EMPLOYMENT TRIBUNALS

Claimant: Dr S Kumar

Respondent: The Care Quality Commission

Heard at: Manchester Employment Tribunal

On: 22, 23, 24, 25 and 26, 29 and 30 November 2021 AND 07 (in chambers without the parties), 08, 09, 10, 13 and 14 June 2022

14 July 2022 and 22 July 2022 (in chambers for deliberation)

Before: Employment Judge Mark Butler
Ms C Bowman
Ms CA Titherington

Representation
Claimant: Mr G Mahmood (of Counsel)
Respondent: Mr T Holloway (of Counsel)

RESERVED JUDGMENT

1. The claimant's claims that he was subject to a detriment on the grounds of having made a protected disclosure succeeds.

2. The claimant is awarded the sum of £23,000 for injury to feelings.

REASONS

INTRODUCTION

1. The claimant presented his claim form on 16 July 2019. He brought claims of having been subjected to a detriment on the grounds of having made a protected disclosure or a series of protected disclosures.

2. This case came before Employment Judge Ainscough for a Preliminary Hearing on 24 January 2020. At this hearing, EJ Ainscough granted the claimant's application to amend to include further protected disclosures that had not been pleaded in his original claim. The parties were directed to produce an agreed list of issues by 28 February 2020. This agreed list of issues was contained at p.71 of

the bundle.

3. Although not an agreed document, a summary of the claimant's disclosures and detriments was created on behalf of the claimant. This was helpful in that it put into a single document the following: details of the protected disclosures and/or detriments, where it was addressed in the evidence and the respondent's position in relation to it (the tribunal has considered this document carefully, as it was disputed whether all the matters recorded as being conceded by the respondent had in fact been conceded).

4. The tribunal was assisted in this case by a file of documents that ran to 1235 electronic pages (which included the index). However, during the proceedings there were a number of additional disclosures, as part of the parties ongoing duties to the tribunal and also at the request of the tribunal. This included the following:

    a. A summary and a final Royal College of Surgeons Report (both with redactions to protect patient confidentiality),
    b. An agreed gist which provided some explanation as to what was behind redactions in the summary report but without impacting on patient confidentiality,
    c. Various emails, most notably of the 19 November 2021 from Mr Damian Riley to the claimant and the 24 November 2021 which was a 'Message from the Chair', and
    d. A letter disclosed by the claimant dated 07 June 2022, which was disclosed on 09 June 2022.

5. The was a disagreement between Mr Holloway and the tribunal in terms of the approach adopted in relation to the letter of 07 June 2022, which we consider prudent to note. Mr Holloway raised a submission that it was an unfair process if the tribunal hears detailed submissions on a document from those seeking to introduce it, without first hearing submissions as to whether it wanted to consider its details. As the tribunal cannot unsee what it has seen. However, in circumstances where the document was only created very late and a matter of 2 days before it was disclosed, the tribunal was not concerned that this was a deliberate withholding of the document (if there were any concerns on that, then the tribunal would have agreed with Mr Holloway's submission). From the tribunal's perspective, the question of relevancy was to be the guiding principle as to whether this document was to be admitted in evidence or not. In those circumstances the detail of the submissions made by Mr Mahmood could not cause any unfairness. If the tribunal, on viewing the document, considered the letter to be relevant to the issues in this case then it was likely to allow the document into evidence, and then consider how to enable Mr Holloway to challenge the detail of it (if needed). And if it was not considered relevant, then having seen it or having heard detailed submissions on it would have no bearing on the decision, as it was not relevant. In short, the letter was considered relevant, and was admitted by the tribunal, having taken some time to consider its contents.

6. The letter of 07 June 2022 was introduced sometime after the claimant had been cross-examined. To ensure that the respondent had the opportunity to challenge this document, the claimant was recalled to give evidence on it on 10 June 2022. This was to ensure fairness to the parties.

7. The claimant gave evidence and called no further witnesses.

8. The respondent called the following witnesses:

    a. Ms Wood
    b. Mr Zeiderman

c. Ms Mallaburn [ADD DETAILS]

9. The tribunal approached witness evidence from the respondent flexibly, at least in terms of hearing it. This led to the order of witness evidence being moved around where it was needed. This was to ensure that the tribunal was not deprived of the necessary evidence. This did lead to two witnesses going part-heard in the first set of dates, with the intention to complete their evidence when the tribunal reconvened on the additional dates (however, see below).

10. Unfortunately, the case was not completed in the initial 7 day listing (alluded to above). The case was listed for a further 6 days. The first day of these additional days was used by the tribunal to read back into the case, given the volume of evidence and the length of period since the first part of the case was heard.

11. During the break in the case, sadly Ms Wood encountered some personal matters that meant she was not able to return to complete her evidence. There was enquiry made by the respondent to identify whether Ms Wood would be able to respond to written questions. However, this was not possible. Ms Wood had completed her evidence up until re-examination, which Mr Holloway was quite some way through. In circumstances where it was unknown if or when Ms Wood would be able to complete her evidence, where Ms Wood's evidence was substantially complete, and where no applications were made on behalf of the respondent, the tribunal considered that it would not be in the interests of justice to delay this case any further. We were satisfied that Ms Wood had given her evidence, and this would be considered as it stood at the end of day 7 of this case. We do take this opportunity to wish Ms Wood well, and hope she makes a speedy recovery.

RESTRICTED REPORTING ORDER

12. The first day of this hearing was used for reading into the case, with neither party present. On the morning of day 2, following the disclosure of a summary report prepared by the Royal College of Surgeons dated 11 November 2021, the respondent made an application for an order akin to a Restricted Reporting Order, pursuant to Rule 50 of the Employment Tribunal Rules of Procedure.

13. In short, this report concerned an investigation into the University Hospitals of Morecambe Bay NHS Trust's orthopaedic department following concerns raised in relation to a number of clinical incidents. The report that was disclosed to the tribunal was heavily redacted to protect the confidentiality of those patients, whose treatments were subject to the investigation. However, the application was made with a view to restricting knowledge of the report and its outcomes until the trust had had the opportunity to discuss the report with the affected patients and their families. The Trust was concerned that if the report was referred to in open court before this these discussions had taken place, it could cause harm to individuals and families.

14. The tribunal carefully assessed the submissions made on behalf of the respondent and the claimant. The tribunal gave full weight to the principle of open justice and to the Convention right to freedom of expression, and in particular to the role that the press played in these important principles (especially given that there were a number of members from the press present).

15. Having considered this matter, the tribunal granted Rule 50 protection in a form that was akin to a restricted reporting order. This was to last from the morning of day 2 of the hearing (23 November 2021) until 4pm on day 4 (24 November 2021), as it was expected that all those affected by the findings of the report would have knowledge of its contents by this time. The respondent was reminded that it could

apply to extend the Order should it be needed. At which point the tribunal would assess further whether any such restrictions would need to be extended. No application to extend the order was made, and the restrictions came to an end at 4pm on 24 November 2021.

PRESS APPLICATIONS FOR ACCESS TO DOCUMENTS

16. A member of the press, who was present at the hearing remotely, made a number of requests to view various documents that are contained in the file of documents. Given that the reporter would have had access to these documents had he attended physically at the hearing, and having taken notice of the comments of HHJ Taylor in **Guardian News and Media Ltd v Dimitri Rozanov and Others [2022] EAT 12**, access to the documents was facilitated through using the share screen option on the Cloud Video Platform. This was considered an appropriate way of ensuring that the report could access the documents, which would assist him in reporting on a case that had clear public interest, whilst maintaining control of the document.

ISSUES

17. For ease, we simply copy the agreed list of issues from the file of documents, given that this offered us a clear and precise list of issues in this case:

1. It is accepted that the Claimant made qualifying protected disclosures in accordance with sections 43B (1) (d) and (f) of the Employment Rights Act 1996 on the following dates:
    - 1.1 10 May 2015 by email to Mike Richards;
    - 1.2 6 September 2018 by email to Jonathan Driscoll;
    - 1.3 8 September 2018 by email to Mike Zeiderman;
    - 1.4 30 October 2018 by email to Kim Woods and Mike Zeiderman.
2. It is accepted that the following disclosures could amount to qualifying protected disclosures:
    - 2.1 16 August 2018 by email to Mike Zeiderman;
    - 2.2 7 December 2018 by email to Mike Zeiderman.
3. It is not accepted that the following disclosures amount to protected disclosures or qualifying protected disclosures:
    - 3.1 16 June 2018 by email to Mike Zeiderman;
    - 3.2 29 June 2018 by telephone to Mike Zeiderman (the Claimant is put to proof on what was said, and therefore disclosed, on the call);
    - 3.3 2 July 2018 by email to Mike Zeiderman;
    - 3.4 17 September 2018 by email to Mike Zeiderman;
    - 3.5 1 November 2018 by telephone to Mike Zeiderman (the Claimant is put to proof on what was said, and therefore disclosed, on the call).

