



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms G. Vivers

**Respondent:** Powys County Council

**HELD BY:** CVP **ON:** 23 – 27<sup>th</sup> November 2020, and 26<sup>th</sup> January 2021 (and in chambers 27.01.21)

**BEFORE:** Employment Judge T. Vincent Ryan  
Ms S Atkinson  
Ms B. Currie

## REPRESENTATION:

**Claimant:** Mr. A. Windross, Counsel

**Respondent:** Mr. C. Howells, Counsel

# RESERVED JUDGMENT

The unanimous judgment of the Tribunal is:

1. The claimant made a protected disclosure to the respondent on 22<sup>nd</sup> December 2018 (set out in her grievance dated 18<sup>th</sup> December 2018) when she disclosed information tending to show the following matters:
  - a. that a criminal offence has been committed, is being committed or is likely to be committed;
  - b. that R has failed, is failing or is likely to fail to comply with any legal obligation to which it is subject;
  - c. but the health or safety of any individual has been, is being or is likely to be endangered;
  - d. that the environment has been, is being or is likely to be damaged and that information tending to show any matter falling within any of the above preceding paragraphs has been, is being or is likely to be deliberately concealed.
2. The claimant did not make the protected disclosures alleged on 31 October 2016, 1 August 2018, or 8 November 2018.

3. Any detrimental treatment to which the claimant was subjected was not done on the ground that the claimant had made a protected disclosure or disclosures. The claimant's claim in this regard fails and is dismissed.
4. In the absence of a series of detrimental conduct done on the ground that the claimant had made protected disclosures all detriment claims relating to events before 12 November 2018 were presented out of time in circumstances when it would have been reasonably practicable to have presented them in time. The tribunal does not have jurisdiction in respect of such claims, in any event.

## REASONS

### 1. Introduction:

- 1.1. This hearing took place over five days in November 2020 and at the conclusion of evidence on the last of the listed days both counsel requested the opportunity to make oral submissions. The hearing was therefore adjourned part heard to the earliest next available date being the 26 January 2021. Evidence and cross-examination were heard from the witnesses listed below during the hearing between 23 November and 27 November 2020. Written submissions were received by the tribunal on Friday, 22 January 2021; respective counsel addressed the tribunal orally on 26 January 2021.
- 1.2. In this judgment I will refer to the claimant (with no disrespect intended but adopting the formula used by her counsel in his draft list of issues), as "C"; by the same token the respondent is referred to as "R".
- 1.3. Witness statements were received from the following witnesses all of whom were available for cross-examination at the hearing, and all bar Mr Vaughan and Mr Williams were cross-examined:
  - 1.3.1. C
  - 1.3.2. Ian **Hammond** – Mr Hammond is employed by R as its Principal Cleaning Manager; he was the claimant's line manager at the material time; his line manager was Mr Jason Rawbone. In the capacity in which he is employed, and by virtue of R's written procedures, Mr Hammond is a person who can properly receive qualifying disclosures that is any disclosure of information that qualifies for protection under section 43A – 43L Employment Rights Act 1996 (ERA) (whistleblowing protection provisions); he received none from C.
  - 1.3.3. Anthony **Holt** - at the material time Mr Holt was employed by R as a Health and Safety Adviser; he was a health and safety adviser to the Catering and Cleaning Service in which the claimant was an Area Manager. He is currently employed by the Powys Teaching Health Board as Senior Health and Safety Officer. Mr Holt was not an operational manager at the material time; he did not hold a position or carry out duties

with responsibilities commensurate with or senior to those of the claimant. His role was to assist by advising on matters pertaining to health and safety and in that capacity he fielded questions and concerns raised by colleagues in the Cleaning and Catering Department; he gave advice. He did not consider himself to be, and we find that he was not, a person either designated to, or appropriate for, the receipt of protected disclosures on behalf of R; he received none from C in any event.

1.3.4. Mick **Hutchison** – Mr Hutchison is the GMB union convener for Powys County Council and he represented the claimant from April 2017 until 2019. Mr Hutchison is a trade union representative. He is not an operational manager or otherwise a person designated as being an appropriate person to receive protected disclosures on behalf of R; he advised, assisted, and represented C.

1.3.5. Pearl **Morris** – Ms Morris is employed by R as an administrator.

1.3.6. Robert Clive **Pinney** - Head of Legal Services for R. In the period from 8 May 2013 until 1 March 2019 his job title was Solicitor to the Council; from 1 March 2019 his job title was Head of Legal and Democratic Services. In the capacity in which he is employed, and by virtue of R's written procedures, Mr Pinney is a person who can properly receive protected disclosures for R. He received none from C.

1.3.7. Jason **Rawbone** - Mr Rawbone is employed by R as the Professional Lead – Catering and Cleaning, succeeding Cheryl Leighton as the senior manager for the Catering and Cleaning Service. He reports to the Head of Housing and Community Development. In the capacity in which he is employed, and by virtue of R's written procedures, Mr Rawbone is a person who can properly receive protected disclosures for R; he received none from C.

1.3.8. Elwyn **Vaughan** – Mr Vaughan is a Powys county councillor.

1.3.9. Gwilym **Williams** – Mr Williams is a Powys county councillor.

1.4. The following people, amongst others, were referred to in evidence but did not give evidence to the tribunal:

1.4.1. Angie Kavanagh Aspinall – Cleaning Co-ordinator mid Powys

1.4.2. John Bevan - Head of HR

1.4.3. Ian Budd – Director of Education

1.4.4. Julie Carrod – HR

1.4.5. Martin Davies – Enforcement Officer

1.4.6. Les George – County Councillor

1.4.7. Ian Halstead – Assistant Director, SWAP (Internal Audit team)

1.4.8. Cheryl Leighton – Business Manager, Cleaning and Catering

1.4.9. Mohammed Mehmet - Acting Chief Executive Officer

1.4.10. Caroline Meredith – Cleaning Co-ordinator South Powys

1.4.11. David Powell - Deputy Chief Executive Officer

2. **The Issues:** I set out below the list of issues presented to the tribunal as an agreed list, albeit R maintains that some of the listed detriments were not properly pleaded in that they were omitted from a schedule of further and better particulars provided by C in compliance with an order made at a case management preliminary hearing on 9 November 2020.

2.1. Time limit / limitation issue

2.1.1. Were **C**'s complaints presented within the time limits set out in ss.48(3)(a) & (b) of the Employment Rights Act 1996 ('ERA')?

2.1.2. If **R** disputes (1) above, then:

2.1.2.1. Did the act and/or conduct extend over a period and/or a series of similar acts or failures?

2.1.2.2. Is the Tribunal satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months?

2.1.3. If so, what further period does the Tribunal consider reasonable?

2.2. Public Interest Disclosure ("whistleblowing") C asserts that she made Public Interest Disclosures (PID) on the following dates:

2.2.1. 31<sup>st</sup> October 2016 [ C refers to **Pleadings/7, 37-38 and 57-58** and all the references to Pleadings throughout the list of issues is a reference made by C's counsel; not all such references are agreed by R's counsel albeit they were included in the list of issues provided to the tribunal].

2.2.2. 1 August 2018 [**Pleadings/7, 38-39 and 60-61**].

2.2.3. 8 November 2018 [**Pleadings/7, 38-39, 46 and 49**].

2.2.4. 18 December 2018 [**Pleadings/7, 39-40 and 51-52**].

2.3. In respect of each disclosure:

2.3.1. Was information disclosed?

2.3.2. Did **C** reasonably believe that that information tended to show one of the matters set out at s.43B(1) (a-f)?

2.3.3. Did **C** reasonably believe that her disclosure was made in the public interest?

2.4. **C** relies on subsection(s) (a), (b), (d), (e) and (f) of s.43B(1) (a-f):

2.4.1. (a) that a criminal offence has been committed, is being committed or is likely to be committed;

- 2.4.2. (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject;
- 2.4.3. (d) that the health or safety of any individual has been, is being or is likely to be endangered;
- 2.4.4. (e) that the environment has been, is being or is likely to be damaged; and
- 2.4.5. (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.

2.5. Did C suffer the following detriments:

- 2.5.1. 8 February 2017: **C** sets out serious concerns due to unfair treatment from Ian Hammond [**Pleadings/7**]. [This statement was expressly withdrawn by C as being an alleged detriment].
- 2.5.2. 7 April 2017: As a result of complaining to Ian Hammond in an e-mail dated 22 March 2017, **C** put under investigation by Ian Hammond and Cheryl Leighton for 14 months [**Pleadings/7 and 59**].
- 2.5.3. 21 December 2017: Ian Hammond sought to humiliate and insult **C** in his statements with the investigating officers [**Pleadings/43**].
- 2.5.4. 30 January 2018: **C** put under restrictions during investigation and was not allowed to work as Area Manager, but instead was put into a museum where she had no previous experience [**Pleadings/7, 43 and 59**].
- 2.5.5. 2 March 2018: **C** tried redeployment with the housing team, however, was not given the position, which **C** believes was due to the upcoming disciplinary hearing [**Pleadings/7**].
- 2.5.6. 8 April 2018: **C** left by managers without any support [**Pleadings/7**].
- 2.5.7. 25 June 2018: Disciplinary hearing at The Pump House, County Hall, from 9:15am until 7:30pm [**Pleadings/7, 43 and 59**].
- 2.5.8. 29 June 2018: dismissal (later found unfair at the appeal hearing on 1 August 2018) [**Pleadings/7, 43 and 59**].
- 2.5.9. 2 August 2018: Jason Rawbone told Stuart Mackintosh **C** will not fit back into the service, that she will come back and be off sick before we know it [**Pleadings/43**].
- 2.5.10. 10 August 2018: Ian Hammond inappropriately accessing **C**'s personal file and **R**'s loss of **C**'s fit notes [**Pleadings/61**].
- 2.5.11. 14 August 2018:

- 2.5.11.1. Jason Rawbone told **C** that staff did not trust her, it was down to her to make amends with 3 staff members and she was to be put on an action plan **[Pleadings/43]**.
- 2.5.11.2. E-mail from Jason Rawbone to 29 members of staff providing confidential information. Such information was discussed by members of staff **[Pleadings/61 and 62]**.
- 2.5.11.3. **C** had no support after this happened and felt she was being victimised and harassed by management in her department **[Pleadings/43]**.
- 2.5.12. 23 August 2018: Although Jason was **C**'s manager, Ian Hammond on **C**'s 2nd day at work sent an email telling her to take herself of any training **[Pleadings/62]**.
- 2.5.13. 23 October 2018: Management of change - **R** sought to change **C**'s position to manage double the amount as her co-worker with the same pay and job title **[Pleadings/7]**.
- 2.5.14. 12 November 2018: Stopped by Ian Hammond from entering the depot where equipment is stored for **C**'s staff, in turn stopping **C** from carrying out her duties **[Pleadings/49]**.
- 2.5.15. 27 December 2018: Ian Hammond bombarding **C** with demands despite not being her line manager. **C**'s holiday not being authorised **[Pleadings/53 and 55]**.
- 2.5.16. 7 January 2019: Ian Hammond stating **C** was now being line managed by him, and that **C** had to manage two areas which she was not contracted to do **[Pleadings/53]**.
- 2.5.17. 28 January 2019: Jason Rawbone shouted at **C** "why I had done this, was it more money I wanted". He also said **C** was being put under investigation from a complaint from a member of staff; this was in a gratifying way **[Pleadings/55]**.
- 2.5.18. Undated: **C** approached HR and her professional lead Cheryl Leighton about Ian Hammond's behaviour, however she was not supported, not believed and suffered severe stress and anxiety as a result **[Pleadings/42]**.
- 2.5.19. Undated: 2 members of staff who were line managed by **C**, although Ian Hammond has always directed them, were also directed them to harass **C**. One of them as well as Ian Hammond is presently being investigated for this **[Pleadings/43]**.
- 2.5.20. Undated: overloaded with work with no support and having to manage a large workforce on her own **[Pleadings/50]**.

