and that fact that she had seen anonymous posts on Facebook relating to the incident on B Wing in March 2017. However, the claimant did not mention having been challenged by either Officer Stanton or Officer Gibbons about the terrorism report. The claimant did not offer to show the Governors any of the Facebook posts, but she described some of the anonymous comments. Governor Horridge told the claimant to protect herself by not looking at Facebook.

37. The Governors asked what they could do to support the claimant but the claimant said in clear terms that she did not want them to take action or to intervene with any of her colleagues. Governor Horridge suggested that the claimant should consider a period of detached duty, whereby she would be temporarily posted to another prison but the claimant did not want that either.

38. On 1 October 2017, there was an incident in the prison's Category A Unit. The claimant attended and helped the Officer involved in the incident by locating a clean shirt for him to change into. At one point, Officer Hesketh put her head round the door to check that everybody was alright, acknowledging the claimant in the process.

39. As the claimant worked part-time, she was not in the office as often as many of her colleagues who worked longer hours. On occasion, a colleague would borrow the claimant's chair when there were not enough chairs to go round - at least one chair in the office was broken. The broken chair would be placed at an unoccupied desk. On occasion, the broken chair was left at the claimant's desk, when she was not in.

40. At Christmas, the respondent's staff organised a "Secret Santa", whereby individuals pick a name from a hat and buy a present anonymously, spending up to £10. In the 2017 Secret Santa, the claimant received a bar of soap from Lush. It had been purchased by Officer Ogden who had previously had

a conversation with the claimant who had admired the "shimmer" on her skin on a night out. The bar of soap was in fact a bar with glittery particles in it such that it would leave a shimmer on the user's skin after use and it was in a presentation tin and loosely wrapped. The claimant was not happy with her present. Officer Ogden voluntarily told the claimant that she had bought the present and said that she had not wanted to offend her.

41. In December 2017, Officer Ogden was told that she was to work a shift on 27 December 2017. She told the claimant that she had applied to take the day off as holiday and she asked the claimant if she would cover her shift, in the event that the holiday was not granted. Eventually, very late in December, Officer Ogden was granted annual leave on 27 December 2017. However, by mistake, she forgot to tell the claimant that the cover was not needed. The claimant therefore went to work on 27 December 2017 to discover that she was not required. The claimant did not raise this with Officer Ogden.

42. On the morning of 6 January 2018, the claimant anticipated that she was having a migraine. She had no medication at home but knew that she had some at work. The claimant therefore drove to work, an hour before her shift to obtain her medication. When she arrived at her desk, the claimant found that there was no medication in her desk. Officer Lyne was at work and she rang the claimant's partner who came to take her home, sick. The claimant's partner took about 40 minutes to arrive, during which time, Officer Lyne looked after the claimant and ensured she got into the lift safely to go down to the gate, to be met by her partner. Governor Leahy was aware of the situation.

43. On 2 February 2018, the claimant was working in the cabin area of the prison. She was expecting a telephone call from an estate agent about a house viewing. The claimant did not receive a telephone call that day. The claimant later learned by email that the estate agent had telephoned the prison and spoken to somebody who had, mistakenly, suggested that the claimant did not work there. The claimant texted Officer Ogden who had been in the office that day. Officer Ogden rang the claimant straight back to say she had not taken any call for the claimant. The claimant accepted that Officer Ogden would not have behaved in that way.

44. On 5 February 2018, the trial of Officers Woodhulme and Henderson commenced at Crown Court. The claimant was called to give evidence as a witness to the incident on B Wing. Officer Mooney and Governor Robinson also gave evidence at the trial. The claimant attended Crown Court to give evidence over 2 days. She was offered support by the respondent and its Care Team, as were all others of the respondent's personnel who attended the trial. However, the claimant declined this support, and brought a friend instead with her each day.

45. On 14 or 15 February 2018, the Crown Court delivered its verdict; Officers Woodhulme and Henderson were acquitted.

46. The day after the trial verdict, Officer Gilligan spoke to the claimant and expressed his view that he was pleased with the result for Officer Henderson. The claimant also spoke to Officer Oliver at this time and the claimant suggested that colleagues would see her as a grass in light of the trial verdict. In response, Officer Oliver opined that the claimant was “not likely to be flavour of the month” for a while.

47. On 16 February 2018, the claimant went to D Wing to deliver some paperwork to a prisoner. In the staff room on the wing, the claimant asked a colleague, James Hird, if she could borrow his pen and he refused to lend it.

48. On 17 February 2018, the claimant sent a message, attaching a number of Facebook posts and also a copy of an article from the Manchester Evening News (“MEN”) about the trial of Officers Woodhulme and Henderson and the not guilty verdict, to Kathryne Flick who worked in the respondent’s CPU, via WhatsApp. The MEN article had been “liked” by at least 2 individuals whom the claimant believed were serving prison officers at HMP Manchester.

49. On 19 February 2018, the claimant sent an email to Governor Walsh attaching the Facebook posts and the article from the MEN. Governor Walsh reacted immediately by email, saying “My goodness, that’s awful – have you reported it? x”. The claimant replied saying that she did not feel safe anymore and Governor Walsh asked if the claimant had considered a compassionate move, to which the claimant replied that she didn’t trust anyone in CPU and felt in the spotlight.

50. Officer Flick went through all the names that appeared in the Facebook posts received and the “likes” of the MEN article and she searched for the names against the respondent’s staff database. She identified 2 names under the “likes” of the MEN article, but she was unable to identify the authors of any of the offensive Facebook posts. The Manchester prison CPU had limited investigatory powers in respect of social media. Therefore, in an effort to escalate the matter for investigation and to seek advice on any action that could be taken, Officer Flick forwarded the Facebook posts and the MEN article to the respondent’s Digital Investigation Unit (DIU) and she also submitted an Intelligence Report (IR) on the claimant’s behalf to the respondent’s national CPU.

51. On the morning of 20 February 2018, the respondent’s DIU came back to Officer Flick to say that it was not considered that the comments crossed a criminal threshold and therefore could not be removed, however, it was suggested that the comments might amount to misconduct. The respondent’s national CPU was asked to make efforts to establish if any of the members of the Facebook group were serving employees. It is apparent from the

communications that the respondent was aware of these closed Facebook groups and had been trying to tackle them, albeit unsuccessfully.

52. On 20 February 2018, the claimant reported sick by telephoning the respondent before the start of her shift. Later that day, the claimant tried also to telephone her Line manager, Officer Crowther, but he was off work that day, and instead the claimant spoke to Governor Leahy who said he would send an email to Officer Crowther to let him know she was sick.

53. Concerned for the claimant's welfare and having failed to make contact with her, on 22 February 2018, Officer's Crowther and Flick tried to visit the claimant at home. The claimant was not in and so a letter was left asking her to contact the respondent.

54. On 26 February 2018, Officer Crowther telephoned the claimant and spoke to her about her absence. They spoke again on 1 March and 6 March 2018. The claimant was having difficulties with her phone and also became distressed during the calls. It was therefore agreed that they would meet face to face on 8 March 2018.

55. During the telephone calls, the claimant mentioned her expectation of a return to full-time hours/pay on 1 April 2018. Officer Crowther explained to the claimant that as she was on part-time working and off sick, she would remain on part-time pay until she was fit to return to work, whereupon she would commence full-time working and her pay would then increase. The claimant had mistakenly believed that her sick pay would increase to the full-time rate of pay automatically on 1 April 2018, even though she remained off sick. The claimant had applied for a mortgage on the basis of this misunderstanding. She was therefore considerably upset to learn of her mistaken belief and felt under pressure to return to work in order to proceed with her mortgage application.

56. On 8 March 2018, Officer Crowther met with the claimant for an informal sickness absence review meeting. In the course of the meeting, the claimant told Officer Crowther that she felt unable to return to work at HMP Manchester. The options of detached duty or a transfer were raised but the claimant's view was that she would be unable to work in any other prison because she believed that her reputation, which she believed to be that of a grass, would follow her.

57. Later, on 8 March 2018, the claimant learned from her trade union that the respondent was going to commence an internal investigation into the incident on B Wing in March 2017. As the claimant had not been formally notified of this, she complained to Officer Crowther about how she was told.

58. On 12 March 2018, the claimant went to HMP Wymott for coffee with a colleague and to access her emails on the respondent's internal email system

so that she could keep up with what was happening at work and also view job vacancies.

59. On 16 March 2018, the claimant was interviewed as part of the respondent's internal investigation. She attended the training unit where the interviews were taking place and saw the subjects of the investigation, Officers Woodhulme and Henderson, sat in reception chatting to a number of her colleagues. The claimant was asked to wait in a side room with her union representative who accompanied her and the claimant felt isolated.

60. On 21 March 2018, Officer Crowther and Governor Young attended the claimant's home for a formal absence review meeting. The claimant's partner also attended the meeting. Governor Young attended the meeting because he was concerned about the claimant's state of mind and because he had not spoken to the claimant since the trial. At the meeting, the claimant talked about a number of things that she was concerned about, including the Facebook posts and issues around her personal safety. Governor Young told the claimant that, if she provided names, the respondent would investigate. Governor Young also told the claimant that she should remove herself from Facebook. There was also a discussion about the claimant's return to work and whether she should go on detached duty or transfer to another prison, or move to another role. The claimant said that she would think about the options.

