EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4104941/2020

Held via written submissions in Glasgow on 14 February 2022

Employment Judge R McPherson
Tribunal Member D Frew
Tribunal Member R McPherson

Ms A McGeachie	**Claimant** **Represented by:** **A Stobart - Counsel (Written Submissions)** **Instructed by:** **M Gribbon – Solicitor**
St Mary's Kenmure	**First Respondent** **Represented by:** **K McGuire - Counsel (Written Submissions)** **Instructed by:** **F McCormick – Solicitor**
Mr K Miller	**Second Respondent - as above**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

FOLLOWING RECONSIDERATION

The unanimous decision of the Employment Tribunal in respect of the claimant's application for reconsideration is as follows –

(i) The Reasons section of the Judgment dated **24 August 2021** (the "Judgment") is varied as follows –

1. **Paragraph 8 (a)** is varied by deletion of "(a)- (f)", and insertion of *"(b)"* to read "*section 43(1)(b)"*; and

2. **Paragraph 19** is varied by insertion of the phrase *", being the Staff Satisfaction Survey" after* the words *"as to this proposed course of action";* and

3. **Paragraph 25** Is varied by insertion of the phrase "*, in that resignation*," after the words "*The Director did not";* and

4. **Paragraph 26** is varied by insertion of the phrase "*for the first respondent"* after the words "*Neither took steps to initiate any arrangements alternative";* and

5. **Paragraph 80** is varied to add, at the end, the sentence "*The second respondent's recollection of that meeting is preferred as reliable*"; and

6. **Paragraph 84** is varied by inserting the phrase "on ***Thursday 6 August 2020***" after "*A discussion took place at that meeting";* and

7. **paragraph 86** is varied to add a second sentence "*The second respondent's recollection of that meeting is preferred";* and

8. **Paragraph 88** is varied to add the phrase *"(that meeting on Thursday 6 August 2020),";* and

9. **Paragraph 99** is varied by adding the phrase *"(the exoneration she had sought in the claimant email of Wednesday 8 April 2020)"* after the phrase *"the two anonymous compliant letters"*; and

10. P**aragraph 99** is further varied by adding at the end of that paragraph: "*It was not wholly or in part, in response to the now-former Director and/or now former Depute Director's description to the claimant as to what had been discussed when the then Director and then Depute Director met with Mr Gillon on 16 March 2020."*; and

11. **paragraph 128**, is varied by deletion of the phrase "*solicitor correspondence"* and insertion of the phrase "*correspondence from the claimant's solicitor to the respondent's solicitor and also from the claimant to Mr Gillon, the respondent Chair*,".; and

12. **Paragraph 139** is varied by inserting the phrase *"that element of the statement in the email,"* after the words "*The Tribunal concludes that"; and*

13. **Paragraph 141** is varied to add the sentence "*The Tribunal, in particular, did so having concluded on the totality of the evidence that the claimant's evidence reflected her view both at the time and subsequently as to what she regarded as the respondent's failure to take steps to exonerate her. In relation to Ms Strang, as above at paragraph 88 it is noted that she had signed the Minute of the meeting on 6 August, her evidence, included her unsigned and undated Note, was of limited assistance, her unsigned and undated Note was considered not to be inconsistent with the second respondent overall evidence.*" after the phrase *"the respondent witnesses are preferred as reliable".*; and

14. **Paragraph 141** is further varied by adding, at the end, the sentence *"The Tribunal having regard to the totality of the evidence, prefers as reliable the recollection of the second respondent, to that of the claimant where dispute of fact arose. The Tribunal concludes that the second respondent approached matters both at the time, and in his evidence to the Tribunal, in a neutral fashion, as accurate including in relation to meetings on Wednesday 29 July, 6 August and 13 August 2020.";* and

15. P**aragraph 185** is varied by adding the phrase *"(listed as detriment 9 in the claimant's list of detriment by reference of paragraph 33 of the ET1)"* after the phrase **"Thursday 13 August 2020"**; and

16. **Paragraph 188** is varied by deleting the sentence "*The respondent's decision to recruit Mr Miller did not amount to a fundamental breach of the contract of employment"* and further the phrase *"and/or the recruitment of Mr Miller,"* where it appears in the final sentence; and

17. **Paragraph 189** is varied by inserting the phrase *"advised in the return to work meeting on Monday 27 April 2020, that she was"* after the words "*flat management structure did not amount to a fundamental breach of the contract of employment the claimant having been*".

