Case Numbers: 3300524/2019 and 3320257/2019

EMPLOYMENT TRIBUNALS

Claimant		**Respondents**
Mrs P Dhillon	v	(1) Dr S Subramony T/A Medina Medical Centre (2) Ms S Pillai

Heard at: Watford (in part via CVP)	**On**:	23-27 November 2020, 19 and (in private) 20 and 21 January 2021
Before: Employment Judge Hyams	**Members:**	Ms E Davey Mr T Chapman

Appearances:

For the claimant: Mr A Gloag, of counsel
For the respondents: In person

UNANIMOUS LIABILITY JUDGMENT

1. The claimant was not subjected by the respondents, or either of them, to any detrimental treatment within the meaning of section 47B of the Employment Rights Act 1996.

2. The claimant was not dismissed unfairly within the meaning of section 103A of that Act.

3. The claimant was not dismissed unfairly within the meaning of section 98 of that Act.

4. The counterclaim for damages for breach of contract succeeds in principle but the hearing of that counterclaim is adjourned on the basis that the claimant may have a valid set-off for a quantum meruit.

REASONS

The claims

1 The claimant was dismissed by the respondents in 2018 from her position as Practice Manager at the premises known as the Medina Medical Centre, which was a General Practitioner ("GP") practice situated in Luton. The respondents are married. They are also partners within the meaning of the Partnership Act 1890, the business of the partnership being the medical practice which the first respondent at the time of the claimant's dismissal conducted, and for the preceding ten years had conducted, from the Medina Medical Centre ("the Practice"). The second respondent is not a medical doctor.

2 The claimant's dismissal was summary, i.e. she was dismissed without notice. However, she was given notice pay. She claims that her dismissal was unfair, both under section 98 of the Employment Rights Act 1996 ("ERA 1996") and under section 103A of that Act on the basis that (it is her case) the principal reason for her dismissal was that she had made a protected disclosure within the meaning of section 43A of that Act. The claimant also claims that she was subjected to one or more unlawful detriments within the meaning of section 47B of the ERA 1996 for having made such a disclosure.

3 The claimant also claims damages for breach of contract on the basis that her notice pay was insufficient because it was paid on the basis that she was entitled to pay for only 20 hours per week rather than, as she claimed, 26 hours per week, and she also claims an unlawful deduction from her wages in respect of the same loss. That is for the reasons stated below. The second case number arises from the fact that the respondents have counter-claimed damages for breach of contract. That claim is for the repayment of wages paid to the claimant which it is the respondents' case were not properly payable to the claimant. The total sought by way of a counterclaim is £48,349.43, which, by reason of the limit on the tribunal's jurisdiction in respect of breach of contract claims, is necessarily a claim for a sum limited to £25,000.

4 Finally, the claimant claims as unpaid wages accrued holiday pay in respect of 13 days of holiday to which she was entitled at the date of the termination of her contract of employment, but only in respect of the 6 hours per week in respect of which she says that she should have received notice pay.

The procedure which we followed

5 This case was listed to be heard on 23-27 November 2020 inclusive, for all issues, including remedy, to be determined. Even with the respondents agreeing not to cross-examine three witnesses of the claimant as described in paragraphs 22 and 23 below, it took all of the five days that were intended to be used for the whole of the hearing to hear the evidence of both parties. Thus, we did not even get to the point at which we could hear submissions by the end of the week (i.e.

the afternoon of Friday 27 November 2020). One reason for that was that the respondents on a number of occasions disclosed (at our request and, albeit belatedly, in accordance with the previous order for the disclosure of all relevant documents) documents which had not previously been disclosed, but which were material. As a result, they were added to the bundle and they were the subject for the most part of positive evidence and cross-examination. The claimant very helpfully agreed to have the evidence of other witnesses interposed when those other witnesses were able to give evidence, so that the claimant's evidence was given over the course of several days, in several stages. At the end of the week's hearing, we said that it would be open to both parties to adduce further oral evidence about the newly-disclosed documents at the resumed hearing, given that the documents had been disclosed only during the first stage of the hearing. We record here that the late disclosure was the result of the respondents not wanting the claimant to see Dr Subramony's intended evidence to be given to a disciplinary committee of the General Medical Council ("GMC") in response to complaints that the claimant had made about him after she was dismissed. We refer further to those complaints, and record here that the failure by the respondents to disclose documents was found by us to be in no way the result of any intention to conceal any relevant evidence from us.

6 Another reason why the hearing took the time that it did was that

6.1 we were obliged, given the Covid-19 pandemic, to make available to some witnesses (not the respondents or the claimant, who gave oral evidence in person) the opportunity to attend the hearing by video (using the now-current software, known as the CVP software) rather than in person,

6.2 we were then persuaded to permit some of the other witnesses to give evidence by video rather than in person, and

6.3 on several occasions, the witnesses who were giving evidence via CVP experienced difficulty in obtaining access to the hearing room properly.

7 As a separate problem, the oral evidence of two of those witnesses (who were giving evidence on behalf of the claimant) was given by them from a computer which did not enable us to hear what they said very clearly: they were Ms Shazia Ayub and Ms Farzana Salam. In addition, both of those witnesses were required in a short period of time to assimilate new documents, disclosed during the course of the hearing. We therefore expressly permitted the claimant if she so wished to adduce further oral evidence from those witnesses at the resumed hearing, to clarify what their evidence was on material matters. In addition, we expressly permitted the claimant to adduce further evidence at the resumed hearing relating to the matters which were affected by the newly-disclosed documents.

8 We resumed the hearing on 19 January 2021, this time entirely via CVP. We then heard more evidence from Ms Salam, the claimant and Dr Subramony.

The issues

9 The issues were determined by Employment Judge Loy ("EJ Loy") at a case management hearing conducted by him on 25 November 2019. In what follows we refer to the issues in part as they were recorded by EJ Loy but also in part as they stood at the end of the hearing.

Public interest disclosure detriment and dismissal

10 The first issue was whether or not the claimant made one or more protected disclosures within the meaning of section 43A of the ERA 1996. That provides:

> 'In this Act a "protected disclosure" means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H.'

11 Section 43B provides so far as relevant:

> '(1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—
>
> (a) that a criminal offence has been committed, is being committed or is likely to be committed,
>
> (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
>
> (c) that a miscarriage of justice has occurred, is occurring or is likely to occur,
>
> (d) that the health or safety of any individual has been, is being or is likely to be endangered,
> (e) that the environment has been, is being or is likely to be damaged, or
>
> (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

12 As for sections 43C-43H of the ERA 1996, the claimant relied initially on the fact that she had made, she claimed, two disclosures to the Luton Clinical Commissioning Group ("the CCG"). The first was, she claimed, made on 1 April 2018 and the second was made (as recorded by EJ Loy) "during the last week in July 2018". Section 43C so far as relevant applies to a disclosure made to a claimant's employer. Sections 43D and 43E were plainly not applicable. Section

43F applies to a disclosure made "to a person prescribed by an order made by the Secretary of State for the purposes of this section" where the person making the disclosure

> "reasonably believes—
>
> (i) that the relevant failure falls within any description of matters in respect of which that person is so prescribed, and
>
> (ii) that the information disclosed, and any allegation contained in it, are substantially true."

13 Section 43G is in the following terms.

> "(1) A qualifying disclosure is made in accordance with this section if—
>
> (b) the worker reasonably believes that the information disclosed, and any allegation contained in it, are substantially true,
>
> (c) he does not make the disclosure for purposes of personal gain,
>
> (d) any of the conditions in subsection (2) is met, and
>
> (e) in all the circumstances of the case, it is reasonable for him to make the disclosure.
>
> (2) The conditions referred to in subsection (1)(d) are—
>
> (a) that, at the time he makes the disclosure, the worker reasonably believes that he will be subjected to a detriment by his employer if he makes a disclosure to his employer or in accordance with section 43F,
> (b) that, in a case where no person is prescribed for the purposes of section 43F in relation to the relevant failure, the worker reasonably believes that it is likely that evidence relating to the relevant failure will be concealed or destroyed if he makes a disclosure to his employer, or
>
> (c) that the worker has previously made a disclosure of substantially the same information—
>
> (i) to his employer, or
>
> (ii) in accordance with section 43F.

(3) In determining for the purposes of subsection (1)(e) whether it is reasonable for the worker to make the disclosure, regard shall be had, in particular, to—

(a) the identity of the person to whom the disclosure is made,

(b) the seriousness of the relevant failure,

(c) whether the relevant failure is continuing or is likely to occur in the future,

(d) whether the disclosure is made in breach of a duty of confidentiality owed by the employer to any other person,

(e) in a case falling within subsection (2)(c)(i) or (ii), any action which the employer or the person to whom the previous disclosure in accordance with section 43F was made has taken or might reasonably be expected to have taken as a result of the previous disclosure, and

(f) in a case falling within subsection (2)(c)(i), whether in making the disclosure to the employer the worker complied with any procedure whose use by him was authorised by the employer.

(4) For the purposes of this section a subsequent disclosure may be regarded as a disclosure of substantially the same information as that disclosed by a previous disclosure as mentioned in subsection (2)(c) even though the subsequent disclosure extends to information about action taken or not taken by any person as a result of the previous disclosure."

14 We do not refer further to section 43H of the ERA 1996, as the claimant did not (see paragraph 16 below) rely on it.

15 Assuming that the claimant made a disclosure to an appropriate person within the meaning of sections 43C-43H, the other issues arising in relation to the claim of "whistleblowing" detriment and dismissal were these.

15.1 Did the claimant reasonably believe that the disclosure was made in the public interest and that one or more of the conditions in section 43B(1) applied? The claimant relied on section 43B(1)(a), (b) and (d). EJ Loy recorded in his case management summary at pages 109-110 (i.e. pages 109-110 of the bundle put before us at the start of the hearing, on 23 November 2020) that in regard to section 43B(1)(a), the claimant relied on "her belief that Dr Subramony was falsifying records or appointments to increase his working hours" as tending to show that a criminal offence was being, had been or was likely to be committed. In regard to section

43B(1)(b), EJ Loy recorded that it was the claimant's case that she relied on "her belief that Dr Subramony failed to provide an adequate standard of care to patients" as tending to show that a person had failed, was failing or was likely to fail to comply with a legal obligation to which he was subject. In regard to section 43B(1)(d), EJ Loy recorded that the claimant relied on "the endangerment to the health or safety of patients she alleges that ... Dr Subramony posed" as tending to show that the health or safety of any individual had been, was being or was likely to be endangered.

15.2 Assuming that the claimant made one or more protected disclosures within the meaning of section 43A of the ERA 1996,

15.2.1 was she subjected to a detriment by any act or deliberate failure to act done on the ground that she had made such disclosure(s)? It is the claimant's case that she was subjected to the following detriments because she had made her claimed protected disclosures:

15.2.1.1 being suspended;

15.2.1.2 being subjected to a disciplinary investigation; and

15.2.1.3 (as recorded by EJ Loy) being "taken through a disciplinary procedure"; and

15.2.2 was the reason, or principal reason, for her dismissal that she had made such disclosure(s)?

16 One issue which arose was, plainly, whether or not the CCG is "a person prescribed by an order of the Secretary of State" under section 47F of the ERA 1996. The relevant order is the Public Interest Disclosure (Prescribed Persons) Order 2014, SI 2014/2418 ("the 2014 Order"). A careful examination of it shows that the CCG was not a person prescribed by it. Accordingly, issues listed in the rest of numbered paragraph 4.1 on pages 109-110 did not apply. We therefore caused the tribunal to write to the parties, pointing that out in advance of the resumption of the hearing. At the resumed hearing, Mr Gloag accepted that the claimant could not rely on section 47F, and he said that the claimant was relying on only section 43G of the ERA 1996 on the basis that the condition in section 43G(2)(a) was satisfied. When asked what was the claimant's justification for believing that she would be subjected to a detriment if she made any kind of a disclosure to Dr Subramony himself, Mr Gloag said that it was the manner in which Dr Kirti Singh had been treated by Dr Subramony in and after 2016.

Unfair dismissal within the meaning of section 98 of the ERA 1996

17 The respondents claimed that they dismissed the claimant for a loss of trust and confidence in her by reason of her conduct in the form of wrongly paying herself 6 hours' pay per week more than she was entitled to. They claimed that the reason for the claimant's dismissal was therefore either some other substantial reason within the meaning of section 98(1)(b) of the ERA 1996, or her conduct. The issues in the claim of unfair dismissal were accordingly these.

17.1 What was the reason, or principal reason, for the claimant's dismissal? Was it some other substantial reason or the claimant's conduct?

17.2 Assuming that the reason for the claimant's dismissal was her conduct, did the relevant decision-maker genuinely believe that the claimant had committed that conduct?

17.3 Did the respondents conduct a reasonable investigation into the alleged conduct of the claimant before deciding that she should be dismissed for that conduct, i.e. was that investigation one which it was within the range of reasonable responses of a reasonable employer to conduct?

17.4 Were there reasonable grounds for the belief of whoever decided that the claimant should be dismissed that the claimant had committed the conduct for which she was in fact dismissed?

Unlawful deductions from wages/breach of contract

18 As far as the claimant's hours of work and entitlement to pay were concerned, the issue was what were the contractual terms between the parties in that regard, and whether or not the claimant was entitled to pay for 20 hours per week or, as the claimant claimed, for 25-26 hours per week. The respondent paid the claimant notice pay on the basis that the claimant was required to work, and was therefore entitled to pay only for, 20 hours per week (and not 25-26).

Breach of contract by the claimant

19 It was the respondents' case that the claimant had wrongly caused herself to be paid for 26 hours per week from 2011 onwards to the time of her suspension, i.e. 31 July 2018, and the respondents claimed the overpaid sums, limited by reason of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994, SI 1994/1623 to £25,000. The amount claimed before the application of that limit was £48,349.43.

The evidence which we heard

20 We heard oral evidence from the claimant and from the following witnesses on her behalf:

20.1 Ms Ayub, who worked as a Medical Secretary for the respondents at the time that the claimant was employed by the respondents;

20.2 Dr Kirti Singh, a GP who had worked with Dr Subramony in the past and who (a) had since the claimant's dismissal and subsequent events taken over the Practice and (b) now employed the following witness at it;

20.3 Ms Salam, who at the time of, and before, the claimant's dismissal worked for the respondents as a Health Care Assistant and at the time of giving evidence to us worked for Dr Kirti Singh as such;

20.4 Dr Ranjana Singh, who was Dr Subramony's partner, and the senior partner of the Practice, from 2007 to 2008, when she (Dr Singh) retired; and

20.5 Ms Sarah Louise Brindley, who is the practice manager of a GPs' practice in Harpenden and who accompanied the claimant as "an independent colleague" at the disciplinary hearing which preceded the claimant's dismissal.

21 We heard oral evidence from both respondents and from the following witnesses on their behalf:

21.1 Mrs Gulshan Parveen, who was employed by the respondents as a Receptionist but was appointed after the claimant's suspension as the acting Practice Manager;

21.2 Ms Zubeda Shakil, who was employed by the respondents at the time of the claimant's dismissal as the Practice Nurse;

21.3 Ms Henna Afzal, who was employed by the respondents at the time of the claimant's dismissal as a Receptionist, and

21.4 Mrs Sultana Islam, who was employed by the respondents at the time of the claimant's dismissal as a Receptionist.

22 The claimant relied on the evidence of three medical doctors who had done work for the Practice as locums. That evidence was to the effect that the claimant had been in communication with them on behalf of the Practice when she was not working at the Practice's premises in person, and we return to that evidence when we deal with the counterclaim in paragraph 181 below. The locum doctors' evidence was also to the effect, stated in the following sub-paragraphs, that the claimant frequently arranged for locum cover at short notice.

22.1 Dr Mansoor Butt said this in paragraph 10 of his witness statement:

> "There were many times When Dr Subramony was unavailable at last minute so I would be requested to provide emergency sameday/next day cover by Mrs Dhillon. This could be as early as 07:00am or as late as 10:00pm. Such requests became more and more frequent overtime [sic] and due to their last minute nature, I would charge a higher rate for those sessions than if I arranged or scheduled in advance."