61. On 27 March 2018, Officer Crowther emailed the claimant to say that he "remain[ed] impartial" and that his role was to support her and hopefully facilitate a return to work.

62. At the beginning of April 2018, the claimant reported to the respondent that she had been told, third hand, that her house may have been "targeted" and that she had reported the matter to the police. The claimant was told that she had done the right thing in reporting the matter to the Police.

63. On 5 April 2018, the claimant submitted a grievance to the respondent complaining about her treatment since the incident in March 2017. The grievance was written by the claimant's solicitors and sent on the firm's headed paper. At first the respondent questioned whether the grievance was genuinely from the claimant. When the claimant confirmed that she had authorised it, the respondent accepted the grievance.

64. Under the respondent's grievance policy, section 3.3, where a grievance is raised about somebody who is outside of the complainant's line management chain, and is senior to the complainant, the grievance shall be responded to by the subject of it. As the main subject of the claimant's grievance was Governor Robinson, Governor Young followed the policy to the letter and appointed Governor Robinson as the investigator. The claimant objected to this. Governor Young then reflected and decided that it would be more appropriate for another Governor, of a higher rank to handle the claimant's

grievance. Therefore, on 26 April 2018, Governor Fisher was appointed to investigate the claimant's grievance. Governor Fisher was senior in rank to Governor Robinson and the claimant raised no objection to his appointment at the time.

65. Before the appointment of Governor Fisher as an independent investigator of the claimant's grievance, Governor Robinson had set out a format and proposed questions to be asked of interviewees in the grievance process. When Governor Fisher was appointed, Governor Robinson provided all the papers to Governor Fisher including the proposed questions, which Governor Fisher then used.

66. On 18 April 2018, the claimant was contacted by a colleague who told the claimant that she had received a letter intended for the claimant and sent by Governor Robinson to the wrong address. The letter was about the claimant's grievance. The claimant contacted Governor Young to say that she was mortified. The letter had been sent to an employee who had the same surname as the claimant until about 8 years previously when she got married and changed her name. Unfortunately, the respondent had failed to update its records and Governor Robinson had copied the wrong address from the records in error. Governor Robinson apologised to the claimant. However, this was one of several incidents in which letters to the claimant were sent to the wrong address in error.

67. In the course of managing the claimant's sickness absence, the respondent referred the claimant to occupational health and the claimant attended the training unit at HMP Manchester for an assessment. On 25 April 2018, the respondent's occupational health advisers reported that the claimant was not fit for work and also gave an opinion that the claimant was unlikely to be considered as disabled because her stress "has not lasted longer than 12 months". There is no exploration of any underlying medical condition(s). In fact, the claimant had suffered from depression in previous years, a matter of which the respondent was aware. The claimant therefore wrote to Officer Crowther on 8 May 2018 to point this out.

68. On 3 May 2018, Governor Fisher came to the claimant's home to interview her about her grievance. He then conducted interviews with a number of the claimant's colleagues regarding the various allegations within the grievance. Governor Fisher had not completed his investigation at the time of the claimant's resignation.

69. On 12 May 2018, after the claimant's grievance interview, the claimant emailed Governor Fisher to set out further complaints about events since she had submitted her grievance, including the wrongly addressed letter, and to highlight her belief that she did not think Governor Fisher had taken her concerns seriously. In particular, the claimant pointed out that she had

offered him the chance to view some of the Facebook posts but he had chosen not to.

70. On 22 May 2018, the claimant again went to HMP Wymott to access her emails on the respondent's internal email system so that she could keep up with what was happening at work and also to obtain job vacancy information.

71. On 30 May 2018, the respondent wrote to invite the claimant to a further, formal attendance review meeting on 7 June 2018. The meeting was to consider any likely return to work, any reasonable adjustments to help the claimant return, a phased return and/or detached duty. The letter also included a paragraph to the effect that the outcome of the meeting might be that the claimant's case is "… referred to a Decision Manager which may include a decision to dismiss."

72. On 7 June 2018, the formal absence review meeting took place at the claimant's house. Officer Crowther attended together with a note-taker from the respondent's HR department. In the course of the meeting, the claimant told Officer Crowther of her depression and anxiety and she asked Officer Crowther about some Band 5 promotions that she believed she should have been made aware of. Officer Crowther apologised for not informing her. However, the claimant said that she was not in the right frame of mind to consider applying. The claimant had recently commenced counselling and Officer Crowther commented that this was a positive move.

73. The claimant confirmed that she did not yet feel strong enough to return to work in any capacity and the discussion led to consideration of the prospect of dismissal. The claimant was aware that, in the absence of a return to work, the sickness absence process would eventually lead to the Governor considering dismissal. In this regard, Officer Crowther told the claimant that if there was little prospect of a return to work, the governor would at some point take the formal decision to dismiss. The claimant repeated her view that people's apparent perception of her following the B Wing incident in March 2017 and the trial verdict was the main issue preventing her from returning to work. Officer Crowther reminded the claimant of his view that he had to remain "impartial" regarding the circumstances surrounding the trial.

74. The following morning, 8 June 2018, the claimant sent an email of resignation to Governor Young. In her resignation, the claimant complained about not getting what she described as her "contractual entitlement" to full time hours, that she had not been supported by the respondent through the incident on B Wing in March 2017 and through the trial, that she considered she had been bullied and victimised, that she had been subjected to slanderous comments on social media and that the respondent had failed to assure her that she would be safe and supported at work. The claimant also complained that she had learned of a non-operational vacancy and other opportunities which she said had not been communicated to her and that none of her colleagues had

been in touch whilst she was off sick. The claimant said that all these matters had made her ill and left her with no option but to resign.

75. The investigation into the claimant's grievance was stopped in light of the claimant's resignation.

76. On 12 June 2018, Governor Young wrote to the claimant to say that he would give the claimant time to reflect on her resignation and he asked her to contact him if she wished to explore options to continue her career with the respondent. Governor Young therefore paused the claimant's resignation for a month's notice period in case she decided to reconsider. The claimant did not take up this option and instead issued her Tribunal claim.

Applicable Law

77. A concise statement of the applicable law is as follows.

Disability discrimination

78. The complaints of disability discrimination were brought under the Equality Act 2010 ("EqA"). Disability is a relevant protected characteristic as set out in section 6 and schedule 1 of EqA.

79. Section 39(2) EqA prohibits discrimination against an employee by dismissing her or by subjecting her to any other detriment. By section 109(1) EqA an employer is liable for the actions of its employees in the course of employment.

80. The prohibition of *discrimination arising from disability* is found in section 15 EqA. Section 15(1) provides: -

(1) A person (A) discriminates against a disabled person (B) if –
(a) A treats B unfavourably because of something arising in consequence of B's disability and
(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

81. There is no need for a comparator in a claim under section 15 EqA; the claimant needs only to show that the treatment complained of was unfavourable and was "because of" something which arises in consequence of the disability. In addition to the defence of objective justification, an employer has a defence to a claim under section 15(2) if it did not know, and could not reasonably be expected to know that the claimant had a disability.

82. The *Harassment* provisions are contained in section 26 EqA which provides:

(1) A person (A) harasses another (B) if-

(a) A engages in unwanted conduct related to the relevant protected characteristic, and
(b) the conduct has the purpose or effect of -
(i) violating B's dignity, or
(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B

(2) A also harasses B if-
(a) A engages in unwanted behaviour of a sexual nature, and
(b) the conduct has the purpose or effect referred to in subsection (1) (b).

(4) In deciding whether conduct has the effect referred to in subsection (1) (b), each of the following must be taken into account-
(a) the perception of B
(b) the other circumstances of the case
(c) whether it is reasonable for the conduct to have that effect.

83. The concept of harassment under the previous equality legislation was the subject of judicial interpretation and guidance by Mr Justice Underhill in *Richmond Pharmacology and Dhaliwal [2009] IRLR 336*. The Tribunal has applied that guidance, namely:

> "*There are three elements of liability (i) whether the employer engaged in unwanted conduct; (ii) whether the conduct either had (a) the purpose or (b) the effect of either violating the claimant's dignity or creating an adverse environment for her; and (iii) whether the conduct was on the grounds of the claimant's [protected characteristic].*"

84. The EqA provides for a shifting burden of proof. Section 136 so far as is material provides as follows:

(2) If there are facts from which the Court could decide in the absence of any other explanation that a person (A) contravened the provision concerned, the Court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.

85. Consequently, it is for a claimant to establish facts from which the Tribunal can reasonably conclude that there has been a contravention of EqA. If the claimant establishes those facts, the burden shifts to the respondent to show that there has been no contravention by, for example, identifying a different reason for the treatment.

86. In *Hewage v Grampian Health Board [2012] IRLR 870* the Supreme Court approved guidance previously given by the Court of Appeal on how the

burden of proof provision should apply. That guidance appears in *Igen Limited v Wong [2005] ICR 931* and was supplemented in *Madarassy v Nomura International PLC [2007] ICR 867*. Although the concept of the shifting burden of proof involves a two-stage process, that analysis should only be conducted once the Tribunal has heard all the evidence, including any explanation offered by the employer for the treatment in question. However, if in practice the Tribunal is able to make a firm finding as to the reason why a decision or action was taken, the burden of proof provision is unlikely to be material.