    (i) While we have varied the Reasons for our original Judgment, it being in the interests of justice to do so, that Judgment is confirmed, without

variation, and the claimant's claims of detriment for making a protected disclosure, and for constructive unfair dismissal, are unaffected, as those claims did not succeed, and that Judgment is confirmed.

REASONS

1. Following a hearing which took place **24 May to 28 May, 1 June 2021 – 7 July** (with members meeting on **28 July 2021**) we handed down the Judgment dated 12 August issued to the parties on 24 August, in terms of which we unanimously dismissed the complaints brought by the claimant under –

   (a) section 47B of the Employment Rights Act 1996 (ERA 1996)

   (b) for constructive unfair dismissal

2. On **6 September 2021** the claimant's representative applied for reconsideration of the Judgment. It was set out that if the Tribunal granted the application, the claimant was content for this to be dealt with without a hearing.

3. The claimant's application for reconsideration was submitted timeously in terms of **Rule 71** of the Employment Tribunal Rules of Procedure 2013 (the 2013 Rules).

4. The application was referred to the Employment Judge who decided that it should not be refused on the basis there was no reasonable prospect of the original decision being varied or revoked. No provisional view was expressed on the application.

5. The Tribunal invited parties' views on whether the application could be determined without a Hearing and confirmed that any response to the application should be copied to the other parties. Parties were advised that should reconsideration take place without a hearing they would be given an opportunity to provide written representations.

6. Representatives for both respondents intimated that they were agreeable to the appointment of a hearing and provided the respondent's responses.

7. The claimant representative intimated that the Tribunal could consider the claimant application without the requirement for a hearing, setting out that both parties fully set out their positions in writing, intimating that it would not be in the interests of the overriding objective to convene a hearing.

8. Having considered parties' respective positions, the Tribunal concluded that it would not be necessary, in the interests of justice, to appoint a party Hearing and the panel was reconvened for a member meeting on **Monday 14 February 2022,** to consider the claimant's application.

9. This judgment sets out the Tribunals conclusions in relation to reconsideration.

Tribunal Rules

10. **Rule 70** of the 2013 Rules, sets out the principles to be applied when dealing with an application for reconsideration –

11. "*A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision ("the original decision") may be confirmed, varied or revoked. If it is revoked it may be taken again."*

Grounds for the application

12. The application contains **25** separate grounds, and we set these out and deal with them in turn. Before doing so, we make some general observations.

13. Several of the claimant's grounds allege that the Judgment is not **Meek** compliant. This is a reference to **Meek v City of Birmingham City Council 1987 IRLR 250 (Meek)**. In **Meek,** Bingham LJ set out that "*It has on a number of occasions been made plain that the decision of an Industrial Tribunal is not required to be an elaborate formalistic product of refined legal draftsmanship, but it must contain an outline of the story which has given rise to the complaint and a summary of the Tribunal's basic factual conclusions and a statement of the reasons which have led them to reach the conclusion which they do on those basic facts. The parties are entitled to be told why they have won or lost. There*

should be sufficient account of the facts and of the reasoning to enable the EAT or, on further appeal, this court to see whether any question of law arises…."

14. A number of the claimant's grounds allege a failure to understand the claimant's claim of constructive dismissal. The Tribunal has sought to revisit its determination in relation to the claimant's claim, where it considered appropriate to do so.