22.2 Dr Mohammed Reza Chowdhury said this in paragraph 3 of his witness statement:

> "During my employment with MMC, l worked flexibly about 8 clinics per week in both the morning and evenings between approx. 09:00am - 12:30pm and 3 - 6pm. In addition to this, there were many times Mrs Dhillon would contact me to as early as 07:00am to request emergency sameday cover or even late evening to arrange cover for the next day due to Dr Subramony's absences for sickness etc. These requests for emergency cover became more frequent over the years."

22.3 Dr Rajeshwer Prasad Singh said this in paragraph 4 of his witness statement:

> "Upon joining MMC, I initially worked Monday – Friday running clinics in both the morning and evening. When Dr Subramony joined in 2007, I mostly ran the evening clinic but would regularly cover Dr Singh's morning session at Mrs Dhillon's request. If emergency cover for the same day was needed, Mrs Dhillon would contact me as early as 7:00am to arrange this."

23 We indicated to the parties that since the respondent accepted that the claimant had been in contact with those locum doctors in regard to matters concerning the Practice when the claimant was not physically at the Practice premises, the doctors' evidence was unlikely to be in contention. As a result of that indication, during the first week of the hearing, the respondents indicated to the claimant that they were not going to cross-examine those doctors and the doctors were not called to give oral evidence.

24 We had before us at the start of the hearing a bundle of documents which contained 398 pages. During the course of the first five days of the hearing, documents were added to that bundle so that by the end of that 5 days, it had 549 pages. Before the start of the second stage of the hearing, the claimant's solicitors had created a supplementary bundle which contained 897 pages. By no means all of the latter pages were relevant.

25 We record here that on the fifth day of the first week of the hearing, the claimant gave us a small bundle of original documents, which Mr Gloag asked Employment Judge Hyams ("EJ Hyams") to retain during the period between

then and the resumption of the hearing. EJ Hyams did that, and during our deliberations found in it one additional page which was relevant, but not so material that we needed to refer to it in these reasons. The bundle is currently held in EJ Hyams' judge's room and will be returned to the claimant on request.

The facts

Introduction

26 There was much evidence before us about matters which Mr Gloag submitted were irrelevant to the real issues in the case. We accepted that in many ways the evidence about those matters was peripheral. However, some crucial issues of credibility arose before us, and to that extent some of the evidence of the peripheral matters was relevant. We refer to that evidence below when stating our reasons for determining conflicts of evidence on material matters.

The claimant's employment at the Medina Medical Centre

27 It was the claimant's evidence that she started working at the Medina Medical Centre on 1 March 1998, at which time it was operated by a Dr Uday Kumar and Dr Ranjana Singh. The claimant was not initially the Practice's practice manager, but certainly by the time that Dr Subramony started to work for it, which was as a locum in 2006, she was its Practice Manager.

28 The start date of the claimant's employment at the Medina Medical Centre was disputed by the respondents, but in the circumstances as we found them to be, we did not need to resolve that dispute.

29 The parties agreed that Dr Kumar retired in 2006 and that Dr Subramony became a partner of Dr Ranjana Singh on 1 April 2007. Dr Ranjana Singh retired from the Practice (and from practising medicine) in 2008. After we had started to hear evidence, the parties agreed that Dr Subramony and Ms Pillai were not only married to each other but also partners within the meaning of the Partnership Act 1890 in relation to the business of the medical practice run by Dr Subramony as a GP Principal at the Medina Medical Centre, and that that partnership had started in 2012.

30 The claimant's contracted hours of work were, as can be seen from what we say above, of central importance. There was a major conflict of evidence about the terms of the claimant's employment with the respondents, and about a number of other critical issues. As a result, in what follows we first record the parties' evidence about the material events, stating our findings of fact in part by reference to our acceptance or rejection of the parties' evidence, after which we state our conclusions (and our reasons for them) on the remaining material matters on which there was a conflict of evidence.

The parties' evidence about, or in relation to matters relevant to credibility concerning the things they said about, the circumstances which led up to the claimant's suspension on 31 July 2018

The circumstances leading up to the claimant's suspension and related matters affecting credibility

31 The claimant gave evidence in paragraphs 20-31 of her witness statement about the manner in which she had interacted with the respondents after 2006. In those paragraphs, the claimant made a number of allegations about Dr Subramony's conduct as the Principal of the Practice. What was said in those paragraphs was, unless it was true, defamatory of Dr Subramony. We return to what was said in those paragraphs only as necessary below. The claimant said in those paragraphs nothing about the situation which it was the respondents' case had led to the claimant's suspension. Instead, the claimant referred to that situation in paragraphs 63-84 of her witness statement.

32 Dr Subramony described that situation in paragraphs 5-12 of his witness statement. While we did not accept every aspect of those paragraphs, we accepted that they were for the most part accurate. Certainly, we found Dr Subramony to be an honest witness, doing his best to tell the truth. We did so not only because what he said was consistent with much of the contemporaneous documentation but also because (1) on several occasions when giving oral evidence to us he accepted frankly certain factual propositions which were problematic for him, and (2) in regard to one thing which he had done which was such as to cast serious doubt on the reliability of his evidence, he had (we could see from the documents put before us which were not in issue) immediately asked the CCG for advice, thereby informing the CCG of it. That matter was the deletion by him in the circumstances to which we refer in paragraph 169 below of some patient records.

33 What Dr Subramony said in paragraphs 5-12 of his witness statement was this:

> '5. Between the end of 2017 and beginning of 2018 I noticed that the surgery expenses were becoming unusually high. I discussed this with PD [i.e. the claimant] and asked her to control the spending.
> She started to get very angry with me and said she did not care and that it was not her problem. I told her to keep a close eye on unnecessary expenses. There were months when I was unable to take a salary for myself and even had to put in money from my personal account into the surgery's account to pay staff salaries. Around that time I told PD that I was better off giving up the surgery and just doing locum work. She got very angry and accused me of not thinking of her and the other staff.
>
> 6. I decided to check on why the expenses were going up from £30000 a month to £42000 a month. Around mid 2018, my wife and partner phoned the bank and started checking invoices. She phoned the companies that

had sent invoices and noticed that there was equipment bought for the surgery which was not necessary. This prompted me to question PD further around June 2018. I asked her if she had bought the equipment for her son who had just qualified as a doctor. In response she got very angry, started shouting at me for bringing her family's name into it.

7. On the following day PD brought the equipment with her including a cardiology stethoscope in a bin bag from home, gave it to the staff at Reception and told the staff to give it to me. The staff brought it to my room. When I opened the bag I found the equipment in it including the cardiology stethoscope, the thermoscan and blood pressure sets.

8. During the following weeks PD became very rude and aggressive towards me whenever I tried to speak to her. She threatened me on about 4-5 occasions that she was not going to do work properly but would only do the minimum work until I increased her salary. She repeatedly said to me in an aggressive manner with her finger pointed at me "Call the accountant and tell him to increase my pay or I won't do my work"
On many occasions she was shouting at me unnecessarily and arguing in the earshot of patients in the waiting room and within hearing of Reception staff at the Reception counter.
One patient came to my room after she left and asked if I needed any assistance / help. He asked if he should write to the authorities regarding her behaviour towards me.
I thanked him for his concern but declined his offer of help.

9. On another occasion around end of June 2018, PD assaulted me by pulling my ear in front of a Senior member of staff, Ms Sultana Islam.

10. I asked PD for invoices and cheque books as I wanted to check where the money was being spent. She accused me of not trusting her and for doubting her.
She continued to be aggressive and threatening and finally brought some cheque books and threw it at me. I told her many times to calm down and not to behave inappropriately. She did not take my advice but continued, saying she was not bothered.

11. I started to worry that she may deliberately cause problems in the surgery that would affect the patients safety and health as she repeatedly said she was not going to do work properly unless I increased her salary. I could not understand why she was reacting so unreasonably. This caused me to doubt her even more.

12. I asked my accountant if there were any irregular payments to staff. It was then that the accountant told me that PD had been claiming well over 20 hours a week for a while even as much as 35 hours a week. The accountant told me that they relied on PD's submission of monthly time

sheets, trusted her and did not think to cross check with me. They had never seen her contract before and assumed she was authorised to claim the overtime.'

34 There were some factors which bore on the reliability of that passage. One was that Dr Subramony had not seen the claimant bringing a black bin bag with medical equipment in it to the surgery from her home, and evidence from not only the claimant but also one of the respondent's witnesses, Ms Islam, pointed towards her having brought it from her office rather than her home, before taking it to the Reception staff. In the light of that factor, we found as a fact that the claimant had not brought the medical equipment to which Dr Subramony referred in paragraphs 6 and 7 of his witness statement from her home to the surgery.

35 In addition, there were some accounts for the respondents' partnership at pages S440-S450 (i.e. pages 440-450 of the supplementary bundle). They showed that expenditure had not in fact increased between 2017 and 2018: rather, it had decreased slightly. However, we did not have the accounts for 2018-2019.

36 Bank statements disclosed by the respondents showed that on 29 March 2018, salaries of £16,000 and £17,000 were paid to the respondents, with the bigger payment going to Dr Subramony. The page showing those payments was not printed out and put in the bundle by error, but it should have been included immediately after page 475. (The bank statements were added to the bundle by EJ Hyams during the course of the hearing when they were sent by Ms Pillai to him and the claimant only by email, and in order to minimise the disruption to the trial caused by that late disclosure, he printed them out and added page numbers to them. On reviewing them when deliberating we realised that page 3 of the bank statement for March 2018 was missing, as were pages 1 and 2 of the bank statement for April 2018. However, those missing pages were of course in the possession of both parties.) At page 474 there were records of payments of salary to Ms Pillai in the sum of £4,000 and to Dr Subramony of £6,000 on 6 March 2018. But no salary was paid to the respondents in the following months of April and May 2018, and (as shown on page 482) only £2,700 to Ms Pillai and £3,000 to Dr Subramony were paid at the start of the month after that (those payments were made on 1 June 2018). At the start of the next month, on 2 July 2018, as shown on page 487, Ms Pillai drew £12,000 as salary and Dr Subramony drew £13,000 as salary. Those things supported one aspect of the evidence of Dr Subramony in that they showed that there was a period in the first part of 2018 when he and Ms Pillai did not draw a salary from the Practice.

37 One element of the evidence before us which Mr Gloag argued strongly should not be taken into account by us because (he said) it was not directly relevant to the issues, was relevant not only to the credibility of the claimant but also to the issue of the reliability of the financial information before the accountants. That was that the claimant had at the end of 2017 started (it was clear from the cashed cheque of which there was a copy at page 393) to make out and sign (as the sole signatory) cheques from the respondents' business account to herself. The

cheque of which there was a copy at that page (393) was dated 29 December 2017 and was in the sum of £870. At page 385 there was a cheque for £300 dated 21 June 2018 and one for £50 dated 25 June 2018. At page 386 there was a cheque in the sum of £200 made out to the claimant and one for £960 made out to Shingara Singh. At page 389 there was a cheque dated 6 April 2018 and made out by the claimant to herself for £420. At page 390 there was a cheque made out by the claimant to herself in the sum of £835 and dated 9 April 2018. At page 392 there was a cheque made out to the claimant by herself in the sum of £600 and dated 27 April 2018.

38 Thus there were cheques made out by the claimant to herself for a total of £3,275, and a cheque made out to Shingara Singh in the sum of £960. In cross-examination the claimant was asked who Shingara Singh was. The claimant's answer was this: "I do not remember who Shingara Singh was. And I do not know anyone called Shingara Singh." She said that if she had been able to look at the cheque book stubs then she would have known for what the cheques to herself (and, presumably, Shingara Singh) had been paid, as she recorded on the cheque book stubs what the cheques were for (and not just to whom they were made out). However, the cheque book stubs were now missing, in the circumstances to which we refer below.

39 The cheques themselves were obtained by the respondents only during 2020, when they requested them from their bank. The respondents' bank statements before us showed a number of payments made direct (i.e. online) to the claimant's own bank account, showing (or, rather, confirming) that there was no need for cheques to be paid to her. In addition, the online banking payments had references, and showed what they were for. For example, on 1 May 2018 (at page 477) there was an entry in these terms:

> "On-Line Banking Bill Payment to
> P.K.Dhillon
> Ref: Petty Cash"

40 In contrast, on the same page there were two entries with simply the words "Cheque Issued" and a cheque number by them. One was for £600 and the other was for £200. Thus, if a cheque was paid then the bank statement did not show to whom it was paid, or for what.

41 Furthermore, there was at page 160 an email dated 30 July 2018 from the respondents' accountants to the claimant, copied to Dr Subramony, in these terms:

> "Hi Palvinder
>
> Hope you had a great weekend. I had a meeting with Dr Siva on Wednesday and one of the things I discussed with him was the Excel cash book. Unfortunately we struggled to reconcile the cashbook back to the

> bank statement. There were a few errors namely items from bank statement not included on your cashbook. As a result we had to spend time going through each transaction on the practice bank account and comparing it to your cashbook. I attach a summary of our findings.
>
> Unfortunately this has cost us in excess of £300 but as a goodwill gesture I will be charging £250+VAT for this. Going forward can you please do a monthly bank reconciliation to ensure this issue does not occur again. Happy to have a chat if you need to. We also need to consider a new HMRC Initiative which will be coming in around 2020 known as making tax digital. This will mean all records have to be kept electronically and Excel will not count."

42 At page 162 there was a sheet headed "Bank Reconciliation". It showed a total of "Missing Payments" of £9,165.54. In addition, there were "Errors on Receipts" totalling £104,039.81. We did not hear evidence about that document, and neither party made submissions about it, so we did not take it into account except that we saw it as part of the background to the claimant's suspension. We consider below the question of whether Dr Subramony knew about and authorised the making out by the claimant of cheques from the respondents' cheque-book to herself.

<u>The keeping by the Practice of patient records in an unlocked shed</u>

43 One further matter which was relevant to the question of the reliability of the passage from Dr Subramony's witness statement which we have set out in paragraph 33 above was what was on one level a peripheral matter but on another was of considerable importance since it was the subject of what looked to us to be a potentially well-founded complaint on the facts to the GMC. That was that the respondents had kept confidential medical records in an unlocked shed in the grounds of the Practice premises from 2016 onwards. It was to Dr Subramony's great credit as far as his honesty was concerned that he admitted that that had happened: he knew that it was by the time of the hearing before us a matter about which the claimant had complained (long after she had been dismissed) to the GMC, and which was a pending matter before the GMC at the time of our hearing. His evidence (given to us on 19 January 2021) was that the claimant had told him that there was no room for the records anywhere else at the Practice's premises, and that if he put a lock on the shed then potential thieves would break into it because they would think that it held something valuable, so that he should not put a lock on it. Dr Subramony then said this:

> "She said I should leave the running of the practice to her and I could not do any more as she was very strong in her management."

44 The claimant's evidence was that she and Dr Subramony had agreed that the records should be kept in the shed. The claimant also said that they had only been kept there because Dr Subramony would not pay for staff to spend time

scanning the documents and then shredding them. In response, Dr Subramony said that the claimant had never asked him to authorise that and that in any event if the claimant had organised it then he would simply have paid the staff without any objection, that she was the manager of the Practice, and that he left the management of the Practice to her.

45 We accepted Dr Subramony's evidence on the issue of the use of the shed for storing confidential medical records to the extent to which it differed from that of the claimant in part because we simply preferred it to that of the claimant and in part because of the factors to which we refer below which diminished the credibility of the claimant's evidence. That led us to the conclusion that Dr Subramony agreed to what the claimant said should occur about the use of the shed because of the force of her personality and his lack of desire to take control at least in 2016 and cause her to do what he should have ensured was done, i.e. make suitable arrangements for the scanning and shredding of the records for which there was no room in the Practice premises except in the shed.

