EMPLOYMENT TRIBUNALS

Claimant: Ms. S. Appleby
Respondents: Tavistock and Portman NHS Foundation Trust

London Central Remote Hearing (CVP) **14-18, 21-24 June 2021**
in chambers 25 June 2021

Employment Judge Goodman
Ms. H.C. Mclellan
Mr. R. Miller

Representation:
Claimant: Ms. Anya Palmer, counsel
Respondent: Ms. Yvette Genn, counsel

RESERVED JUDGMENT

1. The respondent subjected the claimant to detriment on grounds of protected disclosures.

2. The respondent is ordered to pay the claimant £20,000 as compensation for injury to feelings.

REASONS

1. This is a claim of detriment for whistleblowing. The claimant, still employed, is one of three members of the Trust's central Safeguarding team, which oversees safeguarding across number of divisions within the Trust. The respondent admits she made protected disclosures (that is, blew the whistle) on matters of public interest. This tribunal must decide whether she has suffered detriment because she had blown the whistle.

2. The context of the claim is work of one of those divisions, the Gender Identity Development Service (GIDS). Their work is controversial. This tribunal is not required to make findings on the rights and wrongs of that treatment, only on the rights and wrongs of how the claimant has been

treated.

The Issues for the Tribunal

3. By the end of the first day the parties had been able to agree a list of issues. The full list is appended to this judgment.

4. The claimant made six disclosures. They concerned the reporting of safeguarding issues within GIDS. The respondent agrees that they are protected under the legislation. The real dispute in this case is whether the respondent was subjected to detriment on grounds of these disclosures. Twelve detriments are listed, but they can be arranged in two groups. Those in first group are about an interview with Dr Sinha, the claimant's line manager, in July 2019; in the other group, are what was being said about the claimant to GIDS staff in 2018-9.

5. The respondent also argues that some of the claims for detriment are brought out of time.

Conduct of the Hearing

6. The remote hearing was open to the public, and members of the press and public attended from time to time. The pleadings, witness statements, and documents bundles (redacted to exclude medical information) were available on a website hosted by the respondent's solicitors, who sent a link for access to participants who requested one. Communication was adequate, although on day five the claimant lost her internet connection for the first hour or so and gave part of her evidence by a telephone link, and counsel for the respondent had a poor quality connection for much of the hearing. These difficulties slowed down the taking of evidence, but despite that, and losing a hearing day due to listing error, we were able to complete in time and then reserve judgment.

7. We received written submissions, and each side was also able to make a short oral submission. Counsel prepared these under some time pressure and we are grateful to them for doing so, enabling the panel to deliberate without going part-heard.

Anonymity

8. Much of the first morning of hearing was taken up hearing applications by the claimant, first to know the identity of individuals who had made statements to Dr Sinha for his report under a promise of anonymity, and secondly to see the unredacted texts, the redactions being considerable. After hearing from each side, the tribunal directed that the respondent should identify the makers of statements where they were due to give evidence to the tribunal in any event, but (after delay to read in and assess context) not otherwise, as they had spoken on a promise of anonymity, and, given the number of witnesses already being called on detriment,

identifying the speakers was not proportionate. On redaction, counsel were directed to review the unredacted material together, counsel for the claimant having undertaken to preserve confidentiality. When this was done, a further five pages were added to the bundle as being necessary to understand the context.

9. On day five there was a further application from the claimant for more documents, resulting in some additions to the bundle (especially on when Mr Richardson assumed his safeguarding lead duties) but no further removal of anonymity.

10. On the first morning the respondent asked, without detailed argument, for an order anonymising all names from the documents bundle except for those giving evidence, advancing the Convention right to privacy of all non-witnesses in it, as some staff had received "abuse, some of it quite scary" when there was earlier publicity of GIDS activity. No order was made. The tribunal in preparing written reasons would exercise the usual restraint in identifying individuals who had not given evidence, so far as compatible with public understanding of the judicial process and reasoning, but it was too late to start the lengthy process of encoding individual identity in such a large hearing bundle. No reason was given why the application was only made on the first morning when the level of public interest was predictable and both sides knew there must be public access to statements and documents. It would delay the start of a nine day hearing with a tight timetable. The same considerations would have applied had this been an in person hearing, or had public access for the remote hearing been to a hard copy bundle under the supervision of a clerk at the Employment Tribunal's premises.

Evidence

11. In order to decide the issues the tribunal heard live evidence from:

Anastasis Spiliadis, Systemic and Family Psychotherapist, employed in GIDS 2015-19
David Bell, adult psychiatrist, formerly staff governor of the Trust.
Sonia Appleby, the claimant
Anna Churcher Clarke, psychologist, formerly employed in GIDS
Polly Carmichael, psychologist, Director of GIDS from 2009
Dinesh Sinha, psychiatrist, and the Trust's Medical Director from August 2018
Garry Richardson, senior social worker in GIDS
Craig de Sousa, the Trust's Director of Human Resources and Corporate Governance

12. The following were called to confirm their witness statements, but were not questioned by the respondent:

Kirsty Entwhistle, clinical psychologist employed in GIDS 2017-18

Matt Bristow, clinical psychologist employed in GIDS 2014-18
Anna Hutchinson, clinical psychologist employed in GIDS 2013-19.

13. There was a main documents bundle of 1,500 pages, and another 240 pages in a supplementary bundle. Up to 200 others were added in the course of the hearing. We read those to which we were directed.

Findings of Fact

14. The respondent is a small NHS Trust, employing around 800 people. It specialises in talking therapies for mental health. It has grown from a tradition of psychoanalytic and psychotherapeutic work at the Tavistock clinic, which has always included child and adolescent mental health.

15. GIDS is a service within the Trust. It was established in 1989 to support young people experiencing difficulty with gender identity development, and commissioned as a specialised service within the NHS from 2009. From 2016 it became a national service, the only NHS service of its kind for children under 18. There are clinics in London and Leeds, and outreach centres in three other cities.

16. Gender dysphoria is a complex condition, where is there is distress caused by incongruence between a person's perceived gender identity and the gender assigned at birth or their biological sex. GIDS aims to assess young people referred to them by doctors and mental health services. Assessment is conducted by two people from a multi- disciplinary team of around 100 clinicians, and a care plan is then made.

17. Decisions about assessment are rarely straightforward. For example, some patients referred are autistic, and some come from backgrounds of neglect or abuse. Clinicians from a psychoanalytic background may want to consider whether gender dysphoria is a symptom of some other problem which merits treatment. Some clinicians are concerned that young people who might be homosexual presented as misgendered, or are unduly influenced by social media campaigning on trans identity. Others hold that in general young people should be taken at their word on identity, and allowed to make their own choices. Until recently there was no model to follow, and decisions were left to clinical judgment and discussion on a case by case basis. This complexity is an important part of the background to the claimant's disclosures.

18. Treatment may be by discussion but, controversially, distressed young people may also be referred to other hospitals for treatment with puberty blocking drugs, for the stated purpose of giving them more time to reflect on their gender identity. A young person may then decide to proceed to cross-sex hormone treatment to start a transition from their natal gender. In October 2019 judicial review proceedings on whether young people could validly consent to hormone treatment were begun by a former GIDS patient, Keira Bell. The resulting judgment of the Divisional Court of

December 2020 was that they could not. The judgment sets out some of the treatment issues that are the background to this claim. It has been appealed, and the decision of the Court of Appeal is awaited. The pending litigation will have added to existing tensions in the service at the time when the claimant was making the protected disclosures.