Whistle-blowing claims

87. Section 47B of the Employment Rights Act 1996 ("ERA") provides that a worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer on the ground that the worker has made a protected disclosure.

88. Section 47(1A) to (1E) ERA provide that an employer can be vicariously liable for the detrimental acts of its workers unless the employer has taken all reasonable steps to prevent the detriment. It is immaterial whether the act of detriment or deliberate failure to act was done with the knowledge or approval of the employer.

89. Section 103A ERA provides that an employee who is dismissed shall be regarded as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.

90. A "protected disclosure" means a disclosure of information, but not mere allegations, to the employer or to a prescribed person which, in the reasonable belief of the worker is in the public interest and tends to show one or more matters including a failure to comply with a legal obligation, that the health or safety of any individual has been endangered, or that a criminal act has been committed.

91. The Tribunal has jurisdiction to consider complaints of public interest disclosure detriments by section 48(1A) ERA. Section 48(2) stipulates that on such a complaint it is for the employer to show the ground on which any act, or any deliberate failure to act, was done.

92. A 'detriment' arises in the context of employment where, by reason of the act(s) complained of a reasonable worker would or might take the view that he or she has been disadvantaged in the workplace. An unjustified sense of grievance cannot amount to a detriment: see for example, Shamoon v Chief Constable of the RUC [2003] IRLR 285 HL.

93. In Fecitt v NHS Manchester [2012] IRLR 64 the Court of Appeal held that for the purposes of a detriment claim, a claimant is entitled to succeed if the tribunal finds that the protected disclosure materially influenced the employer's action. The test is the same as that in discrimination law and separates detriment claims from complaints of unfair dismissal under section 103A ERA, where the question is whether the making of the protected disclosure is the reason, or at least the principal reason, for dismissal. The claimant must establish a causal link between the protected disclosure and her dismissal and must establish, on a balance of probabilities, that the protected disclosure was the reason or principal reason for her dismissal.

Constructive unfair dismissal

94. Section 95(1)(c) of the Employment Rights Act 1996 provides that an employee is dismissed if the employee terminates their contract of employment, with or without notice, in circumstances such that the employee is entitled to terminate their contract without notice by reason of the employer's conduct.

95. The case of Western Excavating (ECC) Ltd v Sharp [1978] ICR 221 provides that the employer's conduct that gives rise to constructive dismissal must involve a repudiatory breach of contract, or a significant breach going to the root of the contract of employment, showing that the employer no longer intends to be bound by one or more of the essential terms of the contract of employment. In the face of such a breach by the employer, an employee is entitled to treat themself as discharged from any further performance under the contract, and if the employee does treat themself as discharged, for example by resigning, then they are constructively dismissed. If, however, the employee delays in resigning after the employer's breach, the employee may be taken to have affirmed the contract and, if so, may lose the right to claim that they have been constructively dismissed.

96. A course of conduct can, cumulatively amount to a fundamental breach of contract entitling an employee to resign following a "last straw" incident even though the last straw does not by itself amount to a breach of contract, as held in the case of Lewis –v- Motorworld Garages Ltd [1985] IRLR 465. However, the last straw must contribute in some way to a breach of the implied term of trust and confidence.

Time limits

97. The time limit for complaints of disability discrimination is found in section 123 EqA as follows: -

(1) Subject to Sections 140A and 140B proceedings on a complaint within Section 120 may not be brought after the end of –

(a) *the period of three months starting with the date of the act to which the complaint relates, or*
(b) *such other period as the Employment Tribunal thinks just and equitable.*

(2) ....

(3) For the purposes of this section –
(a) *conduct extending over a period of time is to be treated as done at the end of that period;*
(b) *failure to do something is to be treated as occurring when the person in question decided on it.*

(4) ….

98. A continuing course of conduct might amount to an act extending over a period, in which case time runs from the last act in question.

99. Whilst the Tribunal has a broad discretion to extend time, it is important to note that time limits are exercised strictly in employment cases. The exercise of discretion is therefore the exception rather than the rule. In Chief Constable of Lincolnshire –v- Caston [2010] IRLR 327 the Court of Appeal confirmed that there is no general principle which determines how liberally or sparingly the exercise of discretion to extend time on a just and equitable basis should be applied.

100. The time limit for presenting an unfair dismissal complaint appears in section 111(2) of the Employment Rights Act 1996:

(2) Subject to the following provisions of this section, an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal –

(a) *before the end of the period of three months beginning with the effective date of termination, or*
(b) *within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.*

101. Provisions to the same effect (including where time runs from the last in a series of acts) appear in section 48(3) ERA in relation to complaints of detriment for making a protected disclosure.

102. Two issues therefore arise: whether it was not reasonably practicable for the claimant to present the complaint within time; and, if not, whether it was presented within such further period as is reasonable. These are questions

of fact for the Tribunal. Something is "reasonably practicable" if it is "reasonably feasible" as in Palmer v Southend-on-Sea Borough Council [1984] ICR 372, Court of Appeal.

103. In the course of submissions, Counsel for each party referred the Tribunal to a number of authorities, including the following:

Nottinghamshire County Council v Meikle [2004] EWCA Civ 859
London Borough of Waltham Forest v Omilaju [2005] IRLR 35
O'Hanlon v Commissioners for Revenue and Customs [2007] EWCA Civ 283
Wilcox v Birmingham CAB Service Limited [2011] IRLR 810
Mohamud v WM Morrison Supermarket plc [2016] UKSC 11
Pnaiser v NHS England [2016] IRLR 170
Kaur v Leeds Teaching Hospitals NHS Trust [2018] EWCA Civ 978
Forbes v LHR Airport Limited [2019] IRLR 890

The Tribunal took these cases as guidance but not in substitution for the statutory provisions.

Submissions

104. At the conclusion of the oral evidence, each party's Counsel made oral submissions to the Tribunal.

Respondent's submissions

105. On behalf of the respondent, Mr Tinkler had helpfully prepared a written skeleton argument which ran to 23 pages. The Tribunal read it before hearing oral submissions. As the details had been recorded in writing it is not necessary to repeat them here. Mr Tinkler supplemented his submissions by going through each of the allegations and summarising the respondent's position. In broad terms the position of the respondent was that a number of the allegations were factually misconceived, particularly those which the claimant was unable to recall with precision and had not recorded in her diary (the authenticity of which was challenged) or where the claimant's evidence changed materially under cross-examination. It was submitted that for many of the allegations, the claimant had not proven the detriment which she asserted arose from the treatment by the respondent but that in any event there was no evidence provided by the claimant to show that her protected disclosure or disability had any material influence on the treatment she received. He invited us to conclude that the reasons for the treatment at each stage, even if detrimental, were readily apparent and unconnected to the protected disclosure or the claimant's disability. Mr Tinkler also drew the Tribunal's attention to the claimant's perception of events, pointing out that many of the respondent's witnesses had observed the claimant's developing anxieties which, he submitted, led to the claimant developing a perspective

divorced from the reality of the incidents upon which she relied. He invited us to dismiss all the complaints.

Claimant's submissions

106. Mr Bunting for the claimant had also helpfully prepared a written skeleton argument which ran to 32 pages. The Tribunal read it before hearing oral submissions. As the details had been recorded in writing it is again not necessary to repeat them here. Mr Bunting supplemented his submissions by summarising the claimant's case and drawing attention to the evidence which he said supported the contention that there had been detrimental treatment. He emphasised that the claimant's case was primarily about whistleblowing: that the claimant's report of Officers Woodhulme and Henderson for the incident on B Wing led to her being labelled a "grass" on Facebook, suffering animosity from her colleagues and that it caused significant inconvenience to the respondent's senior staff. He submitted that the respondent's failure to give the claimant support and its failure to prevent the Facebook posts was inexplicable for an organisation of the size and resources of the respondent and was supportive of the claimant's complaints. He addressed the sickness absence procedure and the allegations which arose out of it and the handling of the grievance which ensued. He submitted that there had been no intention to retain the claimant in employment, and the involvement of Governor Young at an early stage supported that. He invited us to conclude that the multiplicity of adverse treatment supported the claimant's case that managers had worked together to ensure that the claimant was isolated and she ultimately resigned in the face of the respondent's behaviour towards her which was because she had reported the incident on B Wing.

107. At the conclusion of the oral submissions the Tribunal reserved its judgment.

Discussion and conclusions (including where appropriate any additional findings of fact)

108. The Tribunal has applied its relevant findings of fact and the applicable law to determine the issues in the following way. The Tribunal decided to approach the allegations in numerical order and made findings of fact as to what happened. The burden was on the claimant to prove the facts on which her complaints were based. If those facts were proven the Tribunal then had to apply the law to them. In considering each allegation, the Tribunal also had regard to the evidence overall rather than just looking at each matter in isolation.