15. The Tribunal understands the claimant's claim of constructive dismissal and has regard to the claimant's submissions. The Tribunal on reconsideration remains satisfied that the claimant's claim of constructive dismissal does not succeed.

16. Several of the claimant's grounds allege errors of fact. We have sought to revisit these where we considered it appropriate to do so, during our reconsideration.

17. In several instances it is argued that the Tribunal has not been clear in reasons for preferring respondent evidence. We have sought to clarify matters by variation for clarity.

Grounds and Tribunals consideration in response

18. **Ground 1: Paragraph 8 (a)** the Tribunal was not being asked to consider whether what was asserted as the claimant's protected disclosure claim, "*fell within"* ERA 1996 sub-sections 43B(1)(a) – (f). The Tribunal was only being asked to consider whether alleged protected disclosure fell within the ambit of ERA 1996 43B(1)(b).

19. Para **8 a** sets out the issue as "*Did the claimant have a genuine belief that the information tended to show (Sections 43B [& 43C] ERA), relying on subsection(s) of section 43B(1)(a- f) that the first respondent had failed to comply with a legal obligation".* The final element of which sentence expressly describes, in short, the element of ERA 1996 43 (b) (1) (b) that the respondent had failed to comply with a legal obligation (to which they are subject). By the time of the final hearing, including by reference to List of issues, it was apparent that the issues were those arising from ERA 1996 43(B) (1)(b), rather than as had been earlier identified in the ET1 (para 36) ERA 1996 43 (B) (1) (b) and/or (d). In any event, the submissions both focussed on ERA 1996 43(B)(1) (b).

20. The Tribunal considered whether alleged disclosure was one in terms of ERA 1996 43B(1)(b) that the first respondent had failed to comply with a legal obligation.

21. The Tribunal, having considered the matter varies the Reasons section of the judgment, as above to remove the phrase *"(a-f)"* and insert "*(b)"* so as to read (consistent with the remaining elements of that paragraph) 43B(1)(b).

22. **Ground 2: paragraph 16**, for the claimant, it is said to be it is unclear why the Tribunal considered that it was unnecessary to make substantive findings in fact about meeting on 16 March 2020. For the claimant, it is argued that evidence of Ms Dearie, then Director and Mr McKeown, then Depute Director was that Mr Gillon Chair assured them at this meeting what are said to be child allegations referred to in the **anonymous complaint letters** would be investigated externally and the claimant's evidence is that this information was subsequently relayed to the claimant by them. The claimant argues that the Tribunal has failed to make findings in fact on a matter relevant to her constructive dismissal claim.

23. The Tribunal has considered the same but does not vary that finding. The Tribunal is satisfied that the finding reflected the relevant evidence. The claimant was not present at the meeting.

24. It remains the conclusion of the Tribunal that discussions at that meeting, at which the claimant was not in attendance, were not relevant to the claimant's decision to terminate her employment which are set out at **paragraph 99**.

25. For clarity, however, the Tribunal varies **paragraph 99** as above.

26. **Ground 3: paragraph 19** – in the second sentence of this paragraph, the ET states "*Neither the Director nor the Depute Director raised any objection, in response, as to this proposed course of action as a means of acting on the March 2020 anonymous complaint letters".* For the claimant, it is submitted that this finding in fact was not supported by the evidence. For the claimant reference to made to Ms Dearie's witness statement (which she spoke to and confirmed) in particular paragraph 20 at page 10 of her witness statement) of her recall of a call with Mr Gillon on 19 March 2020. Further for the claimant, it is argued that the Tribunal had before it an email Ms Dearie sent to the Board

on the 30 March 2020 (pages 130.1 and 130.2 of the Joint Bundle) in which she states, "*Can you confirm that you did, as you stated, and brought an external agency in to investigate this?"*. It is argued for the claimant, that the Tribunal has made findings in fact, that are not supported by the evidence.