19. Becoming a national service led to a vast increase in referrals to GIDS. From 2009 it went up 50% each year, then increased by 100% in 2016/17, by which time there were 1,408 referrals. By 2019/20 it was 2,728. Individual caseloads have risen, putting staff under considerable pressure. There has been greater turnover, especially among junior staff. The rise in referrals has also put patients under pressure: in 2018 the waiting time for a first appointment had risen to 14 months (the NHS standard being 18 weeks), and currently it is 3 years.

20. There was a change, over the period, in the balance of the sexes being referred. Initially natal males predominated. By 2011 it had moved closer to 50:50. By 2019, 76% of referrals were of natal females. This has raised added questions on diagnosis, for example, whether social pressure on young women is playing a part in their thinking about gender identity, or whether the change reflects increasing recognition of the condition, and past underdiagnosis.

21. In the background was an increased politicisation of the issue, amplified by both social and traditional media, as trans people asserted their rights, feminists responded defending women-only spaces, and gays expressed concern that sexual orientation was being mistaken for gender identity. External pressure from campaigners (including a group called Mermaids) and some parents made difficult clinical decisions more difficult, and in consequence there were staff who sometimes found detachment difficult. Accusations of transphobia and homophobia were made.

<u>The Claimant's Role</u>

22. The claimant, Sonia Appleby, is a social worker and psychoanalytical psychotherapist. She has long social work experience. From 1987 to 2009 she was also a children's guardian (guardian ad litem). From 2009-2013 she was concurrently service manager in the CAMHS (Child and Adult Mental Health Service) of another Trust, and she has been a CAMHS team leader within the respondent Trust. She has been employed by the Trust from 2004 onwards on 20 sessions (3 days) a week) as senior social worker and as named Safeguarding Lead for Children.

23. The named Safeguarding Lead for children is a statutory post. Safeguarding children means protecting children at risk from maltreatment, and preventing impairment of children's health or development. Naming a lead means there is someone in an institution whose job it is to see that information on children at risk is shared between local authorities, schools, and health providers. Within the NHS:

"The Designated Professionals Safeguarding Children role in the Clinical Commissioning Groups (CCGs) is as professional advisors and strategic leaders for safeguarding. Their role is to advise on strategic planning, commissioning and hold health organisations in their area to account for the quality of the safeguarding services, ensuring that they are meeting the safeguarding responsibilities. They also provide advice for monitoring contracts and commissioned services. They can lead on innovation and change across health to improve safeguarding and provide expert advice on quality productivity, improving health outcomes for vulnerable children including those identified with safeguarding concerns".

24. Within the respondent Trust, the claimant is the named lead for Children, and Dr Caroline McKenna is the named lead for Adults. Both report to the Trust's Medical Director, although until Dr McKenna's appointment in mid-2018, the Medical Director was also the Adult lead.

25. The claimant is responsible for ensuring safeguarding of children in all the Trust's divisions, including GIDS. She prepares an annual safeguarding report for the Board. Her duties included supporting and advising the Trust board on child protection, both strategically and on day-to-day management, working with other designated professionals in the geographical area, ensuring there are appropriate child protection policies and procedures, and that staff understand and implement them, being actively involved in the delivery of training to Trust staff and other groups, advising on effective systems and audits, monitoring agreed local child protection policies and procedures, assisting with collecting data, and monitoring the quality, acceptability and effectiveness of service provision and training. She has to advise board members to ensure that performance indicators on child protection are set. She has also to provide child protection supervision of staff, and support their safeguarding skills.

Events leading up to the Protetced Disclosures

26. In June 2016, the claimant stated in her report to the Trust Board that the increasing pressure of rising referral numbers had an impact that was distressing and even traumatic. She noted deficiencies in reporting on cases, in particular on Safeguarding, in Care Notes, the patient records software used by the Trust.

27. During 2016 and 2017 there was a particular and growing concern among some GIDS staff about a private GP, Dr Webberley, who was, on her own initiative, issuing private prescriptions for puberty blocking drugs to young people being assessed by GIDS, or who were on the waiting list for assessment. Staff were uncertain how to deal with this. Concerned that taking hormones before assessment could pose a risk to children, some approached the claimant, as the Safeguarding lead. She raised with the issue with the then medical director, Dr Rob Senior, who in turn convened a meeting in June 2107 between her and Dr Polly Carmichael, Director of GIDS. The claimant said that in her view staff needed to have some kind

of manual, or standard operating procedure, on how to approach assessment difficulties. It was agreed that an individual within GIDS should be nominated to monitor Safeguarding, and provide a link to the claimant in the central Safeguarding team. Dr Carmichael identified Garry Richardson, a GIDS social worker, for this. She then emailed the claimant saying that Safeguarding issues in GIDS were "not straightforward and would require careful thought", leaving it to the claimant and Mr Richardson to agree with each other what to do.

28. The follow-up is interesting. The same day, the claimant emailed Garry Richardson thanking him for agreeing to be the lead and inviting him to the safeguarding SSF on 26 June. She added that she, Dr Carmichael and Dr Senior would discuss how to take forward his role. Mr Richardson was not available on the date in question and suggested another meeting, but at the same time he forwarded this exchange to his boss, Dr Carmichael, who in tun asked the claimant what discussion she meant - she was "unsure of the agenda here". Dr Senior, the claimant's line manager, replied on the claimant's behalf, saying: "I don't think there is an agenda here. I think the question is what he can realistically expected to do?" He suggested he might be able to do some of the consultation and safeguarding supervision, or with his help, they could make safeguarding practice: "an everyday integral part of the team rather than a bureaucratic burden". Like Dr Senior, the tribunal panel understood Dr Carmichael to have used "agenda" in the sense of an ulterior purpose; Dr Carmichael told us she just wanted to know the agenda for the proposed meeting, but when viewed in the light of other events, we are unconvinced.

29. There was another meeting of some kind, and besides Mr Richardson, a psychiatrist, Dr Rebecca McLaren, and another psychologist, Mattei Dudu, entered the discussion with suggestions on improving GIDS' understanding of Safeguarding. In practice however Mr Richardson was already very busy with his existing job, and little or nothing changed until March 2018.

First Protected Disclosure

30. In October 2017 the claimant was again approached by some concerned GIDS staff. She reported this to Dr Senior, her line manager, on 30 October 2017 in the following terms:

> "a number of GIDS staff have brought some concerns to my attention of late.
>
> Predictably, there are challenges regarding Mermaids, rogue medics and the political expectations of the national service.
>
> Perhaps more worrying are the manifestations of a number of splits within the team (not unusual) but I have been reported is quite potent:
>
> (a) team members feel they are coerced into not reporting safeguarding issues,

and to do so is "trans phobic";
(b) lack of confidence in Children's Social Care
(c) an unhelpful development regarding the linking of the politics of sexuality and gender issues.

I think I was most concerned that some team members reported the tensions around political conformity within and beyond the Trust, the lack of a team position regarding the clinical management of gender issues and what to do when there are safeguarding concerns whatever the genesis".

She was trying to arrange a meeting with him, and would also talk with some workers who had invited her to a meeting they had convened to discuss it. She referred to the need to follow up on the June meetings they had had with Dr Carmichael.