- 2.5.21. Undated: training being refused by Ian Hammond [Pleadings/53].
- 2.5.22. Undated: C had no communication back from senior levels about her grievance or her disclosure. She felt she was not protected by policy, was not given any reassurances, and left to work alone in the same department as the staff and manager she had made the disclosure about with no support. As a result, Ian Hammond in the form of harassment and bullying behaviour targeted her [Pleadings/54].
- 2.5.23. Undated: C was isolated and had to work on her own with no support. After the disclosure, she was made to feel that she was the person in the wrong for doing this by staff involved with Ian Hammond. She was not protected, and staff were openly discussing her disclosure [Pleadings/57].
- 2.5.24. Undated: C was told in a meeting with HR, Cheryl Leighton and Ian Henderson that she needs to put up, shut up and get in with management. Ian Hammond again subjected her to degrading and humiliating treatment [Pleadings/60].
- 2.6. Did the PID have a material influence on any of the treatment found proven?

## The Facts:

### 3 The Respondent:

- 3.1.1 R is a local authority, a large employer with documented policies and procedures including in respect of whistleblowing protection, and grievances. Its functions are divided into various departments including specifically for our purposes the Cleaning and Catering Department (“the Department”). In addition to operatives within the Department there are Area Managers who line manage Co-ordinators. The county is divided operationally North, Mid, and South (at least in respect of the Department); there is one area manager managing the North and another (the claimant during the material time) managing Mid and South. The Cleaning and Catering Department operated in, amongst other places, schools, some leisure facilities and in Council owned and managed residential properties.
- 3.1.2 When a council tenant vacates a property, the property becomes known as a “void”. Void properties need to be cleared of the previous tenant’s belongings, cleaned and repaired where necessary to prepare them for the next tenant to move in. The primary responsibility for the council’s residential properties rests with the Housing Department. Since 2017, the housing service has had a contract with Heart of Wales Property Services (HOWPS), and it was either the case, or at some point the intention, that HOWPS would do the void clearances. Howsoever it was arranged, and why-so-ever, it is agreed that at the material time the void

clearances were being carried out by the Department (Cleaning and Catering). The Department sought to increase its internally billable commercial activities and it wished to maximise the opportunities given to it by the void clearance work.

- 3.1.3 The void clearance work would include cleaning, disposal of waste and rubbish, essential repairs, removal and refurbishment of items of furniture and electrical goods, for recycling where practicable or possible. Some of the voids are in a bad state of disrepair and are unsanitary, requiring deep cleaning, removal of noxious waste and, on occasions, hypodermic syringes.
- 3.1.4 From 2016 onwards in his role as health and safety adviser to the Department Mr Holt raised poor standards of health and safety with regard to void clearances. He was critical of the management of void clearances by Mr Hammond. Mr Holt formed the view that there was a poor health and safety culture within the Department, the Department's emphasis being on getting a job done rather than doing so with appropriate regard to best health and safety practice. He was concerned primarily about the collection of waste and its safe disposal and the checking of items of both furniture and electrical goods before their refurbishment/recycling and re-use (one example being that used needles were found down the back of a settee that was to be reused elsewhere having been taken from a void clearance). Mr Holt did not feel that his advice was being heeded. There was an issue, including one between Mr Holt and Mr Hammond, over the safe conduct of void clearances from at least 2016, including issues specifically relating to Mr Hammond's management. We accept Mr Holt's evidence that he consistently raised criticisms regarding the management of void clearances and the health and safety culture within the Department with Mr Hammond and that Mr Hammond was sensitive and thin-skinned about such criticism; we accept Mr Holt's description of Mr Hammond turning his back upon him at a meeting and being so defensive of his personal position that he implied there could be professional consequences for Mr Holt if he did not desist in his criticism. We find that Mr Holt's opinion was genuinely held by him and that he conscientiously felt his opinion was based on his professional analysis and examination of circumstances on the ground.

## **3.2 The Claimant:**

- 3.2.1 C commenced her employment with R as a support worker for supported tenants on 3 March 2014; on the 22 August 2016 following an interview she was appointed Area Cleaning Services Manager (ACSM) for Mid and South Powys. Although there was a clerical error in the advertisement, job description for the post and some documentation, nevertheless the claimant's appointment was clearly to the area comprising both Mid and South Powys; she was aware of this albeit she has argued that her jurisdiction was Mid Powys only, which contradicts

the operational situation where there was no area manager for the South alone, the claimant in fact managed both Mid and South areas, and adopted the title Area Cleaning Services Manager Mid and South Powys including in her letter heads. The claimant remained so employed until her redeployment, upon her job application being successful, into a wholly separate department of Powys County Council in November 2019. The claimant remains in R' s employment to date but not within the Department.

- 3.2.2 The claimant line managed Caroline Meredith who was her coordinator for South Powys, and Angie Kavanagh Aspinall who was her coordinator for Mid Powys. Her direct line manager was Ian Hammond. Her health and safety adviser was Mr Holt.
- 3.2.3 C attended a void clearance on 30 August 2016, very soon after her appointment as ACSM. She was surprised and dismayed at the state and condition of the property and the way in which the clearance was undertaken; she shared the concerns voiced by Mr Holt and she subsequently sought his advice about the formulation and implementation of improved procedures to deal with clearances. C was concerned for the health and safety of operatives in unsanitary conditions and for those at the depot dealing with removed items; she was concerned about the safe and hygienic disposal of waste; she was concerned about the documentation, removal, and storage of personal items from void clearances and the recycling of some household items. C's concerns were genuine, and she was well motivated in seeking advice from Mr Holt, and in her constructive criticism of Mr Hammond's management of the situation. Some of the responsibility rested with the Housing Department and some was contracted out to the Department. Following her attendance at that void clearance the claimant set about considering how she would best manage the situation in her role, seeking improvements over the procedures that she witnessed. The claimant considered that she was pursuing a path to better management of void clearances and sought advice and assistance to do so in line with her duties and responsibilities as ACSM. C contacted a housing officer shortly after her attendance at this void clearance to discuss her such matters including with regard to valuable items, confidential paperwork, pest infestations and medication that was found, specifically with regard to having a proper procedure including the transfer to the Housing Department of matters that she thought ought to remain its responsibility. She also contacted the waste and recycling team about the safe documentation of, and disposal of, medication and needle sticks. Some of the removed items would be taken back to a depot, referred to throughout as Ddole Road. The claimant was concerned about the safety and appropriateness of storing some items there. Whilst attending a training course some weeks later C discussed these matters with the trainer. Unbeknownst to her the head of Recycling, Highways and Grounds, Mr Brinn, was on the course. The claimant did not hold back in her description of the void property she had visited and what was entailed in the clearance in view of pest infestation, the presence of dirty

needles and the presence of bodily fluids and faeces. She identified Mr Hammond as being in charge of void clearances. The claimant said in evidence, and we have no reason to doubt her, that after the course Mr Brinn wrote to Mr Hammond asking him to meet; she knows nothing of the contents of that meeting or was discussed and we have no evidence of that meeting before us. The claimant's perception is that from this point on Mr Hammond became very hostile towards her although she does not know what the meeting was about or what was discussed at it.

- 3.2.4 From mid-September 2016 until her redeployment in November 2019 the claimant perceived that Mr Hammond was setting her up to fail, such as by giving her responsibility to deal with an issue relating to chemicals in a swimming pool when risk assessments that ought to have been put in place previously had not been done. Throughout September and October 2016, the claimant found Mr Hammond, in speaking to her and in email correspondence, to be intimidating and, whilst he denies it, she believes that he referred to her personally as "the nightmare". The tribunal was unable to make a clear finding of fact as to any time, place, date, or venue when Mr Hammond called her by this name or whether he ever did. The tribunal finds however that from mid-September 2016 onwards C was unhappy with Mr Hammond's management of her, felt that he had taken against her, and that he was both name-calling and mistreating her. She accuses him of consistently failing to provide her with managerial support but at the same time also accuses him of micromanaging her, which the tribunal accepts was her lasting impression albeit those two allegations could be contradictory.
- 3.2.5 In the opinion of Mr Holt, C was the most proactive of managers seeking his advice and he advised her as he felt appropriate including concerning issues that he had been raising with Mr Hammond and others even before C's appointment as ACSM.
- 3.2.6 C requested a meeting with a HR business manager in late October 2016 to explain how she felt she was being treated by Mr Hammond and that she felt she was being bullied. She was advised how to deal with the matter not least because the business manager in question said she too had been distressed by Mr Hammond and reduced to tears by him. C also met with Cheryl Leighton, Mr Rawbone's predecessor as line manager of Mr Hammond; the purpose of these meetings in September and October was to discuss Mr Hammond's alleged behaviour towards C and during that period C went directly to Ms Leighton, bypassing Mr Hammond, to request training and direction so that she could better undertake her role. She does not feel that she was given a proper induction or training following her appointment on the 22 August 2016 and nothing was put in place to assist her until mid-December of that year. It was not until November 2016 that Miss Leighton produced a plan for the claimant to help better understand her role and responsibilities. C gave convincing evidence that she felt she was left to her own devices from the date of her appointment (until the later alleged micromanaging

by Mr Hammond) but that in any event the lack of guidance and support was a feature of her employment by R from the start.

3.2.7 The tribunal notes that prior to 31<sup>st</sup> of October 2016 the claimant was critical of Mr Hammond's management including publicly, at least to her it appeared that their relationship was dysfunctional (the tribunal's description), she felt unsupported and mistreated by him, she considered that he was a bully, and that any direction or assistance was only given to her by Cheryl Leighton. Although C gave a considerable amount of evidence, including by reference to formal grievances, about specific examples of Mr Hammond's alleged conduct towards her it appears from the claimant's own witness evidence that the relationship was fraught with difficulty from its very early days and in many respects the allegations that the claimant makes post 31 October 2016 are more of the same.