27. The Tribunal's finding relates to Mr Gillon's email of **17 March 2020** and the absence of any objection to the proposal set out in that email as set out in **paragraph 19**. **Paragraph 30** includes the subsequent email.

28. For clarity, the Tribunal varies **paragraph 19** as above.

29. **Ground 4: paragraph 25**, second sentence - the Tribunal Judgement states, "*The Director did not describe that any investigation was merited into any aspect of the March 2020 anonymous complaint letters*". This appears to be a reference to the former Director's resignation email on 25 March 2020. The claimant submits that the ET's Findings in Fact misrepresents the former Director's position. The former Director's 25 March 2020 resignation email was before the ET at page 118 of the Joint Bundle. In that resignation email, the former Director states to Mr Gillon (penultimate paragraph) "*I need to protect myself as nothing has progressed since last Monday in respect of the allegations and no supports have been put in place*". It is submitted that the Tribunal's findings in fact are not supported by the evidence.

30. The Tribunal remains satisfied that the wording of that resignation email does not set out that any investigation was merited into any aspect of the March 2020 Anonymous Complaint letters.

31. For clarity, however, the Tribunal varies **paragraph 25** as above.

32. **Ground 5: paragraph 26** – in the second sentence of this paragraph the ET states "*Neither took steps to initiate any arrangements alternative to that notified to them in response to the March 2020 anonymous complaint letters, being a staff satisfaction survey and which became subsequently classed as an employee voice survey*". Reference is made to paragraphs 3 and 4 above in relation to the steps taken by the former Director. Further, the Tribunal heard undisputed evidence that all members of the Senior Management Team referred allegations to the Scottish Social Services Council (SSSC), and the

Tribunal had before it documentary evidence of same (pages 265 to 265.3 of the Joint Bundle). The Tribunal has made findings in facts which were not supported by the evidence.

33. The claimant's application omits reference to the Findings in Fact on the 2018 Standard Operating Procedure set out at **paragraphs 5** and **6** of the Findings of Fact which express reference is made at paragraph 26. The Tribunal does not conclude that the election of the then Senior Management Team to self-refer to SSSC was relevant to the issues before it.

34. For clarity however, the Tribunal varies **paragraph 26** above.

35. **Ground 6: paragraph 45** – the Tribunal makes findings in relation to erroneous conclusions said to have been reached by Ms Lundie in circumstances where it did not have the benefit of hearing any evidence from Ms Lundie. It is therefore unclear what evidence the Tribunal relies upon to support the findings in fact at paragraph 45. The Tribunal has not given adequate reasons for these findings and the Claimant submits that this aspect of the Judgement is not **Meek** compliant.

36. The Findings of Fact reflect the totality of the evidence including statement which was not challenged as being from Ms Lundy at page 187 of the agreed bundle. While Ms Lundy did not attend to speak to same, the Tribunal remains satisfied that it was entitled to consider same as relevant including in the context that her description of her interaction with the claimant was put to Mr Gillon and the second respondent and further in the context as set out in the Findings of Fact set out at **paragraph 48** and **49.**

37. **Ground 7: paragraph 65** – the Tribunal makes a finding in fact that "*Mr McGinty fairly and objectively"* dealt with the Claimant's grievance. It was not disputed that a material aspect of the claimant's grievance was a complaint of bullying and harassment by the second respondent (see the claimant's grievance at pages 140 to 144 of the Joint Bundle). Mr McGinty's grievance outcome letter was before the Tribunal at page 168. On a proper reading of Mr McGinty's grievance outcome letter, he only considered those aspects of the claimant's grievance that related to Mr Gillon. It is submitted that no other conclusion can

be reached given the clear and unequivocal terms of Mr McGinty's grievance outcome letter. There are no findings in Mr McGinty's grievance outcome letter relating to the complaints levelled against the claimant by the second respondent. Against that background, it is submitted that the Tribunal failed to give adequate reasons why they concluded that Mr McGinty "*fairly and objectively*" considered the claimant's grievance The Tribunal's Judgement on this issue is not **Meek** compliant and/or is not supported by the evidence.