Second Protected Disclosure

31. After meeting the workers, she emailed Dr Senior again on 13 November 2017, saying that they were all reporting the same concerns, and she listed them:

"(i) Dr W is still prescribing despite being apparently suspended by the GMC
(ii) the culture within the service has created a dynamic, which makes it hard for staff to raise safeguarding concerns and this is compounded by staff being referred to as being trans phobic
(iii) the model of service delivery is not properly take into account that some children are referred within the context of significant familial adversity
(iv) a worry that some young children are being actively encouraged to be transgender without effective scrutiny of their circumstances
(v) some staff have raised concerns the service, which now has a referral rate of nearly 2000 referrals annually is bound to be seeing some children, who falsely protect presenting as being transgender as a less oppressive option than acknowledging they are gay. There is apparently no acceptable mechanism for discussing these phenomena within the team
(vi) the challenge of working within a sector where other agencies are oppositional
(vii) the team meetings are fraught events and there are specific allegations that Polly is unwilling to listen to these concerns (as above) and demonstrates this by being on her phone and leaving meetings before the end
(viii) there are worries that the current challenge at GOSH regarding the "intersex" complaint, will have implications for GIDS because Polly is allegedly heavily implicated in this historical issue."

32. She went on: "I discussed some of these matters with you several weeks ago. You advised you would advise Sally. I am writing to you today because a fourth staff member has approach me. Please advise".

33. Regrettably, Dr Senior did not advise, or reply at all. The claimant thought he was going to talk to Sally Hodges, Dr Carmichael's manager, about it.

34. Soon after this the claimant had to cease work through ill health, and did not return until mid- January 2018. On her return to work she chased it up, forwarding both messages to Dr Senior on 19 January 2018, saying

"FYI – please advise".

The Third and Fourth Protected Disclosures

35. A few days later, on 23 January 2018, Frank Lowe, the Trust's Head of Social Work, emailed the claimant and Dr Senior, copying Garry Richardson, about a recent meeting of GIDS social workers he had attended, discussing Safeguarding in the context of increased referrals, and the need to "increase space for and dialogue about safeguarding issues to improve awareness and responsiveness in this highly specialised service". They would be contacting her for advice and support.

36. The claimant replied all, that she was already aware of "explicit concerns", which she had twice escalated the previous year, and had chased on 19 January. This was meant for Dr Senior of course, but Garry Richardson did not know that, and wondering if it meant people in GIDS, he forwarded this to Polly Carmichael and two executive members asking who the claimant was awaiting a response from. He also sent it to Dr Senior, who still did not reply. In the email traffic Dr Carmichael, thinking it was being suggested *she* had not responded, complained to Garry Richardson that she had not heard from the claimant about this since their meetings the previous June, and: "it is somewhat unhelpful that she is writing emails suggesting she has not had a response especially as there is implied criticism of the team".

37. The claimant says she did not consider she could approach Dr Carmichael, GIDS head of service, without first clearing it with her own line manager, Dr Senior. She had thought he was speaking to Sally Hodges, and only learned from this flurry of emails that he had not.

38. The upshot was that Sally Hodges asked the claimant and Polly Carmichael to meet to discuss it. The claimant fixed a meeting on 5 February 2018. There the claimant read out her earlier disclosures to Dr Senior, and they discussed them. The claimant explained she had understood from Dr Senior he would be discussing them with Sally Hodges; it was awkward that he had not. The discussion at this meeting is the third protected disclosure.

39. On 8 February 2018 the claimant emailed Dr Carmichael her record of their meeting and the action they proposed. This is the fourth protected disclosure. She recorded the detail of earlier disclosures and meetings, that they had agreed that staff might be "acting out some of the predictable tractions within the service", and that "the challenge was responding to the meaning of these communications". She noted some staff did not feel "safe", and that Dr Carmichael regretted not having been aware of staff concerns earlier. The claimant apologised for that. In conclusion they had agreed that the claimant would talk to Garry Richardson on strengthening Safeguarding leadership in GIDS, Dr

Carmichael would discuss it with Sally Hodges and her executive team, and the claimant would in future alert her direct about any concerns. She asked Dr Carmichael to correct any errors in her record of their discussion (the claimant makes a similar invitation in all her records of meetings).

40. Dr Carmichael did not reply.

"Jimmy Savile"

41. The claimant followed on by arranging a meeting with Garry Richardson. She wanted to establish a relationship, knowing as she now did that Dr Carmichael resented her staff having reported concerns behind her back. At the beginning of March 2018 they discussed how to get Safeguarding more embedded in GIDS. The claimant explained her view of the need for a manual, supplemented by professional judgement, the need for staff to feel supported and safe, and the scenario of affirmative parents, children's capacity, and whether a child was likely to be at risk of significant harm. They planned a further meeting in the summer. From this point on, Garry Richardson took an active role as safeguarding lead in GIDS.

42. Gary Richardson told the tribunal he was shocked and confused by something Ms Appleby said at this meeting. She remarked that if they were not careful a Jimmy Savile type situation could arise, adding, when he looked upset, that she did not mean there was child abuse, but rather, an institution turning a blind eye to what was in front of them. He did not discuss this remark with her further, then or later, but he was upset that she seemed to think his professional colleagues in GIDS were aware children were not safe and wilfully ignoring it.

43. The claimant's explanation is that when delivering training to staff about Safeguarding, she routinely included a reference to Jimmy Savile, (who had been found in the Lampard report to have abused children over many years under the noses of NHS staff, some of whom knew about it, or ought to have noted warning signs, but brushed them off), having been involved with 44 NHS organisations, to illustrate how vigilant staff should be about Safeguarding. It was her shorthand reminder. She did not mean staff were consciously complicit, only that they did not see the risk having been dazzled by celebrity. We have the evidence of this reference in context in the comprehensive notes made by Kirsty Entwistle of a training session the claimant delivered in Leeds later that month.

Further Concerns about Safeguarding

44. Early in 2018 ten concerned GIDS staff had also approached Dr David Bell, the staff representative on the Trust's Board of Governors, and in April 2018 he and the claimant exchanged information about the concerns

raised with each.

45. On 15 May 2018, the claimant was approached by another worried GIDS staff member. The claimant reported their concerns to Dr Senior, listing patients' limited understanding, the premature use of blockers, failure to address the fact that some children lived in homophobic environments, that some staff felt themselves unsafe in the group and were afraid to report these issues within the Trust, high caseloads, staff with anxiety symptoms, and concerns that the GIDS manager had no helpful model for the complexities of the work, nor understood the culture of discontent among the staff group. In terms of action, she advocated a whole service intervention, so that those who complained got a formal response. She discussed this with Dr Senior on 18 May, reporting back to Garry Richardson. Her view was that there should be a document pulling together the concerns and institutional responses. Over the next few weeks she took more steps to act on what had been reported.

46. She met Garry Richardson about it on 21 May. Summarising discussion in an email later that day, she expressed surprise that he had not been briefed about the concerns staff had raised in the autumn. He responded that he had *not* been briefed, and had never seen anything in writing on what they were.

47. Next, on 24 May the claimant reported to Sally Hodges that a GIDS worker she had not seen before had approached her with concerns about children being given medication when they were unable to give informed consent, and when caseloads were very high. She reported the worker's concern about children not having access to local mental health services, being exposed to abuse, that some may be gay, and that the challenges were not being thought about consistently.