109. Where conflict of evidence arose, this was resolved on a balance of probabilities, in that the Tribunal preferred the evidence of the respondent's witnesses to that of the claimant. The Tribunal found that the claimant's evidence was less than credible and at times there were glaring inconsistencies between the pleaded case, her witness statement and the

events she recollected in cross-examination. An example of this was in relation to the allegation that the claimant was removed from the respondent's Care Team. The chronology suggests that the claimant was not told her qualifications had lapsed. However, in her witness statement, paragraph 42, the claimant says she went to Diane Phillips, head of the Care Team at the time, with her old certificate and that Diane had confirmed that the claimant could continue as a member of the Care Team. There was no evidence to support this assertion. In any event, there were emails evidencing that there had been attempts by the claimant and others, at the relevant time, to arrange the required refresher training. In another example, when questioned about an offer to transfer her or send her on a period of detached duty, the claimant had asserted that she was unable to go into any prison as a result of the respondent's treatment of her, that she did not trust any of her colleagues and that she believed that word of her being a "grass" would be communicated to other establishments. Later in the hearing, it transpired that the claimant had in fact been to HMP Wymott to meet a colleague and to access her internal emails. On the final day of the attended hearing, it was revealed that the claimant had in fact visited HMP Wymott on more than one occasion whilst off sick, a matter she had not been open about in cross-examination.

110. The claimant produced her personal diaries for 2017 and 2018 to show her contemporaneous recording of significant events and her feelings about them. However, a number of events appeared to be entered on the wrong day: see bundle pages 261/263 and 359; or duplicated: see bundle page 262; whilst other apparently significant events about which she complained did not appear at all: for example the Secret Santa, and the incident when Officer Gilligan had told the claimant that he was pleased with the result of the trial.

111. The Tribunal considered that the claimant had been given every opportunity to put her case and to evidence the numerous allegations pursued – it had been over 2 years since the proceedings were commenced, with several further and better particulars served and/or re-pleading along the way. The claimant had the support of her trade union and solicitors throughout. Nevertheless, the claimant sought to raise a number of new factual matters in her witness statement and to add detail not supplied previously. For example, in paragraph 27 there is an allegation that Officers Morrison and Watts, members of staff not identified previously in the Scott schedule of detriments, had been part of the distancing and ostracising of the claimant by colleagues about which she complained. In addition, in the course of giving oral evidence and cross-examination, the claimant added details not previously given. Counsel for the respondent understandably took issue with the way the claimant's evidence was being added to or developed, but he took a pragmatic approach: the additional allegations were included by consent for consideration by the Tribunal (allegations numbered 21A, 23 A – C and 24A in the above list of issues) and the respondent dealt with them through supplemental oral evidence of relevant witnesses and in cross examination.

112. In contrast, the evidence of the respondent's witnesses was measured and stood up to proof. Matters were explained by reference to events at the relevant time or by reference to the respondent's policies and procedures. On occasion, a number of the respondent's witnesses candidly accepted that, with the benefit of hindsight, things might have been handled differently and several expressed and reiterated their concern for the claimant's well-being at the material time.

The discrimination allegations – discrimination arising from disability

113. On 20 February 2018, the claimant went off work, sick, with work-related stress. It was the claimant's case that her sickness absence arose in consequence of her disability.

114. The Tribunal made findings in relation to the factual allegations forming the basis of this complaint, numbered 1-5, having found that allegation 6 was not well-founded – the claimant was not told at the meeting on 7 June 2018 that she would be dismissed.

115. In respect of allegation 1, about not permitting the claimant to return to full-time hours from 1 April, this had a rational explanation which the Tribunal accepted. The claimant was on part-time working hours and off sick. She would remain on part-time pay until she was fit to return to work, whereupon, on or after 1 April 2018, she would immediately commence full-time working and her pay would consequently increase. The claimant had mistakenly believed that her sick pay would increase to the full-time rate of pay automatically on 1 April 2018, even though she remained off sick - she had applied for a mortgage on the basis of this misunderstanding, but that is not a matter for which the respondent can be held liable. The Tribunal considered that this was not a case of the respondent preventing the claimant from returning to full-time hours as alleged or at all. The fact that that the claimant did not return to work prior to her resignation meant that she did not go onto full-time working hours/pay. The Tribunal accepted that this was the contractual position and did not amount to unfavourable treatment; alternatively, the Tribunal accepted the respondent's justification of the situation, as a proportionate means of achieving the legitimate aim of an incentive to get better and return to work. In addition, the Tribunal was mindful of the fact that the claimant had not pursued a claim about reasonable adjustments.

116. Allegation 3, about the respondent's alleged failure to tell the claimant about the funeral of a senior former colleague was not proven. There was no evidence that anybody had been told about a funeral that was said to have been held in Cardiff at some point and no evidence that the respondent's HMP Manchester personnel were aware or indeed that they withheld such information from the claimant.

117. Allegations 2, 4 and 5 concerned the alleged failure of the respondent to inform the claimant about updates at work or vacancies whilst off sick. The Keeping in Touch policy applies when an employee in absent for in excess of 4 weeks – bundle page 934D. Therefore, on the first date, 1 March 2018, as the claimant had not then been absent for 4 weeks, there was at that time no obligation for the respondent to provide the information in question and the Tribunal considered that it would have been inappropriate, at such an early stage of sickness, to be alerting the claimant to alternative roles with the respondent. Section 2.6 of the policy provides for access to the respondent's intranet and information via the prison service website so that absent employees can keep in touch. The Tribunal accepted the evidence of Officer Crowther, that the respondent had arranged for HR to send out updates and vacancy information to absent employees to ensure that individual managers did not forget to do so and there was no evidence that this did not happen. The policy provides for paper copies where an employee does not have internet access outside of work, but the Tribunal found that was not the position of the claimant. In any event, the claimant had taken herself to HMP Wymott on at least 2 occasions in order to access the respondent's intranet and her emails. By this method, she had been aware of a number of vacancies being advertised while she was off sick, which throws into question the implication in her resignation email, that she had only in June 2018 learned of the vacancies. The Tribunal noted that at least one of the vacancies upon which the claimant relied was for a non-operational role, which she accepted she was not qualified to apply for, by virtue of being a member of operational staff. The documentation in the bundle showed that the respondent did send out information on a vacancy on 12 April 2018, bundle page 541, which the claimant received but the claimant's position at that time was that she was too ill to apply for it. On 23 April 2018, the respondent sent an email about another vacancy, bundle page 587, which the claimant also received, at a time when the claimant also said she was too ill and so not accessing the internet. The Tribunal also took account of the claimant's admission, in evidence that she was not in the right frame of mind to apply for the vacancies in question due to illness.

118. In light of its findings on the factual allegations above, the Tribunal concluded that the claim of discrimination arising from disability must fail.

Harassment

119. This claim was pursued on the basis of 7 allegations about the respondent's conduct during the claimant's sickness absence. The Tribunal found that the factual circumstances of allegations 1 – 5 were made out but it did not consider that the acts complained of, whether individually or cumulatively, amounted to harassment. The Tribunal accepted the evidence of the respondent's witnesses, that the visit to the claimant's home on 22 February 2018 was conducted because the respondent's managers were concerned

about the claimant's welfare and because the respondent had been unable to make contact with the claimant. The Tribunal did not in any event consider that such a visit constituted detrimental treatment or harassment of the claimant. Officer Crowther acted reasonably when he telephoned the claimant on 26 February 2018 and 1 March 2018, to follow up, after the claimant had been absent, sick, for a week. A further telephone conversation took place on 6 March 2018, during which it was agreed with the claimant that Officer Crowther should visit her at home on 8 March 2018. On 21 March 2018, it was suggested to the claimant that she could move to another location to work for the respondent. That suggestion was made in the context of a discussion of the claimant's return to work and options to address her fears at the time. The Tribunal considered that the visits and contacts with the claimant were of an acceptable frequency under the absence management policy and were not conducted in a manner suggestive that the respondent was keen to dismiss the claimant, as alleged. There was no compulsion, nor ulterior motive to "get rid of [her]", as the claimant suggested in her evidence. A number of options (which did not include dismissal) were discussed and the claimant said that she would think about them.

120. The Tribunal considered carefully the records and evidence in relation to the meeting on 21 March 2018 and the context of discussions. It was unable to find that Governor Young or Officer Crowther had said to the claimant that she was being overly sensitive about the Facebook comments. Governor Young offered to investigate the Facebook comments if the claimant could give him names or further information. The Officers had both been shocked by the Facebook comments and recommended that the claimant remove her self from Facebook. In the circumstances, that was sensible advice.

121. The Tribunal found that allegation 7 was not well-founded – the claimant was not told at the meeting on 7 June 2018 that she would be dismissed.

122. In light of the above findings, the Tribunal concluded that the respondent's handling of the claimant's sickness absence, as particularised and cumulatively, did not amount to harassment of the claimant. The claim of harassment must fail.

Whistleblowing claims – detriment and dismissal

123. It was agreed by the parties that the claimant made a "protected disclosure" within the meaning of section 43B ERA on 5 March 2017, when she attended the respondent's CPU and reported that she had witnessed Officer Woodhulme and/or Officer Henderson assaulting a prisoner on 4 March 2017 in accordance with section 43C ERA and in the public interest.

124. The Tribunal has made findings in relation to the 44 factual allegations of detriment which form the basis of these complaints and also in relation to the 5 additional allegations arising in the course of the hearing.