### **3.3 The alleged disclosures:**

3.3.1 *31<sup>st</sup> October 2016:* The Department's management team met on 31 October 2016. The action log is at page 7 of the hearing bundle. It records, as they both recall, that Mr Rawbone and Mr Hammond arrived late. The action log is not a complete minute but is a record of the most significant matters that were raised requiring any action. Tasks were assigned to named individuals. There is no record within the action log specifically referring to void clearances or to any disclosure of information of the type alleged by the claimant relevant to void clearances. Neither Mr Rawbone or Mr Hammond heard any such disclosure during the time of their attendance at the meeting and neither understood that any of the tasks assigned at the meeting related either specifically to void clearances or to the disclosures alleged by the claimant. The claimant says that she raised her concerns relating to void clearances as described above but there is no other evidence of this. The claimant admitted in cross examination (specifically with regard to the attendance of Mr Holt) that she may have been confused between the meeting of 31 October 2016 and the subsequent meeting of the management team on 5 December 2016. She recalled Mr Holt being in attendance at the October meeting, but he was not. The claimant conceded she was not 100% sure as to which meeting she was referring to in relation to the alleged disclosures, when and to whom. Significantly however the log of the meeting on 5 December 2016 is accompanied by an agenda which includes reference to approval of minutes of the October meeting and there is no record of the earlier action log being corrected by the claimant when it failed to mention what she says now were disclosures relating to void clearances. There is no reference specifically to void clearances in the action log of the December management meeting. While very many issues were discussed relating to the work of the Department no reference was made to disclosures of the type alleged by the claimant and none of the action points necessarily relate to void clearances as opposed to locations such as the toilets which are specifically referred to. We accept the evidence of

the respondent's witnesses Mr Holt, Mr Hammond, and Mr Rawbone that no such disclosures as alleged were made at the 5th December meeting. We also accept their evidence that if disclosures of the type alleged by C had been made at either said meeting they would have been fully noted in specific minutes and/or action log and there would necessarily have been a task to be completed, or many tasks, which would have been allocated to a specific member or members of the team; none was; had disclosures of the type been made at either meeting their expectation is that the action log or minutes would have made specific reference; the documents we saw were contemporaneous and there was no evidence to suggest that they had been altered or amended in any way after their initial creation; we find on balance that they are accurate and genuine. Given the clear evidence from the respondent's witnesses, the absence of any corroboration of the claimant's version and her apparent confusion relating to the two meetings, the tribunal finds as a fact that C did not disclose information tending to show the breaches of legal obligation, endangerment to health and safety, and the like as alleged by her, at either the meeting of 31 October 2016 or 5 December 2016 (albeit it is noted that the claimant's allegation that she made a protected disclosure relates only to the October meeting). It is more likely than not that good management of void clearances was on C's mind and that such management was discussed in some way or form, but we find that C did not make qualifying disclosures of information as alleged.

### 3.3.2 *1 August 2018:*

- 3.3.2.1 On 1 August 2018 Mr Hutchison was leaving a council office as Mr Pinney was arriving and they had a chance encounter in the corridor, Mr Hutchison taking every opportunity he could to buttonhole Mr Pinney about any matters on his mind. On this occasion as they talked in the corridor Mr Hutchison asked for advice (according to his evidence) about void clearance items being dumped without appropriate licenses, clearance items being stored at or outside the Ddole Rd depot, and reusable clearance items being sold rather than being given away as used to be the case (an observation about alternative disposal and not a report of wrongdoing). He said he had received complaints. He thinks that he referred to C by name, although he did not convince us that he was certain of this, adding that even if he did, he was not at all certain that Mr Pinney heard her name being mentioned.
- 3.3.2.2 Mr Pinney made a detailed note of the encounter and conversation which he says was a query about instituting an audit and a complaint from staff at Ddole Rd. The note is at page 59 of the hearing bundle. The note does not refer to C by name and it does not refer specifically to any disclosures of information by C; she is not identified. We find that Mr Hutchison did not name C to Mr Pinney in this context, or if he did allude to her it was not heard by Mr Pinney; Mr Pinney did not understand that C was the source of any of the

complaints made, or the report of what caused the complaints, or suggestion of an audit.

- 3.3.2.3 Mr Hutchison gave examples of matters relating to void clearances by Mr Hammond's team and referred to the interrelationship between HOWPS and the Department.
- 3.3.2.4 Mr Pinney clearly has a recollection of the conversation and stands by his note at page 59, which the tribunal accepts as an accurate record in that it was prepared contemporaneously and is borne out by such of the evidence given by Mr Hutchison that is clear, and by Mr Pinney. Mr Hutchison did not say expressly or by implication, words to the effect that he was making a disclosure of information on behalf of a member. Mr Pinney's impression was that Mr Hutchison was having a moan on behalf of some of the staff who he said had complained about noxious smells and the presence of rats at Ddole Rd. He advised Mr Hutchison to take the matter up with Mr Stuart Mackintosh (Head of Cleaning) but that if he continued to have concerns, he should raise the matter with the relevant director.
- 3.3.2.5 Mr Hutchison confirmed that he would speak to Mr Mackintosh but in any event the problem of the smell that was bothering some of the staff at Ddole Rd disappeared and Mr Hutchison thought the matter had been dealt with and resolved; he took it no further. As far as he was concerned the problem, the smell (and hopefully any infestation), had been rectified.
- 3.3.2.6 The tribunal notes that Mr Hutchison does not give very much detail in his written witness statement regarding this conversation and during cross examination seemed to be backpedalling, playing down whether or not he did mention C by name and then stating that he did not think Mr Pinney had heard it; at paragraph 24 of Mr Hutchison's statement he says he informed Mr Pinney in August 2018 over C's concerns, but does not say that he told Mr Pinney they were her concerns, and at paragraph 26 says that he reported that he had been contacted by staff members working out of Ddole Rd. We find that in his capacity of Head of Legal Services, and taking into account the note at page 59, if Mr Pinney had been made aware that this was a disclosure of information rather than a complaint about the smell and presence of rats, and/or that there was information being disclosed by a named individual such as C, he would have noted it and taken further action because of its potentially serious nature. For all of these reasons, and the clarity of Mr Pinney's oral evidence and contemporary note, we preferred his evidence.
- 3.3.2.7 Mr Hutchison referred to dumping of clearance items without a licence, that there was a health hazard and (albeit without alleging that it was improper but rather just different to his preferred practice) goods were being sold all of which he took to be evidence of the

Department cutting corners. Mr Hutchison does not allege that he was making public interest disclosures himself or that he was subjected to detriment as a whistle-blower; Mr Pinney's note suggests Mr Hutchison may personally have made protected disclosures (but he did not advance evidence to that effect and was not cross-examined in relation to that; we heard no submissions as to whether he personally made a disclosure); the source of the complaints made known to Mr Pinney was Mr Hutchison himself following complaints from the staff at Ddole Rd. There was nothing to link any potential disclosure to the claimant as its proponent.

3.3.2.8 On 1 August 2018 the claimant did not make protected disclosures, as alleged, to Mr Pinney either directly or via Mr Hutchison; alternatively, even if he, Mr Hutchison, believed that this is what he was doing, Mr Pinney was unaware that the matters discussed were of any concern to C.

3.3.2.9 Nothing said in this conversation suggested to Mr Pinney that the contents of Mr Hutchison's remarks were related to, aggregated with or accumulated with the contents of the October 2016 management meeting.

### 3.3.3 8 November 2018:

3.3.3.1 On 8 November 2018 Mr Holt sent an advisory email to C, copying in Messrs Hammond, Rawbone, and Mackintosh concerning Ddole Rd. This email followed a meeting that morning between Mr Holt and C. Mr Holt attended the meeting as adviser to the Department and wrote the advisory email in that capacity by way of confirmation of his advice. The email is at page 100. He attached to it a series of photographs that he had taken at the site. Despite commending C's work, he noted with disappointment that those whom she managed, the operatives, were not doing as they ought to have done and he asked her to ensure that they implemented proper systems. He reminded her of the potential consequences of breaches of health and safety regulations, namely prosecution. He expressed his disappointment and concern about a number of bullet pointed issues. He referred to the fact that he had given advice on these lines quite some time ago and as previously found, he had in fact been doing so since 2016. He advised C of the need for a robust and auditable trail to track items taken from void properties. He talked of matters of concern that he raised with the property manager. He provided C with an inspection sheet asking her to ensure that the issues identified were addressed, requiring her to complete the report and sign it before sending it back to him within 20 working days. He offered his further assistance.

3.3.3.2 Mr Holt said in evidence that he had not understood he had ever received a disclosure of the type alleged by C from her; he would not have expected to do so as he is not named in the whistleblowing

policy and he did not have a managerial position that would make him a suitable person to whom a disclosure ought to be made. He also gave evidence to the effect that in writing the said email he was providing the claimant with a summary of their meeting and advice, with required actions, and that he did this in his capacity as health and safety adviser. He copied in the more senior managers to keep them informed and to make a point to them. We have already made a finding that he was dissatisfied with Mr Hammond's management of the Department with regard to matters of health and safety. He considered there was a poor health and safety culture. The tribunal accepts Mr Holt's evidence as being truthful as his evidence to the tribunal is consistent with the documentation and he gave it in a clear and straightforward manner which was plausible. Mr Holt was not making a disclosure of information such as alleged by C on her behalf. He did not consider that he had received a disclosure from her and so he was not passing on a message from her to her line managers. He accepted, with the benefit of hindsight, that the senior line managers may have read his email as identifying C as a person who shared his concerns but that was not his intention. Neither Mr Hammond nor Mr Rawbone read the email as being a disclosure of any information by C; C was not its author or the proponent of any issue but rather the recipient of the direct admonition of Mr Holt. The email was not a disclosure of information by or for C. The claimant did not make a protected disclosure to R on 8 November 2018.

3.3.3.3 Nothing said in this email suggested to Mr Rawbone or Mr Hammond that the contents of Mr Holt's remarks were related to, aggregated with or accumulated with the contents of the October 2016 management meeting or Mr Hutchison's conversation with Mr Pinney.

3.3.4 *18 December 2018:*

3.3.4.1 The claimant sought the assistance of Mr Vaughan and Mr Williams who are county councillors. She informed them of bullying that she felt she had suffered and drew their attention to what she considered to be managerial shortcomings generally affecting her and her colleagues by way of mismanagement, poor management and the bullying of staff. Amongst her concerns she mentioned to them the management of void clearances and they took matters up with the police. Their involvement culminated in the delivery to the then acting chief executive officer, Mr Mehmet, on 18 December 2018, of a file of papers put together for and on behalf of C. The complete file was not made available to the tribunal. The tribunal finds as a fact, based on the evidence received from both Councillors, Mr Hutchison (who is named as representative in the grievance), and C that it contained a copy of a grievance that she submitted to R under its grievance policy.