48. Sally Hodges said the Trust management group had discussed it, and hoped to develop a clear action plan, and she asked the claimant for more detail. Next day therefore the claimant did a quick audit of Safeguarding referrals from the various divisions within the Trust, using records from the patient records system, and sent it to Sally Hodges. She compared numbers of referrals accepted by five Trust services (I.e. GIDS and 4 others), and the numbers referred to mental health services and local authorities. GIDS had vastly more referrals to it than any other service, and had the lowest rate of referrals to other services. She considered some reasons for disparity, including that possibly GIDS referrals out were underreported by the software, compared to anecdotal evidence, and might simply not being recorded. (The tribunal adds that later it became clear that she was right about this, and one reason was that the Safeguarding form for the system had never been sent to GIDS, who were using their own form).

49. The claimant had another meeting with Sally Hodges, who fed back what was being done to reconfigure job descriptions and strengthen leadership,

and reiterated that decisions were made on a case-by-case basis. The claimant responded on 18 June that the service needed a documented model of criteria for decision-making, especially as some children could not be Gillick competent, and caseloads were too high; she cushioned this message in elaborate and respectful language. She ended by restating her intention to help, even though she had been cast in the role of someone asking the awkward questions. She was also conducting a further audit of case discussions and safeguarding supervisions as shown on case files in 2017/18. This showed that in the entire service in 2017 there had been one record of safeguarding supervision, and only 11 recorded case discussions. This showed urgent action was needed to ensure decision-making events were captured on the records. After further work on the figures confirmed a very low level of recording and supervision, she arranged to meet Garry Richardson to discuss this.

50. All this was now in the context of an impending CQC inspection. Polly Carmichael then cancelled the meeting with Garry Richardson about safeguarding reporting. She said she was on leave and wanted to be involved, at which the claimant protested that it was arranged to discuss gaps in reporting, and had been supported by Sally Hodges. The meeting did then go ahead; examining the Safeguarding risk assessment form, the clinical risk form, crisis planning and the Safeguarding supervision form, and concluded that the claimant and Garry Richardson should continue to meet to discuss informatics.

51. The relationship between the claimant and Dr Carmichael and Garry Richardson was strained, as shown by the claimant having to explain in detail to Dr Carmichael, who had challenged her about it, why she had spoken directly to a Cambridgeshire Designated Nurse about Safeguarding in a GIDS case.

The Bell Report. Fourth Protected Disclosure

52. Meanwhile, the claimant and Rob Senior met Dr Bell, the staff governor, to discuss his concerns. David Bell was to write a report for the governors, and Rob Senior would have another meeting with Sally Hodges about Safeguarding. He also agreed (according to Andrew Hodge, investigating later) the claimant could assist Dr Bell on Safeguarding issues. David Bell told Polly Carmichael and Sally Hodges, the GIDS managers, that he would be writing a full report, and arranged to meet them. Unknown to the managers, he also arranged to interview a number of GIDS staff. He asked the claimant for figures about referrals, which she provided. This provision of information is the fourth protected disclosure.

53. The claimant saw a draft of the Bell report on 11 August, and knowing he intended to submit it at the governors meeting in September, she marked it up for him with her editing suggestions, principally that it needed to be shorter. She also asked him to take out the opening passage which said:

"This report is signed by David Bell but Sonia Appleby has been closely involved throughout preparation and has read and discuss with me this final version to which she has made a number of very important contributions". She learned however, after sending these on 18 August, that he had already submitted his report.

54. The claimant is concerned that his statement exaggerated her input, and led colleagues to suppose that she adopted his views. The tenor of her evidence was that although she agreed that Safeguarding was not being properly handled in GIDS, she was not in agreement with the tone of his report, which came across as an attack on the management of the service.

55. The report, entitled "Serious Concerns Regarding The Gender Identity Service", sets out in detail the concerns reported, and concludes that the whole approach to assessment needed to be rethought, as " the service as it now functions and children's needs are being met in a woeful (sic) inadequate manner and some will live on with the damaging consequences". The service had adopted "an excessively affirmative attitude associated with an inability to stand up to the pressure of a highly publicised external world". There were "serious ethical concerns" and "inadequacy of consent", and systemic homophobia, meaning homophobia was not being identified in children and families, and led to gay and lesbian staff being subject to persecution.

56. Dr Carmichael was certainly troubled by its "divisive tone". In her view the Bell report was "not constructive or balanced". More than that, she felt deceived that Dr Bell had interviewed her staff "in the guise of taking an interest", and then written a hatchet job.

The Sinha Enquiry. Fifth Protected Disclosure

57. In March 2018 Dr Rob Senior had announced he was retiring, and he left in September 2018. His replacement as Medical Director was Dr Dinesh Sinha. He was new to the Trust. As a newcomer he was commissioned to conduct a review of GIDS. Terms of reference were agreed on 25 September and he got to work at the beginning of October. In all he interviewed 31 staff members, with the aid of set questions.

58. The claimant and Dr Sinha did not have a comfortable working relationship. He told the tribunal that he been warned by Dr Senior on handover that the claimant was resistant to management and liked to work autonomously. He added that his initial interaction with the claimant confirmed this view, although he was unable to give us any examples of what she had said or done that led him to this conclusion. He described her as argumentative, and he objected to her habit of summarising discussion and action points by email after meetings, as frequently it "did not accurately reflect my own recollection". His statement of how he formed his assessment of her character so soon after he had started in

post is puzzling, because on the annual appraisal form completed by the claimant a year later, in August 2019, she stated she had not have any one to one meeting or supervision to discuss her work with Dr Sinha from August 2018 (when he started) to January 2019, when she went sick, only returning in May 2019.

59. An example of the difficult relationship is that in mid-October 2018 the claimant asked Garry Richardson for some data on Safeguarding in GIDS As to the purpose of the request for data, the claimant says this was about her quarterly report to the board; the tribunal notes that a quarterly report on Safeguarding reports is mentioned in the CQC inspection report. Garry Richardson forwarded this to Sally Hodges, who then asked the claimant for “some context for this request”, saying they were very busy with the CQC audit, copying in Dr Carmichael, Garry Richardson and Dr Sinha. Their inclusion indicates to us this was about more than workload – there was concern within GIDS following the Bell report that she was gathering more adverse material for an attack. The claimant replied that it was only follow-up on the earlier discussion about recording on Case Notes (the records software), and that she would ask the administrator to get the figures. Dr Sinha then immediately wrote to the claimant asking for background about why they needed to submit this information about GIDS, and who had requested it. This shows that he too was suspicious. Sally Hodges asked the claimant, copying interested others, to keep the agenda for her meeting with Garry Richardson “within operational aspects of safeguarding and governance”, and said that their meeting must be minuted by a third party. Requiring independent minutes does show suspicion. The claimant replied to Sally Hodges, copying everyone else, which included Dr Sinha, explaining the meeting was about how staff were putting information onto Case Notes. Just 50 minutes later Dr Senior emailed the claimant, copying Sally Hodges: “I note that you have not responded to my message. Please cancel the planned meeting with GIDS until we have met and discussed the current context of service”. He explained to the tribunal that he regarded it as insubordination that she had not replied direct to his enquiry on why she wanted the information, and that this was an example of her autonomous working, which he wanted to rein back. We were surprised: he had a detailed answer in the message to Sally Hodges, copied to him. The charitable view is that he had not actually read the message to Sally Hodges. If he had read it, then he comes across as petulant. Moreover, if he did think she had an attitude problem, it might have been better to discuss it face-to-face rather than issue an order about not meeting a Safeguarding colleague about getting accurate statistics. These exchanges show how in the wake of the Bell report the claimant was being regarded with suspicion by both GIDS and Dr Sinha.