4. Were the disclosures on 16 August 2018, 7 December 2018, 16 June 2018, 29 June 2018, 2 July 2018, 17 September 2018, 1 November 2018 qualifying disclosures in accordance with the Employment Rights Act 1996

5. Were the disclosures on 16 June 2018, 29 June 2018, 2 July 2018, 16 August 2018, 30 October 2018, 1 November 2018 and 7 December 2018 made to a prescribed person pursuant to section 43F of the Employment Rights Act 1996, being the regulator of NHS trusts and/or in line with Hibbins v Hesters Way Neighbourhood Project?

6. Were the disclosures on 10 May 2015, 6 September 2018 8 September 2018 and 17 September 2018 made to the Claimant's employer and/or a prescribed person pursuant to section 43F of the Employment Rights Act 1996, being the regulator of NHS trusts?

7. Was the Claimant subjected to the following alleged detriments on the grounds of having made the said disclosures (or any of them):

   7.1 His specialist advisor role being placed on hold on 14 January 2019;

   7.2 His engagement as specialist advisor was terminated on 28 February 2019;

   7.3 He was informed he did not have the right to appeal.

8. Was the reason, or principal reason, for termination of the Claimant's engagement that he made qualifying protected disclosures?

9. Has the Claimant submitted his claim in time? Specifically:

   9.1 Did the Claimant's suspension from his role on 14 January 2019 continue to the termination of his employment on 28 February 2019?

   9.2 Was the Claimant's suspension an ongoing act of detriment?

   9.3 Did the acts of detriment form part of a series of similar acts?

10. What remedy should the Claimant be entitled to?

11. What damages should be awarded for injury to feelings?

18. It was explained to the tribunal by Mr Mahmood on the second day of the hearing that the claimant's case was being brought in two ways. That the primary case was that the claimant had been subjected to the pleaded detriments due to the protected disclosures combined. This was termed throughout the hearing as the claimant having 'become a thorn in the side' of the respondent. And, in the alternative, if not for the combination of disclosures, then he was subjected to those detriments on the grounds of specific protected disclosures that he made.

19. On the afternoon of the fifth day of the hearing, and following a line of questioning pursued by Mr Mahmood in cross examining Mr Zeiderman, Mr Holloway made a submission that the Mr Mahmood was seeking to expand the claim.

20. In short, Mr Holloway submitted that the claimant's pleaded case was narrow and concerned only whether he was subject to detriment due to the fact of him having made disclosures. Whilst the cross-examination was going beyond that, and seeking to introduce a case based on him having been subjected to detriment on the basis that the claimant raised concerns, the respondent had not fulfilled their role in ensuring adequate procedures were in place to address those concerns, that the claimant knew that the respondent had failed in their role, and that the respondent knew that the claimant knew and as a result subjected him to a

detriment. Mr Holloway submitted that the claimant should be confined to the pleaded case, which is contained at paragraphs 38 to 39.5 of the amended particulars of claim, at pages 63 and 64 of the bundle.

21. We heard submissions made by Mr Mahmood on this matter, and further submissions made by Mr Holloway, before retiring to consider this issue.

22. Having considered the pleadings carefully, the tribunal concluded that the line of questioning pursued by Mr Mahmood was not expanding the case, but was clearly covered by the pleaded case:

    a. Paragraph 38 is the pleaded case, and it is a broad pleading that covers the alleged action or inaction of the CQC.
    b. Paragraph 38 had to be read alongside the complete pleadings. In paragraph 37 of the amended particulars of claim, there is reference to s.43F. This must meant that the pleaded case is concerned with matters within the remit of the CQC. And that is in its role of overseeing trusts and ensuring action is taken where concerns for patient safety are identified.
    c. Further, the claim is brought on a number of different disclosures (many to individuals concerned with the CQC), which are, broadly speaking, of a similar nature. Raising similar issues multiple times, must suggest that there is an issue with the actions being taken, if such did require action to be taken.
    d. And for completion purposes. Causation is always a matter of fact for a tribunal. It would be hugely detrimental to any claim of this nature if limited pleadings on causation were to act against a claimant, given that the knowledge behind taking action and/or the motive rests with the respondent (which explains s.48(2) of the Employment Rights Act 1996). To require more, on matters outside of the claimant's knowledge, would act as a significant barrier to bringing such claims. It is imperative that the tribunal has all the facts before it when addressing causation.

CLOSING SUBMISSIONS

23. We were provided with skeleton arguments from Counsel on behalf of both the claimant and the respondent. And we were also assisted by closing oral submissions made on behalf of both too. We do not repeat those here, but considered them carefully in reaching this decision.

LAW

24. Relevant statutory provisions of the Employment Rights Act 1996:

43B Disclosures qualifying for protection.

(1) In this Part a " qualifying disclosure " means any disclosure of information which, in the reasonable belief of the worker making the disclosure, [F2 is made in the public interest and] tends to show one or more of the following—

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

(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,

(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,

(d) that the health or safety of any individual has been, is being or is likely to be endangered,

(e) that the environment has been, is being or is likely to be damaged, or

(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

43C Disclosure to employer or other responsible person.

(1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure F2 ...—

(a)to his employer, or

(b) where the worker reasonably believes that the relevant failure relates solely or mainly to—

(i)the conduct of a person other than his employer, or

(ii) any other matter for which a person other than his employer has legal responsibility, to that other person.

(2) A worker who, in accordance with a procedure whose use by him is authorised by his employer, makes a qualifying disclosure to a person other than his employer, is to be treated for the purposes of this Part as making the qualifying disclosure to his employer.

43F Disclosure to prescribed person.

(1) A qualifying disclosure is made in accordance with this section if the worker—

(a) makes the disclosure F2 ... to a person prescribed by an order made by the Secretary of State for the purposes of this section, and

(b)reasonably believes—

(i) that the relevant failure falls within any description of matters in respect of which that person is so prescribed, and

(ii) that the information disclosed, and any allegation contained in it, are substantially true.

(2) An order prescribing persons for the purposes of this section may specify persons or descriptions of persons, and shall specify the descriptions of matters in respect of which each person, or persons of each description, is or are prescribed.

25. The respondent is identified as 'prescribed person' for the purposes of s.43F, for 'matters relating to (a) the registration and provision of a regulated activity as defined in section 8 of the Health and Social Care Act 2008 and the carry out of any reviews and investigations under Part 1 of that Act; or (b) any activities not covered by (a) in relation to which the Care Quality Commission exercises its functions'.

26. The respondent's objectives are described in s.3 as being:

(1)The main objective of the Commission in performing its functions is to protect and promote the health, safety and welfare of people who use health and social care services.

(2)The Commission is to perform its functions for the general purpose of encouraging—

(a)the improvement of health and social care services,
(b)the provision of health and social care services in a way that focuses on the needs and experiences of people who use those services, and
(c)the efficient and effective use of resources in the provision of health and social care services.

27. The tribunal was taken to, and took into account in reaching this decision, a range of case law , including:

    a. Chesteron Global Ltd v Normohahmed (2015) ICR 920
    b. Kilraine v London Borough of Wandsworth (2018) EWCA Civ 1436
    c. Jesudason v Alder Hey Children's NHS Foundation (2020) EWCA Civ 73
    d. Babula v Waltham Forest College [2007] ICR 1045 (CA)
    e. Darnton v University of Surrey (2003) 615 EAT
    f. Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337
    g. Warburton v Chief Constable of Northamptonshire Police (2022) EAT
    h. Maund v Penwith District Council [1984] ICR 143
    i. NHS Manchester v Fecitt and Others (2011) EWCA Civ 1190
    j. El-Megrisi v Azad University (IR) in Oxford, UKEAT/0448/08
    k. The Co-Operative Group Ltd v Baddeley [2014] EWCA 658
    l. Royal Mail Group v Jhuti (2020) ICR 731
    m. Parkins v Sodexo Ltd. [2002] IRLR 109
    n. Street v Derbyshire Unemployment Workers Centre [2004] EWCA Civ. 964

FINDINGS OF FACT

We make the following findings of fact based on the balance of probability from the evidence we have read, seen, and heard. Where there is reference to certain aspects of the evidence that have assisted us in making our findings of fact this is not indicative that no other evidence has been considered. Our findings were based on all of the evidence and these are merely indicators of some of the evidence considered in order to try to assist the parties understand why we made the findings that we did.

We do not make findings in relation to all matters in dispute but only on matters that we consider relevant to deciding on the issues currently before us.

General Matters

28. The claimant has been employed by the University Hospitals Morecambe Bay NHS Foundation Trust ("the Trust") since August 2011.

29. The claimant throughout is engagement with his employing Trust has not been subject to any disciplinary action. Nor has there been any negative Performance Report raised about the claimant in respect of any investigations that he had been involved in for the respondent.

30. The respondent, and its members are required to comply with a number of policies. This includes the Complaints Policy (pp.1135-1144). This sets out the issues which the respondent can look into (pp.1136-1137). It explicitly records a number of matters which do not fall under the cope of this procedure. This includes:

> - Complaints referring to the activities or actions of CQC employees conducted in a personal capacity or outside of business hours. These will need to be referred to the relevant Line Manager or HR.