125. The first allegation is a general allegation that the claimant was side-lined, ostracised and/or ignored by colleagues because of her protected disclosure. This allegation is broken down into 11 parts in the list of issues, following particularisation in the Scott schedule of detriments. The fifth sub-allegation, v), was abandoned by the claimant at the hearing. Sub- allegations ii), iv), vi), viii), x) and xi) remain unparticularised. The evidence to support such generalisation was vague and the Tribunal considered whether it could draw inferences from such, which is dealt with below under 'Cumulative effect'.

126. Dealing with the remaining sub-allegations in turn, the Tribunal found that the first sub-allegation, i), could not have happened on 6 March 2017, as alleged. That was the day on which Officers Henderson and Woodhulme were formally suspended from duty. The claimant agreed in cross-examination that the incident complained of did not occur on 6 March 2017 as alleged and also that she had said "Hi" to him. In the claimant's witness statement, paragraph 16, it says that Officer Henderson was allowed to come back to work later on and the claimant saw him on a number of occasions which were awkward. The statement does not mention the claimant saying anything to Office Henderson. The Tribunal accepts that it would be detrimental for the claimant not to be told that Officer Henderson had returned to work and to come across him and the Tribunal had little doubt he might have glared at the claimant. The respondent should have ensured that this did not happen. However, the allegation is specific, that the detriment occurred on 6 March 2017, whereas the Tribunal could not conclude from the evidence that such happened that day.

127. In sub-allegation iii), the claimant alleges that, in April 2017, she had attended an incident in a cell where a prisoner was under restraint and that she was prevented from entering the cell by a junior Officer, Sarah Constable. The respondent's witnesses denied the event took place, either in April 2017 or at all. There was no evidence to support the claimant's version of events and so the Tribunal was unable to conclude that it had happened as described or at all. The Tribunal took into account the fact that, if events had happened as alleged, Officer Constable's behaviour towards a superior Officer constituted insubordination but the claimant took no action about such at the time, nor did she record it in her diary as might be expected.

128. Sub-allegation vii) is about a conversation at the beginning of October 2017. The Tribunal has found that on 1 October 2017, there was an incident in the prison's Category A Unit. The claimant attended and helped the Officer involved in the incident by locating a clean shirt for him to change into. At one point, Officer Hesketh put her head round the door to check that everybody was alright. She spoke to the claimant merely to acknowledge her. The Tribunal determined, from the evidence that Officer Hesketh's account was broadly similar to that of the claimant under oath. Officer Hesketh did not question the claimant nor did she at any point tell other staff not to discuss

anything with the claimant and the claimant did not report the incident at the time. This allegation is not upheld on the facts.

129. Sub-allegation ix) relates to an incident just before the claimant went off work, sick, in February 2018. The claimant did not know the name of the Officer that she alleged had refused to give her a pen, although she managed to remember it in the course of cross-examination as James Hird. The claimant was also unclear as to the date of the incident. As this evidence came out at the hearing, the respondent was unable to call Officer Hird to give evidence about the allegation. In light of the circumstances described by the claimant, however, on a balance of probabilities the Tribunal considered that it was not unreasonable that an Officer may decline to lend a pen to a prisoner, in the expectation that it was unlikely to be returned. There was no evidence to suggest that this refusal had anything to do with the fact of the claimant having made a protected disclosure.

130. The second allegation is again a general allegation that the claimant was made to feel deliberately unwelcome and uncomfortable by colleagues because of her protected disclosure. This allegation is broken down into 10 parts in the list of issues, following particularisation in the Scott schedule of detriments. Sub- allegations ii) and ix) remain unparticularised and no individuals have been identified. The evidence of such generalised allegations was vague and the Tribunal considered whether it could draw inferences from such, which is dealt with below under ‘Cumulative effect’.

131. Dealing with the remaining sub-allegations in turn, the Tribunal has dealt with the first sub-allegation, i), above at paragraph 126 and found that it could not have happened on the date as particularised.

132. Sub-allegation iii) concerns the delivery of eggs and toys to a local hospital. The Tribunal was concerned that, despite the claimant’s witness statement, paragraph 30, asserting that the decision was to deliver to a local hospital, the claimant changed this under cross-examination, saying that the delivery was in fact made to a local domestic violence shelter. As the Tribunal has found, the claimant had hoped that some of her colleagues would help. However, understandably, the domestic violence shelter did not want its address known and so required the claimant to go alone to the shelter. This allegation is not upheld on the facts.

133. Sub-allegation iv) is about a conversation which the claimant had with Principle Officer Costello. The Tribunal accepted the evidence of Mr Costello that they had had a conversation about the incident on B Wing but he denied that the nature of the conversation was as the claimant described. The Tribunal resolved the conflict of evidence by preferring the evidence of Officer Costello who explained that he had approached the claimant because he thought she might be suffering from PTSD as a result of witnessing the incident on B Wing and he was concerned for the claimant’s mental health.

He was not confrontational and did not suggest that the claimant was a "grass". The Tribunal found that Officer Costello's approach was designed to reassure the claimant that she had done the right thing by reporting it and that his approach was informed by his awareness of PTSD and personal experience.

134. Sub-allegation v) concerns 2 matters: the moving of the claimant's chair and the 'Secret Santa' at Christmas 2017. In respect of the allegation that the claimant's chair had been removed and replaced by a broken chair, the Tribunal concluded that the respondent's witnesses had provided a reasonable explanation for how the claimant's chair might have been moved or used by others in her absence. The fact that the claimant was working reduced hours meant that she was not in the office as much as colleagues who worked longer hours. It was entirely feasible that a colleague would borrow the claimant's chair, if spare when the claimant was not working and when there were not enough chairs to go round and/or move the broken chair to the claimant's desk, where there was a space. The Tribunal noted the claimant's admission under oath that she also had borrowed colleagues' chairs and/or moved the chairs around the office in this manner and her acceptance that "it wasn't [done] purposely".

135. In respect of the "Secret Santa" allegation, the Tribunal accepted that the claimant had been disappointed to receive what she saw as a small bar of soap but the Tribunal considered that Officer Ogden had explained how the bar of soap was in fact a bar with glittery particles in it which would leave a shimmer on the user's skin after use and she had bought a presentation tin for it. In evidence, Officer Ogden was bemused at the suggestion it was "only a bar of soap" because she had put some thought into what to buy for the claimant. Hence when Officer Ogden heard that the claimant was unhappy, she told the claimant that she had bought it and said that she had not wanted to offend her. The Tribunal accepted Officer Ogden's explanation and also noted that this was not a matter that had been recorded in the claimant's diary.

136. Sub-allegation vi) concerns an issue over shift cover for annual leave. The Tribunal found this to have arisen because of a genuine mistake – Officer Ogden forgot about her arrangement with the claimant. In addition, there was no evidence to suggest the claimant had been deliberately inconvenienced. The claimant's witness statement, paragraph 92, says that she had taken time away from family over the Christmas period. This was expanded in cross-examination to be the loss of time when her son was home from the army. In any event, the Tribunal noted that when the claimant found out, at the start of the shift, that Officer Ogden had in fact been granted annual leave for that day so cover was not required, the claimant did not go home. Instead, she stayed and worked the shift.

137. Sub-allegation vii) was about a call from an estate agent which the claimant was expecting at work. Having heard the evidence on this, the Tribunal considered that the estate agent had called the prison, but that the call had not been received by Officer Ogden. The prison is a large establishment, employing over 800 people and the call could have been taken by a number of employees, who may not have known of the claimant or had access to a list of staff. When the claimant challenged Officer Ogden about the call, at the time, she denied receiving any such call. The claimant had accepted that answer and had commented that she did not think Officer Ogden would do such a thing as to say that the claimant did not work at the prison. This assertion was repeated in the claimant's evidence to the Tribunal. On a balance of probabilities, the Tribunal considered that the call had been answered by somebody who had, mistakenly, suggested that the claimant did not work there. There was no malice, nor any attempt to treat the claimant detrimentally.

138. Sub-allegation viii) centred on events on 6 January 2018. The Tribunal found no evidence that anybody had removed the claimant's medication from her desk drawer, for whatever reason. The Tribunal also found no evidence that Officer Lyne had been instructed to take the claimant home or that she had refused to do so. Rather, there was a reasonable explanation of what happened, which is also set out in an email– see bundle page 645. The role of Officer Lyne on the day was found to be one of looking after the claimant, telephoning the claimant's partner who came to take her home, and waiting with the claimant until the partner arrived. The Tribunal also considered that this was the most sensible option, to call on the claimant's partner, as the claimant could not be left alone. If Officer Lyne had taken the claimant home, she would have had to either leave the claimant at home alone, or stay with her, quite possibly for several hours away from her work.

139. Sub-allegation x) concerns the pen incident in February 2018 which has been dealt with above at paragraph 129. The Tribunal accepted the respondent's reasonable explanation for what had happened.

140. <u>The third allegation</u> is also a general allegation that the claimant was unsupported or unprotected by the respondent because of her protected disclosure. This allegation is broken down into 7 parts in the list of issues, following particularisation in the Scott schedule of detriments. Sub-allegations iv) and vii) are not unparticularised in that no individuals/incidents have been identified. The evidence of such generalised allegations was vague and the Tribunal considered whether it could draw inferences from such, which is dealt with below under 'Cumulative effect'.