38. The claimant disagrees with the Tribunal's findings. The Tribunal accepted the evidence of Mr McGinty, its findings reflect the evidence, so far as relevant to the issues.

39. **Ground 8: paragraph 71** – the Tribunal makes a finding in fact that the Claimant's Acting Depute role was terminated because the first respondent was not able to open Dochas House "*in the near future*". The Tribunal heard the claimant's evidence about what the second respondent said to her at their meeting on 27 April 2020. Further, the Tribunal had the second respondents note of this meeting which was at pages 139.1 and 139.2 of the Joint Bundle. Page 139.2 second respondent's minute states "*The writer informed Anita she was making things very difficult and should she continue to go down this avenue she would leave him with no alternative but to give her four weeks' notice and revert back to her substantive role of a Service Manager as per agreed contract dated in October/November 2019*". The Tribunal has failed to give adequate reasons why it found that Dochas House was the reason why the first respondent prematurely ended the claimant's Acting Depute role in circumstances where the first and original reason given (and confirmed in the second respondent's aforementioned minute) contradicts this. The Tribunal's Judgement on this issue is not **Meek** compliant.

40. The Tribunal accepted as set out, at **paragraph 71**, that Dochas House would not be able to open in the near future. It is not understood that the claimant argues that this finding was in error. It was against that background that the claimant was given 4 weeks' notice in accordance with the notice provision. The Tribunal understands that the claimant disagrees but that does not alter the conclusion of the Tribunal.

41. **Ground 9: paragraph 79** – the Tribunal sets out its findings in fact in relation to the claimant's return to work meeting with the second respondent on 29 July 2020. It is unclear why the Tribunal rejected the claimant's evidence that the second respondent told her that she was not allowed to leave the room until she provided him with names of the individuals who had approached her (see paragraph 65 of the claimant's witness statement). The Tribunal has failed to give adequate reasons why the Claimant's evidence in this respect was rejected. The Tribunal's Judgement on this issue is not **Meek** compliant.

42. The Tribunal is satisfied that, at paragraph 79, sets out the relevant aspects of the meeting on 29 July 2020.

43. **Ground 10: paragraph 80** – in the second sentence of this paragraph the Tribunal states that it was satisfied that the second respondent's minute of the 29 July 2020 meeting was "*a reasonably accurate account of what took place at the meeting*". The Tribunal had before it the second respondent's minute of this meeting at pages 230.1 to 230.3. The Tribunal also had the Claimant's contemporaneous note of this meeting at page 230 which included exchanges which she contends were omitted from the minute. The Tribunal has failed to give adequate reasons why it found that the first respondent's minute of this meeting was a "*reasonably accurate account of what took place at the meeting*" when it had before it a contemporaneous document from the Claimant setting out alleged material omissions. The Tribunal has failed to give adequate reasons explaining why, in light of the production at 230, it rejected the claimant's evidence about this meeting. The claimant contends that the Tribunal's Judgement on this issue is not **Meek** compliant.

44. While the Tribunal was provided with the claimant's written note which was said to be contemporaneous, the Tribunal is not required to prefer the claimant's notation of such an event. It does not. The Tribunal concluded that the claimant's position, in this and other areas where it did not accept her evidence as reliable, reflected her view both at the time and as subsequently as to what she regarded as the respondent's failure to take steps to exonerate her, reference is made to paragraphs **36** and **99**.