- 3.3.4.2 The grievance is dated 18 December 2018 and it complains of incidents from 14 August 2018 onwards (albeit she refers back to 2016) where she says that emails showed intimidation, bullying and victimisation. The grievance commences in the hearing bundle at page 116. C alleges harassment and bullying from Mr Hammond after raising concerns over health and safety, the lack of an audit trail in relation to void clearances, with waste not being properly disposed of; she specifically refers to the improper disposal of clinical waste into general waste collection and the improper disposal of needle sticks. It refers specifically to personal belongings of deceased tenants within void clearances not being properly audited. In her grievance C discloses that household items from void clearances have been sold by staff on eBay, staff members were not following R's policies with regard to sickness absence and the payment of wages including for overtime, there were improper checks on the monitoring of health and safety requirements. She discloses fly tipping and a lack of appropriate required training. Specifically, she says that needle sticks were not contained in a secure location. She makes specific disclosure of information regarding personal data breaches which she had reported to the Information Commissioner's Office.
- 3.3.4.3 The tribunal finds that the claimant's said grievance discloses information tending to show breaches of legal obligation, endangerment of health and safety, and by reference to resultant alleged harassment and bullying, attempts to conceal these matters. Based on the claimant's observations, the advice she had received from Mr Holt, her continuing concerns, and what she considered to be mismanagement by Mr Hammond (and of him by Mr Rawbone), the claimant formed a belief, which she genuinely held, that criminal offences had been committed, and there were breaches of legal obligations, endangerment to health and safety and concealment of the same.
- 3.3.4.4 The disclosure of that information was contained in a formal document addressed to R and handed to its CEO at the time. It qualified for protection. Whilst the tribunal is unable to comment on the full file of papers handed to Mr Mehmet, nevertheless having found that the file contained the claimant's said grievance the tribunal finds that the claimant made a protected disclosure or disclosures on 18 December 2018.
- 3.3.4.5 In May 2019 Mr Hammond was invited to an investigation meeting (in relation to C's grievance) that took place on 19 June 2019. When invited to the investigation he was given a broad outline of C's grievance. He did not become aware of the details of the grievance or the disclosures contained in it until the interview at the investigation meeting. He first saw the grievance in writing in early 2020 when he received the hearing bundle for this hearing. He had known for several years that Mr Holt was unhappy with his

management and unwanted audits; Mr Holt had given him health and safety advice to that effect with an explanation of what the Department was doing that was considered unsatisfactory; he knew that Mr Holt and C had discussed such concerns. He knew that C was unhappy with his management generally.

3.3.4.6 Mr Rawbone knew that an allegation about void clearances had been referred to the council's internal auditors in late autumn of 2018 and he was invited to be interviewed about it on 19 December 2019 by a senior auditor. He was not aware that C was making whistleblowing disclosures prior to consideration of the grievance submitted to the acting CEO in December 2018. Prior to that he knew from Mr Holt that C had general concerns about health and safety matters but did not know that she had made qualifying disclosures; neither Mr Holt nor C had made reports in accordance with the applicable whistleblowing policy, which he would have expected if that was their intention. He knew first and foremost however that C and Mr Hammond were not getting on, that Mr Hammond found C difficult to manage and she was very critical of his management; he took all of this to be an interpersonal problem. In part his belief was borne out by his understanding that C's relationship with other members of the team within the Department was unsatisfactory, not least her relationship with the coordinators she line managed. C alleges that Mr Hammond instructed or directed them to harass her but there is no evidence to corroborate that and the tribunal finds that this is a mere suspicion. Bearing in mind the evidence heard, the tribunal has no difficulty in finding that C's relationships were unsatisfactory with certain members of the team other than just Mr Hammond.

3.3.4.7 The grievance specifically referred to C's allegation that she had disclosed information previously.

3.4 **The Alleged detriments:** I have set out the allegations in italics. The tribunal's findings of fact are not italicised. The tribunal has dealt with all 24 allegations (and sub-allegations) listed above bar 2.10.1 which was withdrawn. The respondent submitted that the claimant has failed to plead all the allegations because they were not included in the claimant's schedule of further and better particulars ordered by Employment Judge Brace at a preliminary hearing on 9<sup>th</sup> November 2020.

3.4.1 *8 February 2017: C sets out serious concerns due to unfair treatment from Ian Hammond:* the allegation of this detriment is withdrawn.

3.4.2 *7 April 2017: As a result of complaining to Ian Hammond in an e-mail dated 22 March 2017, C put under investigation by Ian Hammond and Cheryl Leighton for 14 months:* the claimant was involved in the appointment of a member of staff to a role in Brecon in March 2017; two applicants were considered and the respondent was led to believe that contrary to an instruction that she received to defer any decision, the

claimant made an unauthorised appointment. Had she done so this would have been a breach of R's applicable policies and in contravention of an express managerial instruction. Ms Meredith complained about this situation to Mr Hammond. At this time Cheryl Leighton was Mr Hammond's line manager; he reported Ms Meredith's complaint to her. We accept Mr Hammond's evidence, corroborated by the available correspondence, that it was Cheryl Leighton and not Mr Hammond that "put (C) under investigation". There was an investigation that led to a disciplinary hearing that was conducted by a manager from the transport department; the claimant was invited to a disciplinary hearing by the investigating officer, a Mr Evans, in a letter drafted by Miss Carrod of HR. The hearing was conducted, and an outcome reached by the disciplining officer Mr Forsey, Senior Manager Corporate Transport. The claimant was represented. The outcome letter of the 6 July 2018 was signed on behalf of Mr Forsey (it is believed by HR). The letter commences at page 55. The decision, which C appealed, was that she was dismissed for the reasons set out in that letter. The claimant's subsequent appeal was successful, and the sanction of a final written warning was substituted, for the reasons stated in the appeal outcome letter. There is no evidence before the tribunal to cast doubt on that sequence of events or the veracity of the correspondence in the hearing bundle. It follows from this that Mr Hammond did not put the claimant under investigation. Miss Leighton put C under investigation with cause, borne out by the subsequent decisions at both the disciplinary hearing and appeal hearing, albeit they arrived at different outcomes. The tribunal finds no evidence to support the allegation that the investigation or any part of the disciplinary procedure was influenced by any disclosure of information by the claimant or was improperly influenced by Mr Hammond. In any event these matters predate the claimant's only protected disclosure in December 2018.

- 3.4.3 *21 December 2017: Ian Hammond sought to humiliate and insult C in his statements with the investigating officers:* in the course of an investigatory interview Mr Hammond said of the claimant that he thought she may have ADD, commenting that he felt she did not concentrate well on her work and was not finishing tasks set for her. He had not discussed any such concern of his with C and he had no knowledge of C's health that would allow him to make such a bold diagnosis. The tribunal find on the basis of evidence heard that Mr Hammond was being critical of C with a view to undermining her rather than being helpful to her; the reason for what the tribunal considers having been more a veiled criticism than a health concern, was that the relationship between C and Mr Hammond was dysfunctional from its outset, which continued to be the most appropriate description of it until C left the department. The ill-advised comment made by Mr Hammond was not because of any qualifying disclosure and the tribunal notes that it predates the protected disclosure made by C on 18 December 2018.

- 3.4.4 *30 January 2018: C put under restrictions during investigation and was not allowed to work as Area Manager, but instead was put into a museum where she had no previous experience:* this relates to the investigation into the recruitment process mentioned above. The claimant was put on work restrictions because of the nature of the allegations made against her namely that she made inappropriate comments about her working relationship with a line manager, that she did not carry out her duties to the expected standards, that she did not follow correct management of change procedures resulting in staff being at a financial detriment, that she failed to make appropriate use of financial and human resources, that she disobeyed reasonable management instructions and that she put the cleaning service at risk. The restriction was that in view of those allegations she could not work in the Department. She was instead redeployed, with her reluctant agreement, to work in a museum. This was as convenient a location as her usual place of work in terms of distance to be travelled daily and was much closer to her home than any available alternative redeployed post. The claimant did not feel that the investigation was justified, denied the allegations and therefore felt aggrieved at the restrictions but accepted the redeployment given the circumstances facing her. On 27<sup>th</sup> of December 2017 Ms Leighton wrote to the claimant notifying her of a further disciplinary investigation interview referred to above (page 42). Ms Leighton set out the allegations and said that due to the nature of those allegations it was necessary that her work restrictions remained in place. There is no evidence to suggest that Ms Leighton's decision to impose restrictions was related in any way to any disclosure of information made by the claimant; the length of time that the investigation took was exacerbated by the claimant's absences through ill health various times, logistic and administrative delays; the tribunal finds on the balance of probabilities taking into account the contents of the correspondence and evidence heard that the restrictions remained in place for the reasons stated in this latest letter. The tribunal notes that the imposition and that confirmation of restrictions during the disciplinary investigation predated the claimant's protected disclosure in December 2018.
- 3.4.5 *2 March 2018: C tried redeployment with the housing team, however, was not given the position, which C believes was due to the upcoming disciplinary hearing:* the claimant applied for redeployment in the housing department but was not appointed. There were two in-house candidates one of whom was appointed to the post. The claimant conceded in evidence that had she known of the internal applicants she would not have applied. There is no evidence before the tribunal to suggest that her failure with this application was in any way influenced by her having disclosed any information; the tribunal notes that her further application predates her protected disclosure of December 2018.
- 3.4.6 *8 April 2018: C left by managers without any support:* because of the dysfunctional nature of the relationship between Mr Hammond and C, Mr Rawbone was appointed on a temporary basis to directly line manage her. Mr Hammond remained responsible for the day-to-day management

of the Department. The tribunal felt that the claimant's evidence was unclear in respect of this allegation. She complains of being left without support and exclusion but at the same time of being micromanaged. The tribunal finds that the claimant would refer matters generally to Mr Rawbone but also dealt on occasions directly with Mr Hammond. When Mr Hammond played some hand or part in managing C, she would sometimes respond to him but more often go above him directly to Mr Rawbone. The claimant has not proved that she was left by either manager or any other managers without any support as she went about her usual duties. The claimant perceived there was a lack of support because she was not receiving the support she wanted, and she was dissatisfied working in the Department that was being managed on a day-to-day basis by Mr Hammond. The claimant has not established a detriment as alleged; the level of support given to her was dictated by an attempt to ease a pressure she felt from Mr Hammond and was not influenced by any disclosure of information by her; the tribunal notes that this allegation predates her protected disclosure of December 2018.

3.4.7 *25 June 2018: Disciplinary hearing at The Pump House, County Hall, from 9:15am until 7:30pm:* the tribunal has made findings above but the sequence of events leading to the disciplinary hearing. It was a long hearing. There had been a lengthy investigation into serious allegations. The claimant wanted to be heard in relation to them all, as was her right, and it appears from the documents that she was heard. That was appropriate as her job was at stake. The claimant was represented by a union official throughout the hearing. There is no evidence before the tribunal to suggest that the duration of the hearing was affected or influenced in any respect by any information that the claimant had previously disclosed. It appears to the tribunal that the duration of the hearing was materially influenced by the nature and extent of the allegations facing the claimant and her defence/mitigation; in these circumstances a lengthy and thorough hearing was not detrimental to the claimant, notwithstanding the outcome. The tribunal notes again that this allegation predates the claimant's protected disclosure of December 2018.

3.4.8 *29 June 2018: dismissal (later found unfair at the appeal hearing on 1 August 2018):* The tribunal did not hear evidence from the dismissing officer. The documentation in respect of the allegations facing the claimant, the investigation into them, and the outcome of the subsequent appeal suggest that the disciplinary proceedings took a normal course uninfluenced by any disclosure that may have been made by the claimant at any time. There is no evidence to suggest to the contrary. The claimant was dismissed but was entitled to appeal and did so successfully. Dismissal is a detriment. There is no evidence before the tribunal to support the contention that any manager with whom the claimant was aggrieved adversely or improperly influenced the decision to dismiss. Mr Hammond sought to undermine the claimant by referring to the possibility of her having ADD and we have made findings of fact in respect of that above; whilst that was improper, the tribunal cannot

make a finding that it led to the decision to dismiss the claimant. The tribunal notes that the dismissal was decided upon prior to the claimant's protected disclosure of December 2018.