46 That conclusion in turn led us to conclude that the claimant was in no way intimidated by Dr Subramony. Dr Subramony frankly accepted in oral evidence that he was not a business manager, and that he concentrated on giving good medical care to his patients. He said that he left the management of the Practice to the claimant. We concluded after hearing all of the evidence that his evidence in that regard was wholly accurate. We stress that that was not by any means to Dr Subramony's credit, as he was plainly responsible for the manner in which the Practice was managed, including the manner in which patient records were kept.

<u>The raising by Dr Subramony with the claimant of concerns about expenditure in the first part of 2018</u>

47 It was not suggested to Dr Subramony in cross-examination that he did not start to raise with the claimant the issue of increased expenditure during the first part of 2018; rather, the cross-examination proceeded on the basis of an apparent assumption that that had happened. In addition, when cross-examining Mrs Parveen, Mr Gloag put it to her that the relationship between the claimant and Dr Subramony had "become factious around April 2018", and Mrs Parveen accepted that.

48 The claimant acknowledged some aspects of what Dr Subramony wrote about in paragraphs 7-12 of his witness statement. For example, in paragraph 65 of her witness statement, she said this:

> "In approx. April 2018, Dr Subramony asked me to show him invoices for costs incurred for the first quarter of the year including locum fees, vaccines and medical equipment. I personally took the invoices to him and sat with him to explain what each payment was for. After this, Dr Subramony would ask for the same invoices for the same payments over and over again and wanted them immediately even if I was in the middle of something or with

> a patient. I deny this made me angry, but do admit I found it very annoying to keep taking time out of my working day to go through the same payments over and over again. Reviewing the same invoices multiple times was not going to change the payments made."

The purchase of medical equipment by the claimant without reference to Dr Subramony

49 In regard to the purchase of medical equipment, the claimant said this in paragraph 79 of her witness statement:

> "I noted that all Dr Subramony produced by way of evidence was the invoices showing that the equipment had been purchased. I did not deny that the equipment was purchased; it was purchased because it was necessary for the good of the Practice and as stated I have never required such authorisation before."

50 However, in answer to questions asked by Ms Davey, the claimant said that she was not asked by anyone to buy a stethoscope for the Practice, and that the one that she had bought and about which Dr Subramony complained was bought by her simply because it was "on sale". She then said that it was bought for the benefit of any locum who worked at the Practice.

Did the claimant react aggressively to being questioned about expenditure and later threaten to do the minimum if she were not given a pay rise in 2018?

51 In paragraph 81 of her witness statement, the claimant said this:

> "With reference to Dr Subramony's allegation that I threatened not to discharge my duties properly if I was not awarded a substantial pay rise, I refuted that I made such a statement, although, I do confirm that I reminded Dr. Subramony of his contractual obligation to review staff salaries on an annual basis."

52 Something she said at the end of her oral evidence, and after re-examination, without an invitation by anyone to say it, was relevant in this regard. She started by saying this:

> "I felt really humiliated. We built the patients [at the Practice] up from 2000 to 6000. I recommended him [Dr Subramony] to Dr Ranjana Singh to take as a partner. I felt he was not taking care of the practice and when I was pinpointing him he did not like me making him aware that I was aware of his weak points. The assistant manager got a pay rise from £10 to £18 per hour, and for years there were no pay increases. That was due to the greed of Mrs Pillai as she had legal knowledge and she found a loophole to get the NHS contract for public funds for her personal use."

53 That showed that the claimant regarded the Practice as being in some way at least in part hers, and that she felt that she had not been properly remunerated for her part in its success.

54 We came to the clear (in fact we saw it as being an inescapable) conclusion in the above circumstances that Dr Subramony questioned the claimant about what he perceived as increased expenditure by the Practice in the first part of 2018 and that she was not happy at all when he did that. We also concluded, in part from what the claimant herself told us, that the claimant reacted aggressively to being questioned in that way. She also, we concluded, did demand on four or five occasions to be paid an increase in her salary and said that if she did not get one then she would do only the bare minimum required by her contract of employment.

55 In addition, we concluded that the claimant was well aware by July 2018 that her integrity was being questioned by Dr Subramony and that he was likely to go down a disciplinary route, if only by carrying out a disciplinary investigation.

Was the claimant authorised by Dr Subramony to make out to herself, and be the sole signatory on, cheques from the respondents' cheque book?

56 We record here that the claimant referred in paragraph 105 of her witness statement to the payment to herself of cheques, but that she said nothing in that paragraph about them being authorised by Dr Subramony. His evidence was that she never obtained his approval for any cheque that she signed on behalf of the Practice. Hers was that she always did seek such approval.

57 As far as liability was concerned, we did not need to come to a conclusion on the question whether or not the claimant sought and obtained Dr Subramony's approval before cashing cheques to herself, but that question was relevant to the parties' credibility. We refer below to Dr Subramony's evidence that the cheque book stubs went missing from the Practice on or shortly after 31 July 2018, when the claimant was suspended, and we record here that, for the reasons given below, we accepted that evidence. Whether the claimant was responsible for the loss of the cheque book stubs was not a matter on which we came to a conclusion: there was insufficient evidence before us to do so, and in any event we did not need to do so. We record here that we could see no good justification for the claimant paying cheques to herself, and that if we accepted that she had not shown them to Dr Subramony before paying them to herself, then the only possible reason for doing that rather than doing a bank transfer was to hide the cheque payment from Dr Subramony's eyes so that he could know to whom it was made and (if it was recorded) for what only if those things were recorded (i.e. accurately) on the cheque stub and he was shown that stub. We record here too that what the claimant initially said to Dr Subramony, in paragraph 2.3 of the document that she described as a witness statement which she put before him on 6 September 2018 (see paragraph 138.1 below), was consistent with the

claimant not seeking authorisation for major expenditure. What she said there was:

> "It is my job to buy medical equipment for the surgery. It is also within my job description to incur such expenditure without Dr Subramony's authorisation. Please provide me with evidence that such authorisation is required for such expenditure. Please also confirm why I have been allowed to incur such expenditure from the commencement of my employment for sums well in excess of this that do not require his authorisation? By way of example, in or around 2015 I purchased a blood pressure monitor for the waiting room for £1200. I was not required to obtain prior authorisation or discuss the matter with Dr Subramony prior to making this purchase."

58 Partly because of that passage in the claimant's own document, created shortly after she was suspended, but also because we preferred Dr Subramony's evidence on this, both in the light of the other factors relating to the parties' credibility to which we refer above and below and in any event, we accepted that the claimant did not show Dr Subramony the cheques which she made out to herself and obtain his approval for them before paying them into one of her several bank accounts.

<u>Emails that were sent from the claimant's NHS email account after she was suspended and after she was dismissed</u>

59 Another element of the claimant's witness statement evidence which was relevant to her credibility was that she said this in paragraphs 107-110 about her use of her NHS email address after she was suspended:

> "107. The Respondent also alleges fraud in that I was sending emails from my NHS account in the capacity of Practice Manager after my dismissal (pages 395 and 381 of the Bundle). I deny sending or receiving any emails in the capacity of Practice Manager and note the only evidence Dr Subramony was able to provide in support of his claim was a print out of the emails in question which were not originals and could very well have been doctored and interfered with.
>
> 108. I confirm that between my suspension on 31 July 2018 until the end of October 2018, I only used my NHS email for personal matters and to obtain relevant evidence against Dr Subramony for the purposes of the GMC tribunal, with the permission of CCG.
>
> 109. In any event, my NHS email address belongs to me personally and was not owned by the Practice or Dr Subramony as my employer so he should not have been accessing my email account or holding a record of any of my personal emails without my consent. The CCG confirmed they denied a request from Dr Subramony to access my NHS emails in March 2019, so he was very aware of this policy.

> 110. I believe that Dr Subramony accessing my NHS emails, viewing and holding my personal email containing personal information (between myself and my bank) without my consent is a breach of GDPR. I was therefore, required to further report Dr Subramony to the GMC on 4th August 2020 in light of the breach."

60 During her oral evidence, however, the claimant acknowledged that she had in fact continued to use her NHS email address, showing her as the Practice Manager of Medina Medical Practice, until the middle of January 2019. She also accepted that at least some (if not all) of the print-outs that the respondents had supplied and were in the hearing bundle (at pages 372, 373, 376, 380, 381, 384, and 395, which were put there in the circumstances described in paragraphs 68-70 below) were print-outs of emails that she had actually sent. Some of those print-outs were very difficult, if not impossible, to read. When EJ Hyams asked Ms Pillai why they were so unclear, she said that she had the original print-outs with her in a physical file which she had at the hearing room. EJ Hyams then asked her to get them from that file, which she did. She gave them first to Mr Gloag, so that he could see them. EJ Hyams then scanned, paginated, and added them to the bundle as pages 398-426. Without referring to the Computer Misuse Act 1990 or the applicable case law (*Jones v University of Warwick* [2003] EWCA Civ 151, [2003] 1 WLR 954), EJ Hyams asked Mr Gloag whether any issue was taken about the admission of the emails into evidence, and he said that no such issue was taken. The copies in the bundle were the subject of paragraph 69 of Mr Gloag's closing submissions, in which he said this:

> "Further on, or around, the 20th March 2019, Cs emails were accessed by R [398-426, note the inverted date of print at top left of each page]. C challenges the content of some the emails as they do not appear to have the accurate footers. The emails appear to be copies [visible photocopy line top 398-426]."

61 We record here that if and to the extent that it appeared that a page of the bundle was a photocopy then that was because when the original print-out was scanned by EJ Hyams, the scanner introduced one or more lines, and that each print-out that EJ Hyams scanned was (we could see) plainly original, and not a photocopy.

62 We pause to note that what the claimant said to us about having used her NHS email address until the middle of January 2019 was contrary to what she had said in paragraph 108 of her witness statement, which we have set out in paragraph 59 above, in that in paragraph 108 of her witness statement the claimant was saying at least implicitly, if not unequivocally, that she had stopped using that email address in October 2018. The complaint that the claimant made to the GMC as she recorded in paragraph 110 of that witness statement, had been followed up by the GMC, and there was at pages S578 onwards a copy of a statement made for the GMC proceedings in the claimant's name. That statement was shown at page S586 to have been approved and signed by the

claimant on 22 December 2020. At the end of paragraph 15, on page S581, the claimant said this:

> "I used the account until early January 2019."

That too was contrary to the content of paragraph 108 of the claimant's witness statement made for these proceedings.

63 At page 399 there was a short chain of emails. The first was from Ms Ayub to the claimant sent at 13:04 on 31 July 2018 with the words "please see attached". The email above it was sent apparently by the claimant (i.e. it was sent from the claimant's NHS email address) to Ms Sharan Dhillon, who was, we were told, the claimant's daughter. It was sent at 14:41 on 6 August 2018. It had no text but was plainly a forwarding of the email below it with its enclosures. There were two enclosures with the file names "contract page one.jpg" and "Contract page two.jpg". Those were almost certainly the result of scanning, i.e. they were in all probability documents produced by a scanner being used to scan a hard copy.

64 The email at page 406 was from the claimant to "drkirtisingh@gmail.com" and had this text:

> "*kirti please* can you print this".

65 Four attachments were shown, and they were in these terms:

> "statement of terms of employment FARZANA.rtf; statement of terms of employment GULSHAN.rtf; statement of terms of employment PD.rtf; statement of terms of employment SULTANA.rtf"

66 The email at page 406 was sent at 11:46 on 9 August 2018. It appeared therefore that the claimant had had Ms Ayub send to her a scanned copy of a contract, which had two pages, at lunchtime on 31 July 2018. On 9 August 2018, the claimant had apparently sent to Dr Kirti Singh what appeared to be rich text format versions of the statements of terms and conditions of Ms Salam, Mrs Parveen, Mrs Islam and the claimant herself. A rich text format document is usually produced when using a word processing package such as Word. We pause to note that while the claimant orally denied sending at least some of the emails which Ms Pillai had retrieved from the claimant's NHS email account, the claimant's own documentary evidence showed that she had said to the GMC that she had used the account until early January 2019, and she had not said to the GMC that there were in the emails sent from that account up to that point (early January 2019) any emails that she had not herself sent. That was clear from paragraphs 7-11 of the statement that the GMC had made for her in support of her complaint about the gaining by Dr Subramony of access to her (the claimant's) NHS email account (paragraphs 7-11 were on pages S579-S580), which were in these terms:

> "7. The email account that I had used to email my bank was one that I had for all my employment period – it was issued to me by the NHS and I had it until 2019. No- one could access it apart from me. When I worked at the Practice the email account was on the computer that I used.
>
> 8. The email account required a password to access it, but it was set as auto sign-in on my work computer, so my computer remembered my password, so I did not need to enter it.
>
> 9. I could also access my email account with my NHS card by swiping it on the keyboard which would automatically log me into my desktop.
>
> 10. I believe that Dr Subramony had access to my NHS card when he obtained the key to my drawer following my suspension from the Practice.
>
> 11. When I was suspended from the Practice on 31 July 2018, I left all my things there. My NHS card was in my drawer, so I was never able to retrieve it."

67 We describe in the next section of our reasons below what happened when the claimant was suspended and what was (we found as a fact) in her drawer when Dr Subramony eventually was able to gain access to it. Here, we record that while the claimant claimed in paragraph 108 of her witness statement for these proceedings (which is set out in paragraph 59 above) to have had the permission of the CCG to access and use her NHS email account, her oral evidence did not support that proposition: at best it was to the effect that she had in the afternoon of 31 July 2018 told Ms Sukeina Kassam (who had written the email at page 263, which we have set out in paragraph 112 below) that she planned to continue to use her NHS email account and that she was told "you can collect your own evidence from your email account and then you can stop using it". We saw in this regard that the claimant's witness statement to the GMC on the complaint of wrongful access to her NHS email address contained this paragraph (on page S580):

> "13. When the CCG came to my house, I also discussed with them about having permission to access my email account as I had proof in my emails that I wanted to use for a GMC complaint against Dr Subramony, so I needed access to the email account. They allowed me to continue to use my email account from home."

68 We asked the respondents how they had obtained access to the emails sent from the claimant's NHS email address. Ms Pillai said that it occurred through someone putting through her and Dr Subramony's door one evening in March 2019 an unmarked envelope in which there was a sheet of paper on which was a password and other sheets of paper with what Ms Pillai described as

"anonymous emails that the claimant had sent". The latter was a dubious concept, but we record that Ms Pillai's evidence was at times imprecise, and that what she said next might have explained what she meant. She said that she (not Dr Subramony) had used the password and found that it gave her access to the claimant's email address and that the claimant had been using it after her (the claimant's) dismissal. She then clarified that the sheet of paper with login details was accompanied by a print-out of one email.

69 We asked Ms Pillai why the enclosures that were referred to in the emails were not printed out, and she said that she had tried to print them out but that they had not printed out. Ms Pillai told us that she used only a recently-purchased iPad for email and internet use and the preparation of documents for the trial before us, and on a number of occasions during the hearing before us she could be seen to be having difficulty in using digital technology. In part as a result, but also because

69.1 we found Ms Pillai's evidence on this and generally to have been given honestly in the sense that she was, we concluded, genuinely doing her best to tell us the truth, and

69.2 it would have been very much in the interests of the respondent to have been able to print out the enclosures unless they were in the same form as one or more of the documents at pages 128-157, but

69.3 there were only 2 pages of what appeared to be and was almost certainly the claimant's scanned contract of employment, which suggested strongly that Ms Ayub on 31 July 2018 sent the claimant only a two-page statement of terms and conditions,

we accepted that Ms Pillai was not able to use computing facilities with ease and either there was a real technological problem with printing the enclosures, or Ms Pillai was not able because of her lack of technical prowess to print them out.