141. Dealing with the remaining sub-allegations in turn, the Tribunal has dealt with the first sub-allegation, i), above at paragraph 133 and preferred the evidence of Officer Costello about the conversation he had with the claimant.

142. Sub-allegation ii) arises from an allegation that Governor Robinson had told Officer Stanton that the claimant had reported her for a conversation about terrorism. This is dealt with below in paragraph 153. The Tribunal found no evidence that Governor Robinson had in fact told Officer Stanton that the claimant was a source of the intelligence. In any event, the claimant's witness statement, paragraph 57, relies on an email sent by Governor Robinson to the Police, bundle page 522, which is inelegantly worded but makes no criticism of the claimant, a contention with which the claimant agreed in evidence.

143. Sub-allegation iii) concerns an alleged refusal of detached duty by Governor Young on 12 October 2017 (The date was changed to this at the hearing; previously it was alleged as 18 September 2017). The Tribunal found no evidence to support this allegation on either date and, in cross-examination, the claimant became confused about when such a refusal had happened, if at all. There is no entry in the claimant's diary about an application or indeed refusal – see bundle page 276. In addition, Governor Young's evidence, which the Tribunal accepted, was that it would have been a reasonable request at the time and that he would have had no reason to refuse. Indeed, the Tribunal considered that if, as was the claimant's case, Governor Young wanted rid of her or to move her on, this allegation that he refused detached duty at another establishment does not sit well with the claimant's case.

144. Sub-allegation v) is set out in general terms. In oral evidence, the claimant explained that she thought that other employees of the respondent who attended the trial were allocated a member of the Care Team as support on the day whereas she was not. The claimant also stated that, in her view, she should have been allocated support from an Officer of at least Governor rank. The Tribunal has found that the claimant was in fact offered support by the respondent and its Care Team, as were all others of the respondent's personnel who attended the trial. In addition, Governor Walsh's unchallenged evidence was that she had offered to accompany the claimant. However, the claimant declined this support, and brought a friend instead with her when she attended court to give her evidence. Further, the Tribunal noted that the claimant made no complaint about any lack of support at the time, it is not mentioned in her diary and texts which the claimant sent after giving her evidence (bundle page 326) make no mention of a lack of support.

145. Sub-allegation vi) concerns a statement said to have been made by Officer Crowther about the claimant's return to full-time hours. The Tribunal did not consider that Officer Crowther had suggested, as alleged, that he would not support the claimant's return to full-time work unless she returned physically. At paragraph 115 above, the Tribunal has set out its findings and conclusions on the claimant's return to full-time working and pay. The claimant had mistakenly believed that her sick pay would increase to the full-time rate of pay automatically on 1 April 2018, even though she remained off sick. In that context, Officer Crowther had explained that the claimant would need to

return to work in order to return to full-time hours/pay. He was setting out the contractual position and he did not suggest that his support was required or conditional. The claimant's request for full-time hours had been agreed and signed off. The only issue was the fact that the claimant was off sick.

146. Allegation 4 concerns an anonymous Facebook post under the name "Keema Naan" within a closed group. The Facebook posts are addressed in paragraph 183 below.

147. Allegation 5 is about the claimant not being invited for meals with Officers Lyne or Ogden from April 2017 onwards. The claimant relied on text messages as evidence that she and Officer Lyne would have breakfast together and that this arrangement ceased after her report of the incident on B Wing. However, the text messages in the bundle at pages 286 – 296 show that this had happened after the claimant's report and that the parties texted regularly for a period. The Tribunal concluded from the evidence that this had not been a regular arrangement before or after the report of the incident on B Wing in March 2017, and that Officer Lyne had invited the claimant to come out with her on only a handful of occasions. In evidence, Officer Lyne was able to give cogent evidence of each occasion on which the claimant had come out with her, where to and the reason for the outing. Further, the Tribunal considered that the relationship between the claimant and Officer Lyne cooled in mid-2017 after Officer Lyne lost a considerable sum of money trying to set up a burger van on the claimant's advice and not because of the claimant's protected disclosure.

148. Allegation 6 has been addressed in paragraph 127 above. The Tribunal found no evidence to support the claimant's version of events and so was unable to conclude that it had happened as described or at all.

149. Allegation 7 has been addressed in paragraph 132 above. The Tribunal did not uphold this allegation on the facts.

150. Allegation 8 has been addressed in paragraph 133 above. The Tribunal preferred the evidence of Officer Costello as to the nature of the conversation with the claimant.

151. Allegation 9 has been addressed within paragraph 109 above. It is correct that Officer Flick removed the claimant from the Care Team in April/May 2017. However, this was not without notice. The claimant and other members of the respondent's Care Team had been told, 12 months earlier, that they were required to update their training. The claimant failed to do so and therefore, along with other staff who had not completed the requisite training within the year, she was removed from the Care Team. Her removal had nothing to do with her reporting of the incident on B Wing.

152. Allegation 10 concerns the Facebook posts which are addressed in paragraph 183. below.

153. Allegations 11, 12 and 13 arise from a report of an overheard conversation about terrorism. The claimant had not reported this but had been contacted about it by Greater Manchester Police in August 2017. The Officers said to have been involved in the conversation included Officers Stanton and Gibbons. Separately, on 13 September 2017, after they had been interviewed by Governor Robinson, they challenged the claimant about what she had said. This was not because of the claimant's report of the incident on B Wing in March 2017 but because, in the Officers' view, they had been wrongly reported for allegedly discussing a terrorism incident and they were annoyed. There was also no evidence that Governor Robinson had in fact told Officers Stanton or Gibbons that the claimant was a source of the intelligence, whether falsely as alleged, or at all. Nevertheless, the Tribunal considered that the claimant had imagined that Governor Robinson must have told Officers Stanton and/or Gibbons that the claimant was the source of the intelligence. Importantly, even though the challenges to the claimant would have been hostile the Tribunal noted that, when complaining to Governors Walsh and Horridge about her treatment by colleagues, shortly after 13 September 2017, the claimant relays a number of concerns but does not mention being challenged by Stanton and/or Gibbons, even though such were the most recent incidents and therefore presumably fresh in her mind.

154. Allegation 14 concerns the note which Governor Robinson left on the claimant's computer, asking her to come to see him in the CPU. It was not clear what the note had in fact said and the note had not been retained by either party. Governor Horridge's evidence was that it said only that C should come to see Governor Robinson in the CPU. The claimant's witness statement, paragraph 61, says the same although the claimant contends that it was left as an act designed to humiliate her. In cross-examination, the claimant sought to suggest that the note had said she was to attend the CPU office to "discuss issues". The Tribunal considered, on a balance of probability, that the note contained nothing that could be described as confidential and did not breach the claimant's confidentiality as alleged. The Tribunal accepted the explanation for it, in Governor Robinson's witness statement, paragraph 22, as reasonable action in the context of trying to get hold of the claimant and the Tribunal rejected the claimant's evidence that the fact the note disclosed that she was being invited to speak to Governor Robinson and the fact that it mentioned the CPU carried an implication that she was either in trouble or telling tales. The Tribunal disagreed with the claimant's analogy.

155. Allegation 15 has been addressed in paragraph 143 above. The Tribunal found no evidence to support the claimant's version of events and so was unable to conclude that it had happened as described or at all.

156. Allegation 16 comprises 2 allegations that the claimant was told to ignore the offensive comments on Facebook. The Tribunal has found that Governor Horridge had told the claimant, on 18 September 2017, to protect herself by not looking at Facebook. This was out of concern for the effect that such comments might have, which the Tribunal considered was not an act of detriment. The allegation that Governor Young had said similar on 12 October 2017, is linked to allegation 3 iii); see paragraph 143 above. However, the Tribunal found no evidence that the claimant had spoken to Governor Young at that time about the Facebook posts.

157. Allegation 17 has been addressed in paragraph 134 above. The Tribunal considered that the respondent's witnesses had provided a reasonable explanation for how the claimant's chair might have been moved or used by others in her absence. The claimant did not disagree with the explanation given; indeed, she admitted doing similar herself on occasion.

158. Allegation 18 has been addressed in paragraph 128 above. The Tribunal did not uphold this allegation on the facts.

159. Allegation 19 has been addressed in paragraph 136 above. The Tribunal found this to have arisen because of a genuine mistake on the part of Officer Ogden and there had been no intention to inconvenience the claimant.

160. Allegation 20 has been addressed in paragraph 135 above. The Tribunal found that, when Officer Ogden heard that the claimant was unhappy with her present, she told the claimant that she had bought it and gave a reasoned explanation for the purchase to the Tribunal, saying that she had not wanted to offend the claimant. The Tribunal accepted Officer Ogden's explanation.

161. Allegation 21 has been addressed in paragraph 138 above. The Tribunal found no evidence that Officer Lyne had been instructed to take the claimant home or that she refused to do so. Rather, sensible arrangements were made for the claimant's partner to collect her, which he did.