31. The respondent applies a 'Grievance Procedure' in relevant circumstances (see pp.1161-1169). This envisages informal action to be taken by employees in the first instance:

> 5.1 We encourage all employees to seek to resolve matters informally wherever possible.
>
> 5.2 Employees are encouraged where practical to have an informal discussion with the person they have the concern with, either at the time of any incident or as soon as possible afterwards.
>
> 5.3 If this should fail to resolve the issue, or the employee feels unable to talk to the person concerned, they should raise it informally with their line manager at the earliest possible opportunity. If the concern is in relation to their line manager and it is not appropriate to have this discussion with them direct, it should be raised with the next most senior manager. The senior manager may propose the involvement of a peer line manager from a different team or directorate if appropriate.

32. The principles contained within the various policies and procedures that apply for those engaged by the respondent are similar to those applied by Trusts to their employees. Including, attempts to resolve matters informally, before then raising an issue with a line manager should an informal approach not resolve the matter.

33. Issues of probity are very serious issues for medical practitioners. Where there are concerns of probity around an individual, this has to be taken seriously. A potential consequence is to be struck off by the General Medical Council ('GMC'). Given the potential consequences, where an issue of probity is raised, it would be reasonable for a medical practitioner to be concerned and upset.

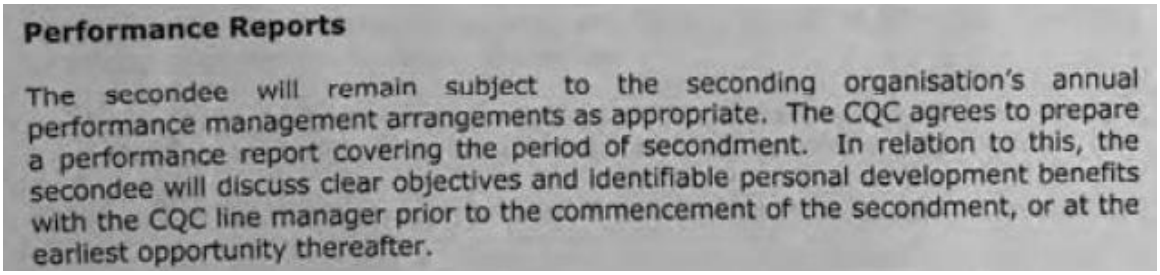
34. The respondent has an overarching responsibility for Trusts. It has a role in regulating Trusts to ensure that patient safety is achieved. It can require action to be taken by Trusts where there are concerns about failings within a Trust which is impacting on patient safety. Whilst it is the GMC who has responsibility for fitness questions concerning individual doctors, the respondent plays a role where such matters have been raised in ensuring that action is taken by the Trust, for which it has wide investigative powers. The role of the respondent and the GMC overlaps, to a degree, when patient harm is identified. Where there are concerns with actions being taken by a Trust in relation to individual medical practitioners, where this is causing patient harm, this would fall within the remit of the respondent.

Contract with CQC

35. Alongside his primary role with the trust, the claimant was appointed under a secondment contract with the respondent on 11 July 2014 (pp.88-90). This was to act as a Clinical and Professional Advisor ("Specialist Advisor"). This contract was open-ended.

36. Under the secondment agreement with the respondent, either party could terminate the contract by giving at least 4 weeks' notice. It was provided that whilst the claimant was on secondment, he would remain an employee of the trust but be subject to the direction of the respondent in respect of day-to-day activities for the duration of the secondment.

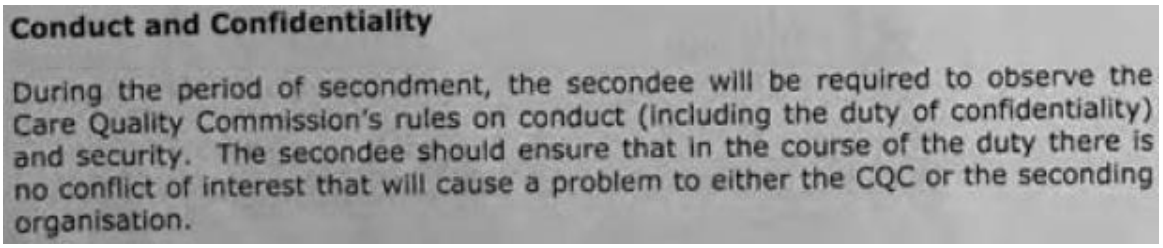
37. The secondment contract provided for performance reports to be prepared by the respondent:



Performance Reports

The secondee will remain subject to the seconding organisation's annual performance management arrangements as appropriate. The CQC agrees to prepare a performance report covering the period of secondment. In relation to this, the secondee will discuss clear objectives and identifiable personal development benefits with the CQC line manager prior to the commencement of the secondment, or at the earliest opportunity thereafter.

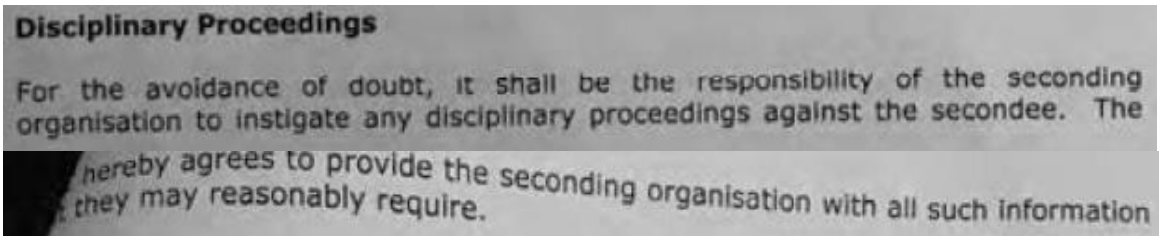
38. Whilst on secondment, the claimant was required to observe the respondent's rules on conduct:



Conduct and Confidentiality

During the period of secondment, the secondee will be required to observe the Care Quality Commission's rules on conduct (including the duty of confidentiality) and security. The secondee should ensure that in the course of the duty there is no conflict of interest that will cause a problem to either the CQC or the seconding organisation.

39. In respect of disciplinary action under the secondment contract, this remained with the trust, irrespective of what work the claimant was undertaking. With the respondent's involvement in disciplinary matters limited to providing necessary information:

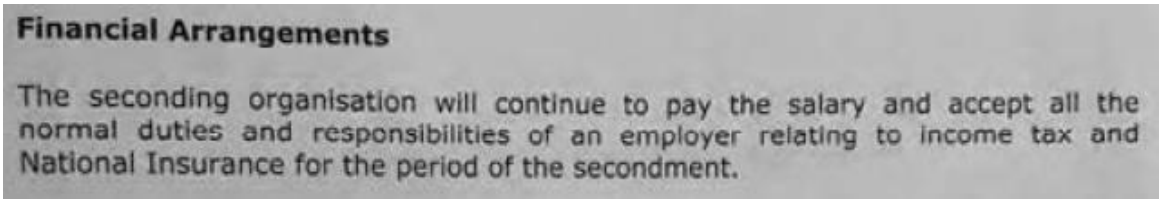


Disciplinary Proceedings

For the avoidance of doubt, it shall be the responsibility of the seconding organisation to instigate any disciplinary proceedings against the secondee. The

[redacted] hereby agrees to provide the seconding organisation with all such information [redacted] they may reasonably require.

40. Under the secondment arrangement, whilst on secondment the Trust continued to be responsible for the pay of the claimant:



Financial Arrangements

The seconding organisation will continue to pay the salary and accept all the normal duties and responsibilities of an employer relating to income tax and National Insurance for the period of the secondment.

41. On 14 April 2016, the claimant raised a claim form for payment to SPAqueries following an inspection that he had been involved in. This was being claimed as a casual worker (p.155).

42. In consequence, on 15 April 2016, the claimant was sent a letter from Ms Carla Malhorta from the respondent's Human Resources Team. This letter added the claimant to the respondent's 'bank' of Specialist Advisors (see p.165) in order to facilitate the outstanding payment. With this letter, the claimant was sent a copy of the causal worker agreement, which he was asked complete and return as soon as possible.

43. A query was raised with the claimant concerning the contract type that he was engaged with the respondent on.

44. In response to this query, the claimant explained by email to SPAqueries the following (p.154):

> Thanks for the mail. Unlike my previous claims, I did this inspection while I was on annual leave (12th and 13th of April 2016) and in my own time (as it was called for at very short notice). Hence, my employer did not have to relieve me for CQC duties.Hope this clarifies the situation.I have copied this mail to my service manager also for the records.

45. Ms Danielle Hughes, a HR administrator with the respondent replied to the claimant to explain the following (p.152):

> On this occasion we can pay you as a Casual Worker, however, going forward you can only be placed on 1 contract at one time and we are unable to accommodate switching of contracts throughout your Engagement as a SPA.
>
> Can you therefore please confirm if you would like to remain on a Secondment Agreement for future Inspections or change permanently to a Casual Workers Agreement?

46. The claimant replied to this email on 19 April 2016, confirming that his preference was to remain on the secondment contract for future inspections. He attached to this email (p.152) a signed copy of the Casual Worker Agreement as requested (a copy of which is at pp.157-164).