70 Mr Gloag asked Ms Pillai why she had accessed the claimant's NHS email account. She said that it was because she wanted to get proof that Dr Subramony was innocent of the charges which had by then been levelled against him by the GMC as a result of the complaints which had by then been made against him by the claimant, Ms Ayub and Ms Salam to which we return below. We record here that we thought that that reason for accessing the email account was entirely understandable and such as to justify us in admitting the relevant emails, even if they were obtained in breach of a legal prohibition, such as section 1 of the Computer Misuse Act 1990. In fact, one would normally not expect an NHS email account to be used for any purposes than those of the NHS, and one would normally expect an employer to be able to access an employee's work email account if only to obtain relevant emails relating to the employer's business.

71 When the claimant was being cross-examined, she admitted that she had sent the email at page 399 to which we refer in paragraph 63 above, but said that she had not forwarded what Ms Ayub had sent to her on 31 July 2018. That did not make sense: it was contradictory. Unfortunately, we had no record of the claimant being asked specifically in cross-examination whether or not she had sent the email at page 406 to which we refer in paragraphs 64 and 65 above. Nor, however, did we have a record of her at any time saying that she had not done so.

The claimant's suspension and related matters

72 Dr Subramony's evidence was that when he suspended the claimant on 31 July 2018, he had at first seen her contract of employment when he asked for it to be brought to him in his office, but that it had shortly after that gone missing. His witness statement continued, immediately after the paragraphs of his witness statement which we have set out in paragraph 33 above:

> "13. Further to all this information I considered calling her to discuss this but knew that she would be very confrontational and aggressive. I therefore contacted BMA employment advisers for advise.
> On their advice I called PD for a fact finding meeting on 31/7/2018 in the presence of Ms Shazia Ayub, my secretary.
> I raised my concerns with her i.e. 3 points regarding her over claiming of salary, her threatening behaviour towards me during the past few weeks and the fact that she was buying vaccines from her daughter's company. (She was questioned by NHSE for over claiming flu vaccines in October 2017) In response to their query she got an invoice from her daughter's company, Cape Pharmaceuticals to account for the shortfall of amount claimed. She was in charge of all managerial matters including submission of claims of vaccines, etc. After this incident / query by CCG in October 2017, I warned her about her behaviour.
>
> 14. She did not respond to any of my concerns during the fact finding meeting and was not interested in communicating with me. I told her I was suspending her pending further enquiries and handed her a suspension letter which informed her that the suspension was a neutral act. I asked her to return her keys and NHS smart card which she refused. She shouted at me as she walked out of my room saying she was going to CCG to complain about me and that she would make sure I never sat in my chair again.
>
> 15. I asked CCG members to go and collect her keys from her. They collected a set of keys from her home which were brought to me two days later. None of the keys fitted any locks. Between the evening of 31/7/18 and the next day someone had removed all policies, staff contracts and documents from the surgery. I last saw PD's contract

which was in a box with all other staff contracts last on the afternoon of 31/7/2018.

16. On the following day i.e. 1/8/2018 I noticed that all staff contracts were missing from the box. I then realised that all surgery policies and documents were also missing.

17. A locksmith was called to open PD's drawers in her desk. There was nothing of significance there except for some coins and old receipts. Everything else appeared to have been removed."

73 The claimant accepted that she had retained her keys to the Practice when she was suspended. She claimed that she had given the CCG those keys. She said this in paragraph 88 of her witness statement:

> "I confirmed the reason I initially held onto the keys after my dismissal was because I had evidence against Dr Subramony in my locked drawers and feared returning the keys would compromise the evidence and any potential investigation."

74 Mrs Parveen's witness statement contained this passage:

> '6. PD [i.e. the claimant] was in Dr Subramony's room with Shazia Ayub in the morning of 31/7/18. PD came out of the room followed by Shazia Ayub. PD shouted that she was going to CCG to complain about Dr Subramony and she shouted at Dr Subramony "I will see that you never sit in that chair again"
>
> 7. As PD left I followed her to get her keys but she refused to give them to me.
>
> 8. The CCG brought the keys two days later which they collected from PD's house on request of Dr Subramony. None of the keys fitted any locks. I phoned PD at home and told her the keys did not fit any locks and asked her whether she sent the wrong bunch of keys by mistake. PD rudely replied "No" and disconnected the call. We called a locksmith to open PD's drawers and the drawers were empty except for some receipts and coins.'

75 Mrs Islam's witness statement contained the following passage:

> '5. PD was in Dr Subramony's room with Shazia Ayub in the morning of 31/7/18. PD came out of the room followed by Shazia Ayub. PD shouted that she was going to CCG to complain about Dr Subramony and she shouted at Dr Subramony "I will see that you never sit in that chair again"

6. As PD was leaving the building, Gulshan Parveen followed her to get her keys but she refused to give them to her.

7. The CCG brought the keys two days later which they collected from PD's house on request of Dr Subramony. None of the keys fitted any locks. Gulshan phoned PD and asked her if she had mistakenly sent the wrong keys because nothing fitted the locks to the doors of the surgery or the cabinets in PD's room. PD just said No rudely and disconnected the call. We called a locksmith to open PD's drawers and the drawers were empty except for some receipts and coins.'

76 We noted the similarities between those two statements, and we concluded that they were drafted initially by Ms Pillai. Mrs Islam was cross-examined on the issue of the locked drawer and she said that she saw a locksmith come to the Practice to "open the locks" as she put it. She said that she was not present when the claimant's drawer was opened and that she was told that the drawers were empty except for some receipts and coins. Mrs Islam otherwise stood by the passage in her witness statement that we have set out in the preceding paragraph above.

77 Mrs Parveen was also cross-examined about what happened on 31 July 2018 and shortly afterwards. She stood by the passage in her witness statement set out in paragraph 74 above, and she said that when the claimant left the building, she, Mrs Parveen, said that Dr Subramony wanted the Practice's keys and that the claimant did not give them to her. She also said that the claimant refused to say what had happened and then just drove off. Mrs Parveen said that she had herself after the claimant left the building gone to get the box in which the staff's contracts of employment were kept and she had seen all of the contracts in it. She had taken the claimant's contract and given it to Dr Subramony, she said. She said that the box was in a cupboard above the claimant's desk. She said that the next day, Dr Subramony asked her to bring the box with the contracts down to his office and that when she went to the box the contracts were all missing: that the box was empty. She said too that other documents were missing. What she said (as noted by EJ Hyams, with the note tidied up for clarity here) in that regard was this:

"Q: And did other documents come to your attention as being missing?
A: Yes

Q: What other documents?
A: We had policies; loads of other stuff was locked away in one of the cupboards; but we did not have a key to them until Thursday. When Dr Subramony tried to open them the key was wrong so we had to have someone come and open the locks; and the things that we needed was not there; just papers that were not of any need; in boxes and folders.
Q: What about computer data?

A: We were offered help by the CCG; in the afternoon of 31 July 2018 someone came and helped us. She went onto the shared drive looking for us and she said there was nothing there that we needed.

Q: Including the contract for Farzana Salaam?
A: Everything had gone.

Q: That must have been of significant concern?
A: Of course it was."

78 Dr Subramony was cross-examined about this during the first week of the hearing. He said that he had reported the loss of the documents and data to the police and the CCG. We noted at that point that there was nothing to that effect in the bundle, but at the resumed hearing, a copy of a police report was in the supplementary bundle (at pages S858-S860). We accepted that it was a true copy of the police report as claimed by Dr Subramony. In fact, its authenticity was not challenged in cross-examination. It showed that the matter was reported on 4 August 2018. It was recorded as a complaint of theft, but it was said (on page S858) that "Evidential Difficulties Prevent Further Action". On page S859 there was this entry:

> "The person reporting reports that the person he suspects is the only person that has keys and access to the contacts [sic], and money, and that he has found the contract box after having to force open the container, but the box is empty and all the contracts have been taken".

79 Given all of that evidence, we concluded that someone (not Dr Subramony or someone acting at his direction or with his knowledge), had gained access to the Practice's premises between 31 July 2018 and 4 August 2018 and removed the documents which Dr Subramony said had been removed. We also concluded that Dr Subramony had not been able to gain access to the claimant's drawer between those times and that when he was first able to do so, which was when a locksmith attended the premises and opened the drawer, there was no swipe card in it which would have enabled him to gain access to the claimant's emails. Bearing in mind in addition the documents at pages 174-176 whose content we describe in paragraph 135 below, we also accepted what Dr Subramony said in paragraph 14 of his witness statement, which we have set out in paragraph 72 above, about the claimant refusing to give him her swipe card when she was suspended. Accordingly, we concluded that the respondents had no access to the claimant's NHS email account until March 2019 when the respondents were given the password to that account, and Ms Pillai used it.

<u>The allegation of the claimant pulling Dr Subramony's ear on 22 June 2018</u>

80 While it was not necessary for us to decide whether or not the claimant had pulled Dr Subramony's ear on 22 June 2018, since she was not (as we found: see paragraph 178 below) dismissed for it, it was a hotly contested issue (with the

claimant denying firmly that she had pulled Dr Subramony's ear) and its resolution assisted us in deciding whom to believe on other, central, issues.

81 The first time it was recorded by Dr Subramony that his ear had been pulled by the claimant was in the letter in which he stated his decision to dismiss the claimant. That was dated 19 September 2018 and was at pages 202-205. On page 204, he wrote this:

> "During the disciplinary hearing, you denied that your behaviour towards me had changed at all, but as an example, I recalled that you had even assaulted me by pulling my ear, whilst you were in my room in the presence of another member of staff."

82 Later, on the same page, Dr Subramony wrote:

> "I have also sent you a statement from Sultana Islam confirming you pulled my ear in her presence."

83 That statement was in fact in the form of a letter dated 10 September 2018, of which there was a copy at page 218.

84 In addition to Dr Subramony and the claimant, Mrs Islam gave direct oral evidence about the alleged ear-pulling by the claimant on 22 June 2018. She referred to that situation in paragraph 9 of her witness statement, where she said this:

> "On 22/6/ 2018 I was in Dr Subramony's room when PD pulled his ear. She wrongly accused him regarding a prescription to a patient. I was shocked at her behaviour."

85 Mrs Islam was asked supplemental questions in chief about that matter and she said that at some point during the morning, she had gone into Dr Subramony's surgery to get a prescription signed and while she was there, the claimant had walked in – rushed in, Mrs Islam corrected herself – and pulled Dr Subramony's ear. Mrs Islam said that the reason why the claimant had come into the room and approached Dr Subramony was that she, the claimant, had with her a prescription for a controlled drug which the patient to whom it related had amended and then signed. Mrs Islam said that she could see that the signature on the prescription form was not Dr Subramony's and was instead that of the patient, but that it appeared that the claimant thought that it was Dr Subramony's. Mrs Islam was cross-examined on the issue of the ear-pulling and she said: "It happened. I was present".

86 We concluded on the basis of the above evidence that the claimant had indeed pulled Dr Subramony's ear in the morning of 22 June 2018. We found the evidence of Mrs Islam to have been given with a genuine desire to tell the truth, and that her recollection of the event (which, we accepted, could have been

mistaken) was genuine. That helped us to accept also the evidence of Dr Subramony on this issue, although, as we say above, we found him generally in any event to be doing his best to tell us the truth.

The allegation that Dr Subramony was asleep, drunk, at work in the morning of 22 June 2018

87 The first time that the claimant alleged that Dr Subramony was at any time drunk at work was in the witness statement which she put before him at the disciplinary hearing of 6 September 2018 which followed her suspension. We return to that witness statement in the next section below, but before doing so, i.e. here, we deal with the evidence on that issue before us, and resolve the evidential conflict on the issue. Again, the issue was not determinative, but its resolution was important as far as the credibility of the claimant and Dr Subramony was concerned.

88 In paragraph 1.4 of her statement given to the respondents on 6 September 2018, at pages 183-184, the claimant said this:

> "Dr. Subramony went through some personal challenges and has often had an unhealthy relationship with alcohol which he has admitted previously to NHS England. In addition. he regularly suffers from depression. There have been occasions when, due to his drinking, I have had to recommend to Dr. Subramony that he go home and have arranged for locums to come to the Practice to step in for him. I have also been responsible for arranging adequate cover for his holidays and sick periods."

89 In paragraph 3.1 of that document at page 186, the claimant said this:

> "On 24 July 2018, I felt I had no choice but to raise the conduct of Dr. Subramony to the CCG. I advised them of my concerns regarding Dr. Subramony's behaviour, especially regarding his alcohol abuse and the fact that he was not upholding the standards of the profession."

90 In paragraphs 28-30 of her witness statement for the hearing before us, the claimant said this:

> "28. In the first quarter of 2018, when inspecting clinic records to submit claims for payment from NHS England, I had found a number of fake patient consultations had been added to his clinics for patients I know myself are housebound and can only be seen during home visits. I suspected that Dr Subramony was acting fraudulently in an attempt to justify his late working hours and maintain his level of income. Although I never confronted Dr Subramony directly, I did raise this subsequently as part of my anonymous complaint to the CCG in July 2018 (see below).

29. Over time the wider staff also started to become aware of the issues Dr Subramony was facing as they became too obvious to hide. They would often call me frantically asking for help after finding him sleeping in the Practice during clinical hours or in an inebriated state just before clinics were due to start for e.g. on 22 June 2018, one of the receptionists made me aware that Dr Subramony was sleeping during a clinic at 09:49am when he was mean to be seeing patients.

30. I believe that Dr Subramony was an alcoholic as when I made him aware of the detrimental effects his behaviour was having on the Practice in approx. mid-2016, he disclosed to me he was on medication from Malaysia to treat his alcoholism. In a bid to also help him, I arranged for a private psychiatric referral and understand he met with the psychiatrist in approx. September 2016."

91 Dr Subramony and Ms Pillai said that Dr Subramony had suffered from depression (not alcoholism) and had sought the help of a psychiatrist as a result. None of the claimant's witnesses said that they had seen Dr Subramony drunk or under the influence of drink at work. The respondents' witnesses gave evidence firmly to the contrary. Ms Shakil was the most senior in professional terms of them. In the first three paragraphs of her witness statement, she said this:

> "I have been working at Medina Medical Centre since May 2008 as partime [sic] and was working as Diabetes and TB nurse with cambridgeshire Community Service in Luton. I use to work partime from 2008 till Nov 2017 I started full time. When working partime I did not get to see Palvinder Dillion [sic] as I use to work 3 evenings, by then PD would have finished for the day. When I had started fulltime I got to see PD at work.
>
> While working at Medina Medical centre I was happy working, with good team. Dr Subramony and all staff had a good understanding relationship as a team.
>
> I found Dr Subramony was a good Dr, very caring for his Patients. I had never found Dr Subramony drunk or a sleep [sic] in his clinics. I was well supported in my clinics and Dr Subramony was also willing to help me learn clinical skills and enhance my knowledge in primary care. If I had ever come acoss [sic] Dr Subramony being drunk or a sleep in his clinics I would of [sic] never left my CCS job as Daibetes/ TB [sic] specialist job and increase my Hours at Medina Medical Centre."

92 When giving oral evidence and being cross-examined on this point, Ms Shakil was adamant that she would not have given up her job with the Cambridgeshire Community Service in Luton and gone to work full-time at the Practice if she had come across Dr Subramony being drunk or asleep in his clinics.

93 Mrs Parveen said this in paragraph 11 of her witness statement:

> "In the 13 years I worked with Dr Subramony, I have never seen him drinking alcohol at work nor have I ever seen him drunk at work, neither has any patient complained about him being drunk."

94 Ms Afzal said this in her witness statement:

> "In regards to the complaint filed against Dr Subramony by Palvinder Dhillon to the GMC, I would like to mention, to the best of my knowledge, I have not come across any misconduct by Dr Subramony whilst working at Medina Surgery. I have never seen Dr Subramony drink alcohol at work nor have I seen him drunk."

95 In paragraph 12 of her witness statement, Mrs Islam said this:

> "During the 13 years I worked for Dr Subramony, I have never seen him drunk at work, I have never seen him drinking alcohol at work and no patient has ever complained that he was drunk. He was always well respected by all patients and staff."