3.4.9 *2 August 2018: Jason Rawbone told Stuart Mackintosh C will not fit back into the service, that she will come back and be off sick before we know it:* the claimant was out of the Department for several months through sickness absence and redeployment pending investigation. Following her successful appeal against dismissal she was to return to the Department. Mr Rawbone did not want her back because he felt there was a lack of mutual trust. Her engagement within the Department had been problematic from the outset because she had never got on well with Mr Hammond, she complained about him and him about her, she had periods of absence through ill health; there was a generally unhappy situation within the Department and for whatever reason it was felt that the claimant was part of the problem. This was at least in part corroborated as far as the managers were concerned by the apparently poor relationship between the claimant and the coordinators that she managed. C alleges that the latter poor relationship was at the behest of Mr Hammond but has not been able to adduce any evidence to support that contention. Mr Hammond denies it. The complaint against C made by Miss Meredith was not wholly without merit as far as R was concerned and this is borne out by initially the decision to dismiss but then on appeal to issue a final written warning. Because of these interpersonal relationship difficulties Mr Rawbone foresaw further problems if C returned to the Department. Based on this reasoning he anticipated C would not fit in working with her colleagues and line management; he foresaw that in due course she would be absent again with ill-health. He shared these concerns with Mr Mackintosh. They were genuine concerns of his. He voiced them in his role in the line management of the Department based on his experience. The comment was detrimental in that it sought to influence the opinion of a senior manager towards C and prejudice M against her. Mr Rawbone's opinion however was not influenced by a disclosure of information by C and once again the tribunal notes that the comment predated the claimant's protected disclosure of December 2018.

3.4.10 *10 August 2018: Ian Hammond inappropriately accessing C's personal file and R's loss of C's fit notes:* Mr Hammond accessed C's personal file. Albeit he was her line manager, the tribunal was not satisfied with Mr Hammond's explanation for accessing the personal file when he did, including checking medical records. He took the file to his office without signing it in or out at any time, and retained it in his office, only returning it after repeated requests by HR. The tribunal finds that Mr Hammond's reason was to check up on C for any information you could use against her in their continuing struggle. In an email dated 21 August 2018 addressed to Mr Hutchison, and copied to HR, C explains her distress at the fact that Mr Hammond accessed her file in August 2018. That email is at page 82. The tribunal finds as a fact that the effect of Mr Hammond's action in this regard was as described by C in her email. Mr Hammond's

actions were detrimental. The tribunal finds that his actions and his response to Miss Smith when she sought the return of the files was typically defensive and abrasive being part of his way of treating anyone with whom he did not see eye to eye (as was the case with Mr Holt, and the representative of HR who was reduced to tears and told C about it in the early days of her employment). Mr Hammond's actions were part of both his defence and attack in the context of the dysfunctional relationship he and C and others in the Department were enduring at the time. His actions were not influenced by any disclosure of information by the claimant but rather as part of the continuing problems with the working relationship that started upon her appointment and continued throughout her stay in the Department. The tribunal was unable to make a finding as to who misplaced C's medical records, or when, in the absence of any direct evidence and with a plausible denial by Mr Hammond. The tribunal further notes that Mr Hammond's detrimental treatment predated the claimant's protected disclosure.

*3.4.11 14 August 2018: Jason Rawbone told C that staff did not trust her, it was down to her to make amends with 3 staff members and she was to be put on an action plan:*

- 3.4.11.1 On 14 August 2018 the claimant attended a meeting with Mr Rawbone and others from HR the minutes of which start at page 67. This meeting was to discuss arrangements following her successful appeal against dismissal and her intended return to work within the Department (subject to disciplinary final written warning). C requested that Mr Hammond not attend at the meeting and he did not. She did not feel that she could face him and did not want him involved in her return-to-work discussion or arrangements.
- 3.4.11.2 Mr Rawbone commented that there would be a few bridges to build within the team for all of the staff to gain trust again in each other, including C. He commented that this went for all staff from Mr Hammond "down" to the rest of the team and C confirmed that she felt the feelings were mutual; this was their respective genuine and honest appraisal of the situation as it stood upon the C's intended return to the Department. The tribunal finds that the interpersonal problems within the Department were not exclusive to C and her line managers but were also between several members of the team and C, and between several members of the team and Mr Hammond. The respective statement of the obvious was not detrimental to C; the meeting was constructive towards an improvement in interpersonal relationships so as to work towards C's reintegration into the Department.
- 3.4.11.3 Mr Rawbone expressed the possibility that C could instigate the improvement in relationships (and again the tribunal notes that C had excluded Mr Hammond from the meeting). C was not put on a formal capability procedure or performance management action plan as alleged; it was expressly explained, as corroborated by witness

evidence and the documentation including the minutes of this meeting, and in accordance with the recommendation of the appeal panel, that C was to follow an informal action plan under the performance capability procedure; this was to benefit C and accorded with the outcome of the disciplinary appeal which C accepted.

- 3.4.11.4 Mr Rawbone attempted to reassure C that she ought not to become stressed at work in case it made her ill and that she should speak to people within the Department including him at any time; he expressed a preference for conversation over text messaging. C confirmed that she felt comfortable speaking to him and that she was happy to return to work the following day. There was a discussion about the geographical scope of the area managed by C and an explanation of the administrative error defining her area when she was appointed; the situation was explained to C in accordance with the findings of fact above. They discussed C attending a training course for supervisors and managers and that she should look into available courses as well as resuming a coaching relationship with a colleague (although emphasis was placed on C performing her ACMS role first).
- 3.4.11.5 The tribunal accepts that Mr Rawbone expressed his expectations from C on her return as set out in the minutes of this meeting but at the same time he expressed his expectation of similar conduct from everyone in the team or the Department. This was a constructive and helpful meeting. There was no detriment to C. What was said in the meeting was motivated by Mr Rawbone's hope for peaceful coexistence within the Department once he had accepted (contrary to his initial reluctance as expressed to Mr Mackintosh) that C was to return to work within the Department. What he said was not influenced by any disclosure of information by C; the tribunal notes that this meeting took place prior to C's protected disclosure in December 2018.
- 3.4.11.6 *E-mail from Jason Rawbone to 29 members of staff providing confidential information. Such information was discussed by members of staff:*
- 3.4.11.6.1 on 14 August 2018 Mr Rawbone sent an email to 29 people in the Department confirming the outcome of C's disciplinary appeal namely that the dismissal was overturned and that she had received a written warning and would be returning to the Department (pages 72 to 74). He confirmed details of a phased return to work and that he had explained to C "roles and responsibilities and my expectations". He commented that he understood that his message would cause "some tensions within our team" but he asked for integrity and mutual respect and support.

3.4.11.6.2 The imposition of a written warning was confidential information pertaining to C. This disclosure put C was a detriment because information personal to her had been shared with people in respect of whom there was perceived tension upon C's return to work. It infringed her privacy.

3.4.11.6.3 Mr Rawbone accepted that he had not acted professionally in making this disclosure and regretted it. We find that he apologised for it (albeit C did not either recall or recognise what she considered to be an apology).

3.4.11.6.4 The reason for this disclosure of information was to explain to colleagues within the Department about C's return to work, summarising the previous meeting held with C; it appeared to Mr Rawbone that some of C's colleagues may react adversely to C's return having thought that she had left employment and he sought to manage a respectful return, controlling colleagues' reactions. He inadvertently gave away more information than he subsequently realised he ought to have done well but his intention was to set the scene following on from the successful appeal.

3.4.11.6.5 The disclosure of information by Mr Rawbone was not influenced by any qualifying disclosure made by the C and predates any protected disclosure. This was a matter of information and expectation management within the Department.

3.4.11.7 **C** had no support after this happened and felt she was being victimised and harassed by management in her department: C felt unsupported and was clearly unhappy, notwithstanding a successful appeal. She was offered support and it was available to her. Temporarily Mr Rawbone was substituted as a line manager and point of contact for C, despite Mr Hammond managing the Department on a day-to-day basis. She had a go-between. She had HR support. She confirmed that she enjoyed a good relationship with Mr Rawbone, and she took advantage of the direct line of communication that she could have with him, bypassing Mr Hammond; she did this regularly.

3.4.12 *23 August 2018: Although Jason was C's manager, Ian Hammond on C's 2nd day at work sent an email telling her to take herself of any training:*

3.4.12.1 on 23 August 2018 Mr Hammond sent an email to C listing some training courses that the claimant had booked which he wanted her to cancel. There were other courses that C had to do, and he did not want her away from the service more than was necessary. He confirmed that he had no issue about the attendance on relevant courses but raised concern about better time management bearing in mind C's absence from the Department for some time. The email is at page 83.

- 3.4.12.2 Mr Rawbone had agreed with C for future training to be undertaken but he did not specify what she ought to do or when, other than has been indicated by the appeal panel. The courses mentioned in Mr Hammond's email were not essential to the performance of C's role.
- 3.4.12.3 At the time of Mr Hammond's email, he was managing the Department but was not directly line managing C. Whereas Mr Rawbone was the recognised go-between, daily deployment of staff was managed by Mr Hammond and delivery of the service was his principal concern.
- 3.4.12.4 Mr Hammond's concern about C's absence from the Department was genuine. He did not want her to be away too much but did want her to familiarise herself back into the Department and its work. He was not opposed to her undertaking training. All witnesses agreed that the Department was very busy, including C
- 3.4.12.5 C was upset at the instruction. She felt any such instruction should have come from Mr Rawbone, although it was in fact contrary to what she had understood from him. Such a direct email limiting C's training opportunities was detrimental; the training could have been advantageous to her personally; cancellation was easily interpreted by her as a slight by Mr Hammond; it was contrary to the line of management that had been set up and the instruction was apparently contrary to the indication given to her by Mr. Rawbone.
- 3.4.12.6 The reason for the email is set out in it, the recognised needs of C but also the needs of the service.

3.4.13 *23 October 2018: Management of change - R sought to change C's position to manage double the amount as her co-worker with the same pay and job title:*

- 3.4.13.1 The tribunal has already made findings of fact in this regard, namely that owing to a bureaucratic mistake the claimant's initial job application was in response to an advertisement that failed to make clear that the post would include responsibility for both Mid-Powys and South Powys. C was aware of this from the time of her job interview. She accepted appointment to management of both areas and worked out that consistently. She presented a grievance dated 29 June 2017 and did not include any reference to this being an issue. C referred to herself as being responsible for both areas. She line managed the coordinators for each area. C only raised the matter when the self-evident error was pointed out during the course of a grievance procedure and she then persisted with it. The tribunal finds the fact, based on this evidence, and to coin the word used by R in submissions, that C is being disingenuous with this allegation. Restating C's responsibility for both mid and South was not influenced by any disclosure of information by C; the initial error, the

correct working arrangements, and R's clarification and restatement of the correct situation, predate C's protected disclosure.

3.4.13.2 C's responsibilities, duties and pay reflected responsibility for mid and South areas. Formally stating that there had been an error, and that C was responsible for both areas in fact merely reflected the situation of C's work and pay; it was not a detriment.