45. For clarity the Tribunal varies **Paragraphs 80** and **141** as above.

46. **Ground 11: paragraph 86** – in the absence of any information to the contrary, the claimant is proceeding on the basis that this paragraph relates to the return to work meeting she attended on Wednesday 29 July 2020. If so, then the Claimant's evidence about what occurred at this meeting is contained at paragraphs 65 to 67 of her witness statement. This includes allegations that she felt browbeaten by the second respondent at the meeting who said to her "*You are not leaving this office until you tell me the names*" (see paragraph 65 of the claimant's witness statement). The Tribunal has failed to give adequate reasons why it found that the 29 July 2020 meeting was conducted in a reasonably professional and supportive manner by the second respondent and why the claimant's evidence about what occurred at this meeting was rejected. The Tribunal's Judgement on this issue is not **Meek** compliant.

47. The Tribunal remains satisfied with its Findings of Fact in paragraph 86 which, along with paragraphs 84, 85, 86, and 88 flows chronologically from **paragraph 83**, which commences "*On Thursday 6 August 2020…"*

48. While noting that paragraph 84 commences *"A discussion took place regarding the **previous*** (emphasis added*) Return to Work Meeting on Wednesday 29 July 2020*", and the Tribunal had sought to minimise repetition, however, paragraphs **84, 86** and **88** are varied to identify the Tribunal's sequential findings relate to **6 August 2020.**

49. **Ground 12: paragraphs 87** (GDPR compliant) **and 88** – no date is given for the meeting referred to by the Tribunal in this paragraph. In the absence of any information to the contrary, it is reasonable to conclude that this paragraph relates to the meeting the claimant attended with the second respondent on 29 July 2020. If so, then Helen Strang did <u>not</u> attend this meeting. It is not in dispute that the only meeting Helen Strang attended with the claimant was on 6 August 2020 (and referred to in both the Claimant and Helen Strang's witness statements). The Tribunal has conflated the 29 July 2020 and the 6 August 2020 meetings leaving the impression that the claimant declined to sign the 29 July 2020 minute "*owing to a one-line omission*". The production at page 230 sets out the claimant's issues with the second respondent's minute of the 29

July 2020 meeting. It is submitted that both these meetings were crucial to the claimant's constructive dismissal claim and as the Tribunal appears to have confused both then the interest of justice dictates that these findings in fact be corrected.

50. The Tribunal observes, as above, that **paragraph 87** follows on from **paragraph 83**. The Tribunal has sought to set out matters in chronological order. However, as above the Tribunal has set out variations above for clarity.

51. **Ground 13: paragraph 99** – the Tribunal make a finding in fact that the claimant's decision to resign was not consistent with the reasons contained in her resignation letter at pages 261 to 263. The Tribunal has failed to give adequate reasons explaining why it rejected the reasons the claimant gave for her resignation in oral evidence and in her resignation letter. For instance, the claimant's evidence throughout was that she had no issue with the first respondent's reorganisation to a flat management structure (and same was not referred to in her resignation letter). The Tribunal has failed to give adequate reasons why the claimant's (unchallenged) evidence for resigning was rejected. The claimant is therefore unable to understand why her unchallenged evidence on why she resigned was not found to be credible or reliable. The Tribunal's Judgement on this issue is not **Meek** compliant.

52. The Tribunal is not required to accept the claimant's description of her reasons for electing to terminate her employment. It does not do so. The Tribunal has set out the reasons at paragraph 99.

53. For clarity, however, the Tribunal has varied **paragraph 99** as above.

54. **Ground 14: paragraph 128** – there appears to be a word missing from this paragraph. It is not in dispute that the first respondent solicitor's email of the 4 September 2020 was sent in response to correspondence from the claimant and her solicitor.

55. For clarity the Tribunal has varied **paragraph 128** as above.

56. **Ground 15: paragraph 139** – the claimant is none the wiser from reading the Judgement what aspects of the first respondent solicitor's 4 September 2020 e-

mail the Tribunal found were and were not covered by legal privilege. The Tribunal's findings in relation to the 4 September 2020 e-mail are not **Meek** compliant.