96 In the course of cross-examination, Ms Pillai said that Dr Subramony had a wound which required dressing with rubbing alcohol three or four times a day. She said that it was caused by a motorcycle accident to which she had referred in paragraph 18 of her witness statement as having occurred in 1990. Dr Subramony said words to the same effect. He was not cross-examined on that, and claimant accepted, when she was being cross-examined on 25 November 2020, the proposition that Ms Pillai put to her that "[Dr Subramony] has a wound which requires a dressing with rubbing alcohol every day? 3/4 times?". The claimant said in response to that question: "Yes, I know." The claimant then, subsequently, when she was being cross-examined, shortly after 12 noon on the following day, Thursday 26 November 2020, introduced a photograph. It was a scanned copy of a WhatsApp message. It showed Dr Subramony either feigning being, or actually, asleep. It had a time of 09:49 and was dated 22 June 2018. The claimant said that one of the receptionists, Khalida, had taken it. We put it in the bundle as page 428. The claimant said that she was not at work at that time, when she said she received it, and that Khalida had sent it to her while she (the claimant) was on her way to an off-site meeting. The claimant said that she had then turned round and gone to the Practice surgery and gone into Dr Subramony's room. She said that he was asleep there. She continued (as noted by EJ Hyams, with the note made at the time tidied up for present purposes):

> "And then I can smell something in his room. That was the smell of alcohol. I knew he used to put it on wounds; but I knew he had an alcohol problem, so I went into his bag and found a whisky bottle; 75ml.

> I did not take a photo; I was so panicked; I waked him up [sic] and told him he was sleeping and had a bottle of half-drunk whisky.
>
> He was just shocked and he said sorry, sorry, sorry."

97 Dr Subramony immediately said to us when EJ Hyams asked him for his response, so that it could be put to the claimant fairly and properly:

> "I did not have a whisky bottle in my bag; and it was in a narrow space between the table and chair and wall on my left; the bag was next to me.
>
> The bag is there [indicating] and just next to me is my cabinet with a printer on it. Unless someone leans over me they have to physically touch my body to open my bag. They cannot otherwise access it [the bag]. Mine is a small room. Two feet away is the patient's chair. And the patient's chair is immediately to my right.
>
> So without leaning across me there is no way that anyone can access the bag."

98 When EJ Hyams put that to the claimant, she said:

> "I did lean over him to get the bag."

99 When EJ Hyams asked her why, she said: "As I could smell something on his breath."

100 When EJ Hyams asked Dr Subramony whether he was aware of being woken up by the claimant, he said "No, not at all." Dr Subramony then said that as he lived 22 miles away from the Practice and he worked long hours, he did on occasion lie down on the couch in his room (i.e. the one there for patients to lie on when that was necessary to examine them), but to rest his back, and not to sleep. He said that the Practice's staff knew that they could disturb him at any time unless he had the curtains around the couch closed, when they would know not to disturb him, and that that would be because he might be changing the dressing on the wound to which Ms Pillai had referred in her evidence. He said that he was not able to sleep in his chair.

101 Dr Subramony said too that his staff had in the past taken photographs of him, when he had pretended to be doing something as a joke, but that he did not recall that happening on that day.

102 We subsequently on that day experimented with the use of WhatsApp and came to the tentative conclusion that the time shown on a WhatsApp message which enclosed a photograph was the time of the sending of the message and not the time of the photograph. When we put that tentative conclusion to the parties, they agreed with it.

103 On 22 December 2020, i.e. after the hearing before us in November 2020, as we record in paragraph 62 above, the claimant made a fresh statement to the GMC. In paragraph 27 of that new statement (at pages S584-S585), the claimant said this:

> "In my initial statement I raised a concern about Dr Subramony sleeping in the surgery during clinic times. I have a copy of a photograph of Dr Subramony sleeping at the Practice that was taken on 22 June 2018. This was provided to me by a receptionist who currently works there. She sent it to me at 9.49am on 22 June 2018. His clinic started at 9.30am. I wasn't at the surgery at the time. I returned to the surgery and woke Dr Subramony up and he apologised and said he was tired. I couldn't find this photograph at the time of my previous statement as it was on my surgery phone which was cancelled. However, I found the photograph when I was looking through photographs on WhatsApp. A copy of the photograph is attached as Exhibit PD/08."

104 The claimant was cross-examined on that at the resumed hearing before us, i.e. on 19 January 2021. The exchange between Dr Subramony and the claimant on that matter as noted by EJ Hyams and tidied up for present purposes was this:

> "Q: Why did you give one version to the Employment Tribunal about being called back by the staff and having to put a hand over me and get the bottle out of the bag, and then say to the GMC only that you came back to the surgery and had to wake me up?
>
> A: It is not contradictory; it is different occasions. It is not the same photograph. That time I did not send the photograph to the GMC. I did not find it. Now I have sent the photograph."

105 The latter proposition, i.e. that she was referring to two different photographs, was very hard, if not impossible, to accept. The photograph to which the claimant was referring was not in the supplementary bundle, but she had described in the passage set out in paragraph 103 above precisely the photograph that we had seen on the WhatsApp message at page 428. Similarly, the proposition that the claimant was referring to another occasion was very hard, if not impossible, to accept. In fact, the claimant had not previously, before giving oral evidence, said anything about herself seeing Dr Subramony drunk or asleep on 22 June 2018. Rather, she merely said this in paragraph 29 of the witness statement which she signed on 23 October 2020 and which was her evidence in chief the hearing before us:

> "Over time the wider staff also started to become aware of the issues Dr Subramony was facing as they became too obvious to hide. They would often call me frantically asking for help after finding him sleeping in the Practice during clinical hours or in an inebriated state just before clinics

were due to start for e.g. on 22 June 2018, one of the receptionists made me aware that Dr Subramony was sleeping during a clinic at 09:49am when he was mean[t] to be seeing patients."

106 We concluded that if the claimant had genuinely seen a whisky bottle in Dr Subramony's bag then she would said so to the GMC in her statement of 22 December 2020.

107 In those circumstances, we concluded that the claimant had when she was being cross-examined on 26 November 2020 made up her evidence about seeing Dr Subramony asleep at the Practice and smelling of alcohol on 22 June 2018 and then, when she made her statement to the GMC of 22 December 2020, she left it out of that statement because she knew that it was not true.

<u>The claimant's evidence relating to the disclosures that she said she had made to the CCG in 2018 and related matters</u>

108 The parties agreed that the claimant on 31 July 2018, after she had been suspended by Dr Subramony, said something to him about making a complaint about him to the CCG. In paragraph 48 of her witness statement (i.e. for these proceedings), she said that she had said to him that she was going to complain "to the CCG again". Dr Subramony and the witnesses to whose evidence we refer in paragraphs 74 and 75 above said that the claimant did not use the word "again". Dr Subramony was adamant that that was the first occasion when she said anything to him about making a complaint to the CCG about him, and that she merely said that she was going to make such a complaint.

109 The claimant then, on (see paragraph 138 below) 6 September 2018, said in the document at pages 183-187, which was described at its head as a witness statement and was clearly drafted with great care, and probably with the assistance of legally qualified person, the following things about what she had said to the CCG. In paragraph 3 (of which for convenience we repeat here the first two sentences, which we have already set out in paragraph 89 above) she said this:

> '3.1 On 24 July 2018, I felt I had no choice but to raise the conduct of Dr. Subramony to the CCG. I advised them of my concerns regarding Dr. Subramony's behaviour, especially regarding his alcohol abuse and the fact that he was not upholding the standards of the profession. By way of example. Dr Subramony removed a disabled patient and their family from our patient register due to another member of that family being removed as an alleged violent patient. I advised Dr. Subramony that taking such an action was against our Practice's policies and he could only remove the alleged violent patient, and not his family, as it would leave a disabled child without immediate care. I also reminded Dr. Subramony that a similar incident in the preceding year had resulted in the Practice being fined and having to issue a letter of

apology to the family concerned. It also resulted in the Practice being ordered by the Ombudsman to change the Practice's guidelines with regards to the removal of patients. When I raised these points with Dr. Subramony, he accused be [sic] of "going against him".

3.2. I was also concerned about the fact that I had to get locums to cover Dr Subramony when he would not attend to the surgery and would often not let us know of his whereabouts. A recent example of this was on 18 July 2018 when Dr. Subramony failed to attend the surgery, leaving 6,000 patients without a doctor, thereby compromising patient care and breaching his contract with NHS England.

3.3. I understand Dr Subramony was made aware of the complaint made against him to the CCG on Monday, 30 July 2018 and I believe as a result of me having blown the whistle on him that he is now looking to terminate my employment when there is no reason for doing so and certainly no grounds for gross misconduct.'

110 The next development in the sequence of events was that in the hearing, conducted (as we describe in paragraph 141 below) by Dr Subramony, of the claimant's appeal against her dismissal, she said this (as recorded by the employee of the firm of solicitors at whose offices the appeal hearing took place on 21 November 2018; the record was at page 259):

> "PD said she thinks the only reason why Dr S suspended her was because of her whistleblowing to the GMC, CCC [sic] and CQC. Dr S asked whether the reports/complaints were made before 31st July 2018. PD confirmed they were made in April 2018. Dr S denied knowing anything about the complaints prior to 31st July 2018. PD asked whether his reason for dismissal was therefore expenditure. Dr S said he will consider this in further depth."

111 There was also, on the following page, the following relevant note:

> "Dr S asked PO if there was anything else she wished to discuss. PD said she feels that the only reason for her suspension was because of whistleblowing after her complaint in April 2018. Dr S said he has already discussed this issue and he was not informed of her complaints prior to 31st July 2018. PD said she initially complained anonymously. Dr S said he was still not informed of any complaints prior to 31st July 2018."

112 On 5 December 2018, Ms Sukeina Kassam of the CCG wrote the email at page 263 to the claimant, which was in these terms:

> "Dear Palvinder,
> Further to my conversation just now, this is to confirm that Luton CCG received your whistleblowing letter on 30th July 2018. We were unaware of

> the sender until you made contact with us on 31st July 2018 informing us that you were the anonymous sender.
> Kind Regards".

113 The claimant said in oral evidence that she had contacted the CCG by telephone shortly after she had been suspended and at that time told them that she was the sender of the anonymous complaint to which Ms Kassam was referring.

114 In the details of claim enclosed with the ET1 claim form, which was received by the tribunal on 18 January 2019, this was said (it was paragraph 19, on page 19):

> "As detailed above, the Claimant became aware that the Respondent was failing to meet the needs of his patients, abusing alcohol in the course of the working day and was falsifying records of appointments to increase his working hours. The Claimant was also concerned about the Respondent removing the family of a difficult patient from the Practice's patient list, including a disabled child who was consequently left without care. The Claimant felt the only responsible course of action was to make a referral to the CCG. The first referral was in April 2018 and the second referral was in the last week of July 2018."

115 Next, on 25 November 2019, the claimant told EJ Loy (as recorded in paragraph 4.1 of the record of that hearing, at page 109) that she "relies on two disclosures to the Luton Clinical Commissioning Group: a first disclosure on 1 April 1998 and a second disclosure during the last week of July 2018."

116 The claimant then described in the witness statement that she made for the purposes of these proceedings what she had said to the CCG on which she relied as a public interest disclosure. The witness statement was signed on 23 October 2020. The relevant passage was paragraphs 36-41, all of which was relevant. Those paragraphs were preceded by the heading "Referrals to the NHS Luton Clinical Commissioning Group (CCG)" and were in these terms.

> "36. I tried to contain the situation with Dr Subramony as best I could but eventually my concerns regarding his ability to provide an adequate standard of care to his patients became too apparent to ignore.
>
> 37. I believed that Dr Subramony's conduct was potentially fraudulent as he was misusing public funds and had started to act dishonesty [sic] with patients. I believed that he was failing to comply with his legal obligations and the health and safety of the Practice's patients and staff was at risk.
>
> 38. I felt the only responsible course of action was to make a referral to the CCG in line with the Practice's whistleblowing policy. I therefore, made two separate anonymous referrals to the CCG on approx. 01 April 2018 and again on approx. 26 or 27 July 2018 outlining my

concerns. Unfortunately, I do not have a copy of the whistleblowing policy as this was kept electronically in the Practice and I no longer have access to it.

39. I made these referrals anonymously as I was fearful of losing my job if Dr Subramony were to ever find out these concerns came from me. Unfortunately, I did not keep a copy of the complaints.

April disclosure

40. I advised the CCG by way of an anonymous letter sent I believe on 1 April 2018 that he was not providing adequate care to his patients in a timely manner and was compromising patient wellbeing. He was cutting down locums in the Practice in an attempt to save money, despite always calling in sick or being unavailable. Patient investigation reports including blood test results, X-Rays and scan reports were not dealt with on time meaning patient referrals and treatment were delayed, putting their health and safety at risk. I had also advised them of the unauthorised removal of some patients.

July disclosure

41. I again advised the CCG by anonymous letter on around 26/27 July 2018 regarding Dr Subramony's ongoing failure to ensure adequate locum cover but this time highlighting the fact he was now refusing for some new patients to be registered at the Practice as they required more complex clinical care which could not be provided with limited clinical staff. I also raised concerns regarding his falsifying of patient records for financial gain. I had become aware that Dr Subramony had created a number of false patient consultations claiming patients had received vaccinations. I believe this was so that he could claim the money back from NHS England. I advised them of the incident on 18 July 2018 where he breached his contract and left 6,000 patients without any care. In addition to this, I complained that he was refusing to carry out home visits even for the most deserving and bed bound patients and instead recommending they call for an ambulance. This behaviour had led to a serious incident with the patient and safeguarding concerns were raised by the hospital which Dr Subramony did not address."

117 In addition, in paragraph 47 of the claimant's witness statement for these proceedings, she said this:

"On 30 July 2018, I was speaking with Dr Subramony in person at the Practice, raising my concerns regarding his recent behaviour and the breach of contract on 18 July 2018. It was during this discussion that I revealed his behaviour had left me with no choice but to inform CCG and

> that I had done so the week prior. Dr Subramony was left visibly angry by the entire discussion and the conversation ended as most had done in recent times, by one of us walking away from the other."

118 Dr Subramony was adamant that there had been no such conversation between him and the claimant on 30 July 2018. The respondent's response to the claim included this paragraph (numbered 10, on page 70):

> "The Respondent was not and is not aware of any complaint the Claimant may or may not have made to the CCG in April 2018 and was not contacted by the CCG at that time or anytime. The first time the Claimant indicated that she may make such a complaint was when she left the fact finding and suspension meeting with the Respondent on 31 July 2018 and stated that she was going to complain to the CCG. The Claimant then stated at the appeal hearing held on 21 November 2018 that she had made a complaint to the CCG in April 2018. However, the Respondent has never been formally notified by the CCG or the CQC that the Claimant has complained about him whatsoever. The Respondent only became aware that a complaint had been made to the GMC about him by email from GMC dated 26th September 2018. (The claimant was dismissed on 21st September 2018)".

119 At the start of the hearing before us, we made it clear that we thought that it was likely to be evidentially very helpful to us to see what, precisely, the CCG had in its possession by way of any complaint made by the claimant to it in 2018 about Dr Subramony. As a result, Mr Gloag said that he would ask his instructing solicitors to ask the CCG for a copy of any such complaint.

120 In fact, the claimant then made that request. On the following day, 24 November 2020, Ms Fiona Foster of the CCG emailed the claimant in the following terms:

> "I have liaised with the relevant CCG colleagues who have confirmed to me that they are in receipt of your original letter which was unsigned.
>
> Due to the sensitive nature of the case it would be inappropriate for us to forward any documentation to a non-secure and unsubstantiated email address. What we can do is forward a copy of this letter to the court (or other 'official' organization) if they request it from us.
>
> I hope this is acceptable to you, and I do hope you appreciate the need for a secure method of transmission."