47. Under the terms of the Casual Worker Agreement, the claimant was only contractually obliged to comply with the respondent's policies and procedures when he was involved in an inspection for the respondent. That is the clear explicit wording of clause 4.1 of that contract (see below).The casual worker agreement contained the following clauses:

> **4 Policies and Procedures**
>
> 4.1 During any activity undertaken you must comply at all times with all CQC policies and procedures, and required values and behaviours and you must make yourself familiar with these. You must also complete any mandatory training requirements which will be specified by CQC.

5 Remuneration

5.1 You will only be paid for the activity you undertake, evidenced by submitting you [timesheet and] expenses claim and relevant receipts. You will be paid for activity undertaken in the preceding month at the rate set out in Part I of this agreement monthly, in arrears, on the 19th of each month.

5.2 CQC will make all necessary deductions from your remuneration as required by law and shall be entitled to deduct from your pay or other payments due to you any money which you may owe to CQC at any time.

5.3 CQC will pay any sums due to you by direct transfer to your bank or building society account. You are responsible for providing correct bank account details to CQC.

8 Termination of Agreement

8.1 CQC shall be entitled to terminate this agreement summarily i.e. without notice, without prejudice to any rights or claims it may have against you if at any time you are guilty of any type of gross misconduct, for example dishonesty, theft, gross negligence or breach of duty or you commit any serious breach of this agreement.

8.2 If you no longer wish to be considered for Clinical and Professional Advisors activity by CQC you should inform the HR Department as soon as possible.

8.3 Either party may terminate this agreement by giving notice of 4 weeks to the other in writing.

48. On 18 May 2016, Danielle Hughes, from the Flexible Workforce Team, emailed the claimant. That email was requesting the claimant to provide evidence of his right to work in the UK, since he had changed to a Casual Worker Agreement. The claimant replied that same day and explained that he had not changed to this agreement, but that it was a one off arrangement (p.177):

Hi,
Please note that I have not changed to a casual worker agreement. I was asked to do this for one of payment and I have indicated that I would like to remain on secondment. I tried to help the CQC at short notice to do this inspection and I found lot of hassles around it. For the avoidance of doubt.,I want to be paid for the inspection I did at Southport hospital and I do not want to be on the casual workers agreement .Please ring me on [redacted], if you have any issues.
Regards

49. The claimant entered into the casual worker agreement on these terms (amongst others) on a one-off basis, to enable him to claim payment for an inspection that he was involved in whilst on leave. The claimant gave clear evidence on this (paragraph 8 of the claimant's witness statement), which is consistent with the findings above.

50. Aside from the inspection that took place on the 12 and 13 April 2016 (whilst the claimant was on annual leave) all other inspections were paid in line with the secondment agreement, including those that the claimant was involved in after the April 2016 inspection. This included the inspection the claimant was involved in at the East Lancashire Hospital in or around September 2018. The claim form in respect of this inspection is at p.269, and expresses the following:

Please find attached a copy of the Secondee claim form for your attention.

Our records show that you are on a Secondee contract with CQC.

Mr.	Shyam	Kumar	25853917	25853917	SpA: Doctor - Consultant

Secondees should make their pay and mileage claims via their employers (Trust) in the first instance, who will invoice CQC to recover the costs. These claims must be countersigned by an authorised signatory who will be the Lead Inspector/Inspection Manager.

Please forward your authorised CQC claim form and all receipts to your Employer Trust Finance Department and request them to raise a sales order/invoice to recharge for your time and expenses.

Please request them to add your name, inspection date, name and address of location you worked on secondment for Care Quality Commission and include breakdown of costs, and include VAT.

51. The claimant was engaged with the respondent on a secondment contract from 11 July 2014 up until his disengagement. He was paid pursuant to a casual worker agreement on a one off basis for an inspection that he undertook on or around 12 and 13 April 2016. The claimant continued to be engaged on a secondment contract with the respondent after this inspection was completed.

The Disclosures

Disclosure 1

52. The claimant was involved in an inspection for the respondent in 2015. This as led by Amanda Stansford. Following some concerns with respect the adequacy of the inspection.

53. In light of his concerns, the claimant sent a letter dated 10 May 2015 to the Chief Inspector of Hospitals, Professor Sir Mike Richards. He summarised his main concerns as being:

> 1. CQC's failure to act appropriately to address whistleblowers' concerns
> 2. Curtailing my professional independence and undermining or obstructing me from carrying out my duties in accordance with the GMC's guidance, *Good Medical Practice*.
> 3. Bullying that I experienced at the hands of CQC officials

54. As part of this letter, the claimant raised a concern that patient safety is being significantly compromised by the behaviour of some CQC staff.

55. Neither Mr Zeiderman or Ms Wood had knowledge of this letter sent by the claimant in advance of the decision to disengage him from the respondent. The tribunal accepted the evidence of Mr Zeiderman and Ms Wood on this point. This was made before MR Zeiderman was in post, and there is no reason as to why either would have had this brought to their attention at a later date.

56. The respondent accepts that this disclosure is a protected disclosure (see para 25 of amended Grounds of Resistance).

Disclosure 2

57. A number of individuals working at the Trust, including the claimant had concerns in relation to the clinical practice of Dr X. A decision was made following a meeting of consultants, that this issue was to be raised with the Trust's MD (pp.199-206). The concerns were far ranging, and included concerns for patient safety and

patient harm and issues of probity. These matters were subsequently investigated both internally and externally, with findings that supported the concerns raised by the consultants. The claimant's concerns, and those of the other consultants were found to be justified.

58. On 16 June 2018, the claimant emailed Mr Zeiderman (see p.234). He raised concerns about patient safety, and raised a concern about the trust burying it 'under the carpet'. This was a concern that Mr Zeiderman understood to involve negligently performed operations, concerns around waiting lists being manipulated and significant patient harm.

Disclosure 3

59. On 29 June 2018, following up his email of 16 June 2018, the claimant called Mr Zeiderman. During this phone call, the claimant reiterated concerns that matters had been raised with the Trust's Medical Director, but that the Trust was refusing to look into those concerns but was wanting to cover up the issues. The claimant also raised specific examples of to suspicious deaths, after which the Trust had not taken steps to prevent further harm. The claimant provided specific details of the two cases to Mr Zeiderman in this phone call. The claimant was disclosing information of serious and/or potential harm to patients. Mr Zeiderman accepted the claimant's paragraph 38 as being the content of that phone call.

60. Ms Wood could not say either way whether she had knowledge of these disclosures around the time, or by 06 December 2018. However, it is more likely than not that Ms Wood was informed of these concerns raised by the claimant. Ms Wood accepted that this type of information would be shared with her. And that such issues were discussed during monthly engagement meetings. So on balance, the contents of this phone call and the contents of the 16 June 2018 email was likely to have been shared by Mr Zeiderman with Ms Wood.

Disclosure 4

61. On 02 July 2018, the claimant emailed Mr Zeiderman (see p.232). This concerned the decision to send 7 cases out for external review. The claimant raised concerns of the approach being adopted. This included being concerned about having to wait until August for feedback. That the terms of reference had not been shared. And that 'people are scared to submit clinical incidents due to loss of anonymity as some colleagues have started to meet with reprisals'. This email builds upon the previous two disclosures.

Disclosure 5

62. On 16 August 2018, the claimant emailed Mr Zeiderman (see pp.256-258). The claimant provides detailed information of matters concerning patient safety as a result of Dr X being allowed to continue to practice. He explains that this has led to at least 3 further patients being harmed.

63. The respondent accepts that this disclosure is a protected disclosure (see para 21(iv)(d) of amended Grounds of Resistance)..

Disclosure 6

64. On 06 September 2018, the claimant emailed Mr Jonathan Driscoll, copying in Amanda Lear (see p.268). He raises concerns around the inadequacy of a CQC inspection. Most notably, he discloses that certain areas have high infection rates

and need further investigation and that there are instances of bullying and harassment of doctors at the Trust.

65. The respondent accepts that this disclosure is a protected disclosure (see para 28 of amended Grounds of Resistance).

Disclosure 7

66. On 08 September 2018, the claimant emailed Mr Zeiderman (see p.274) concerning the East Lancashire inspection. He raises similar patient safety issues in this email to that in disclosure 6, raises concerns about documents being withheld during the inspection process which impacts upon the validity of the inspection and raises concerns about the lack of specialisms in the inspectors.

67. The respondent accepts that this disclosure is a protected disclosure (see para 28 of amended Grounds of Resistance).

Disclosure 8

68. The claimant followed up his email of 08 September 2018, with a further email to Mr Zeiderman on 17 September 2018. This therefore must be read alongside that email. The claimant adds that the issues that he had previously raised concerning bullying and harassment of medical staff. He further reiterates that he has no confidence in the team which di the inspection.

69. Mr Zeiderman accepted that these matters could, if correct, impact upon the health and safety of individuals.

Disclosure 9

70. On 30 October 2018, the claimant emailed Ms Wood, with Mr Zeiderman copied into it (see p.282). This disclosed information relating to clinical concerns raised about a SAS doctor, patient safety matters including the deaths of two patients, issues concerning retaliatory action against the clinicians that had raised concerns, around racial discrimination, and that this is having the effect that '…white colleagues were now terrified to raise concerns about BME doctors'.