3.4.14 *12 November 2018: Stopped by Ian Hammond from entering the depot where equipment is stored for C's staff, in turn stopping C from carrying out her duties:*

3.4.14.1 on 12<sup>th</sup> and 13 November 2018 Mr Hammond sent emails to C about the stores and these appear at page 104. Mr Hammond had been informed by a Health and Safety representative that C had gained access to a caged area without authorisation, on a site without informing the local manager of her attendance. It was his understanding that C had obtained a key to gain access to the cage door contrary to the applicable safety rules, no cleaning duties being carried on within that site and there being no apparent reason for C to gain such access. This was a matter of concern to management.

3.4.14.2 Mr Hammond confirmed the limited circumstances in which there would be a good reason for her to attend that site but in any event reminded C would be courteous of her to let the local manager know prior to attendance.

3.4.14.3 In the email chain referred to, Mr Hammond does not (and he did not) stop C from entering the depot or carrying out her duties as alleged.

3.4.15 *27 December 2018: Ian Hammond bombarding C with demands despite not being her line manager. C's holiday not being authorised:*

3.4.15.1 The Tribunal finds as a fact that the temporary line management arrangements involving Mr Rawbone were fraught. Mr Hammond was line managing the department on a day-to-day basis; he would ask for information for operational reasons, but C would bypass him regularly, preferring to pass on such information to Mr Rawbone, that is information that was required for the provision of the service and not just matters of a personal nature to C. This became frustrating to both Mr Hammond and to Mr Rawbone. The arrangement was temporary and to oversee C's transition back into the Department but both line managers considered that it was unworkable in the long term in respect of operational matters.

3.4.15.2 Mr Hammond wanted to make a point and to reassert that he was responsible for the management of the service by the Department. He had no apparent issue with Mr Hammond; Mr Rawbone was only

accepting Mr Hammond's role in line managing C in so far as it related to personal affairs.

- 3.4.15.3 The correct procedure for booking holidays was to check availability of dates through an electronic HR system called Trent. Once a request for holiday is authorised diary entries are made.
- 3.4.15.4 Prior to Christmas 2018 C made a diary note which she passed on to Mr Rawbone's personal assistant, Sarah, that she was taking holidays from 2 January 2019 to 4 January 2019. C did not seek prior authority via the Trent system. On 26 December 2018 C requested leave via the Trent system. Mr Hammond refused to authorise the leave request on 27<sup>th</sup> of December 2018.
- 3.4.15.5 Mr Hammond refused the request of the reasons he set out in an email of 27<sup>th</sup> of December at page 125. By the time of the request others had already booked leave properly. C would be the only operational manager in the Department available at that time. The refusal was based on operational requirements of the service. There were staff absences, and it was a holiday period. Prior managerial authorisation (either from Mr Hammond or for that matter from Mr Rawbone) had not been sought and obtained.
- 3.4.15.6 C's leave had not been cancelled; it had never been authorised. In the event Mr Rawbone offered to work those days providing cover for C and this satisfied operational requirements. C was not subjected to a detriment.
- 3.4.15.7 The tribunal finds as a fact that an additional factor in the Mr Hammond's decision-making was that he was making the point that he was managing the Department and that C ought to comply with the procedures in force. This emanated from the dysfunctional nature of the line management arrangements and C's disregard for proper procedures in so far as they involved Mr Hammond's management of the Department. Mr Hammond's refusal of authorisation, irrelevant in the event because of Mr Rawbone's offer, was not influenced by any disclosure of information by C. At this stage Mr Hammond was unaware of C's disclosures contained within the grievance she provided to the acting CEO on 22<sup>nd</sup> December 2018.
- 3.4.15.8 Mr Hammond did not become aware of the contents of the grievance until he was interviewed about it in May 2019.
- 3.4.15.9 In asserting his authority Mr Hammond sent repeated emails to C and she responded in kind. Mr Rawbone told Mr Hammond to desist. It was upsetting C. It was seen as being unnecessary. The emails were in line with day-to-day management of the Department, but their frequency and tone were clearly contrary to the spirit of the

temporary line management arrangements that had been put in place by agreement. Taking all that together, and because of the temporary arrangement, they amounted to detrimental treatment. The reason for this was Mr Hammond's frustration with the managerial arrangements and what he perceived as lack of cooperation from C in the running of the service. He took badly to being bypassed. He took it as a personal criticism. Mr Hammond was making a point about line management responsibility, voiced through his frustration. This was in keeping with his style generally as evidenced above. The tribunal does not consider that it was materially influenced by any disclosure of information by C but rather it was of a piece with his management of C from her appointment onwards, his dealings with Ms Lain Smith over C's personal file and medical records, Mr Holt and the unnamed HR officer who told C that he had made her cry.

3.4.16.7 *7 January 2019: Ian Hammond stating C was now being line managed by him, and that C had to manage two areas which she was not contracted to do:*

- 3.4.16.1 At a meeting on 12 December 2018 between C, Mr Rawbone and two HR officers including RW it was confirmed that from 1 January 2019 the temporary line management arrangements would come to an end and that Mr Hammond would resume responsibility for personal line management of C. RW said that the temporary arrangements were no longer fair to Mr Rawbone. He did not feel it was fair to him or that it was efficient, and he had never intended to be a long-term arrangement. It was not working. In her grievance to the acting CEO of 18 December 2018 (the protected disclosure, at page 116) C complained about this change in line management.
- 3.4.16.2 The decision to revert to Mr Hammond's line management was taken prior to the claimant's protected disclosure and it was done with a view to relieving Mr Rawbone of his temporary responsibility, integrating C back into the Department and hopefully improving management of the service.
- 3.4.16.3 On 8 January 2019 Mr Hammond sent an email to C asking whether she had received a quote for certain work, whether it had been accepted and when it was scheduled to be done. Apparently in response on 9 January 2019 C told Mr Hammond that she had given all the information to Mr Rawbone and told him that she had applied for another position outside the Department until which redeployment she would update Mr Rawbone about any work matters.
- 3.4.16.4 In response to C, Mr Hammond emailed her quoting his understanding that he was to be her line manager as of 1st January and asking again for the information that had not been forthcoming.

He expressed disappointment that she would not attend a scheduled meeting although she had not informed him directly.

3.4.16.5 Mr Hammond's email was a statement of the line management arrangements he understood had been agreed between C, HR, and Mr Rawbone.

3.4.16.6 C considered reversion to Mr Hammond's line management to be detrimental and she said this in her grievance. Mr Hammond's statement however in his email to her was a reiteration of what he understood to be an agreed position as of 1<sup>st</sup> January. C was clearly aware of the outcome of her meeting of 12 December 2018 and she knew that pending resolution of her grievance the decision had not been rescinded. Mr Hammond's explanation and his questioning C about work was not a detriment nor was it influenced by any disclosure of information by C. The emails are at pages 142 and 141.

3.4.16.7 C alleges that it was a detriment for her to be reminded that her responsibilities covered Mid and South Powys. The tribunal has already made findings in this regard. Any restatement of C's responsibilities for both areas was merely confirmation of the contractual position and was not detrimental. It was not influenced or related to any disclosure of information but was part of on-going clarification of the contractual situation from the start of her employment once the discrepancy in the job advert and related papers was spotted.

3.4.17 28 January 2019: Jason Rawbone shouted at C *"why I had done this, was it more money I wanted"*. He also said C was being put under investigation from a complaint from a member of staff; this was in a gratifying way:

3.4.17.1 C met with Mr Rawbone on 20 January 2019 to discuss, amongst other things, again, C's issues with accepting her responsibility to manage Mid and South Powys. He did not understand her difficulty in accepting the situation as it had been since her appointment and as was made clear to her at her recruitment interview. He asked her why she had a problem with this and was it that she wanted to be paid more because of the alleged wider area of responsibility. This was a genuine enquiry. C says that Mr Rawbone shouted at her; he denies it. The tribunal considers that he was exasperated and was C sensitive to what she considered to be criticism. We are unable to find whether voices were raised or not but feel on balance that it was unlikely he actually shouted. The reason for this conversation was C's apparent dissatisfaction with being told that she needed to manage Mid and South Powys, as she had been since her appointment. Whether the question about money was said in a raised voice or not it was not influenced by C's protected disclosure.

It was a genuine query. Mr Rawbone wanted to resolve the issue being raised by C.

3.4.17.2 Mr Rawbone informed C that she was to be investigated following a complaint made against her by a member of the Department. There had been such a complaint. C was to be investigated. Informing her of this was not a detriment; she was entitled to know and needed to prepare. The reason for it was the fact of it. It was not influenced by the claimant's protected disclosure.

3.4.18 *Undated: C approached HR and her professional lead Cheryl Leighton about Ian Hammond's behaviour, however she was not supported, not believed and suffered severe stress and anxiety as a result.* this is a generalised complaint summarising many of the above allegations. The tribunal finds that C did approach HR and Ms Leighton about Mr Hammond's behaviour. She was supported as described above. It appears that she was believed about the dysfunctional nature of her relationship with Mr Hammond and efforts were made to build bridges. Mediation was offered on more than one occasion; temporary line management arrangements were put in place. C did suffer stress and anxiety as a result of her dysfunctional relationships within the Department. There is no evidence to support the allegation that HR or Miss Leighton acted in the way they did under the influence to any degree of any disclosures by C of information of the type alleged whether protected or not.

3.4.19 *Undated: 2 members of staff who were line managed by C, although Ian Hammond has always directed them, were also directed them to harass C. One of them as well as Ian Hammond is presently being investigated for this:*

3.4.19.1 R investigated allegations of bullying and harassment that were made against both Mr Hammond and one of C's coordinators, AKA. No evidence was found to substantiate those allegations.

3.4.19.2 Other than C's suspicion, as stated above, there is no evidence before us to support the allegation that Mr Hammond directed two members of staff to harass her. Mr Hammond denies the allegation. The tribunal was unable to conclude that he so directed them and on balance finds that he did not. AKA gave evidence to the investigation which the tribunal read. The tribunal accepts that at all times C perceived that people were ganging up on her.

3.4.20 *Undated: overloaded with work with no support and having to manage a large workforce on her own:* all witnesses confirmed, and the tribunal finds, that the service was very busy. It was not only a busy department, but it was looking to extend its activities such as by cooperation with the housing department. The department's activities cover a wide geographic area. Its workforce was stretched. C was absent from the

Department for lengthy periods of time as is clear from the above chronology of events, when clearly, she was not overworked within the Department. She was at all times conscientious and a hard-working person. There is no evidence to suggest that she was “overloaded”. She was supported as described above. In addition to all the support mentioned above Mr Hammond also offered to provide cover for one of the coordinators line managed by the claimant when she was absent through ill-health. At all times Mr Hammond wished to line manage the claimant and when he did not do so directly, she was line managed by Mr Rawbone. She had used access to Miss Leighton and HR. She had two coordinators whom she line managed. She did not have to manage a large workforce on her own. The tribunal accepts that the claimant’s perception was that she was overloaded without support and had to manage on her own but that is not what occurred. C’s workload, level of management support and responsibility for the workforce was not at all influenced by any disclosure of information made by her at any time.

3.4.21 *Undated: training being refused by Ian Hammond:*

3.4.21.1 this is partly a reiteration of an earlier allegation and the tribunal’s findings of fact are set out above.