121 We were told about that email on the day after, 25 November 2020. EJ Hyams then sent Ms Foster an email from his judicial email address, in the following terms (copying it, of course, to the parties):

> "I now ask that you organise the sending to this email address of (1) any letter (scanned) or email (forwarded as an email file, if possible) which you now know was sent by the claimant to the CCG alleging malpractice of some sort at the Medina Medical Centre, and (2) a scanned copy of any envelope enclosing any physical letter. Very unusually, I am writing to you from my judicial email address in the middle of a hearing, but I do so in order to ensure that the matter is dealt with as soon as possible."

122 An hour later, Ms Foster wrote in the following terms (only, apart from a salutation and a signature):

> "Further to your request please find attached scanned copy of the required letter."

123 The enclosed "letter" was in these words and these words only (we later put it into the bundle as page 429):

> "Raising Genuine concern re Medina Medical centre:
>
> Core consultation times is reduce to do extended hrs.
>
> Wednesday only one GP working since Jan 2018, previously 2 GPs was working. Patient safety at risk if on duty GP called off sick. 6000 patient with no dr. example 18th July 2018.
>
> From practice staff
> Instructed to cover up wrongdoing otherwise job at risk.
> Wanted to stay anonymous ."

124 We drew the following conclusions having seen that document.

124.1 The claimant made only one complaint or disclosure to the CCG before she was suspended.

124.2 That complaint was made in July 2018, and was received only on 30 July 2018.

124.3 The complaint was apparently hurriedly written, not least because the first substantive sentence made no sense.

124.4 The only part of the complaint that made any sense as far as the language was concerned was objectively not well-founded if locums could be obtained to work at short notice. Here, the claimant's own evidence showed that the Practice frequently obtained the services of locums, including at very short notice, as recorded in paragraph 22 above. In addition, there are plainly (i.e. it appeared obvious to us from

our experience and knowledge of the kind of services available via the NHS) emergency services available to members of the public to cater for emergencies.

124.5 It was unlikely that that short document would have led the CCG to contact Dr Subramony, especially as an emergency matter and at short notice.

124.6 The claimant's first set of reasons for contacting the CCG (set out in paragraph 109 above) included Dr Subramony's alleged alcohol problem and the removal of a disabled patient and that patient's family from the Practice's register, as well as the allegation that Dr Subramony was absent from the Practice without warning, leading to a requirement to obtain the services of a locum at short notice.

124.7 Neither of the first two of those things was in fact in the one short document which the claimant sent to the CCG before her suspension. That short document showed that what the claimant had put in paragraph 3.1 of the statement that she made no more than six weeks after sending the document to the CCG was (see paragraph 109 above) therefore untrue and showed either that the claimant was deliberately not telling the truth in that statement, or that her recollection (no more than six weeks after the event which she purported to describe in paragraph 3.1 of that statement) was markedly unreliable.

124.8 The claimant did not initially say that she had made a referral to the CCG in April 2018. The allegation that she had done so was first made only at the hearing of her appeal against her dismissal, on 21 November 2018.

124.9 By the time of the making of the claimant's witness statement for these proceedings, she was alleging that in addition she had (see paragraph 116 above) told the CCG "that Dr Subramony's conduct was potentially fraudulent as he was misusing public funds and had started to act dishonest[l]y with patients". That was not in the document at page 429 whose contents we have set out in paragraph 123 above.

124.10 In addition, the claimant wrote in her witness statement for these proceedings (see also paragraph 116 above) that she had told the CCG the following things, which were also not in fact in the document at page 429 whose text we have set out in paragraph 123 above.

124.10.1 "Patient investigation reports including blood test results, X-Rays and scan reports were not dealt with on time meaning patient referrals and treatment were delayed, putting their health and safety at risk".

124.10.2 Dr Subramony "was now refusing for some new patients to be registered at the Practice as they required more complex clinical care which could not be provided with limited clinical staff".

124.10.3 Dr Subramony was "falsifying ... patient records for financial gain"; this was said on the basis that the claimant "had become aware that Dr Subramony had created a number of false patient consultations claiming patients had received vaccinations. I believe this was so that he could claim the money back from NHS England."

124.10.4 Dr Subramony "was refusing to carry out home visits even for the most deserving and bed bound patients and instead recommending they call for an ambulance. This behaviour had led to a serious incident with the patient and safeguarding concerns were raised by the hospital which Dr Subramony did not address."

125 Accordingly, either the claimant was capable of creating memories which grew and grew with each revisiting, so that her evidence was unreliable for that reason, or she had knowingly misled the respondent and the tribunal on a highly material matter.

126 In addition, and in any event, there was a marked contrast between the opening words of paragraph 3.3 of the claimant's witness statement made shortly after her suspension, at page 187 (see paragraph 109 above), about whether or not Dr Subramony knew that she had made a complaint to the CCG about his practices, and what she said in that regard in paragraph 47 of the witness statement that she made for these proceedings over two years later, which we have set out in paragraph 117 above. Initially, the claimant merely said that she "understood Dr Subramony was made aware of the complaint made against him to the CCG on Monday, 30 July 2018". In marked contrast, she wrote in paragraph 47 of her witness statement for these proceedings that she had a verbal exchange with Dr Subramony on that day after which he was "left visibly angry by the entire discussion" and one of them (who, the claimant does not say) walked away from the other in anger. One would have expected the latter to be stated in detail only some six weeks after it occurred if it had in fact occurred.

127 We also noted that the document whose terms we have set out in paragraph 123 above was of such a sort that if the claimant had not been dismissed and Dr Subramony had found out about it, then he would have been highly unlikely to take any negative action against the claimant for sending it. It also would not have been possible for him to be able to identify its writer.

128 The document referred to a risk of the loss of employment if the matter in question was not covered up. As we record in paragraph 16 above, the claimant

claimed that the manner in which Dr Subramony had treated Dr Kirti Singh after she had made a complaint about him to the GMC justified her believing that if she complained to Dr Subramony about his behaviour, then he would subject her to a detriment. The main evidence before us about the situation concerning Dr Kirti Singh was in paragraphs 33 and 34 of the claimant's witness statement:

> "33. In 2016, due to Dr Subramony's increasing mental health issues and problems with alcohol, the Locum was required to step in and take more responsibility as the lead Doctor of the Practice. As a result, it was decided between themselves that the Locum would replace Ms Smeetha Pillai as a Partner of the Practice and the Locum would go into Partnership with Dr Subramony. They signed a Partnership agreement with NHS England and the Locum left her Partnership in another local practice. However on 01 October 2016, the day the Locum was due to start as Partner, Dr Subramony withdrew from this contract all of a sudden and without warning. The reason Dr Subramony gave was that he did not want to share the profits of the Practice.
>
> 34. After this, the relationship between the Locum and Dr Subramony completely broke down and she left in 2017. The Locum subsequently made a complaint to NHS England regarding Dr Subramony's fitness to practice and provide adequate patient care. As a result of their investigation, NHS England made a number of recommendations to Dr Subramony regarding his personal and professional development."

129 The "locum" to whom the claimant referred in those paragraphs was Dr Kirti Singh. In those paragraphs there was evidence only of a breakdown of the relationship between Dr Subramony and Dr Kirti Singh <u>followed</u> by a complaint made by the latter to "NHS England".

<u>Our conclusions on the factual issues relevant to the claim of whistleblowing detriment and dismissal</u>

130 We concluded the following things from the evidence and factors to which we refer above.

130.1 The claimant could not reasonably have believed that she would suffer any detriment if Dr Subramony found out about the complaint that she had in fact made to the CCG. That was not only because there was nothing in the circumstances in which Dr Kirti Singh and Dr Subramony had interacted before 30 July 2018 from which any reasonable person could draw the inference that he or she would be treated detrimentally if Dr Subramony found out about that complaint, but also because the claimant had plainly said objectionable things to Dr Subramony on many occasions, and (we concluded) been subjected to no detrimental treatment for doing so.

130.2 The claimant did not at any time before being suspended say to Dr Subramony that she had made a complaint to the CCG about his conduct. In coming to that conclusion we preferred the evidence of Dr Subramony to that of the claimant, both because we found his evidence to have been subjected to far fewer inconsistencies than hers but also on the balance of probabilities given what she herself said in paragraph 3.3 of her statement made within six weeks of being suspended (as set out in paragraph 109 above).

130.3 What the claimant did was 'hedge her bets' by making a complaint to the CCG so that she could allege that the real reason why she was disciplined (as she could see by the time of making that complaint she was going to be) was that she had made a whistleblowing complaint (although in the circumstances she did not make it to the right person or body and as we say in paragraph 177 below, in our judgment the conditions in section 43G of the ERA 1996 were not satisfied, so that it was not in fact a whistleblowing complaint), in the circumstance that if Dr Subramony did not dismiss her but did later find out about the complaint, then he would be unlikely to take it amiss that she had made it.

The procedure followed in deciding that the claimant should be dismissed and the evidence that emerged during and after it concerning the terms of the claimant's employment with the respondents

131 The claimant was suspended after a short meeting with Dr Subramony in the manner he described in the passage in his witness statement which we have set out in paragraph 72 above. There was a hot dispute between the parties about what, precisely, was said during the meeting, but in our view it was immaterial as far as the claim of unfair dismissal was concerned, given what occurred after that meeting, to which we now turn. During the meeting, the claimant was given the letter dated 31 July 2018 at page 168, which had plainly been prepared in advance of the meeting.

132 The respondents obtained evidence from the Practice accountants about the claimant's pay and the number of hours for which she had caused herself to be paid by the respondents in the preceding years, as shown by the letter dated 3 August 2018 and its enclosure at pages 169-170.

133 On 10 August 2018 the respondents sent the letter at pages 488-490 (and not the version at pages 171-173, which was plainly printed by the respondents to pdf; the error was, we found as a fact, innocent). With that letter there were enclosed copies of the invoices for the medical equipment which the claimant had bought as described in paragraph 33 above and the letter and enclosure to which we refer in the preceding paragraph above. In the letter of 10 August 2018 it was said that the claimant's contract of employment was enclosed, but it was,

we found as a fact, not so enclosed. The explanation for that was given by Ms Pillai and Dr Subramony, and it was that they had been receiving advice from the British Medical Association ("BMA") about the procedure to follow, that the letter had been drafted initially by the BMA adviser in question, and that they had failed to take out the reference to the contract of employment. They had not, they said, got a copy of that contract, as it had been (as we describe in paragraphs 72-79 above) removed from the Practice's premises between the morning of 31 July 2018 and 4 August 2018.

134 The letter of 10 August 2018 set out in detail the matters for which the claimant was being invited to attend a disciplinary hearing. They were, in summary:

134.1 the purchase of "expensive medical equipment including a cardiology stethoscope and other items such as a sensor thermometer" without Dr Subramony's authorisation; and

134.2 "claiming a higher salary than that to which you are actually entitled".

135 Dr Subramony then, on 14 August 2018, sent the letter at page 174 enclosing the document at pages 175-176 which was headed "Fact finding meeting with Mrs. Palvinder Dhillon Practice Manager on 31st July 2018 at 9am" and was in the name of, and signed by, Dr Subramony. Ms Pillai said that she had written the document from what she had been told by Dr Subramony about what had happened at the meeting with the claimant of 31 July 2018 at which the claimant was told that she was being suspended. The one part of the document at pages 175-176 which was material to our deliberations was that it recorded that Dr Subramony had handed the claimant "the letter confirming her suspension and she walked off angrily, refusing to return her surgery keys or the NHS card". The next sentence was this: "She said she was going to CCG to complain about me". The meeting was recorded to have taken 10 minutes. Ms Ayub was recorded to have been present "to take notes".

136 The disciplinary hearing was stated in the letter of 10 August 2018 to be arranged for 20 August 2018, but it was, at the request of the claimant made on 14 August 2018, on 17 August 2018 (we saw from the letter at page 181), put back to 6 September 2018.

137 The claimant then sent a letter dated 3 September 2018, to which Dr Subramony replied on 5 September 2018 at page 182. The letter of 3 September 2018 was not in the bundle before us. There was no indication that the claimant had enclosed any kind of documents in advance of the forthcoming disciplinary hearing.

138 The disciplinary hearing then took place, as re-arranged, on 6 September 2018. Ms Brindley was permitted by the respondents to attend as the claimant's companion, and Ms Brindley took the handwritten notes at pages 188-201. Ms Pillai took notes for the respondents. She did so by hand, and those handwritten

notes were not disclosed by the respondents. What the respondents said were Ms Pillai's notes were at pages 206-214. They were typed and dated 6 September 2018, but they were subject to the omissions and valid criticisms of Ms Brindley, which were the subject of her witness statement. However, none of the omissions or valid criticisms were major, and Ms Brindley did not take issue in any way with the notes at pages 206-214 in so far as they showed that

138.1 the claimant put before the respondents the statement at pages 183-187 during the meeting, so that they saw it then for the first time;

138.2 the claimant put before the respondents 'four contract sheets which she called "offsite" contracts which confirmed she worked 5-6 hours a week offsite/on call from home';

138.3 "The four offsite contracts presented by PD [i.e. the claimant] were dated 25.5.07, 19.9.08, 3.4.12, and 6.3.14";

138.4 "[Dr Subramony] said he had never seen or heard of any offsite contract between the Practice and [the claimant] in the 11 years he has worked here. Furthermore, there was never any contract signed with [the claimant] in 2014."

139 We pause to record here that Ms Brindley's evidence was not the subject of much cross-examination. However, she was asked some supplementary questions in chief, and EJ Hyams recorded this exchange:

> "Q: And in terms of the practice manager dealing with CCG; concerning contracts of employment; do the names of the employees have to be updated if the partners change?
> A: No; I do not upgrade them at all; they stay as is; if we make an amendment we would do it by letter; not on the contract."

140 The respondents' decision to dismiss the claimant was communicated to her in the letter dated 19 September 2018 at pages 202-205. Having heard evidence from both respondents on the reasons for the claimant's dismissal, and having read that letter critically, we found that letter to be an accurate and fair record of what happened at the meeting of 6 September 2018 and of the reasons for the claimant's dismissal, with the caveat that what was said by both respondents to us in oral evidence about what was the "tipping point" (i.e. the thing that made them decide that the claimant had to be dismissed and could not again work for the respondents) was (we concluded) the principal reason for the claimant's dismissal. That tipping point was the fact that the claimant had produced documents which purported to be statements of her terms of employment which were not genuine, so that the respondents had to conclude that the claimant had dishonestly created those documents, and that as a result there was no way that they could trust her sufficiently to continue to employ her. In short, they dismissed the claimant not only for, as they concluded, overpaying herself salary at the rate

of 6 hours per week for a number of years, but also and crucially for what was in effect forgery.

141 The claimant appealed against that decision, and the appeal was held at the offices of a firm of solicitors who were instructed only on the bases that (1) the appeal could be held at their offices, which was a neutral place for both parties, and (2) the solicitors would provide a note-taker. Those things occurred. The appeal was heard (in the manner described by Dr Subramony in paragraphs 26 and 27 and the first sentence of paragraph 28 of his witness statement) by Dr Subramony himself, after which (as stated in paragraph 29 of that witness statement) he discussed the appeal with Ms Pillai, so that they in effect reviewed their decision that the claimant should be dismissed. They decided to uphold that decision. Their decision to dismiss the appeal was stated in the letter dated 7 December 2018 at pages 264-266, and the notes of the appeal hearing were at pages 257-261.

142 We did not need, for the purposes of deciding whether or not the claimant was dismissed unfairly, to determine the genuineness of the documents that the claimant claimed were statements of her terms and conditions of employment. However, we did, for the purpose of determining the counterclaim, need to decide whether or not those documents had been dishonestly put together to make it seem that the claimant was contractually entitled to be paid for 26 hours of work per week. That question fell to be determined against the following factual background.