71. The respondent accepts that this disclosure is a protected disclosure.

Disclosure 10

72. On 01 November 2018, the claimant telephoned Mr Zeiderman (see claimant's witness statement at paragraph 63). The claimant told Mr Zeiderman of some serious patient safety concerns, including a recent example of an elderly lady, where he explained the following:

> actions. The most recent example was an elderly lady on who Dr X had performed hip replacements on both sides overlooking a serious dislocation in the pelvis who later presented with severe pelvic discontinuity and inability to walk. This patient later presented as an emergency through the Accident and Emergency department and had to be referred to the regional pelvic unit. In the opinion of some of my colleagues, it is unlikely that this patient's lost limb function would ever be restored. I suggested to Mr Zeiderman that the Respondent should, as the Trust's regulator, ask the Trust to perform a look back exercise and proactively identify any other patients who were at risk of presenting later with irreversible consequences due to Dr X's practices. I also informed Mr Zeiderman that the Trust were reluctant to order a comprehensive review as it would likely cause them reputational damage at the expense of patient safety.

73. This evidence was not challenged through cross-examination and I therefore taken to be accurate.

Disclosure 11

74. The claimant emailed Mr Zeiderman on 07 December 2018 (see p.317). This raised further information about further patient malpractices as a result of operations by Dr X. He raises that there does not appear to be any appetite in the Trust to do a look back exercise.

75. The respondent accepts that this disclosure is a protected disclosure (see para 21(iv)(g) of amended Grounds of Resistance).

Investigations into the Trust and the actions of Dr X

76. In January 2020, The Tulloch Review into 20 cases involving Dr X was released (see pp.534-552).

77. A Royal College of Surgeon Review was also undertaken. This related to some 46 cases, of which there were concerns highlighted in relation to 26 of those cases. It was agreed between the parties that the following conclusions were found:

    a. some surgeries undertaken by Dr X were not completed to an acceptable standard
    b. some of the surgery and quality of care provided by Dr X was unacceptable.
    c. some clinical decision making to undertake surgery by Dr X was inappropriate.
    d. in some cases there was either no or a lack of evidence of a “Duty of Candour”

78. On 28 October 2021, following receipt of the draft report from the Royal College of Surgeons, Mr Damian Riley, Associate Medical Director of the Trust, emailed the claimant (see p.1090). It was explained that:

> The College Reviewers studied case records for patients that you as a whistle-blower had raised concerns about. Thank you for doing so. The reviewers have made findings of note in a number of the cases they looked at. The report gives the Trust a number of recommendations arising from their findings. I will be taking part in a 'task and finish group' to oversee the delivery of the recommendations.
>
> I hope this helps gives you reassurance that your whistle-blowing actions were not in vain, and you were correctly targeting improvements in patient safety.

Events leading up to, during and after the focus group

79. On 16 July 2018, the claimant emailed Bari Shahedal and Joshi Ameeta to give his version of what happened had a meeting the previous Friday, after Shahedal left the meeting (see p.242). He records that one of the consultants made accusations that consultants, including the claimant, were 'jacking up waiting lists'. This was with a view to gaining financially through patients paying for private care. This is an accusation of probity. These accusations were targeted at the claimant.

80. On 30 October 2018, Mr Sinha, in an email to a broad recipient list, described individuals who were involved in activities against doctors of Indian origin as being 'traitors of their community' (p.393). Given that the claimant had raised complaints about the Dr X's practice, and the close nexus in time that this comment is made to those complaints, on balance it is likely that this comment is about the claimant.

81. The claimant understood that Mr Sinha intended on attending the focus group meeting at the Trust and raise criticisms against him.

82. In anticipation of Mr Sinha raising issues at the upcoming focus group, the claimant sent an email to Mr Zeiderman on 29 October 2018. He explained that due to Dr X having been placed under restrictions by the GMC, '[s]ome fallouts of this will be reflected during the CQC inspection this week' (see p.281).

83. On 30 October 2018 at 21.46, the claimant emailed Ms Wood, copying in Mr Zeiderman (p.282). In this letter the claimant sets out the background to issues within the Orthopaedic Department, concerning Dr X. He continues to explain that since having raised his concerns about that doctor, he has been subjected to intimidation, and that some friends of the doctor have been trying to turn the matter into a BME/SAS doctor issue. The email concludes with the following:

> **Some of us would not be coming for the meeting tomorrow, as people with an agenda might deliberately make the environment unpleasant. If you need any further information, I am happy to discuss with you over the phone.**

84. Ms Wood did not read this email in advance of the Focus Group meeting. And when Ms Wood did read the email and replied (see p.283), she either did not read the email in full, or at the very least did not process the information contained within it. Ms Wood only responded to detail contained within the first two paragraphs of the claimant's email of 20 October 2018. She does not engage with the concerns around the claimant and others being intimidated by friends of Dr X and nor does she respond in any way on matters concerning the Focus Group meeting and people attending to 'deliberately

85. The Focus Group took place on 31 October 2018. In this meeting, Mr Sinha raised a number of issues which the Investigating Manager, Ms Helen Vine, considered were not appropriate for the Focus Group. This includes raising concerns of bias, discussing personal grievances, allegations of patients going private to benefit a group of surgeons that are not BME, that there was some motive to report clinical

incidents, and linked matters to his ethnicity. Although we did not hear evidence from anybody present in the meeting and who had heard the discussion (Ms Wood was present but wearing ear-phones and did not hear the discussion), the tribunal did have access to notes made from the meeting (p.288-292). Given the content of the emails above, and our findings in respect of those, on balance these comments were likely made about the claimant by Mr Sinha in the Focus Group meeting.

86. The notes at pp.282-292 were not a verbatim record of the discussion that took place at the meeting.

87. The claimant was informed by two doctors present in the Focus Group meeting that Mr Sinha referred to the claimant by name and accused him of the matters recorded in the paragraph above.

88. On 12 November 2018, the claimant raised issue with Mr Sinha for having named him in the Focus Group alongside various allegations. This letter is at pp.295-297 of the bundle. This letter includes the following:

    a. It informs Mr Sinha that the letter is not a formal complaint
    b. That the letter is giving Mr Sinha the opportunity to rectify any misunderstandings and rectify any errors he may have made
    c. That further action would only have to be taken, depending on the outcome form this exchange
    d. The claimant, along with other colleagues, had raised performance issues in relation to a doctor. He had no concerns about any other SAS doctors.
    e. That the claimant always valued the clinical work of Mr Sinha, and that he has never expressed any concerns about his clinical ability.
    f. That the claimant became aware of emails written by Mr Sinha (the emails referred to above), in which there are allegations that have been 'extremely' hurtful and has damaged his reputation and professional standing among his peers.
    g. That he recognises that Mr Sinha's change in attitude toward him coincided with him having escalated concerns about a colleague, that being Dr X.
    h. The claimant understood that Mr Sinha had named the claimant at the Focus Group meeting and that he has raised an allegation that the claimant had stopped another colleague from operating in order to take cases privately
    i. That such an could only be to mislead the CQC as there was no truth to it based on the data
    j. That such an allegation is very serious
    k. That Mr Sinha has breached the claimant's confidentiality by naming him directly in front of others at the meeting, which was not a Trust meeting but a CQC Focus Group meeting.
    l. Lists what he considers Mr Sinha's actions could amount to.
    m. Suggests actions that Mr Sinha could take to fix the situation. This included an apology and an email to the groups previously emailed to the effect that what he had said was false and defamatory.
    n. The claimant required a response to this letter within 5 working days, after which he would be considering whether he was going to take formal action in relation to the matter.

89. Mr Sinha did not respond to the claimant.

90. The matters raised by the claimant, in his letter to Mr Sinha, were serious issues. The claimant, if these matters were true, had the right to feel upset, in particular with the matters that were probity matters or race. All involved in this case accept

that allegations concerning probity, bias and racism are serious matters and could have impacted on the claimant's fitness to practise.

91. The letter sent by the claimant to Mr Sinha was an attempt to resolve matters informally, before making any decision as to whether to pursue a formal process. This is in line with the policies and procedures adopted by both the respondent and the employing Trust. We accept the claimant's evidence on this, which is consistent with the wording in the letter that he sent to Mr Sinha, in which he is seeking to resolve the situation. This is also consistent with the approach the claimant took after this letter was sent. For example, see the email of 11 December 2018, sent by the claimant to Joshi Ameeti of the employing Trust (pp.315-316).

92. On 29 November 2018, Ms Wood met with Mr Sinha to discuss the concerns that he had raised with her about the letter he had received from the claimant. It is likely that Mr Sinha explained a number of matters, including the following: explaining that after having attended the CQC Focus Group meeting, at which the claimant was not present, he received a letter from the claimant that he considered to be intimidating and threatening. And that this letter contained allegations that he had accused the claimant of taking patients privately rather on the NHS, and that he had deliberately tried to mislead the CQC and allege wrongdoing by the claimant. Mr Sinha was unsure how the claimant received this information, and denied the accusation. Although there are no notes of this meeting, Ms Wood's recollection of this meeting does, to a degree, follow the letter sent by Mr Sinha subsequent to this meeting (pp.264-265) which appears to be Mr Sinha's record of what was discussed (discussed below).