162. Allegation 21A was first raised in the claimant's witness statement, paragraph 97, and added to the list of issues, by consent, in the course of the claimant's evidence on day 5 of the hearing. There is a note in the claimant's diary. However, the incident was denied by each of the respondent's witnesses who were alleged to have been present at the time. In the circumstances, the Tribunal accepted the respondent's evidence and considered that the claimant had been mistaken about what happened.

163. Allegation 22 has been addressed in paragraph 137 above. The claimant had commented at the time that she did not think Officer Ogden would do such a thing or say that the claimant did not work at the prison, an assertion which was repeated in the claimant's evidence to the Tribunal. The Tribunal considered that the call had been answered by somebody who had,

mistakenly, suggested that the claimant did not work at the prison. There was no malice, nor any attempt to treat the claimant detrimentally.

164. Allegation 23 has been addressed in paragraph 144 above. The Tribunal found that the claimant was offered support at the trial by the respondent and its Care Team. In addition, Governor Walsh's unchallenged evidence was that she had offered to accompany the claimant. However, the claimant declined this support.

165. Allegation 23A was first raised in the claimant's witness statement, paragraph 39, and added to the list of issues, by consent, in the course of the claimant's evidence on day 5 of the hearing. After hearing evidence from both witnesses, the Tribunal found that the claimant had in fact approached Officer Gilligan, on or around 20 April 2017, to talk about the incident on B Wing in March 2017 but that he told the claimant that he did not want to talk to her about it. The Tribunal accepted Officer Gilligan's reasons for his refusal to discuss matters with the claimant at that time and in the circumstances did not conclude that his refusal amounted to a detriment.

166. Allegation 23B was first raised in the claimant's witness statement, paragraph 113, and added to the list of issues, by consent, in the course of the claimant's evidence on day 5 of the hearing. The Tribunal heard evidence that Officer Gilligan was a friend of Officer Henderson and was therefore understandably pleased that his friend has been acquitted. However, the Tribunal did not consider that he had expressed his view in a manner designed to upset the claimant and that was not his intention.

167. Allegation 23C was first raised in the claimant's witness statement, paragraph 25, and added to the list of issues, by consent, in the course of the claimant's evidence on day 5 of the hearing. The claimant's evidence was that she spoke on one occasion to Officer Oliver although there are 2 separate entries in the claimant's diary, (on 29 and 31 March 2017, at page 262 of the bundle) regarding the comments alleged and referring to 2 separate locations, the gate area and also reception. Officer Oliver recalled the conversation that she had with the claimant, but she was clear in her evidence that it took place after the trial verdict, in February 2018, and not before. The Tribunal resolved the conflict of evidence by preferring the account of Officer Oliver, who told the Tribunal that she did not call the claimant a "grass" and that it was the claimant who suggested that colleagues would see her as a grass in light of the verdict. Officer Oliver responded by suggesting that the claimant was "not likely to be flavour of the month" for a while following the verdict – that was an expression of an opinion and not an accusation as the claimant alleges.

168. Allegation 24 concerns the Facebook posts which are addressed in paragraph 183 below.

169. Allegation 24A was first raised in the claimant's witness statement, paragraph 158, and added to the list of issues, by consent, in the course of the claimant's evidence on day 5 of the hearing. The substance of this allegation was that, in the course of her interview about her grievance, the claimant had wanted to show Governor Fisher the Facebook posts and she contended that Governor Fisher had refused to view them. The claimant had taken issue with this in an email of 12 May 2018. Unfortunately, the grievance investigation was ongoing when the claimant resigned. In those circumstances, the Tribunal was unable to conclude that the claimant had offered and/or that Governor Fisher had flatly refused to view the Facebook posts as alleged. The Tribunal read the copious notes that Governor Fisher had made, of his investigations so far, which were in evidence before the Tribunal. He was in the course of probing a number of issues in detail and the Tribunal considered, on a balance of probabilities that he may well have decided to view them in due course. However, the Tribunal also considered that Governor Fisher was aware that the Facebook posts had been referred to the respondent's national CPU and DIU for an investigation which was beyond his authority. In those circumstances, the Tribunal concluded that the allegation that Governor Fisher had been unsupportive of the claimant was not made out.

170. Allegation 25 relates again to the pen incident, in February 2018, which has been dealt with above at paragraph 129. The Tribunal accepted the respondent's reasonable explanation for what had happened.

171. Allegation 26 concerns the respondent's visit to the claimant's home on 22 February 2018, after she had gone off work, sick on 20 February 2018. This has been dealt with above at paragraph 119. The Tribunal accepted the respondent's reasonable explanation for the visit, which was un-announced. Its purpose was to check on the claimant's welfare. There was no ulterior motive – the Tribunal did not consider that the visit had been carried out in a manner suggestive that the respondent was keen for the claimant to be dismissed.

172. Allegations 27, 36, 37 and 39 repeat a number of allegations that the respondent's managers failed to tell the claimant about updates at work or vacancies whilst she was off sick. The substance of these allegations has been dealt with above at paragraph 117.

173. Allegation 28 concerns Officer Crowther's contact with the claimant, after she had gone off work, sick on 20 February 2018. This has been dealt with above in paragraph 119.

174. Allegation 29 relates to the issue of whether the claimant could resume full-time hours on 1 April 2018 as agreed before she went off, sick. This is dealt with above in paragraph 115. The claimant had mistakenly believed that her sick pay would increase to the full-time rate of pay automatically on 1 April

2018, even though she remained off sick. This was not a matter of the respondent's management keeping the claimant on part-time hours or obstructing her return to full time working when she was well enough to do so. The Tribunal has rejected the basis for this allegation.

175. Allegation 30 is covered in paragraph 119 above.

176. Allegation 31 relates to Officer Crowther's visit to the claimant's home on 8 March 2018. The Tribunal have determined that the meeting was arranged because the claimant was having problems with her mobile and was distressed. Her evidence was that she expressed a wish to meet face-to-face with her line manager. The Tribunal considered carefully the records of the meeting and found no evidence from which to conclude that the meeting was in any way oppressive for the claimant.

177. Allegation 32 concerns whether the claimant was supported by the respondent's management during the internal investigation into the incident on B Wing, which was commenced after the criminal proceedings against Officers Woodhulme and Henderson had concluded. The Tribunal found that the claimant was supported throughout the investigation process by her trade union representative. There was no evidence that the claimant had sought support from the respondent or its Care Team at the time, although she was aware that such was available to her, nor that she complained at the time about any lack of support. The claimant's case, under cross-examination, focussed on her contention that she was put to wait in an unheated side room whilst she saw Officers Woodhulme and Henderson seated in comfortable chairs in reception, with access to tea and coffee, and also that they were talking to her colleagues. The Tribunal accepted that such a situation would have been unsettling for the claimant who was already nervous about giving her evidence all over again, and the Tribunal took the view that the situation could have been managed better by the respondent's personnel. Likewise, the way that the claimant was notified of the investigation and provided with paperwork was unclear and could also have been handled better by the respondent's personnel. However, the Tribunal considered that in terms of administration of the investigation, this was the job of the investigating officer, Governor Hodkinson, and not the responsibility of the claimant's line manager or the Governing Governor, neither of whom were involved in the investigation process, although this allegation is directed at Officer Crowther and Governor Young.

178. Allegations 33 and 34 relate to the welfare meeting, held on 21 March 2018, at the claimant's home. Officer Crowther attended together with Governor Young. The Tribunal accepted that Governor Young attended this meeting for the right reasons, to show support for the claimant. With the benefit of hindsight, however, the Tribunal considered that Governor Young might have first reflected on how his attendance at an early stage of the attendance management process might appear to an employee in the claimant's state of

mind. So far as the specific allegations are concerned, the Tribunal has addressed these at paragraphs 119 and 120 above and has found that it was suggested to the claimant that she could move to another location to work for the respondent, in the context of a discussion about the claimant's return to work and options to address her fears at the time, and the claimant said that she would think about the options. There was no evidence to suggest, however, that the situation had become well-known throughout the prison service as the claimant alleges. In addition, the Tribunal considered that neither Governor Young nor Officer Crowther had said to the claimant that she was being "overly sensitive" about the Facebook comments although the Officers had recommended that the claimant remove herself from Facebook given the nature of the posts concerned.

179. Allegation 35 is an allegation that, at the beginning of April 2018, an unidentified individual had told the claimant that her home was being targeted and the claimant understood that this might be because she had apparently upset people at the prison. There was no evidence to substantiate any part of this allegation, and nothing to suggest that the targeting had come from or related to the respondent's staff or was because of the claimant's protected disclosure. In those circumstances, the Tribunal failed to see how the respondent could be held liable for such.

180. Allegation 38 concerns a letter by Governor Robinson to the claimant which was sent erroneously to another member of the respondent's staff. The Tribunal considered that Governor Robinson's despatch of the letter in this was either a genuine mistake or a question of competence, using a database that was at least 8 years out of date and not being careful to check the address that was copied. There was, however, no evidence of any deliberate or malicious intent as the claimant alleged. In addition, as the letter confirmed only the existence of a grievance and not its substance, any breach of confidentiality was limited.