<u>The evidence relating to the documents which the claimant claimed had been given to her by one or both of the respondents as statements of her terms and conditions of employment</u>

143 The documents themselves were copied in the bundle before us in something of a jumble. There were also duplicates. The details of the documents were important, and we quote precisely in the next two paragraphs below the content of the first pages of those which purported to have been signed in 2007. For example, where we use capital letters in the following quotations, that is because the words quoted were in capital letters. Similarly, if the quoted words are in bold, then that is because they were in bold font in the document from which we have taken them. We have also not used any quotation marks.

144 At pages 128-129 there was a document (which was repeated at pages 143-144) that had on its second page (i.e. page 129) handwritten signatures of (1) the claimant, (2) Dr Ranjana Singh, and (3) Dr Subramony, with the date of “25/5/07” by each of them. It also had on it, i.e. still on page 129, a stamp for “DR.S.SUBRAMONY MEDINA MEDICAL CENTRE” (alone; not also in the name of Dr Ranjana Singh, who at the time the document was purported to be created, 2007, was the senior partner and whose name would have been expected to be either the only one used for the Practice’s stamp, or at least one of them). The first page had this text:

STATEMENT OF TERMS OF EMPLOYMENT Date of statement

NAME OF EMPLOYEE: MRS PALVINDER DHILLON

NAME OF EMPLOYER: **DR. (Mrs.) R. SINGH & DR.S.SUBRAMONY**

Your employment began on: 1.4.2007

Your period of continuous employment began on: **NOT APPLICABLE.**

JOB TITLE: PRACTICE MANAGER

PLACE OF WORK: **MEDINA ROAD SURGERY, 3 MEDINA ROAD,**

LUTON. LU4 8BD.

PAY: **Basic rate of pay: per hour** – pay intervals –**MONTHLY**

Reviewed ANNUALLY.

HOURS OF WORK:

HOLIDAY ENTITLEMENT: **20 days per annum**

22 days per annum after 5 years of service

24 days per annum after 10 years of service

BANK HOLIDAYS pro rata

Time off for any other reason including hospital appointments, family commitments. religious festivals etc. should be exchanged with another member of staff by mutual consent or taken as holiday.

Holidays must be taken in the year from 1st April to 31stMARCH. Under special circumstances holidays may be carried over from one year to the next but only after prior arrangement with the PRACTICE MANAGER(MRS.P.DHILLON)

SICKNESS OR INJURY: **The employers' sick pay scheme is as follows:**

Period of continuous service	**Basic salary**	**Basic half salary**
Less than 6 months	**Nil**	**Nil**
6 months to 5 years	**4 weeks (pro rata)**	**Nil**

5 to 10 years	**4 weeks (pro rata)**	**1 week (pro rata)**
10 years and over	**4 weeks (pro rata)**	**2 weeks (pro rata)**

145 There was at page 138 what was almost certainly a photocopy of what was in the bundle as page 129 with one exception: that the stamp in the name of Dr Subramony (i.e. for the avoidance of doubt it was the same as on page 129) was in a slightly different place as compared with that stamp's position on page 129. However, the page that preceded page 138, i.e. page 137, differed from page 128 in numerous ways. (Pages 137-138 were repeated at pages 152-153.) The text of page 137 was in these terms:

STATEMENT OF TERMS OF EMPLOYMENT

DATE OF STATEMENT: 25.5.2007

Name of Employee: MRS PALVINDER DHILLOON

Name of Employer: **DR. (MRS.R.SINGH) & DR SUBRAMONY**

Your employment began on: 1.4.2007

Your period of continuous employment began on: **2001**

Job Title: Place of work: work off site/on call (FROM HOME)

PAY: per hour- pay intervals-Monthly REVIEWED ANNUALLY

Hours of work: 5 TO 6 HRS PER WEEK

About your work, job description, holiday any other matters you should be answerable to DR R SINGH & DR SUBRAMONY

Holiday entitlement : 20 days per annum

22 days per annum after 5 years of service

24 days per annum after 10 years of service

Bank holidays pro rata

Time off for any other reason including hospital appointments, family commitments. religious festive etc should be exchanged with another member of the staff by mutual consent or taken as a holiday.

Holidays must be taken in the year from 1st April to 31st March. Under special circumstance holiday may be carried over from one year to the next but only after prior arrangement with the DRS.

SICKNESS OR INJURY: The employer's sick pay scheme is as follows:

PERIOD OF CONTINUOUS SERVICE	**BASIC SALARY**	**BASIC HALF SALARY**
Less than 6 months	**Nil**	**Nil**
6 months to 5 years	**4 weeks (pro rata)**	**Nil**
5 to 10 years	**4 weeks (pro rata)**	**1 week (pro rata)**
10 years and over	**4 weeks (pro rata)**	**2 weeks (pro rata)**

146 There were the following differences between the text of those pages:

146.1 The first line differed in that the text on page 128 was underlined as well as being in bold font, and the words "Date of statement." were on that line, with no date inserted (just a full stop). In contrast, the first line of page 137 was not underlined and did not contain the words "Date of statement.". There was underneath that first line (still not underlined) the words (in capitals and bold) "DATE OF STATEMENT", with a date of "25.5.2007" next to those words.

146.2 In the next two lines, the words "name of employee" and "name of employer" were in capitals on page 128, but in lower case (but with capital letters at the start of the first and third words) on page 137.

146.3 The claimant's surname ("**DHILLON**") was correctly spelt on page 128 after the words "**NAME OF EMPLOYEE**", whereas on page 137, after the words "**Name of Employee**", the claimant's surname was spelt "**DHILLOON**".

146.4 On page 128, after "NAME OF EMPLOYER", the words were "**DR.(Mrs.) R. SINGH & DR.S.SUBRAMONY**". On page 137, after "Name of Employer", there were these words: "**DR. (MRS. R.SINGH) & Dr SUBRAMONY**".

146.5 The entries after the words "Your period of continuous employment began on:" differed in that on page 128 it was "**NOT APPLICABLE.**" whereas on page 137 it was "**2001**".

146.6 On page 128 there were the words "**JOB TITLE: PRACTICE MANAGER**", but on page 137 there was nothing after the words "**Job Title:**" about the job title. Instead, there were on the same line the words "**Place of work: work off site/on call (FROM HOME)**". On page 128, the place of work was stated to be the Practice's surgery.

146.7 The words relating to pay differed in that there were the words "**Basic rate of pay:**" on page 128, but not on page 137.

146.8 In addition, the words "pay intervals" on the same line were not in bold font on page 128, but they were in bold font on page 137.

146.9 Immediately following the words "– pay intervals –", the word "monthly" was in capital letters on page 128, and in lower case font on page 137.

146.10 The word "reviewed" immediately after the word "monthly" was in lower case with the first letter capitalised on page 128, but in capitals on page 137.

146.11 There was no entry for the hours of work on page 128 and no hours of work were stated anywhere else on that page or page 129. On page 137, the hours of work were stated to be "**5 TO 6 HRS PER WEEK**".

146.12 On page 128, the words for "hours of work" were in capitals but not in bold, whereas on page 137 they were in bold font and lower case except that the first letter of the word "hours" was capitalised.

146.13 There were on the document that purported to be a statement of terms for 5 to 6 hours per week, at page 137, these words, of which there was no equivalent in the other document, i.e. on page 128:

> "**About your work, job description, holiday any other matters you should be answerable to DR R SINGH & DR SUBRAMONY**".

146.14 The words for "holiday entitlement" were in capital letters and not bold font on page 128, but they were in lower case and bold (with the first letter capitalised) on page 137.

146.15 The words "bank holidays" in the section for holiday entitlement were in capitals on page 128 and in lower case with the first letter capitalised on page 137.

146.16 The text under that relating to “Time off for any other reason” had the word “festivals” in the second line on page 128, but the equivalent text on page 137 have the word “festive” in the equivalent place.

146.17 The next word on both pages was “etc”, but on page 128 there was a full stop after that word, whereas on page 137 there was no such full stop.

146.18 The word “staff” on the same line on page 128 was not preceded by the word “the”, whereas that word on the equivalent line on page 137 had the word “the” before it.

146.19 The word “holiday” in the next line was not preceded by the word “a” on page 128, whereas the word “holiday” was preceded by the word “a” on page 137.

146.20 The period of the holiday year was stated on page 128 to be “1st April to 31stMARCH”, so that the word “March” had clearly been inserted using capitals and in the superscript font, since it was evidently caught up in the automatic insertion of superscript font for the abbreviation “st” after a number. On page 137 the word “March” was not in capitals and it was in ordinary, i.e. the correct, font.

146.21 The first four words in the second sentence of the paragraph above the table showing sick pay entitlement on page 128 were these:

> “Under special circumstances holidays”.

The equivalent first four words on page 137 were these:

> “Under special circumstance holiday”.

Thus, the word “circumstances” in the string of words on page 128 was in the singular in the equivalent string on page 137, and the word “holidays” was in the plural on page 128 and in the singular on page 137.

146.22 The document at page 128 stated that holiday could be carried over from one year to the next “only after prior arrangement with the PRACTICE MANAGER(MRS.P.DHILLON)”, whereas in the case of the document at page 137 such prior arrangement was to be made with the “DRS.” We observe that page 128 therefore required the claimant, as the Practice Manager, to agree on her own behalf to the carrying over of holiday entitlement, which was not only unlikely, but also different from the text on page 137.

146.23 The sections on entitlement to pay in the event of sickness or injury differed in a number of ways, as can be seen by a further careful comparison of the texts. Not only was the text on page 128 in the form of a table, which was a sensible way of formatting it, but it was also preceded by the words "SICKNESS OR INJURY" not in bold font, whereas those words on page 137 were in bold font.

146.24 The next words on page 128 (in the same line) were "**The employers'**", whereas on page 137 the equivalent words were "**The employer's**", so that the apostrophe was in different places.

146.25 In the next line, the words "period of continuous service", "basic salary" and "basic half salary" were in lower case with the first letter capitalised on page 128, and all in upper case on page 137.

147 In marked contrast, the text of the signed pages, pages 129 and 138, was precisely the same, including the same textual error in the string of words "The person to whom you should apply of you have a grievance relating to your employment" (i.e. "of" instead of "if").

148 There was in the bundle at pages 128-157 no document purporting to be a contract of employment made in 2007 for the claimant stating that her hours of work were 20 per week. The only document stating hours of work for the claimant which purported to have been created in 2007 was the one at pages 137-138, which was repeated at pages 152-153, i.e. the one that stated that the claimant's hours of work were "5 TO 6".

149 We observe here that one would not expect there to be two contracts of employment issued to an employee, one for work at the employer's workplace and the other for work to be done from home. Rather, one would expect both aspects of the employee's work to be covered by one contract.

150 If, highly unusually, there were two contracts for on-site and off-site work then one would not expect there to be any differences in the text of the two contracts issued on the same day in relation to those matters, except for the words relating to hours and place of work.

151 It is also highly unusual for a contract to be imprecise about the hours of work. We ourselves had never seen one providing for a range or hours, such as the words used here, namely "5 TO 6".

152 The evidence before us, including from the claimant, did not support the proposition that she did at least a whole day's extra work (i.e. the same number of hours as she worked on the four days that she did work at the Practice, which was five hours), let alone more (between five and six), outside normal working hours. We noted that Ms Pillai said in oral evidence that the claimant frequently took time off in lieu, for example to go to the airport to pick someone up, or to go

to a wedding or a funeral. Dr Subramony said words to the same effect, and when that part of his evidence was challenged in cross-examination, he stood by it firmly. He said that the claimant initially told him that her time off was being taken to compensate for working outside her normal hours but that after a period of time, she just took the time off without telling him on what basis she justified it. We did not make a firm finding in that regard, for reasons to which we refer below, concerning the manner in which we concluded the counterclaim should be dealt with. Here, we record only that it would be surprising if in a single document containing a statement of terms of employment, or even if there were, highly unusually, two such statements for what was in effect one job, the time spent otherwise than at the workplace, including "on call", would be paid at the full rate of pay and for a number of hours that was equal to, or exceeded, the number of hours usually worked in a day.

153 There were in the bundle at pages 128-157 in addition to the two documents to which we refer above (both of which, as we record above, were there twice) documents purporting to be statements of terms of employment for the claimant

153.1 dated "06.3.2014" at pages 130-132, and repeated at pages 145-147, for "**5-6 HRS PER WEEK**";

153.2 dated "03.04.2012" at pages 133-134, and repeated at pages 148-149, for "**5 TO 6 HRS PER WEEK**";

153.3 dated "19.09.2008" at pages 135-136 and repeated at pages 150-151, for "**5 TO 6 HRS PER WEEK**";

153.4 dated "3.4.2012" at pages 139-140, repeated at pages 154-155, for which there was this line on the first page: "HOURS OF WORK: 20"; and

153.5 one at pages 141-142 which had no date on the first page (having at its start the same text as set out in paragraph 144 above), but which had the date of "19/9/2008" written by hand on page 142 and had this line on its first page: "HOURS OF WORK: 20hours per week"; that document was repeated at pages 156-157.

154 There were numerous oddities in the text of the contracts referred to in the preceding paragraph above. We do not state those here because we came to the conclusion that Dr Subramony's evidence that he had given the claimant only one contract of employment, in 2007, which was for 20 hours' work per week, was accurate: we preferred his evidence to that of the claimant about the issuing by him of statements of terms of employment to the claimant. We did so having taken into account the following things:

154.1 the fact that we saw no legal need for a completely new statement of terms and conditions to be issued to any existing employee of Dr

Subramony (whether acting as an individual or as a member of a partnership) after 2007 (since at most all that was required was a statement of a change in the name of the employer, issued under section 4 of the ERA 1996, in 2008, when Dr Ranjana Singh retired, and in 2012, when Ms Pillai became a partner within the meaning of the Partnership Act 1890 of Dr Subramony);

154.2 the fact that Ms Brindley's evidence was (see paragraph 139 above) to the effect that there was no such need;

154.3 the factors referred to in the preceding ten paragraphs above (144-153);

154.4 the facts and matters which we describe in paragraphs 56-107 above; and

154.5 the evidence which we describe in the next section below concerning the documents which purported to be statements of terms of employment for Ms Salam,

155 We therefore concluded on the balance of probabilities, accepting that the respondents' allegation in this regard was one which required us to apply the balance of probabilities test with particular care, albeit that it remained the balance of probabilities test, that the claimant had created documents which she then claimed had been created by or on the instructions, or at the direction, of Dr Subramony, but which he had neither created nor caused to be created.

156 In the above circumstances, we concluded that the documents referred to in paragraph 153 above (or at least those which purported to be statements of terms and conditions of employment for 5-6 hours of work per week to be carried out off-site and at home), and those which purported to have been signed on 25 May 2007, i.e. the ones at pages 128-129 and 137-139, were not genuine in the sense that they were not what they purported to be.

157 We concluded for all of the above reasons that the claimant was contractually entitled to work and be paid for (only) 20 hours per week.

<u>Ms Salam's evidence about the documents relating to her employment with the respondents</u>

158 Ms Salam made two witness statements for the purposes of these proceedings, in the circumstances to which we refer below. In her first witness statement she said this:

"3. I worked at MMC [i.e. the Practice] part time, Monday to Friday in both the morning and evenings conducting patient clinics, home visits,

attending meetings, education sessions and training as well as any necessary admin work all between 09:00am - 6:30pm.

4. To cover my work on and off-site, I have always been issued with an on and off-site contract of employment. The originals were kept by MMC in my employee file and I was given copies."

159 She also said this in her first witness statement:

"11. Soon after Mrs Dhillon's suspension, I was forced to file my own complaint with the Care Quality Commission (CQC), CCG and the General Medical Council (GMC) regarding Dr Subramony's behavior and his complete disregard of patient safety and wellbeing.

12. On 19 September 2018, Dr Subramony advised me that he would be deleting the records of my patient consultations in anticipation of the upcoming CQC inspection as he was under the belief that I did hold the appropriate qualifications to work as a HCA. [Sic; the word "not" was probably inadvertently omitted from that sequence after the word "did".]