93. At this meeting Mr Sinha showed Ms Wood a copy of the letter the claimant had sent to him on 12 November 2018. However, Ms Wood did not make a copy of this letter for her records, nor was she sent a copy at a later date. There is simply nothing to support that Ms Wood had taken or received a copy of the letter that the claimant sent to Mr Sinha. Ms Wood's witness evidence notes that she was shown a copy of the letter (at paragraph 15 of her witness statement, and confirmed as only seeing it at paragraph 19), but at no point does she state that she took a copy of it nor that she was sent a copy of it at a later date. And this is consistent with numerous other part of Ms Wood's witness statement and comments in documents throughout the bundle. For example:

    a. At paragraph 26 of Ms Wood's witness statement, when presenting her evidence when informing Ms Mallaburn of the reasons behind the decision to disengage the claimant, Ms Wood writes that she explained the letter that the claimant had sent to Mr Sinha, and forwarded other relevant documents. If Ms Wood had a copy of this letter then it would have been a relevant document to send to Ms Mallaburn. And the reason she did not was likely because she did not have a copy of it.
    b. at p.355 when Ms Wood raises this matter with the claimant's employing Trust (noted in more detail below), she only refers to having 'had sight of the letter'.
    c. At p.440 in an email between Ms Wood and Mr Zeiderman when discussing this letter, Ms Wood references only having seen the 'bullying letter'. At no point does she say that she had a copy of it or has been sent a copy of it.
    d. On 18 December 2018, when Ms Wood referred the complaint from Mr Sinha to Ms Aubrey, the Director of Governance at the Trust (see p.355), Ms Wood copies and pastes sections of Mr Sinha's letter dated 29 November 2018 (referenced below). However, she does not include anything from the letter sent by the claimant. Nor does she attach a copy. Given that this communication is concerning that communication by the

claimant, it would be a strange decision not to include some reference to specifics of the claimant's letter if MS Wood did have a copy of it.

94. At this meeting with Ms Wood, Mr Sinha was upset. This is Ms Wood's clear evidence, and there is no reason to question this evidence.

95. Mr Sinha sent a letter to Ms Wood following his meeting with her. This letter was sent on 29 November 2018 (the letter is incorrectly dated 29 August 2018), and is at pp.264-265. In this letter he explains:

    a. Following the Focus Group meeting he received a letter from the claimant (referred to as Mr X).
    b. He had concerns of a breach of confidentiality, being fearful of being harassed or having false allegations made against him as a result, that the claimant may have misused his CQC status to obtain information.

96. Mr Sinha did not deny the accusations made by the claimant in this letter to Ms Wood.

97. The respondent did not, nor did anybody on behalf of the respondent, investigate this issue between the claimant and Mr Sinha, before taking action in relation to it.

98. On 18 December 2018, Ms Wood referred the complaint from Mr Sinha to Ms Aubrey, the Director of Governance at the Trust (see p.355). Ms Wood makes reference to the concerns raised by Mr Sinha, before copying excerpts from Mr Sinha's letter into the email. Ms Wood concludes by asking to be kept updated on any investigations or actions that are taken as a result.

99. The Trust did not investigate or take action against the claimant for having sent the letter to Mr Sinha on 12 November 2018. The Trust sought to resolve the dispute through mediation. However, this was not agreed upon by the claimant or Mr Sinha. The claimant raised a formal grievance in relation to the situation. Mr Sinha did not raise a formal grievance with the Trust in relation to the actions of the claimant (see p.352).

Disengagement of the claimant

100. A few days after 29 November 2018, Ms Wood phoned Mr Zeiderman. She explained that she had met with Mr Sinha to discuss a letter that he had been sent by the claimant. Ms Wood explained that she had seen the letter and concluded that she had become concerned with the behaviour of the claimant and that the letter showed that he was bullying and intimidating colleagues. Ms Wood further explained that she was concerned that the claimant was using his position with the respondent to intimidate his colleagues.

101. During this same phone conversation, Mr Zeiderman told Ms Wood that he had received a number of emails from the claimant during 2018, where he had expressed concerns about the use of SAS doctors at his Trust.

102. On balance we find that before 06 December 2018, Mr Zeiderman had not seen the letter that the claimant had sent to Mr Sinha. Although Mr Zeiderman in his oral evidence said he had seen the letter, the evidence before the tribunal suggests on balance that he did not see it by this date. Ms Wood's witness statement at no point says that she passed on a copy of the letter to Mr Zeiderman. Mr Zeiderman's witness statement is also quiet on this. There are no emails with this letter attached between Ms Wood and Mr Zeiderman. At p.440 of the bundle,

when Ms Wood emails Mr Zeiderman on 10 May 2019, which is some time after 06 December 2018, Ms Wood refers to the bullying letter as something that she has seen. Clearly if Ms Wood had shared that letter with Mr Zeiderman then this would read that 'we have seen' or it would explain that it was a document which Ms Wood had shared with Mr Zeiderman. All of this supports this finding.

103. On 06 December 2018, Mr Zeiderman made the decision to terminate the claimant's contract with the respondent (see p.311). In actioning this decision, Mr Zeiderman sent an email to Ms Malhorta with the following:

> Hi Carla
>
> I have had a number of complaints regarding one of our orthopaedic SPAs, Mr Shyam Kumar
>
> These relate to his behaviour within his host organisation and abuse of his position within CQC
>
> I would be grateful if he could be removed from the SPA list
>
> Regards
>
> Mike

104. Mr Zeiderman is the individual with the authority to terminate SPA contracts, and as at this date he was instructing that the claimant was removed from the SPA list, and disengaged. This was Mr Zeiderman's clear oral evidence. He expressed this on several occasions. This is consistent with his witness evidence. And this is consistent with the emails sent by those involved in the disengagement process around the time. Ms Mallaburn's oral evidence also supports this finding She gave evidence that Mr Zeiderman wanted to remove the claimant from the SPA list and gave instructions for that to be done. And that there was no request to do anything before this decision was actioned. In other words, it was not conditional on anything. Ms Mallaburn also explained that Mr Zeiderman was the National Policy Advisor, and it was 'his decision to make'. Ms Mallaburn expressed that Mr Zeiderman was not seeking advice form her line manager, and that she was just actioning what her line manager had directed her to do.

105. The reasons Mr Zeiderman was making that decision to disengage the claimant at that time were twofold: first was the claimant's behaviour within his host organisation, and secondly, abusing his position within CQC. There was no reference to the inappropriate letter sent by the claimant to Mr Sinha in this email.

106. Ms Malhorta responded to Mr Zeiderman by email on 07 December 2018 at 08.55 (p.313). In short she informed Mr Zeiderman that the claimant would be put on hold with immediate effect. She then requested further information to be sent before the claimant could be officially removed. Ms Malhorta, was giving a clear explanation that Mr Zeiderman's instruction would be carried out once further information was provided, not that such would be conditional on what that information was.

107. On 07 December 2018, at 09.11, Ms Mallaburn emailed the Flexible Workforce explaining that the claimant was to be moved to the 'on hold' register. And that 'Mike Zeiderman has asked that we do so but I need further information around the concerns before we move to disengagement'. In effect, what this email expresses is that a decision had been made by this point by Mr Zeiderman, however, that Ms Mallaburn could only action disengagement once she received sufficient information from Mr Zeiderman. And that is consistent with the oral

evidence of Ms Mallaburn when cross-examined on this email and the email from Ms Malhorta to Mr Zeiderman above.

108. Mr Zeiderman provided further information by email on 07 December 2018 at 16.49 (see p.313), when he replied to Ms Malhorta and explained the following:

> Hi Carla
> I had been contacted by Kim Wood who is the local IM
> Apparently Mr Kumar has been using his position with CQC to manipulate colleagues
> In addition he has been involved with a group of consultants trying to get their Trust to stop using associate specialists as
> Independent practitioners and has been using his position with CQC inappropriately.
> I know Kim is very concerned about his behaviour
> Regards
> Mike

109. This expanded reasoning extended the reason for disengagement to three reasons: first, using his position with CQC to manipulate colleagues, secondly, being part of a group of consultants trying to get their Trust to stop using associate specialists, and thirdly, using his position with CQC inappropriately.

110. On 13 December 2018, Ms Mallaburn had drafted a letter that was to be sent to the claimant (see p.319). This was a letter informing the claimant that he was being placed on hold, pending further information being gathered. Ms Mallaburn emailed this draft letter to Ms Malhorta. Ms Mallaburn also raised her concerns with sending the letter as she did not consider that the respondent had enough detail to take this action. And she was concerned about putting the respondent 'at risk'. The only plausible interpretation of this, despite Ms Mallaburn's evidence, given that the context of the discussions are around disciplinary action, is that putting the respondent at risk is referring to the risk of legal action.