3.4.21.2 Additionally, the claimant wished to attend a course, entitled ILM, at level 5. Mr Hammond had no issue with her doing that in due course but wished that she would first achieve level 3, which she had not done; that was the usual progression within the council. For the department’s purposes level 3 was appropriate. C had been advised that she would be capable of achieving level 5 and this was her aspiration. Bearing in mind C’s absences from the Department, the nature and amount of work to be done, her reintegration into the Department, the Department’s needs, the usual course progression and relevance of the training, Mr Hammond had a sound managerial reason for stalling the claimant’s application to do the higher level before achieving the appropriate level; they are the reason he did so. In addition, he did not like being gainsaid by C and contradicted. C did not like any interference from Mr Hammond in her achieving her aspirations, at her speed, when she wished to do so. There was an impasse. This is another example of the dysfunctional relationship between Mr Hammond and C; in addition to his operational reasons Mr Hammond was making a point to her and asserting his authority. This was not related to a protected disclosure of information, of which in any event Mr Hammond only became aware in May/June 2019.

3.4.22 *Undated: C had no communication back from senior levels about her grievance or her disclosure. She felt she was not protected by policy, was not given any reassurances, and left to work alone in the same department as the staff and manager she had made the disclosure*

*about with no support. As a result, Ian Hammond in the form of harassment and bullying behaviour targeted her.*

- 3.4.22.1 this is a reiteration and summary of many of the claimant's claims above in respect of which the tribunal has already made findings of fact.
- 3.4.22.2 C lodged her first grievance against Mr Hammond and Julie Carrod of HR on 20 June 2017 (pages 29 to 33).
- 3.4.22.3 C was absent from 20 June 2017 until 29<sup>th</sup> of January 2018.
- 3.4.22.4 Mr Martin Davies, an Enforcement Officer for R investigated the grievance. On 21 December 2017 (pages 38 to 40) RW sent the grievance investigation outcome to C, signed by Mr Davies. The tribunal did not hear evidence from Mr Davies or RW. The letter however appears to set out the rationale for Mr Davies partially upholding C's grievances. There is no evidence to suggest that the time taken to investigate and deliver the outcome of her grievance was influenced at all by any alleged disclosure of information or C's health and safety concerns.
- 3.4.22.5 C's second grievance of 18 December 2018 (page 116) was initially overlooked by R in terms of the application of the grievance procedure. The tribunal accepts the evidence of Mr Pinney when he said that it became clear the grievance was inadvertently overlooked by Mr Ian Budd; this became clear to him when he met C and her union representative about it on 16 April 2019. Mr Budd ought to have dealt with the grievance under the applicable policy and procedure. He did not. We did not hear evidence from Mr Budd. Mr Pinney apologised to C at the April meeting and saw to it that, by agreement, PG would arrange for the grievance to be investigated by somebody outside the Department.
- 3.4.22.6 Mr Gareth Jones professional Lead for Regeneration was appointed to investigate it. He commenced his investigation on 19 June 2019 and the outcome letter is dated 7 November 2019. The report is at page 204 and following. We did not hear evidence from Mr Jones however the tribunal notes the conclusion at paragraph 17 (page 211) which corroborates the tribunal's findings of a progressive deterioration in the working relationships to the point of breakdown, significant stress and anxiety, unsuccessful attempts to improve relationships, a lack of coordination and confusion over roles and work issues with misinterpretation of events and emails having a negative impact on the operation of the service. There were apparent concerns about trust and C fitting back into the team upon her reinstatement in August 2018 and whilst some of Mr Hammond's

decisions were based on the needs of the service it was not always his place to make his views known. There are findings that Mr Hammond was frustrated. Similar comments are made regarding the relationship and poor communication between C and her coordinator AKA. Whilst not upholding the grievance or finding a direct link between C's health and safety concerns and the matters of which she complains regarding Mr Hammond and other colleagues, Mr Jones felt that health and safety concerns contributed to the deterioration in the relationship. He does not make a conclusion regarding any protected disclosure which was a matter being dealt with separately. He made recommendations. It appears from the outcome that, despite the delay in the commencement of the investigation, R dealt with the grievance in accordance with its policy.

- 3.4.22.7 In fact, C did receive communications about her grievances, contrary to her allegation above. She did not feel supported because the outcomes did not go the way she wished. There is no evidence to suggest that R's handling of C's grievances was influenced by any protected disclosure; the tribunal finds on balance in the light of the available documentary evidence and that of Mr Pinney that it was not.
- 3.4.22.8 Meanwhile on 24<sup>th</sup> of January 2019 Mr Budd had referred the claimant's protected disclosure to the internal auditors. This corroborates in the tribunal's mind that his initial failure to deal with the grievance was more than likely inadvertent as he appears to have been dealing with the disclosure element. The internal auditors investigated the matter and prepared a report dated 26<sup>th</sup> of March 2019 at pages 167 - 170. This report is in response to a request received from the deputy chief executive officer to conduct a review by audit, of the process of clearance of void council dwellings that was made in December 2018 in direct response to the claimant's protected disclosure of 18<sup>th</sup> December. The tribunal did not hear evidence from the internal auditors but conclude from the apparent thoroughness of the audit review that the auditors addressed the matter appropriately and professionally. R reacted properly and appropriately to the protected disclosure by commissioning this report.
- 3.4.22.9 From January 2019 until November 2019 Mr Hammond was redeployed out of the Department. From 27 July 2019 until 2 September 2019, he was absent generally through ill health. Upon C's application she was redeployed within the Council in November 2019. There is no evidence to support any allegation that C was subjected to detriment following the outcome of her second grievance (Mr Jones's report), or the internal auditors report into void clearances. The tribunal finds that she was not.

- 3.4.23 *Undated: C was isolated and had to work on her own with no support. After the disclosure, she was made to feel that she was the person in the wrong for doing this by staff involved with Ian Hammond. She was not protected, and staff were openly discussing her disclosure:* The tribunal has made findings of fact in respect of this generalised allegation. There is insufficient evidence before the tribunal to conclude that “staff are openly discussing her disclosure”, particularly bearing in mind the finding of fact that the claimant’s protected disclosure was made in December 2018. The tribunal accepts that there was discussion of the Mr Hammond’s management of the Department generally and concerns shared by Mr Holt and C over health and safety issues generally. The claimant has failed to show how such discussion of relevant health and safety issues was detrimental; we find it was not in so far as we can only assume that it occurred.
- 3.4.24 *Undated: C was told in a meeting with HR, Cheryl Leighton and Ian Henderson that she needs to put up, shut up and get in with management. Ian Hammond again subjected her to degrading and humiliating treatment.*
- 3.4.25 The tribunal understands the reference to Ian Henderson ought to be Ian Hammond and that this is a reference to a meeting in March 2017.
- 3.4.26 In December 2016 Ms Leighton and Ms Carrod of HR suggested to C that she discuss her concerns with Mr Hammond, and they arranged to meet in January 2017. They exchanged views but there was no resolution to their interpersonal problems. C felt stressed and anxious at work blaming Mr Hammond’s treatment; he said he felt she was trying too hard at work. C’s impression was that Mr Hammond felt threatened as if C was “trying to take his job”. That was the claimant’s impression but there is no evidence to suggest it was Mr Hammond’s fear. However, in view of failure to resolve the dispute Miss Leighton invited both parties to attend a further meeting.
- 3.4.27 It appears from the available evidence, mostly about of C, that the purpose of the meeting was to attempt to build bridges. It did not work. The tribunal finds that insofar as there was a conclusion both Mr Hammond and C were told something along the lines of that they just had to get on with work; it is likely, on balance, that Mr Hammond made a similar remark directly to C. There is no evidence to support the suggestion made in Mr Windross’ submissions that C was told to “shut up, put up and get up in with management” or that she would be out of a job. C herself does not allege that. C felt that. The tribunal accepts that she probably did.
- 3.4.28 C alleges generally and without specific quoted words or actions that Mr Hammond subjected her to degrading and humiliating treatment. Mr Hammond denies it. We did not hear evidence from Miss Leighton or

Miss Carrod. The tribunal finds that it is likely there was an appraisal of the dysfunctional relationship between Mr Hammond and C with mutual blame and recrimination that C took to be unwarranted criticism, belittling her and blaming her. She has not proved words spoken or actions on the part of Mr Hammond. The tribunal is unable to make any further finding of fact than that there was an attempt to build bridges, the two warring parties failed to do so, both were dissatisfied, and C's subjective feelings were on the lines that she describes. In the context of this case however the efforts of Miss Leighton and HR do not appear motivated or influenced by any protected disclosure and we find on balance and by inference that they were not. The meeting predated the protected disclosure.

3.4.29 Taking all matters alleged into account: in addition to the tribunal's findings of fact in respect of each individual allegation it has looked at the matter as a whole and considered whether or not it would be appropriate for it to draw inferences. The tribunal finds that C was dissatisfied with her line management from the commencement of her employment right the way through her time in the Department; that she had concerns about what she considered to be managerial deficiencies from her appointment and induction until her eventual redeployment some years later; she shared the same or similar concerns with others with regard to matters of health and safety; that she did not enjoy a harmonious relationship with her coordinators that she line managed, while others within the Department had their reservations about C (evidenced by Mr Rawbone and our findings around his email announcing the claimant's successful appeal against dismissal); Mr Hammond's style of management was challenging and not only to C, and this is a general finding not one related to those making qualifying disclosures whether they were protected or not. The claimant attributes her problems with Mr Hammond and others to her disclosing specific information on specific dates and that is what she feels. She has a subjective sense that she has been penalised, but in the way the claim has been framed the tribunal finds as a fact that the first disclosure was not made until December 2018 by which time her relationship with Mr Hammond had completely broken down for unrelated reasons; subsequent words or treatment were misinterpreted by the claimant as relating to specific disclosures but there was no detrimental treatment related to the actual disclosure of December 2018.

#### **The Law:**

- 4 The parties presented written submissions including legal submissions and neither took exception to the other party's legal analysis save initially in two respects.
  - 4.1 Initially Mr Windross submitted that by virtue of section 48 Employment Rights Act 1996 (ERA) a claimant need only establish that he or she has made a protected disclosure and complain of being subjected to detriment

whereupon it is for the employer to show the ground on which any act, or deliberate failure to act, was done. Conversely Mr Howells submitted that the burden did not shift to the respondent unless a claimant had established “a prima facie” case. Having been granted further time to present supplementary written submissions and on the basis of cited authority both parties agreed that the shifting burden of proof was akin to the law in discrimination, such that facts must be proved from which the tribunal could find conduct giving rise to liability subject to which the burden would pass to the respondent to prove an innocent explanation.

- 4.2 Initially Mr Howells submitted that neither the respondent’s Head of Legal Services, or its Health and Safety Adviser were appropriate people to receive qualifying disclosures thus giving them protection under section 43C ERA, as representing the employer or other responsible person. Mr Windross submitted that they both were. Having been granted further time to present supplementary submissions Mr Howells conceded, upon instruction and consideration of R’s written policy, that R’s Head of Legal Services did fall within the provisions of section 43C.
  