57. For clarity the Tribunal has varied **paragraph 139** as above.

58. **Ground 16**: **paragraph 141** – the claimant submits that given the factually dense nature of her case and the dispute between the parties in relation to the various meetings, this paragraph is insufficient and not **Meek** compliant. The claimant is entitled to know in relation to each matter which she relied upon in support of her constructive dismissal claim, why the respondent's evidence was preferred. The claimant submits that this is crucial in circumstances where she contends there was ample documentary evidence and oral evidence supportive of her position. The claimant is therefore left in a position of being unable to understand why her evidence on the various matters the Tribunal had to determine was rejected by them. The Tribunal's Judgement is not **Meek** compliant in relation to the salient findings it had to make in this case. The claimant submits that this exercise is crucial in circumstances where, on at least one occasion, the Tribunal has conflated two meetings.

59. Having considered the claimant application, the Tribunal, for clarity, varies **paragraph 141** as above.

60. **Ground 17: paragraph 185.2** – it is submitted that the Tribunal has misunderstood the claimant's complaint in relation to the second respondent's conduct at the 13 August 2020 meeting. The claimant made no complaint about the second respondent asking her if he could record the meeting. It was clear from the claimant's evidence and pleadings that her complaint was that having declined to give consent to record the meeting, the second respondent ignored her and proceeded to record, nevertheless. This allegation has been consistent throughout the claimant's claim. Reference is made to paragraph 33 of the ET1 Paper Apart (page 23 of the Bundle) and the claimant's oral evidence of this meeting at paragraph 76 of her witness statement. The claimant submits that this aspect of her complaint is key to her constructive dismissal claim and given the clarity of the ET1 and her oral evidence on this point, she is unclear why, as appears the case, the Tribunal has misunderstood this aspect of her

claim. This misunderstanding has resulted in the Tribunal failing to consider a relevant factor in deciding on the constructive dismissal claim.

61. As above, the Tribunal prefers the evidence of the second respondent including in relation to the 13 August 2020 meeting.

62. For clarity **paragraph 185** is varied as above.

63. **Ground 18**: **paragraph 188** – the claimant submits that this paragraph demonstrates another misunderstanding on the part of the Tribunal in relation to her constructive dismissal claim. The claimant did not and has never alleged that the second respondent's appointment was a fundamental breach of her contract. The claimant's claim did not include any complaint about the first respondent's decision to appoint the second respondent.

64. The claimant expressed criticism of the actions of the second respondent at various points, including in relation to return to work meetings and his response to grievance. However, the Tribunal's Findings in Fact at para 188 relate to the alleged allocation of claimant duties to another member of staff on 15 March 2020.

65. For clarity, the Tribunal has varied paragraph 188 as above.

66. **Ground 19: paragraph 189** – the Tribunal state that the first respondent's decision to remove the claimant's Line Manager responsibilities reflected a number of matters including "*the 2020 employee staff survey confidential responses*". No evidence was lodged about the Employee Staff Survey confidential responses.

67. The second respondent gave oral evidence on the decision, which evidence the Tribunal accepted.

68. For clarity **paragraph 189** is varied as above.

69. **Ground 20: paragraphs 190 to 192** – the Claimant contends that this aspect of the Tribunal's Judgement is not **Meek** compliant for the reasons already stated at paragraph 7 above.

70. The Tribunal disagrees for the reasons set out above.

71. **Ground 21:** paragraph 194 – this aspect of the ET Judgement is not **Meek** compliant for the reasons already stated at paragraph 8 above.

72. The Tribunal's response to **Ground 8** is repeated.

73. **Ground 22: paragraph 195** – the claimant submits that this finding was made in circumstances where the Tribunal appears to have omitted to take into account the relevant evidence referred to at paragraph 11 above.

74. The Tribunal refers to its response to **Ground 11** above. The Tribunal is satisfied it has considered the relevant evidence.