60. The claimant was interviewed by Dr Sinha, as part of his GIDS review, on 25 October 2018. She prepared a six page written statement of her views, with eight appendices. One of the appendices is a recent exit interview with Matt Bristow, and providing this exit interview to Dr Sinha is the fifth

protected disclosure. The text is extensive, but incudes that there was homophobia in GIDS, that staff worked in a “climate of fear”, and referral outside the service (such as a Safeguarding report) was the last resort. When she handed the statement to Dr Sinha at the start of the meeting, he handed it unread to the note taker, and proceeded with his set questions. The claimant found this discouraging. It is interesting that Dr Sinha says that he learnt for the first time in this meeting that the claimant had raised concerns about GIDS with his predecessor a year earlier. He also says he was not aware that the Bell report had been leaked until early 2019, but he did ask questions about her involvement in it, and she told him that she had neither co-authored nor approved the report, as Dr Bell had seemed to suggest.

61. Dr Carmichael saw the exit interview independently of the claimant’s disclosure to Dr Sinha. She said on 8 October: “I do not recognise some of the things attributed … and as with David Bell’s report feel strongly that whatever I may have said it is not what is reported”.

62. After the interview Dr Sinha emailed tersely instructing her not to interrogate *any* service for additional data or information without discussing it with him first, nor to take any part in the ongoing board review of the GIDS service, and to have no contact with David Bell except with respect his clinical practice.

63. In February 2019 the Bell report was leaked to the press, increasing public pressure in the service, and it seems it was the first draft, identifying the claimant as co-author. At the time many people speculated that the leak came from Dr Bell or the claimant, though current Trust thinking is that it was in fact leaked by another governor. The media publicity only increased ill feeling.

64. In the spring of 2019 Dr Sinha presented his review report to the board. It was published in March 2019 with an action plan. This included having a Safeguarding lead within each division, as GIDS already did in Garry Richardson.

The first group of detriments

65. The first five detriments listed for this claim revolve around Dr Sinha’s handling, in July 2019, of a remark or remarks made to him about the claimant in the course of his confidential interviews for his enquiry. A number of matters had come to light in the course of his interviews which were not directly relevant to his review of GIDS, but which he wanted to follow up as matters of individual conduct. He discussed with HR what action was appropriate in these cases. At least one of his concerns resulted in disciplinary action of another staff member.

66. In the claimant’s case, he learned from two of his interviews that she had “allegedly made comments indicating a comparison between GIDS and “a

Jimmy Savile type situation" , indicating that she was not objective in her view of GIDS work.

67. The first of these two interviews was on 8 October 2018, with an unknown member of senior staff. Discussing the safeguarding process within GIDS, he or she said:

> "the issues of the ethics of this work and the young people doing what they are doing, some coming to the service, grooming, parents pushing the young person down to this path is detrimental to their welfare. Sonia said there will be another Jimmy Savile. With the Jimmy Savile case it was clear that there was blatant harm being done and there was a massive cover-up by the senior people, which is not the case in GIDS. It was upsetting to hear that from Sonia as we take our work very seriously and we do the best we can to ensure that the young person is safe".

Discussion then moved to another topic, and there is no context for the remark. Dr Sinha did not ask the claimant about it when he interviewed her later that month.

68. The second such interview was with Garry Richardson, on 10 December 2018. He complained to Dr Sinha that at times the Safeguarding advice from the claimant was: "less of a collaborative process or collaborative conversation and much more directive". He went on that the claimant had seemed to endorse the contents of Dr Bell's report, and he worried that if she took a particular position about their work, her advice might not be balanced. During the conversation about Safeguarding and GIDS:

> "and in the context that people simply were coming forward and raising their concerns, she made a comment about we need to be careful that the Jimmy Savile type situation does not happen here… then added that she did not mean child abuse but something in terms of your service being a cash cow for the Tavi and the Tavi turning a blind eye to something that is not right. So I think that is what she meant".

He said that later he had interpreted this as the Tavistock trying to close down Safeguarding concerns :

> "because we bring in a lot of money for the Trust, but you know the team works exceptionally hard and have something like that, you know to have our own work referenced in that way, I personally found that quite disrespectful and really difficult to take from the safeguarding lead".

He next volunteered the episode about the Cambridgeshire enquiry which the claimant had handled directly, and from which she had felt excluded:

> "It is just situations like that which make me feel a bit uncomfortable, make me wonder what Sonia's motives are, especially given her involvement (in) David Bell's report; it almost felt like there was some sort of information gathering process happening alongside the concerns about the child".

69. Dr Sinha discussed this complaint about the Jimmy Savile remark with a member of the HR staff, SM, at the beginning of April, once his review and action plan was complete. He says: "she (SM) advised that the concerns are too general to be the subject of further investigation but that there was sufficient information/concern to warrant me having a conversation with Ms Appleby to explore it".

70. At this point the claimant was away from work. After a period of ill health in the late autumn, on 25 January 2019 she had had to take leave for unplanned major surgery at short notice. Her return to work was delayed by wound infections. It is worth mentioning that the way this was handled reflects Dr Sinha's unsympathetic, almost hostile, relationship with the claimant. She had notified HR and supplied them with fit notes. He took objection to her not informing him directly (the policy on this had recently changed) and insisted on an explanation of the cause. The tribunal could understand that when things are difficult at work and an employee goes sick for some time a manager may want to find out whether work-related stress is the reason for absence, but this was much more than that. Even when he was satisfied on that score, he seems to have viewed her approach to reporting sick leave as insubordination.

71. At the beginning of May 2019 the claimant returned to full duties, phased in, as recommended in an occupational health report.

72. On 16 July 2019 the claimant was asked to attend "an informal meeting to discuss recent events regarding the GIDS", with Dr Sinha, with a member of HR staff in attendance. The message was recalled, but then the claimant was asked to attend on 22 July anyway. She speculated it had to do with her recent request for voluntary redundancy - in fact the scheme was no longer open). When the claimant arrived, and found an HR staff member attending what was said to be an informal discussion, she was concerned, and asked what it was about. Dr Sinha told her it was about an alleged comment on GIDS, reported during the review, "about something like a Jimmy Savile type situation". Dr Sinha did not explain more; he felt he could not give her context, because the remarks had been made in confidence. The claimant explained that she did make reference to Jimmy Savile in Safeguarding training, as an "attention grabber". She could not recall in what circumstances she might have said anything else about it to GIDS staff. He then told her she would be receiving a letter about it, which would be kept on her file.

73. The claimant was very upset. Later that day she emailed saying she understood that if a letter was going on her file there should be an investigative process. Other than when delivering training she would only have said it to those who approached her direct; without context she could not say more. She also emailed an account of the meeting to her union representative, emphasising that it was scheduled as an informal meeting, with no notice of the topic, or mention of bringing a companion, but the outcome (a letter being kept on her file) was as if it was the conclusion of

a disciplinary process.

74. Two days later Dr Sinha sent the claimant the promised letter. He recited the brief allegation and her response, and that he had told her the member of staff concerned felt "very disrespected"; her role was to facilitate good practice in Safeguarding in a supportive way. "I further suggested that you should ensure you are mindful of any further statements made in the future in relation to this matter or any other that may cause offence to other colleagues". It had not been a formal proceeding because he was not giving her context for the alleged comment. He concluded:

> "finally, I confirmed that although this matter will not be taken further, this meeting would be documented and remain on your file. I may need to investigate the matter formally, if there are further reports of this type of incident".