- 5 As the parties have agreed the basic principles and their evolution, distillation, from the ERA and cited authorities, and set them out at length in their respective written submissions I will refer briefly to the most significant general principles that have been agreed and that apply (having duly noted all that is set out in respective submissions and taken them into account):
  - 5.1 the relevant statutory law is set out in sections 43K – 43L, and s47B ERA.
  - 5.2 Certain disclosures of information may qualify for protection where in the reasonable belief of the worker concerned, the information is made in the public interest and tends to show one of the matters listed, including breaches of legal obligation and danger to health and safety et cetera (all the matters C says she disclosed).
  - 5.3 It follows that some information must be imparted. This must go beyond a mere allegation or complaint or opinion, although any one of those may be included in the written or oral disclosure, provided that there is information.
  - 5.4 The worker must reasonably believe that the disclosure is in the public interest and must reasonably believe that it is true. This is at least initially a subjective test. The tribunal must ask whether a claimant subjectively believed that the information was true and being disclosed in the public interest, and that belief must be objectively reasonable. A claimant may be mistaken. The claimant must however believe the information is probably true and accurate or more probably so than not. It must therefore amount to more than passing on an unsubstantiated rumour.
  - 5.5 Disclosures can be aggregated or dealt with cumulatively provided that a claimant specifies which disclosures are to be aggregated and why.

- 5.6 To gain protection disclosure ought to be made to the employer or other responsible person, failing which there are alternatives set out within ERA.
- 5.7 “Detriment” has the same or similar meaning, undefined, as in discrimination cases. It must be more than an unjustified sense of grievance. It must be treatment that a reasonable worker would or might feel in all the circumstances was detrimental to them. Mr Windross helpfully lists a number of potential detriments at paragraph 22 of his submissions; this is not an exhaustive or exclusive list.
- 5.8 The question then arises as to whether the protected disclosure materially influenced the treatment alleged to amount to detriment. The influence has to be more than trivial to substantiate a detriment claim.
- 5.9 Claims of public interest disclosure detriment are to be presented to a tribunal within three months unless a tribunal finds that it is not reasonably practicable to do so and also finds that it was then presented within a reasonable time thereafter. Time starts to run from the imposition of a detriment or the last in a series.

## **6 Application of law to facts:**

- 6.1 The claimant relies on four alleged disclosures. The tribunal has found that she made one, namely that set out in her grievance of 18 December 2018 given to the acting CEO on 22 December 2018. The claimant set out in her grievance information which in her reasonable belief was made in the public interest, which she reasonably believed tended to show that criminal offences had been committed, that there were breaches of legal obligation and endangerment of health and safety, and to the environment; furthermore, the allegation of bullying amounted to, or included, information that attempts had been made at concealment of these matters. All of that information was in relation to void clearances. The claimant believed the information partly as a result of what she had witnessed but also on advice she had received from Mr Holt, which bore out her concerns. She was consistently and genuinely concerned about standards of management within the Department and of matters relating to health and safety generally. Bearing in mind the nature of R’s services to the public, and the numbers of employees potentially affected by the matters that she raised, it was reasonable for her to believe that she was raising them in the public interest. Her grievance went beyond mere allegation and complaint. Within her allegations and complaints there are specific pieces of information sufficient to allow for investigation.
- 6.2 The claimant has failed to satisfy the tribunal in her own evidence, by way of documentary supporting evidence or as a result of cross examination of the respondent’s witnesses that any disclosure was made of the nature alleged on 31<sup>st</sup> of October 2016. The claimant admitted confusing that meeting with a later meeting in December 2016. There was no corroborating record of what was alleged to have been disclosed at the October meeting. The respondent’s evidence was preferred as apparently

substantiated by the written records and lack of reference to the disclosure as alleged by C. The tribunal accepts that C is concerned about matters of health and safety. It found as a fact however that there was no disclosure of information on this occasion.

- 6.3 C discussed her concerns with her trade union representative, Mr Hutchison. He made a complaint to Mr Pinney on 1 August 2018 for and on behalf of various members of staff. The tribunal found that he did not make a disclosure on behalf of C, or at very least he did not make it clear to Mr Pinney that anything he passed on was from her. C did not make a disclosure directly to Mr Pinney on this occasion. Mr Hutchison arguably made a disclosure of information in his own right, but he does not make such a claim. As he conceded that at very least Mr Pinney was unlikely to have heard the claimant's name or, or he does not think he did, there was no reason for Mr Pinney to suspect or believe that C was making a disclosure; he had not heard her named. Mr Hutchison's disclosure was consistent with C's concerns but the problem for C is that even if Mr Hutchison made a disclosure C could not have been subjected to the claimed detriment as R did not know or have reason to believe that she had made one; in the absence of that knowledge or belief it cannot have acted on that ground. There is no evidence that Mr Pinney took any further action after making his file note because he believed that Mr Hutchison had taken the matter up elsewhere, as so advised. Mr Hutchison took no further action because the smell at the depot abated and he thought the matter had been satisfactorily dealt with at that. There is no proven link, on the basis of oral, written, or inferred evidence, between what was said to Mr Pinney and the treatment of which C complains at the hands of her line managers, HR, and her other colleagues.
- 6.4 Mr Holt's email of 8 November 2018 is his advice to C, which he copied into her line managers, the line management of the Department to which Mr Holt was the advisor. It is confirmation of a discussion that Mr Holt had had with C earlier. It comments on work she had done and work she was yet to do, including in seeing to satisfactory work from those whom she managed. Her line managers will therefore have known that Mr Holt had made his concerns known to C who was trying to address a particular situation. The email cannot be read as C disclosing information to her line managers. At its highest C's line managers may have read into it that she was sympathetic to the points raised by Mr Holt, but if anyone was disclosing information it was Mr Holt. He does not claim that he was doing so. He was giving advice in his official role. As an adviser his role included discussing matters of concern to those within the Department, considering them and then dispensing professional health and safety advice. Mr Holt is not named in the respondent's whistleblowing policy as a designated person for receiving qualifying disclosures; he does not consider himself to be an appropriate person for this and we accept as evidence that he did not receive information from C that he considered amounted to disclosure as alleged. The purpose of this email in question was not to pass on information for and on behalf of C. He was making and emphasising a point that he had made for a long time in giving advice and criticising Mr

Hammond's management of void clearances and the like. He was not an operational manager and had no authority above C. He does not fall within the provisions of sections 43C – 43H. The tribunal accepts that Mr Holt and C discussed their concerns over matters relating to void clearances but that does not amount to disclosure of information by C to R that gained protection under the legislation. Furthermore, that email is not sufficient to base an allegation that the receiving line managers treated C in any way because she had given any information as she does not disclose information directly or indirectly in it.

- 6.5 In the absence of any protected disclosure prior to December 2018 the claimant cannot succeed in her claim that she was subjected to detriment prior to that date because of it, on the ground of it.
- 6.6 The only alleged disclosure that refers to other potential disclosures was her last one, namely the 18 December 2018 grievance that the tribunal has found was a protected disclosure. The earlier alleged disclosures therefore cannot be read together, aggregated or treated cumulatively, save with that one. Any detrimental treatment on the ground that C made a protected disclosure can therefore only succeed from the 22 December 2018, when the grievance was delivered.
- 6.7 The tribunal has found that C was on occasion treated detrimentally by both Mr Hammond and Mr Rawbone. C clearly feels aggrieved and links everything to what she maintains were protected disclosures, but which were not. The tribunal has sympathy with C for her unhappy working environment and her sense of general frustration and disappointment at work. She was a well-motivated and conscientious manager with a concern for health and safety; her colleagues knew that, but that that is not the same as saying that they were aware she was a whistle-blower let alone that they subjected her to detriment for being one. As set out in the findings of fact the reasons for the poor working environment are many and varied but can best be categorised as a dysfunctional relationship between line management, specifically Mr Hammond, and those whom he managed but particularly C. The relationship got off to a bad start and never improved; it disimproved, but Mr Hammond did not know of the claimant's protected disclosure until he was interviewed in relation to her grievance, at a time when he was no longer effectively her line manager. Whilst there was detrimental treatment it was not done on the ground that C had made a protected disclosure.
- 6.8 This is not to say that C's criticisms of Mr Hammond had no bearing; it more than likely did. The available evidence tended to show that Mr Hammond took criticism badly and that he reacted defensively and disproportionately, even rudely as demonstrated by Mr Holt. On one occasion Mr Hammond turned his back on Mr Holt and would not address him at a meeting. We believe C's evidence that she was told by an HR officer that Mr Hammond's behaviour towards her made her cry. We have seen emails that could reasonably be interpreted as being threatening and intimidating such as in relation to requests for return of C's personal file,

and to Mr Holt. All that said, if Mr Hammond's detrimental treatment of C started before he became aware that she had made protected disclosures as alleged, then that conduct cannot have been done on the ground of that protected disclosure. The tribunal has not found there to have been detrimental treatment by Mr Hammond after he became aware of that disclosure during the grievance investigation.

- 6.9 Mr Rawbone likewise was not aware of protected disclosures when he treated C detrimentally, but in any event his treatment of her was born out of frustration at both her and Mr Hammond, and its deleterious effect on the running of the department. It was a massive distraction to him and one that caused him annoyance. He became exasperated. He was concerned at the effect of the continuing row on the departmental team. He was concerned that the claimant's reintegration would be problematic for a number of members of the team and he knew how Mr Hammond would react. Mr Rawbone wanted to understand better why C would not accept that she managed both Mid and South Powys when this appeared so obvious to everyone, more than likely sharing Mr Howells' view in submissions that C was being disingenuous. That is why, when he was not being supportive as we have found he generally was, he subjected her to the detriments we have found. He did not subject C to any treatment that was detrimental on the ground that she had made a protected disclosure.
- 6.10 C has included within her allegations members of the HR team and referred to other managers. There is no evidence to support her view that they had any interest in the matters that she says she disclosed, or her protected disclosure of December 2018, let alone that there would be any motivation for them to subject her to detriment on such grounds. There is no evidence to support any suggestion of a concerted campaign or collusion or conspiracy against C. She has misinterpreted everybody's interaction with her by relating anything that did not go satisfactorily for her to those health and safety concerns. C is viewing everything said and done through her own prism, with a lack of awareness, out of context and without a sense of proportion. This is in part understandable because she was so upset and such was her suspicion of Mr Hammond in particular, but it is not enough on which to base a technical claim such as this.
- 6.11 Taking each allegation in turn and then viewing them in the round, taking into account all circumstances, the tribunal accepts that there was a protected disclosure but does not accept that any of the treatment of which C complains was done on the ground of it.
- 6.12 In the absence of a series of detriments, any claims of alleged detriment arising more than three months before the claim was presented to the tribunal (with due extension for early conciliation) are out of time. The tribunal does not have jurisdiction to consider them. It was necessary however to analyse each allegation and consider both parties' evidence and submissions in relation to them in order to reach this conclusion. The tribunal also felt that it was fairer to both parties that they fully understand the tribunal's reasoning.

6.13 For all the above reasons claimant's claims fail.

Employment Judge T.V. Ryan

Date: 12 February 2021

JUDGMENT SENT TO THE PARTIES ON 15 February 2021

FOR THE TRIBUNAL OFFICE Mr N Roche