75. **Ground 23: paragraph 196** – in determining that R1 did not conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the Claimant, the Tribunal has failed to consider context and appears to have placed its own particular gloss on the evidence it heard. The 6 August 2020 was a welfare/return to work meeting. It is unclear why the second respondent's evidence on this meeting was preferred in preference to the evidence of the claimant and Helen Strang. The claimant's complaint was not that the second respondent had raised a data protection issue; it was that the second respondent accused her of committing GDPR breaches (see paragraph 73 of the claimant's witness statement). This accusation is recorded in the second respondent's minute of this meeting at page 249.2 of the Joint Bundle. It was not in dispute that the claimant's Solicitor's email of the 6 August 2020 to the first respondent's Solicitor (page 250 of the Bundle) asking for further specification of the alleged data protection breaches was not responded to. The claimant contends that the Tribunal has put its own gloss on what occurred at this meeting, and it was one which was not supported by the evidence. The claimant's complaint was that the second respondent accused her (at a welfare/return to work meeting) of having committed a GDPR breach (as evidenced by the second respondent's own minute) and that the first and second then subsequently failed to provide her Solicitor with any details of this serious allegation when asked to do so. The Tribunal has misunderstood what the alleged fundamental breach of contract

was being advanced by the claimant; failed to consider context and made findings in fact unsupported by the evidence.

76. The claimant disagrees with the Tribunal's Finding in Fact and its conclusions. Having reviewed same, the Tribunal is satisfied they do not require to be varied in the interests of justice.

77. **Ground 24: paragraphs 198 and 199** – as with the Tribunal's findings at paragraph 196, it is submitted that in these paragraphs the Tribunal has again misunderstood the alleged breach of the implied term of mutual trust and confidence. The claimant made no complaint about the second respondent's request to record the meeting. It was, and ought to have been apparent to the ET from the considerable evidence before it on this matter, that the alleged breach of the implied term of mutual trust in confidence was the second decision to continue recording the meeting in the knowledge that the claimant had not given her consent to same.

78. The Tribunal set out in its finding that the second respondent sought the claimant's view. The Tribunal set out its conclusion on the evidence before it, on the claim, so far as relevant at **paragraph 200.**

79. **Ground 25: paragraph 203** – the Tribunal has again misunderstood the precise nature of the alleged breach advanced by the claimant in relation to the first respondent's Solicitor's email of the 4 September 2021. It was not the case that the claimant alleged that the first respondent Solicitor communicating with her Solicitor amounted to a fundamental breach of contract. The claimant contends that this paragraph adds to her state of confusion in relation to what the ET found in relation to the status of the contents of the 4 September 2020 email (see paragraph 15 above). The claimant contends that the Tribunal has failed to give adequate reasons on its findings regarding the status of the 4 September 2021 email. The claimant's evidence was that the allegation in the first respondent's Solicitor's 4 September 2020 email that she had behaved in an inappropriate manner towards the second respondent and signalled the possibility of disciplinary action "*was the tipping point for me*". The Tribunal has made a finding that the second respondent's reference to misconduct in his 13 August 2020 email to the claimant (page 252 in the Bundle) was "misguided"

but makes no finding in relation to similar language/accusations referred to in the first respondent's Solicitor's email of the 4 September 2020) which the claimant said was the trigger for her resignation. Further, the Tribunal has repeatedly misrepresented the matters the claimant relied upon as amounting to fundamental breaches of her contract by the first respondent. The Tribunal's findings on the 4 September 2021 email are opaque, confusing and not **Meek** compliant.

80. The Tribunal notes but does not accept the claimant's position. The Tribunal is satisfied it does not require to vary its Findings, in response, in the interests of justice.

Conclusions

81. While we have varied the Reasons for our original Judgment, it being in the interests of justice to do so, that Judgment is confirmed, without variation, and the claimant's claims of detriment for making a protected disclosure, and for constructive unfair dismissal, are unaffected, as those claims did not succeed, and that Judgment is confirmed.

Employment Judge: **R McPherson**
Date of Judgment: **18 March 2022**
Entered in register: **25 March 2022**
and copied to parties