111. Ms Mallaburn had a conversation with Ms Wood on 18 December 2018. Ms Mallaburn was seeking a better understanding behind the decision to disengage the claimant, in light of her concerns around the lack of detail that the respondent had.

112. By email dated 18 December 2018 (see pp.324-326), Ms Wood forwarded a number of other emails to Ms Mallaburn. These were forwarded in the context of providing Ms Mallaburn the reasoning behind disengaging the claimant. Ms Mallaburn removed parts of emails that she considered to be irrelevant to the decision, and this is clear by the body of that email where she states "*I have copied and pasted the email from Mr Kumar to Mike Zeiderman below as the email exchange was long and most of it irrelevant.*" The emails forwarded by Ms Wood were relevant and played a central role in this decision to disengage the claimant from his role with the respondent. The emails contained in this email were:

a. The 08 September 2018 email from the claimant to Mr Zeiderman (Protected Disclosure 7)
b. The 17 September 2018 email from the claimant to Mr Zeiderman (Protected Disclosure 8)
c. The letter of 29 November 2018 (wrongly dated as August) that Mr Sinha had sent to Ms Wood.

113. Ms Wood did not forward to Ms Mallburn on 18 December 2018 the claimant's letter to Mr Sinha. This was despite Ms Wood providing Ms Mallaburn with context behind the decision to disengage the claimant. This again further

supports the finding above, that Ms Wood unlikely had a copy of this letter. It would not make sense to withhold from forwarding the claimant's letter at this time if Ms Wood had a copy of it. This is especially given that Ms Wood did forward to Ms Mallaburn Mr Sinha's response to the claimant's letter at this time.

114. On 08 January 2019, Ms Mallaburn in emailing Ms Jackson, included detail passed on to her by Ms Wood. This included additional new allegations against the claimant, that had not been contained in any of the discussions concerning the claimant's disengagement. This included: the claimant was involved in an inspection in 2016 and was not suitable. That the claimant was well known as he had reported bullying in the trust, however, when investigated, was found to be in the middle causing the issues.

115. On 14 January 2019, Ms Mallaburn wrote to the claimant (see pp.345-346). This recorded the allegations against the claimant, as explained to Ms Mallaburn by Ms Wood. Ms Mallaburn in 'investigating' this matter spoke to Ms Vine, Ms Wood and Mr Zeiderman only. And the discussion with Ms Vine was limited to whether information from a focus group can be shared (see p.424. I also note here that this specific allegation was later held to be unfounded and not part of the reasons for disengagement, see below). Ms Mallaburn did not meet with either the claimant, nor with Mr Sinha. In this email, Ms Mallaburn explained that the claimant's role as Specialist Advisor was being placed on hold. And that this was a neutral act. The claimant was informed that he had the opportunity to provide his views on the allegations by 21 January 2019.

116. The claimant provided a response to Ms Mallaburn to the allegations on 15 January 2019 (see p.347).

117. Due to an IT issue, this response was not received by Ms Mallaburn, but instead had been quarantined by the computer server, having been marked as suspicious.

118. Ms Mallaburn wrote to the claimant on 29 January 2019. In this communication, Ms Mallaburn explained that the claimant had not provided a response within the requisite timescale. And that based on the information available to the respondent, a decision had been made to disengage the claimant.

119. On that same day, 29 January 2019, the claimant responded to Ms Mallaburn and explained that it appeared that a decision had been made without having considered his reply. A copy of his reply was attached to that email (see pp.362-363). This email was also quarantined by the respondent's computer server.

120. On 04 February 2019, MS Mallaburn emailed the claimant to explain that she had now been able to access the claimant's reply, that the decision to disengage had been rescinded, and that the respondent would approach the matter afresh in light of the claimant's response.

121. Ms Mallaburn wrote to the claimant on 28 February 2019. The decision to disengage the claimant was reinstated. However, this was founded on only one of the four allegations. I copy this part of the decision letter here:

- **It is alleged that you had then used the information from the focus group to contact a colleague. You were alleged to have made them aware that you have gained information from the focus group and have then challenged them in relation to their contribution.**

Whilst you have advised that you gained the information from the focus group meeting via colleagues. You then used unconfirmed information to approach your colleague to challenge his participation in the meeting. In your correspondence you state that you were following trust policy to attempt to resolve a grievance informally. However, it is believed that the approach and conduct following the focus group is not in line with the expected behaviours/ values of CQC. I find that on the basis of the evidence considered, this element of the feedback is upheld.

Taking account of all of the information and evidence reviewed, including your correspondence, a decision has been made to proceed with the disengagement of your services. This has been agreed by Mike Zeiderman, National Professional Advisor for Surgery. The reason for the disengagement is that the conduct following receiving information from the focus group was not in line with the expected behaviours/ values of a CQC Specialist Advisor.

As per paragraph 14 of your CQC Specialist Advisor Terms of Engagement, it is therefore terminating your casual worker agreement by giving you notice of 4 weeks in writing. During these 4 weeks no further inspections will be offered to you. Your final date of engagement with CQC is Thursday, 28 March 2019. As per your terms of engagement, there is no right of appeal against this termination of agreement.

122. On 10 May 2019, Mr Zeiderman emailed Ms Wood (see p.440), explaining that he had been asked for further information from Mr Matt Wood from the Private Office Correspondence Unit. Mr Zeiderman included a draft of the email that he intended to include in this response. The focus in this draft was on emails sent by the claimant to Mr Zeiderman (many of which are Protected Disclosures). There is no reference to the letter sent by the claimant to Mr Sinha. Mr Zeiderman wrote as follows:

Essentially Mr Kumar sent me a number of emails expressing concerns that his own organisation were allowing an Associate Specialist to operate independently and that this was leading to poor patient outcomes.

In his letters he stated that he was representing 'concerned colleagues'
There have been GMC documents published which lay down the criteria which Trusts should adhere to if they wish to engage in such arrangements.
I brought these concerns to the local team who told me that the Trust were aware of the concerns, had investigated them and had not found them to be valid.

In addition, much of the problem appeared to be related to Mr Kumar, who was unhappy with the arrangement and wanted it stopped. It was also brought to my attention that Mr Kumar had been using his position within CQC to intimidate his colleagues.

Following a discussion between Kim and myself it was decided that he should no longer be used as an SPA and I informed the FWO accordingly.

I hope that clarifies the situation but would be happy to provide any further information if necessary

123. Ms Wood responded to Mr Zeiderman that same date. She queried whether it would be worth adding the following:

Do you think it is worth adding in about the bullying letter (which I have seen) sent to the SAS doctor, challenging him on speaking out at a CQC focus group (the SAS doctor had not actually said anything untoward). On receipt of the letter, the SAS doctor informed CQC he felt bullied and intimidated. The matter is being dealt with formally by the trust. This is not within CQC values and behaviours.

124. Mr Zeiderman, when he made the decision to disengage the claimant, took into account, alongside the matters raised with him by Ms Wood on the telephone in early December 2018, the emails sent by the claimant to him over the course of 2018, where he raises concerns about SAS doctors (this is the clear evidence of Mr Zeiderman in his witness statement, at para 28), amongst other things. These were part of the decision making process, and part of the reasons underpinning the decision. These had a material influence in the decision making of Mr Zeiderman. Those emails are the emails of 16 June 2018 (Protected Disclosure 2), 02 July 2018 (Protected Disclosure 4), 16 August 2018 (Protected Disclosure 5) the email of 06 September 2018 (Protected Disclosure 6) which was essentially repeated to Mr Zeiderman on 08 September 2018 (Protected Disclosure 7), 17 September 2018 (Protected Disclosure 8) and 30 October 2018 (Protected Disclosure 9).

Appeal

125. Neither the secondment agreement nor the casual worker agreement gives a right of appeal against a decision to terminate the agreement where it is terminated by the giving of 4 weeks' notice.

126. Ms Mallaburn, albeit wrongly (see our findings above), considered the claimant to be engaged on a Casual Worker Agreement (see for example, p.426).

127. In the decision letter of 28 February 2019, sent by Ms Mallaburn to the claimant, the claimant's engagement with the respondent was terminated on 4 weeks' notice. And, it was expressed that 'as per your terms of engagement, there is no right of appeal against this termination of agreement'.

128. On 05 March 2019, at 11.31, the claimant acknowledged receipt of the decision letter sent to him by Ms Mallaburn (see p.428).

129. Ms Mallaburn on 05 March 2019, at 13.40, reiterated that there was no right of appeal against the decision to disengage, due to the nature of the claimant's terms of engagement.

130. Ms Mallaburn was simply following the process as she understood it to apply to the claimant.

Conclusions

Were the disclosures protected disclosures?

131. The disclosures that are disputed as being protected disclosures are disclosures 2,3,4,8 and 10. And that is the focus of the discussion here.