13. Dr Subramony and his wife; Smeetha Pillai, also forcefully told me to lie and sign a new contract for the role of Receptionist in an attempt to mislead the upcoming CCC inspection into believing I was not working as a HCA for MMC. As previously confirmed, I've worked at MMC as a HCA since 1994 so I refused to sign the new contract.

14. As a result of his incorrect assumption, he proceeded to delete several of my patient consultations for patients I had seen in the previous 2-3 weeks, to cover up any traces of care or advice given as part of my clinics run in the capacity of HCA

15. Despite Dr Subramony's concerns regarding my lack of qualification, I continued to work in my role as HCA in the run up to and after the CQC inspection.

16. MMC eventually failed that inspection and after this I limited my interaction with Dr Subramony as he continued to make veiled threats regarding staff changes as a result of complaints made about him by several staff members to CCG, CQC and GMC. I had seen what had happened to Mrs Dhillon despite being a loyal and dedicated employee, as well as other staff members, so I did not want the same to happen to me.

17. In April 2019, in what I can only say was an attempt to undermine Mrs Dhillon's employment claim, Dr Subramony and his wife; Smeetha Pillai, were again forcefully telling me to lie and sign some meeting

> minutes that claimed Mrs Dhillon had prepared and issued all of my on and off-site contracts of employments after she was suspended from MMC. I refused to do as this was not true. This led me to submit yet another complaint to the CCG, CCC and GMC to advise them of the bullying and harassment I was still being subjected to."

160 Ms Pillai's witness statement contained this paragraph (numbered 16):

> "Whilst working as Practice manager in 2019, I asked all staff to show me their contracts, all staff confirmed they only had one contract in the past. The healthcare assistant Farzana Salam (also a GMC witness) was the only person who produced 4 contracts claiming she had offsite contracts allowing her to work from home. Dr Subramony's signature on these contracts were forged. I had a fact finding meeting with her, during which she eventually admitted that Dr Subramony had not signed these contracts and that they were given to her by PD pre signed. She also admitted that she did not work from home. I believe PD gave her these offsite contracts to corroborate her false claim that off site contracts were the norm in the surgery and to justify PD's claim that she had a valid offsite contract. I have not signed any contract with any of the staff at any time. Dr Subramony was the only one who signed all staff contracts and there was no requirement for me to co sign them. There was no requirement to sign any new contracts with staff after I became a partner in 2012. In fact in 2008 when Dr Subramony became sole proprietor of the surgery after Dr Ranjana Singh left, he phoned the BMA for advice as to whether he had to sign new contracts with the staff and was advised there was no need to do so. He was told the contracts he had signed in 2007 with the staff and Dr Ranjana Singh remained valid."

161 Ms Pillai was cross-examined on that paragraph. When paragraph 17 of Ms Salam's witness statement was put to her, Ms Pillai described the meeting which she had had with Ms Salam in 2019 (clarifying that it had happened on 15 April 2019) and said that she had notes of the meeting in the folder that she had with her at the hearing. She also said that she had retained the documents which Ms Salam had given to her in April 2019, although Ms Salam had, she said, during the meeting of 15 April 2019, tried to grab them back and tear them up.

162 We made it clear that we thought that if Ms Salam had a genuine contract for off-site work as well as one for the work which she did at the Practice surgery, then that would be a factor which might well enable us to conclude that the claimant also had a separate contract for off-site work. We were then given copies of the documents that Ms Salam had put before Ms Pillai in April 2019. In addition, it was clarified by Ms Pillai that there had been two meetings with Ms Salam on 15 April 2019. The first occurred at 2.30pm and only Ms Pillai and Ms Salam were present at it. Ms Pillai then had a meeting with Ms Salam at 5.30pm, with Mrs Parveen present also, at which, said Ms Pillai, Mrs Parveen had made notes. Ms Pillai put before us some typed notes of the meeting that she said had been made by her from rough hand-written notes that she had made at the first meeting.

Those were at pages 522-525. Ms Pillai also put before us a document which was, she said, a set of notes of the second meeting made by Mrs Parveen. That set was at pages 526-528. Ms Pillai's manner of questioning as recorded on Ms Parveen's notes was consistent with Ms Pillai's cross-examination questions in the hearing before us, and that was to ask a series of questions rather than one, so that when Ms Salam gave a short answer, it was not clear precisely what she was saying. We were therefore cautious about accepting that Ms Salam had in fact admitted that the contractual documents that she put before Ms Pillai were not genuine.

163 The documents which purported to be statements of terms and conditions for Ms Salam were scanned by EJ Hyams and added to the bundle as pages 493-510. They were consistent with the documents to which we refer in paragraph 153 above. They were also in terms which were as odd as those which were in the documents to which we refer in that paragraph and paragraphs 144-152 above. By way of example, none of the documents stated Ms Salam's rate of pay, which was equally surprising.

164 The documents for Ms Salam which referred to "work off site (FROM HOME)" were all for "2-3 HRS" per week. That was consistent with the claimant's purported contract for "5-6 HRS" per week, but was also equally surprising in that it did not state a set number of hours per week (or, as it might have done, no set hours, such as a zero hours contract).

165 When Ms Salam first gave evidence to us orally, via CVP in the circumstances that we describe in paragraph 7 above, she said that she could not remember when she was given the documents to which she referred in paragraph 4 of her witness statement (which we have set out in paragraph 158 above) and of which we now had copies (at pages 493-510). Before the resumption of the hearing on 19 January 2021, Ms Salam made another witness statement, which included this passage (in paragraph 31):

> "I was unable to comment on the dates of the contracts during my witness evidence over CVP was because I could not be sure that the copies of my contracts given to the tribunal by the Respondent and Smeetha Pillai were the same as the ones I provided during the meeting in April 2019."

166 As stated above, at the resumed hearing on 19 January 2021, Ms Salam again gave oral evidence via CVP. At the start of her evidence, she was taken to page S795. That was headed "Farzana Salam Record of Home Visits". It stated that home visits for patients whose names were not included but were referred to only as Patients A to I inclusive had taken place on dates from 2005 to 2020. There were 32 such dates. Ms Salam was cross-examined on the document, and she initially said that the dates on page S795 were recorded by her in a physical diary and then recorded on a computer at the Medina Medical Centre. She then said that the document at page S795 was created by Mr Gloag's instructing solicitors from what she had said over the telephone. She said that she had given the

instructing solicitors the dates from her physical diary, which, she said, spanned the whole of the period from 2009 (not, we note, 2005, but 2009) to 2020. She said that she had not given a copy of that diary to the solicitor, that the solicitor had not asked for a copy of the diary, and that she had a home visit diary which she wrote for each patient. When asked why she had recorded the home visits for the nine patients (A-I inclusive), she said that she had "just remembered the names in [her] heart", and that there were other home visits done by her. It was put to her that she had not for years been asked by Dr Subramony to go to a patient's house, and that when she had done so she had only been asked (as a health care assistant) to do a blood pressure check. She said that she had done more than just a blood pressure check when she had visited patients' houses, so that if they had a cough for example then she had (despite not being either a doctor or a nurse) dealt with that. When it was put to her that she had not been asked to go to a patient's house by Dr Subramony to do blood pressure checks for years because (1) there had for years been readily available and inexpensive equipment for the carrying out of blood pressure checks at home, and (2) doctors at the Practice would ask the families of patients to buy such equipment and, if the patients were unable to use that equipment, themselves (the family members) to use it and ascertain the patient's blood pressure, she disagreed and insisted that she had gone to patients' houses to carry out checks of patients' blood pressure.

167 Ms Salam then said that she was never paid to go to patients' homes.

168 We could not accept that evidence of Ms Salam: she was on the one hand saying that she had a contract of employment to do work off-site for 2-3 hours per week but on the other hand that she had never been paid for off-site work. We also could not believe that she had kept a diary for the whole of the period from 2009 to 2020. In those circumstances, we concluded that Ms Salam's evidence that she had been given by the respondents a contract for 2-3 hours per week off-site was untrue. Thus, we concluded that Ms Salam's evidence in no way supported that of the claimant about having a contract of employment to do work off-site as well as at the Practice's surgery.

169 The issue of whether or not Dr Subramony had caused some records of patient consultations with Ms Salam to be deleted from the Practice's computer was peripheral, but (as we say in paragraph 32 above) relevant to his credibility, and since his credibility was a central issue, we determined it. It was clear not only from Dr Subramony's oral evidence but also some documentary evidence before us that he had caused records to be deleted but that within a day of doing so he had contacted the CCG for advice on the matter, and that he had in deleting the patient records acted out of a concern that Ms Salam had ceased to be qualified by reason of having satisfactorily completed updating training (i.e. because she had not updated that training), to act as a health care assistant. The documentary evidence was an email from Mr Paul Lindars of the CCG of 5 October 2018 to Mr Dave Briggs of NHS England of which there was a copy at pages S225-S226, in which Mr Lindars wrote:

> "At approx. 12 noon on the 20th September I received a telephone call from Dr Subramony requesting some advice.
> Dr S informed me that his reception staff had inadvertently booked two patients in with the HCA, 1 was a for a Diabetes review, and the other was for an Asthma review.
> He informed me that he'd deleted the subsequent HCA consultation records (completed EMIS templates). His rationale for removing these was that he was not sure his HCA should have completed the chronic disease reviews as he was not at the time certain that the HCA could provide the appropriate certificates to demonstrate her competence.
> On this basis, he informed me that he felt it was appropriate to re-book both patients in with the practice nurse to complete the chronic disease template assessments. The reason he gave for deleting the HCA records was he felt it was inappropriate to have two records of review completed by different members of the clinical nursing team available on the system for each patient. He was concerned this may cause confusion.
>
> He asked me if he'd followed the correct procedure.
> I informed him that it is not my area of expertise, however my understanding is that patient clinical records should not be deleted. By removing them it removes visibility and does not allow a clear clinical audit trail.
>
> I asked him if he had taken copies of the records before deleting them, to which he responded 'yes'. My advice was to scan these hardcopies back in to the patient clinical record and add a note to explain why they'd been deleted.
> I also advised him to contact EGTON (clinical system provider) for guidance to reinstate the clinical records."

170 As for Ms Salam's allegation that she had been required by Dr Subramony to sign a contract for a receptionist rather than for a health care assistant, so that she was being forced to accept a demotion, that issue was peripheral and we saw no need to determine. We therefore declined to determine it.

Our conclusions

171 We therefore now state our conclusions on the claimant's claims. Given our above findings of fact, they were as follows.

The claim of whistleblowing detriment and dismissal

172 The claim of whistleblowing detriment and dismissal was founded on the allegation that the claimant had made two written complaints to the CCG before she was suspended on 31 July 2018. As stated in sub-paragraphs 124.1 and 124.2 above, we found as a fact that the claimant made only one written

complaint to the CCG which could, conceivably, have constituted a public interest disclosure within the meaning of section 43A of the ERA 1996. That was the one that was received by the CCG on 30 July 2018.

173 As stated in paragraph 130.2 above, we concluded that the claimant did not say to Dr Subramony before she was suspended that she had made a complaint to the CCG about him.

174 The claimant did not claim that the CCG contacted Dr Subramony before she (the claimant) was dismissed on 31 July 2018, and for the avoidance of doubt, in the absence of any evidence to that effect, we concluded that the CCG had not done so.

175 Thus, for the avoidance of doubt, we concluded that Dr Subramony did not know before he suspended the claimant on 31 July 2018 that the claimant had made any kind of complaint about him to the CCG. If only for that reason, the claimant's claim of detrimental treatment for whistleblowing by being (1) suspended, (2) subjected to a disciplinary investigation and then (3) taken through a disciplinary procedure, had to fail.

176 In fact, the one disclosure that the claimant had made to the CCG (the one at page 429, set out in paragraph 123 above) was in our view not an allegation within the meaning of section 43B of the ERA 1996. That is because in our view it was not an allegation which the claimant could in the circumstances stated in paragraph 124.4 above reasonably have believed tended to show that a person had failed, was failing, or was likely to fail to comply with any legal obligation to which he was subject, or that the health or safety of any individual had been, was being or was likely to be endangered. Thus, the claim of whistleblowing detriment failed for that reason too.

177 We also concluded that the claimant had, in the circumstances to which we refer in paragraph 130 above, made the disclosure that she made to the CCG at page 429 which we have set out in paragraph 123 above for the purposes of personal gain within the meaning of section 43G(1)(c). We also concluded in those circumstances that the claimant could not reasonably have believed that she would be subjected to a detriment by the respondents (or either of them) if she made the disclosure to them. That was a further reason for the failure of the claim of whistleblowing detriment.

178 The reasons stated in the three preceding paragraphs above meant that the claim of unfair dismissal within the meaning of section 103A of the ERA 1996 also had to fail. However, it failed also because we concluded (on the basis of our findings stated in paragraph 140 above) that the principal reason for the claimant's dismissal was her conduct in the form of (1) causing the respondents to pay her for 26 hours per week instead of 20 and (2) fabricating documentary evidence in the form of the alleged statements of terms and conditions of employment in the manner we describe in paragraphs 143-156 above. Thus, it

was not because the claimant had made any statement of any sort about alleged wrongdoing on the part of Dr Subramony.

The claim of "ordinary" unfair dismissal

179 As for the claim of unfair dismissal, having concluded that the real reason for the claimant's dismissal was her conduct, we concluded that

179.1 there were reasonable grounds for the determination of the respondents that the claimant had committed that conduct, bearing in mind that (1) it was agreed that she had caused herself to be paid for 26 hours of work per week, and (2) what we say in paragraphs 143-156 above;

179.2 the respondents had in our view carried out an investigation which it was within the range of reasonable responses of a reasonable employer to carry out, given the things that we describe in paragraphs 131-138 above;

179.3 the holding of an appeal in the form of a review, as described in paragraph 141 above, was in our view within the range of reasonable responses of a reasonable employer, given the size and administrative resources of the respondents' organisation, i.e. given its small size and the limited resources available to it; and

179.4 it was in the circumstances as we found them to be within the range of reasonable responses of a reasonable employer to dismiss the claimant for the conduct for which the respondent dismissed the claimant.

The claim of wrongful dismissal

180 Given our finding in paragraph 157 above, the claim of wrongful dismissal had to fail.

The counterclaim

181 Even though the claimant did not defend the counterclaim on the basis that if we found that she was not entitled to be paid for 26 hours per week but only 20, she should be given credit for such amount as we decided was a quantum meruit for the work that she did, we concluded that it would be harsh and unfair to the claimant not to give her an opportunity to defend the counterclaim on that basis. We did so for the following reasons.

181.1 We could see that it was at least possible that the claimant had done at least some work for the Practice over and above the 20 hours per week that she was contracted to do.

181.2 The respondents had, it appeared, not increased the claimant's pay significantly for some years.

181.3 The claimant might well have been able to point to the pay of practice managers in comparable GP practices and argue that she should have been paid more for her work and responsibilities than she was in fact paid.

181.4 The claimant could also quite reasonably have argued that the profit that the respondents made from the Practice was the result of much work done, and goodwill generated, by the claimant, so that the true value of the claimant's work overall might well have been much greater than the pay to which she was entitled by reason of her contract of employment with the respondents for doing 20 hours per week.

182 We therefore declined to determine that the counterclaim should succeed. We decided that the claimant should be permitted to adduce evidence which might support the setting off of a quantum meruit of the sort which we describe immediately above. We therefore concluded that we should adjourn the hearing of the counterclaim, so that it could be listed for a further day's hearing, and give the claimant permission to rely on further evidence at that hearing. In that regard, we determined that a short telephone hearing to be conducted by EJ Hyams should take place at 9.30am on Monday 15 March 2021, about which the tribunal staff will write, with the necessary information about the practical arrangements for that hearing.

_____

Employment Judge Hyams

Date: 5 February 2021

JUDGMENT SENT TO THE PARTIES ON
08/02/2021

.....

J Moossavi

.....

FOR THE TRIBUNAL OFFICE