The Claimant's Grievance

75. Soon after this July 2019 episode the claimant, through solicitors, lodged a grievance about it, and then presented this claim to the tribunal.

76. The Trust's HR department asked an independent investigator, Andrew Hodge, to interview staff and report back. He did so in February 2020. As an outsider and non-specialist, he noted that Trust clinicians were divided between those who considered the Bell report an overreaction to the inherent complexity of GIDS work, and those concerned about the increase in natal females identifying as male, that gender identity may be a proxy for same-sex orientation, and that there is no thorough exploration of the issues. He concluded that most saw the claimant as a concerned professional, not someone out to make trouble.

The Second Group of Detriments

77. In January 2019 the claimant was contacted by Matt Bristow (who had left a few months before), and told that, within GIDS, staff were being told not to take concerns to her direct. It was second-hand, and a few days later she stopped work for urgent surgery, so she did not pay it much attention at the time.

78. The claimant later learned from past and present colleagues about matters which - by amendment of proceedings on 20 February and 19 March 2020 - form the second group of detriments, which could collectively be characterised as disparagement of her as Safeguarding lead. Specifically, it is alleged that Dr Carmichael put in place an unwritten but mandated directive that Safeguarding concerns in GIDS should not be brought to the claimant's attention, that reporting of Safeguarding to her was discouraged, that Garry Richardson tended not to refer Safeguarding concerns to her and discouraged others from doing this, that the Trust and Dr Carmichael excluded and denigrated the claimant by remarking that she had a negative stance about GIDS and was "not on side" , so underlining and marginalising her, that she was viewed negatively by Trust

management and some GIDS staff by reason of perceived involvement or collaboration with Dr Bell, or had conspired with Dr Bell to damage GIDS, or mobilise complainants. It is alleged to be a continuing state of affairs that she was regarded as adverse to GIDS.

79. Nothing was ever put in writing to GIDS staff about reporting or not Safeguarding concern. In fact they were not even told in writing that Garry Richardson was the Safeguarding lead within GIDS, so the lack of writing does not mean of itself that this was not said.

80. Reviewing the evidence we heard on this, we note that Anna Hutchinson had said to Dr Senior in the course of the GIDS review in October 2018, that there was no explicit instruction, but active discouragement of raising Safeguarding issues, and gave as example that in discussion a manager had said to her that prescription of puberty blockers by the private GP (Dr W) to a child was not something which should be referred to social services. In the course of the interview she also said "what is interesting is, since the review was started… they are bringing Safeguarding in-house now, which means that they are stopping taking cases to Sonia Appleby because they think she is "bad", part of the review, and they're trying to get the social worker to deal with it in-house". In evidence she recalled an episode where Dr Carmichael said of a case where she had consulted the claimant, "oh you're not taking it to Sonia are you?", her tone suggesting this was the wrong thing to do.

81. Anastasis Spiliadis told Dr Sinha at the review interview in January 2019 that until Garry Richardson was appointed a safeguarding lead (which he dated to September 2018): "there was a very clear message actually from senior management about being being really cautious about how we talked to the Safeguarding team at the Tavi and specifically Sonia Appleby", and that Dr Carmichael thought the claimant "had a very clear agenda about GIDS, and she thinks we are not on top of the safeguarding concerns in GIDS and, especially in the last how many months until the announcement of the review, there was a message actually towards the clinicians, at least to people who were talking to Polly directly about having to really cautious about how we talk to Sonia about safeguarding issues". He had in fact spoken to the claimant about a case without going to Dr Carmichael first, because he feared that she would think he was "deep into this agenda that Sonia might have the GIDS". In his evidence to the tribunal he reported attending a large team meeting of both London and Leeds teams (in December 2018) when Dr Carmichael said on Safeguarding issues: "that Sonia clearly had an agenda, and that she was making all our lives difficult". At the same meeting Dr Carmichael had mentioned that the claimant said clinicians needed smaller caseloads, as they were overstretched. He did not understand what he meant by her "having an agenda". He also recalled an episode where the claimant had enquired about a case of his with domestic violence and emotional abuse in the background, and Dr Carmichael had told him: "you should not just take cases to Sonia… You should discuss things internally and avoid talking to

Sonia …I don’t know what her issues with GIDS are”. Despite that he had called the claimant (whom he had never met) as Safeguarding and found her helpful, this led to social care workers being involved.

82. Dr Carmichael later told Andrew Hodge, when he was investigating the claimant’s grievance, that the claimant “seems to be on a fishing expedition” to show that Safeguarding was defective, but was providing no real support. Safeguarding was meant was go to Garry Richardson in the first instance.

83. There is some support for this understanding in emails from Anna Churcher Clarke about a Safeguarding case: she had approached Sonia Appleby for advice, and copied Garry Richardson into her emails, explaining that he had been away on the day in question. That she needed to explain why she had gone to the claimant is significant.

84. Pulling this together, we understand that having Garry Richardson to assist the claimant in strengthening Safeguarding came out of the claimant’s discussions with Polly Carmichael on Safeguarding back in June 2017, (though nothing was done to implement that until March 2018), and that an instruction to GIDS staff to take Safeguarding issues to Garry Richardson in the first instance could well have been intended to make sure that this system worked. This message could well have been understood by some as meaning not to take cases to the claimant at all. Whether Dr Carmichael’s message to staff was being understood or misunderstood by them is hard to say, because nothing was ever put in writing, and both in emails, and in answers to questions in the tribunal, Dr Carmichael was often both verbose and imprecise. Undoubtedly her message could have been extended and amplified in third party discussion. The tribunal has considered the evidence of witnesses such as Mr Spiliadis and Ms Churcher Clarke carefully, in particular, whether it has been contaminated, noting that a number of staff had met up after the meeting, or after they had left employment, to discuss what they had heard. We concluded nevertheless that there *was* a message being communicated to GIDS staff by Dr Carmichael , at the time of the Sinha review, that they should not take Safeguarding issues to the claimant, not because she was not a clinician familiar with the complexities (as had been suggested to some staff when they took concerns to the speak up champion) but because she was hostile to GIDS.. What had been said in the December 2018 team meeting went beyond a mere statement of Safeguarding protocol. It was clear from Dr Carmichael’s discussion after the event with Andrew Hodge that she *did* doubt the claimant’s good faith and neutrality in what GIDS were doing (attributing it to her psychoanalytic background). This reinforces the earlier indicators of suspicion of the claimant (for example, that she had an agenda when she communicated staff concerns brought to her) and lends credence to the perception of those working in the team that they were being told that the claimant was to be regarded as hostile to their work.

85. It was plain that Garry Richardson himself resented the claimant, as far back as September 2017. That may only have been an understandable resentment that he was being expected to do more work without additional resource when he was already overstretched; possibly too because Dr Carmichael had volunteered him without discussion. But he did not give the claimant the benefit of the doubt as a fellow professional who was the Safeguarding lead. He reported to his own managers whenever the claimant sought to involve him, which indicates that he understood that they saw her as a hostile outsider, and probably held this view himself. He heard her Jimmy Savile remark as an attack on his colleagues complicit in abuse, not as a discussion between Safeguarding personnel about the need to be vigilant on behalf of vulnerable children.