181. Allegation 40 challenges Governor Young's appointment of Governor Fisher to investigate the claimant's grievance. The Tribunal considered what had happened upon receipt of the claimant's grievance. Section 3.3 of the grievance policy provides that where a grievance is about the actions or decisions of somebody who is not the person's manager or their manager's manager, and is more senior, then this person should respond to the grievance. The claimant's grievance was primarily about the actions of Governor Robinson who was not in the claimant's line management chain. Upon receipt, Governor Young followed the grievance policy and gave the grievance to Governor Robinson to investigate and respond. He later reflected on this, following the claimant's complaint, and instead appointed Governor Fisher. However, the claimant believed that her grievance should have been dealt with by a very senior member of the Prison Service, above Governor Young because Governor Young had also been mentioned within the grievance. The claimant's grievance contained several complaints about

Governor Robinson, whilst the claimant's complaint about Governor Young was limited to a generalised failure to act. In those circumstances, the Tribunal considered that the appointment of Governor Fisher was appropriate because Governor Fisher was senior to Governor Robinson, and the claimant suffered no identifiable detriment as a result of the appointment of Governor Fisher.

182. Counsel for the claimant confirmed, in his written submissions, paragraph 76, that the allegations of detriment numbered 41, 43 and 44 were not pursued. That left allegation 42 as the single allegation about the discussions at the formal absence review meeting on 7 June 2018. The claimant's case was that she had been told at this meeting that she was to be dismissed and she believed the decision had already been made. The claimant also contended that she had not been to a capability hearing when, in fact, the meeting on 7 June 2018 was the first stage of the respondent's formal capability process. The letter of invitation in the bundle at page 625, is clearly headed "Continuous Absence – Formal Attendance Review Meeting Invitation". During the meeting, the claimant said to Officer Crowther that she was not strong enough to return to work in any capacity at that time. Therefore, the discussion led to consideration of the alternative, which was put to the claimant as potential for dismissal in the future. The respondent did not say that it had already decided on dismissal and the Tribunal found no evidence from which it could conclude that any such decision had been made. Instead, what was happening was that the respondent was embarking on a capability process because the claimant had been absent sick for over 3 months. The claimant was unrepresented at this important meeting. If her union representative had been present the claimant may well not have misunderstood matters as she did.

183. The allegations about the Facebook posts: allegations 4, 10 and 24. The respondent accepted that the posts upon which the claimant relies are offensive and their posting amounted at the very least to misconduct in the case of a serving Officer found to be responsible. However, none of the posts could in fact be identified as being by any serving Officer of the respondent and many of them appeared to be posted under pseudonyms. The respondent's Manchester CPU had conducted a thorough search of its data bases and was only able to identify 2 Officers who had "liked" the MEN article. Although this newspaper article reported the trial verdict in ways which contributed to the claimant's distress, the fact of "liking" the article did not, in the Tribunal's view, amount to detrimental treatment of the claimant for which the respondent could be liable. For the respondent to be liable for such posts, The Tribunal considered that the authors would need to be identified as serving employees of the respondent and also there must be evidence that the posts were published in the course of employment. The respondent cannot be held liable for such activity otherwise. The Tribunal also noted that it was understood that a number of the members of the sites were thought to be retired prison officers, no longer in the respondent's employment.

184. The Tribunal found that the respondent made efforts to investigate so far as it was able. It sent on the offensive material to its DIU for investigation and analysis and, in addition, the claimant's complaint was escalated to the respondent's national CPU. However, the Tribunal accepted the evidence of Officer Flick, that the respondent's Manchester personal had done all they could in that regard. It was apparent to the Tribunal from the content of emails such as that in the bundle page 445, that the respondent was already aware of the existence and content of the closed Facebook groups but it had found that it does not have the power to delete posts or to simply close the groups down.

185. One matter that did concern the Tribunal was the fact that the respondent's evidence was that they could not access the sites to investigate and/or that they could not identify any serving Officers who were members of the sites. This was contradicted by the fact that Officer Crowther admitted in evidence he was a member of the Facebook site in question and he confirmed that he was there under his own name rather than under a pseudonym. However, he had made no effort to verify what the claimant said to him nor to discover what was upsetting her, by checking the posts, when he clearly could have done so. Likewise, he did not see fit to remove himself from that site either.

186. In light of its findings on the factual allegations above, the Tribunal was unable to conclude that any of the individual acts contended for were done on the ground that the claimant had made a protected disclosure and also the Tribunal considered that the claimant had not been subjected to any detriment by the individual acts contended for. In respect of the Facebook posts, the Tribunal was unable to conclude that any of these were done by a worker or employee of the respondent or in the course of employment so as to make the respondent liable.

Cumulative Effect

187. Having decided for the reasons set out above that none of the individual allegations amounted to detrimental treatment or discrimination, the Tribunal nevertheless considered whether taken cumulatively there may be a case for that. The Tribunal recognised that the claimant had expressed a concern about being treated adversely by colleagues because of reporting the incident on B Wing in March 2017, when she met with Governors Walsh and Horridge, in September 2017 although, at that meeting, the claimant said that she did not want the respondent's management to take action or to intervene with her colleagues. The Tribunal took note that a number of the respondent's witnesses gave evidence that they had observed the claimant to be anxious about having reported the incident on B Wing and thereafter she repeatedly sought assurances from her colleagues that she had done the right thing. As the trial approached, the claimant's anxiety was observed as increasing, and the Tribunal accepted the claimant's candid admission to the effect that a

disconnect may have developed between her perception of a number of events and the reality of them.

188. When the claimant went off work, sick, the respondent's handling of the claimant's absence gave rise to numerous allegations in this case. Officer Crowther followed the Attendance Management policy, with some discretion in its application, for which the Tribunal does not criticise him. The Tribunal has examined a number of aspects of the handling of the claimant's absence which were pleaded as harassment because of disability and also as detriments, but the Tribunal did not find that a case of harassment was made out. Neither did the Tribunal find that any act complained of was done because the claimant was a whistle-blower. However, the Tribunal was concerned that, in his approach to the claimant, Officer Crowther had used the word "impartial" in evidence and in contemporaneous documents and meetings, when he described his position. The Tribunal considered that this showed a lack of insight into the management of the claimant's absence and anxieties, particularly when Officer Crowther was on notice that the claimant suffered from depression. There was a discussion in the course of the hearing, about what the word "impartial" meant and Counsel for the respondent accepted that it conveyed an impression of not taking sides. The Tribunal considered that when Officer Crowther describing his position to the claimant as "impartial", that description served to fuel the claimant's misperception of the situation at work, and supported her belief that people were taking sides against her. It was apparent to the Tribunal that the claimant had taken many things out of context and proportion. Officer Crowther was the Line manager that the claimant should be able to turn to for support; however, he was unable to provide the reassurance she sought at the relevant time. As a result, it appeared that the claimant was likely to view any treatment by management as detrimental to her, in the months that followed. She plainly reflected on events through that prism. Viewed objectively, however, the Tribunal considered that the respondent behaved properly in relation to the claimant. It offered support and sought to reassure her on a number of occasions that she had done the right thing in reporting the incident on B Wing in March 2017.

189. The claimant had also relied on the alleged involvement of Governor Young behind the scenes. It was accepted that in his senior role Governor Young was aware of the claimant's report of the incident in 2017 and her sickness absence in 2018, but there was no evidence that he had been influencing or directing individual managers in the way the claimant believed.

190. Even cumulatively, therefore, the Tribunal concluded that there had been no discrimination or detrimental treatment of the claimant.

Constructive unfair dismissal

191. The claimant's case has been that she was constructively dismissed, in that she resigned in response to the respondent's treatment of her over time and because she considered such treatment was detrimental and made her ill, and was because of her protected disclosure – the report of the incident on B Wing in March 2017. The claimant' contended that the respondent had been determined to dismiss her from an early stage in her sickness absence and that Governor Young had decided on a course of action designed to remove her. If this were in fact the case, it begs the question why Governor Young would pause the claimant's resignation on 12 June 2018, and invite her to reconsider, with a view to retaining the claimant in the respondent's employment. However, the Tribunal has not found that any of the 44 allegations of detrimental treatment amounted to such, whether individually or cumulatively. The claimant has failed to establish a causal link between her protected disclosure and her dismissal. In addition, the Tribunal had not concluded that the respondent harassed the claimant nor that she suffered discrimination arising from disability. In those circumstances, the claim of constructive unfair dismissal which is based on the same factual allegations must fail - the respondent was not in repudiatory breach of the claimant's contract entitling her to resign as and when she did. It follows that the claim of automatic constructive unfair dismissal must also fail.

Time Limits

192. As there had been no discriminatory or detrimental treatment of the claimant we found that there was no instance of conduct extending over a period so with hindsight a number of the allegations were out of time in any event. Of course, had there been any discriminatory or detrimental treatment this question would not have been academic and the Tribunal would have considered it in more detail.

193. For the reasons set out above, the Tribunal found against the claimant on each individual allegation. The Tribunal was also satisfied that even when viewed cumulatively and against the relevant background the allegations failed on their merits. All the complaints brought by the claimant in these proceedings failed and are dismissed.

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Employment Judge Batten
Date: 21 October 2020

JUDGMENT SENT TO THE PARTIES ON:
6 November 2020

FOR THE TRIBUNAL OFFICE