86. It is less clear how this impacted on the claimant herself, whose communication with others is notable as always scrupulously correct, and who stepping carefully, no doubt aware of the difficult politics and boundaries of expertise. It is said Safeguarding referrals to her from GIDS fell dramatically. It is hard to say whether this is what happened. There were already very few Safeguarding referrals from GIDS - that was her concern. It is agreed that many GIDS staff with concerns would go to Dr Senior, a familiar figure, while the claimant, whose daily work did not involve her in GIDS, was more remote. It is a matter of impression, and there are no figures. Garry Richardson, however, told Andrew Hodge he was more likely to go to Caroline McKenna for support and to discuss Safeguarding than to the claimant. This is surprising, as she is the adult Safeguarding lead. Whether the claimant's work was impaired by this, but her reputation was damaged by what was said to people who themselves had little day to day contact with her.

87. One result of these proceedings is that since they began. the claimant and Garry Richardson have had little contact on Safeguarding at all.

Relevant Law

88. By law, in whistleblowing, what is protected is:

"any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—

(d) that the health or safety of any individual has been, is being or is likely to be endangered - (section 43B Employment Rights Act), and qualifies for protection if made to the employer (among others) - section 43C.

89. By section 47B(1)A:

" a worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.

90. This includes acts done

"by another worker of W's employer in the course of that other worker's employment" - section 47B (1A).

91. Detriment means being put at a disadvantage. The test of whether someone has been disadvantaged is set out in **Shamoon v Chief Constable of RUC (2003) UKHL 11:** it is whether a reasonable worker would or might take the view that the treatment accorded to them had in all the circumstances been to their detriment. **Jesudason v Alder Hey Children's NHS Foundation Trust (2020) IRLR 37** shows that whether it is detriment depends on the worker's reasonable perception, not on the employer's intention or motive- though of course the employer's state of mind that may be relevant to the grounds on which detriment occurred**.** In **Garry v London Borough of Ealing (2001) IRLR 681** the claimant was unaware of the detriment (an investigation) at the time, but had nevertheless been disadvantaged by what was going on.

92. The test of whether any detriment was "on the ground that" she had made protected disclosures is whether they were materially influenced by disclosures, rather than that disclosures were the sole or principal reason for the treatment – **NHS Manchester v Fecitt (2012) ICR 372**. Tribunals must look for the reasons why an employer acted as he did.

93. A reason is a set of facts and beliefs known to the respondent - **Abernethy v Mott, Hay and Anderson 1974 ICR 323 CA**, and **Kuzel v Roche Products Ltd (2008) IRLR 530, CA.**

94. In assessing reasons, tribunals must be careful to avoid "but for" causation: see for example the discussion in **Chief Constable of Manchester v Bailey (2017) EWCA Civ 425 (**a victimisation claim). However, it is not necessary to show that the employer acted through conscious motivation – just that a protected disclosure was the reason for the dismissal (or grounds for detriment)– **Nagarajan v London Regional Transport (1999) ITLR 574**. These cases concern the Equality Act, but the same considerations apply to analysing why the employer acted as it did in the context of a protected disclosure.

95. There may of course be more than one reason why something occurred, and there have been cases where a tribunal finds that although the disclosure was the occasion of detriment, it is not the disclosure itself, but some feature of the way it was made that is the reason for the unfavourable treatment. An employer may be able to say that the fact that the employee disclosed particular information played no part in a decision to subject the employee to the detriment, for example, but the offensive or abusive way in which the employee conveyed the information was considered to be unacceptable. Similarly, it is also possible, depending on the circumstances, for a distinction to be drawn between the disclosure of the information and the steps taken by the employee in relation to the information disclosed. Tribunals must however take care not to diminish statutory protection for whistleblowers by accepting arguments about there being a different reason. For example, in **Aziz v Trinity Street Taxis, (1988) ICR 134,** making covert recordings was held to be the reason for expulsion, not that they were intended for use in tribunal proceedings, and in **Bolton School v Evans (2017) IRLR 140** an IT technician was dismissed for hacking into the school IT system to prove a point he had been making (the protected disclosures) that the

system was insecure, and it was held he was dismissed for hacking, not for his disclosures insisting it was insecure. In **Martin v Devonshires (2011) ICR 352** (a victimisation case) the person making extravagant allegations was ill, and it was held her difficult behaviour was the reason for dismissal, not making the allegations themselves. In **Panayiotou v Hampshire Police (2014) IRLR 500,** a police officer who had made a series of disclosures (which were heeded and investigated) was eventually dismissed because he persisted because the outcome of his complaints was not as he wished, and his complaints took up too much management time. While the employer's decision was upheld, in so doing the EAT drew attention to a passage in **Martin** as a warning:

> "Of course such a line of argument is capable of abuse. Employees who bring complaints often do in ways that are, viewed objectively, unreasonable. It would certainly be contrary to the policy of the anti-victimisation provisions if employers were able to take steps against employees simply because in making a complaint they had, say, used intemperate language or made inaccurate statements. An employer who purposes to object to "ordinary" unreasonable behaviour of that kind should be treated as objecting to the complaint itself, and we would expect tribunals to be slow to recognise a distinction between the complaint and the way it is made save in clear cases. But the fact that the distinction may be illegitimately made in some cases does not mean that it is wrong in principle."

In **Beatt v Croydon Health Services NHSTrust (2017) EWCA Civ 401**, the Court of Appeal said:

> " it is all too easy for an employer to allow its view of a whistleblower as a difficult colleague or an awkward personality (as whistleblowers sometimes are) to cloud its judgement about whether the disclosures in question do in fact have a reasonable basis or are made (under the old law) in good faith or (under the new law) in the public interest."

Discussion and Conclusion

96. Was the meeting between the claimant and Dr Sinha in July 2019, and the letter he sent her afterwards, a detriment? The Trust argues it was not disciplinary action, but a discussion about being more respectful to colleagues, which a line manager is entitled to have. Dr Sinha said he was following HR advice, and he wanted HR there because the claimant's record of what was said at the meeting would not be accurate. At this stage we leave aside his intention, and assess whether the claimant was reasonable in her apprehension that this was in practice a disciplinary warning, even though not labelled as such.

97. In our finding, any employee who goes into a meeting and finds a member of HR staff there, is right to apprehend that this is part of a process, whether on capability or on her conduct. The outcome, a letter being placed on file indefinitely, to be used if there was any recurrence of "this type of incident", is clearly in the nature of a warning that it will be taken into account at some later date if there is a similar event. The obvious unfairness of this is that the claimant was given no context as to when or

to whom she may have said it, which might have prompted her memory and enabled her to explain, nor any notice, which might have helped her to recall it. Further, there was no investigation. Had there been, Dr Sinha would have learned that this was indeed part of her standard training presentation, as we can see from Kirsty Entwistle's notes. In some ways the outcome was worse than a disciplinary warning. A warning would have remained on her file only for a set period. She would also have had a chance to appeal. The injustice was obvious and the claimant's upset entirely understandable. She was nearing the end of a long and blameless career, and as far as we can see had always tried to act responsibly over the Safeguarding concerns of GIDS staff.

98. We now assess the reasons why Dr Sinha acted as he did. He says he was following HR advice, and that this was to the effect that the reported remark was too vague to merit investigation but might be worth a conversation. Dr Sinha may have been justified in thinking that the claimant and Garry Richardson had fences to mend and bridges to build in their working relationship, but as far as we could see this was no way to achieve it. She did not know that Garry Richardson found her directive and not collaborative, or that he thought she was condemning hard-working GIDS staff, so she was unable to take steps to improve relations. Nor did Dr Sinha do anything to mend relationships. He was judgemental and punitive; he believed Garry Richardson and not her. It is possible that was because their own relationship had been difficult right from the start because of his perception of her. He attributes this to handover from Dr Senior and his own experience. We do not know what Dr Senior made of the claimant, but as far as we know, they had worked well together; he had come to her defence in October 2017 when suspected of an agenda. The handover may not have been very detailed, given that Dr Sinha was unaware of the claimant's disclosures to Dr Senior. As noted, Dr Sinha seems to have had almost no contact with the claimant than by email, and there were no 1:1 meetings other than when she returned to work in May 2019. There was an interesting comment in his interview with Andrew Hodge that some people in this small Trust were very self-important. We were driven to the conclusion that the only explanation for his stern, arm's-length approach to the claimant, his direct report, was that he thought she was raising concern about Safeguarding in particular, and the GIDS model in general, in bad faith. He therefore banned her from continuing the work getting accurate records for statistics on Safeguarding because he suspected she was digging for dirt to attack the service, when, as far as we can see, her actions were dedicated to finding out why the level of referrals from GIDS was so low, which might have been thought a legitimate activity on the part of the Safeguarding lead for children. The claimant's disclosures to Dr Carmichael in February 2018, and her contributions to Dr Bell's report, led to her being positioned as hostile to the service model, and having an ulterior motive. We found it hard to credit that the only reason Dr Sinha treated her in this way was because he thought she was resistant to line management and needed to be brought into line. By July 2019 extensive press coverage of the matters she had

raised, given the leaking Dr Bell's report, had contributed to a febrile 'them and us' mentality.

99. The respondent has argued that a number of features of the claimant's disclosures and the way she made them that explain why she was treated as she was, which do not concern the content of the protected disclosures. These include that she was not really concerned about Safeguarding, or about service delivery, that she was associated with Dr Bell, and that she was perceived as more accusatory in approach, leading Dr Sinha to raise the Jimmy Savile remark with her. In our finding, she was associated with Dr Bell, but that was because she had already raised in her disclosures the issues that GIDS staff later took to Dr Bell. The fact that she questioned not just record-keeping, but the lack of rigour in the service model for making judgements about whether there was background abuse requiring consideration of Safeguarding, meant that she was seen as hostile to a service already under external pressure from politicised groups, and the internal pressure of sometimes acrimonious splits between clinicians. In our view these cannot be separated from the fact that the claimant had made disclosures about concerns on young people needing more consideration of whether there were Safeguarding issues, and staff being too overworked to deal with them properly. Stating that a manual or standard operating procedure or model was a suggestion to assist clear thinking about a child's case and whether a Safeguarding issue was shown by the particular circumstances. Dr Sinha's quasi-disciplinary treatment of her can only be explained as materially influenced by her disclosures, which were viewed by him (and others) as unwarranted interference, overstepping her proper role.

The second group of detriments

100. It is harder to grasp here the extent of disadvantage to the claimant. It had been agreed Garry Richardson would lead within GIDS. If staff were told to take difficult cases to him first, that was as planned and agreed. As discussed, the comments about the claimant having an agenda ring true. Those who did approach her comment on how clear and practical she was in her advice. Many staff in GIDS did not know her however, and it must have done her some harm in the way staff who did not know her thought about her. It damaged her professional reputation, and her ability to do her job, even if she did not find out until later. Andrew Hodge noted that the Jimmy Savile remark had become well known within GIDS. That must have come either from Garry Richardson, or the other senior person who spoke about it to Dr Sinha, so that she was seen by them as hostile. Garry Richardson did not want to work with her because he saw her as critical of GIDS work. This too will have prevented her from proper work on Safeguarding in GIDS, and continues to do so.

101. We concluded that Dr Carmichael was long suspicious that the claimant was undermining her and her work. In her view, the claimant should have gone to her first, in 2017, not Dr Senior or Sally Hodges,

when she heard about it in January and February 2018. She resented being, as she saw it, undermined, and this was amplified when Dr Bell made his report at the end of August 2018. She also put her in the hostile camp because of her psychoanalytic background. She held the claimant was against the service model, not just concerned that Safeguarding was weak. But she held these views principally because the claimant had raised concerns. We cannot sever her sense of being undermined from the claimant making the disclosures, which she did, in the first instance, and properly, to her line manager. We do not consider that the making of disclosures about GIDS work and Safeguarding can be severed from the way the claimant handled the information. She was subjected to the second group of detriments because she made them.

Time

102. The respondent argues that the addition of the second group of detriments was out of time, and that it came to the claimant's attention much earlier, perhaps as much as a year before the amendments in February or March 2020, proceedings having been started in July 2019. The directions to GIDS staff about the claimant were made in the autumn of 2018, and on the face of it time starts to run then. The test under the Employment Rights Act is whether it was not reasonably practicable for the claimant to present a claim within 3 months of the act complained, and if so, whether it was presented within a reasonable time thereafter. 'Practicable' means whether there was some factor, physical or mental, which prevented the claim being presented in time. We noted that by its nature, it was something which came to the claimant's attention late and indirectly, and she was not fully aware of what had been said until disclosure of documents, after starting proceedings, or speaking to witnesses. As of January 2019, she had only Matt Bristow's hearsay. She was then very ill until May 2019. There is no reason to believe she had any idea of what had been said at that time, or indeed at any time until disclosure of documents, after proceedings began. She may have sensed hostility, or may have felt there were reduced referrals, but as noted there were and are no figures and it is not clear they did fall. If fewer came to her, then from her point of view it was because Garry Richardson now fielded them first, and after she started proceedings, relations between them became more difficult. It is doubtful that any reasonable person would present a complaint based on impression and hearsay; in our view it was not practicable. It was reasonable not to press a claim for which she had no evidence other than. When the documents were disclosed, she amended in a reasonable time thereafter.

Remedy

103. The claimant has continued to work, and the remedy sought is compensation for injury to feelings. Awards were standardised in the guidelines of **Vento v Chief Constable for West Yorkshire (2002) EWCA**

Civ 1871, and have been updated from time to time for inflation. For claims begun between April 2019 and April 2020 the middle band range is £8,800 to £26,300.

104. We assessed the injury to feelings from July 2019 as significant. The claimant was reaching the end of her hitherto blameless professional career in a senior position. She was being blamed for offending unknown persons by unknown words. Her explanation that referring to Jimmy Savile was shorthand for being careful that harm was not overlooked and was something she routinely stated in training was rejected without investigation. The letter on her file contained an explicit threat that it would be taken into account later if there was a recurrence of an obscure event. She had no opportunity to clear her name or get another view, as would happen if there was an appeal, and it was to remain on her file indefinitely, and it still is on her file. The resulting sense of injustice is obvious. Anyone would lose sleep over this.

105. We assessed the injury from that date at £12,500.

106. As for learning in December 2019 that (in summary) staff were being discouraged from referring Safeguarding matters to her because she had "issues" with GIDS, that must have been hurtful, and must have made carrying on with her duties painful and difficult, especially when the Trust denied that had occurred, and was asserting that she bore the responsibility for any difficulty. As an added hurt, we assess it in the round at £7,500.

107. Taking the two together, the award is £20,000. That is a little above the mid-point of the middle band. Both senses of injury are likely to resolve on receipt of this judgment vindicating her position. Looked at in the round that seemed to us a fair figure.

Employment Judge Goodman
03/09/21

JUDGMENT and REASONS SENT to the PARTIES ON

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. 03/09/2021

FOR THE TRIBUNAL OFFICE