132. In respect of disclosures 2,3,4 and 10, these are all brought in the same way: as being disclosure of information, which was in the reasonable belief of the claimant, as being in the public interest and tends to show that the health or safety of any individual has been, is being or is likely to be endangered and/or that information tending to show this is being or is likely to be deliberately concealed. And that he made he disclosed this to the respondent as a prescribed person, for which he reasonably believed fell within any description of matters in respect of which that person is so prescribed, AND that the information disclosed, and any allegation contained in it, are substantially true.

133. Disclosure 2 alone would unlikely to reach the level of being a protected disclosure, as it does not contain the requisite disclosure of information. However,

this must be read alongside disclosure 3, which was a phone conversation between the claimant and Mr Zeiderman as a follow up to this email. Given our findings above, this tribunal has no doubt that the claimant across disclosures 2 and 3 (when read together) raised concerns of the health and safety of patients. And that he was concerned that this matter was being concealed by the Trust. Given that this involved the welfare of patients in a clinical setting, this easily satisfies the public interest requirement. The purpose of this disclosure was to ensure that the respondent, that had overarching regulatory oversight of the Trust, exercised its powers to prevent continued patient harm. It was entirely reasonable that the claimant considered this to fall within the respondent's remit as a prescribed person. And given the findings in the subsequent reviews, the information disclosed and the allegations made were evidently substantially true. Both disclosures 2 and 3 are therefore protected disclosures.

134. Turning to disclosure 4. This builds further on disclosures 2 and 3, and again cannot be read in isolation from these, given that it is a development of the discussion in those two disclosures. This discloses further information that people had become scared to submit clinical incidents and that the MD would not speak to other departments and staff members that have raised concerns. This clearly falls within the category of information tending to show that the health and safety is likely to be endangered. And the information surrounding concerns about not knowing the terms of reference, and the matter about not investigating the concerns raised by other departments and staff members is information tending to show that this information is being or is likely to be concealed. This very much goes back to the burying under the carpet comment made by the claimant in Disclosure 2. We repeat what we stated above. Given that this involved the welfare of patients in a clinical setting, this easily satisfies the public interest requirement. The purpose of this disclosure was to ensure that the respondent, that had overarching regulatory oversight of the Trust, exercised its powers to prevent continued patient harm. It was entirely reasonable that the claimant considered this to fall within the respondent's remit as a prescribed person. And given the findings in the subsequent reviews, the information disclosed and the allegations made were evidently substantially true.

135. And turning to disclosure 10. Given our findings above, this clearly reaches the level of being a protected disclosure. The claimant disclosed specific information in relation to the health and safety of patients, with a clear example provided. He disclosed information that the Trust were reluctant to undertake a comprehensive review for risk of reputational damage, which is further building on previous disclosures concerning concealing of the patient risk. This is clearly within the public interest, being concerned with safety patient. And it was reasonable for the claimant to believe that monitoring a Trust and ordering a review to ensure patient safety where failings had been identified, falls within the respondent's remit. Put bluntly, it does. And, the information was later established as being substantially true through a number of external reviews.

136. For completeness. In respect of disclosure 8, this is brought slightly differently to the others. This is brought solely in whether this was disclosure of information, which was in the reasonable belief of the claimant, as being in the public interest and tends to show that the health or safety of any individual has been, is being or is likely to be endangered. This was pleaded as being to either the claimant's employer (s.43C ERA) and/or to a prescribed person pursuant to s.43F ERA.

137. It seems somewhat surprising that disclosure 7 was accepted by the respondent as being a protected disclosure, and yet disclosure 8, which simply builds upon that disclosure and inevitably would be read alongside it, is not. The

claimant is disclosing information about the bullying and harassment of staff, which is information that the claimant reasonably believes is in the public interest, given it is about broad treatment of staff that can impact on patient care, and tends to show that health and safety of individuals was being endangered. A matter accepted by Mr Zeiderman under cross-examination (although this itself is not conclusive). This was made whilst the claimant was undertaking an inspection for the respondent, and therefore they were in the role of employer at the time, and were the body to make the disclosure to (s.43C of ERA). But also, it would have fallen within s.43F, given it was whilst an investigation was taking place, and therefore it would clearly fell within the remit of the CQC.

138. For the avoidance of any doubt, the disclosures that remained in dispute as to whether they were protected disclosures or not, namely disclosures 2,3,4,8 and 10, are all found to be protected disclosures for the purposes of the Employment Rights Act 1996.

Was the claimant subject to detrimental treatment?

139. The decision to place the claimant on hold was not communicated to him until 14 January 2019. This was despite the decision having been made on 07 December 2018. Although this was described as a neutral act in the 14 January 2019 communication with the claimant, this tribunal was satisfied that that was not the case. Placing the claimant on hold was simply part of a process that was implemented during which the claimant was no longer able to act as a SPA, and during which the decision had already been made to disengage him. It is difficult to view this as a neutral act in circumstances where nobody at the respondent was seeking to investigate the matter before making any decision, other than talking to Mr Zeiderman and Ms Wood, who had already reached a conclusion that the claimant should be disengaged, and to Ms Vine, on a limited matter. And in circumstances where the decision maker, that being Mr Zeiderman, had in no uncertain terms instructed those from HR to remove the claimant from the SPA list. Disengaging the claimant was a foregone conclusion at the point the claimant was informed that he was placed on hold, and in those circumstances it is not plausible that it is a neutral act.

140. Applying the legal test as laid down in **Warburton v Chief Constable of Northamptonshire Police (2022) EAT 42**, this tribunal accepts that placing a person on hold in circumstances whereby disengagement was inevitable and where its practical impact is to preclude that individual from being involved in inspections, as it did to the claimant, is a detriment.

141. Mr Holloway on behalf of the respondent submitted that the disengagement itself was not a detriment. He submitted that in circumstances where the claimant gave indication that he was planning on stopping participation in inspections unless certain matters were addressed, and where he describes the respondent as ‘morally corrupt’, and that the only real difference was that he did not leave ‘on his own terms’, it would not be reasonable of the claimant to view this as a detriment.

142. However, the tribunal has little difficulty in finding the disengagement to reach the level of detriment in this case. It is very difficult to see how a tribunal would not consider disengagement to reach the level of detriment in these circumstances, given the low threshold attached to that concept. This tribunal sees a world of difference between leaving on one’s own terms and being subject to disengagement. That would support, at least in the majority of cases where reputation is highly regarded, including this one, that disengagement is a detriment. Alongside this, this tribunal is mindful that this is a case where the claimant was being disengaged for having conducted himself in a manner not

befitting of the respondent, without any proper and reasonable investigation. Where his professionalism was being questioned, and his action, which was later used as the reason for disengagement was in response to that. Where he had made the decision-makers aware of potential retaliatory action against him, and no safeguards were put in place. Against this backdrop, the decision to disengage him clearly reaches the level of detriment.

143. The right of appeal is also found to reach the level of detriment. In short, a reasonable worker in the circumstances described above would likely consider it a disadvantage to not be able to challenge the decision to disengage. On that basis, this is also established as being a detriment that the claimant has been subjected to.

Causation

144. The question for this tribunal is whether any of the protected disclosures, individually or collectively materially influenced the detrimental treatment.

145. Given our findings above, it is very clear that the emails and concerns raised by the claimant in the form of protected disclosures had a material influence on the decision to disengage him. Amongst other reasons, this is particularly because of:

a. The reasons provided by Mr Zeiderman for disengaging the claimant appeared to develop throughout the period between the decision to disengage him on 06 December 2018 and his correspondence Mr Matt Wood from the Private Office Correspondence Unit, and into these proceedings. This and the lack of reference to the alleged offending letter to Mr Sinha form the claimant, casts great doubt on that being the reason for disengagement and placing on hold of the claimant.
b. The correspondence with the claimant disengaging him provides little in terms of explaining in what way his behaviour fell below the expected behaviours or values of the respondent. And there was no detail as to what in the letter from the claimant to Mr Sinah offended those principles. This again casts doubt on this being the sole reason, with other matters being trivial in the decision making process, for the decisions made.
c. During the phone call between Mr Zeiderman and Ms Wood in early December 2018, when Mr Zeiderman formed the view that the claimant could no longer be used as a special advisor, the claimant had at the forefront of his mind the emails which he had received from the claimant over the course of 2018. The emails that he is referring to include a number that are protected disclosures, or more specifically Protected Disclosures 2-10.
d. Mr Zeiderman in his own witness evidence at paragraph 28 explains that it was clear '…when combining this letter to Mr Sinah and the emails sent to myself about SAS doctors…' Again, the emails that Mr Zeiderman is referring to include those that have been found in this judgment to be protected disclosures (numbered 2-10). Mr Zeiderman places these as having more than a trivial influence.
e. Ms Wood compounds this at paragraph 33 of her witness evidence, where she explains whilst discussing the decision to disengage and the letter to Mr Sinha that 'This was particularly so against the background of the persistent emails to Mike about the use of SAS doctors and patients concerns…' Ms Wood again refers to emails as part of the decision making process. These emails are protected disclosures 2-10.
f. When Ms Wood sought to justify the decision to disengage the claimant to Ms Mallaburn through providing relevant information on 18 December

2018, she pasted two emails that were sent to Mr Zeiderman from the claimant. These are protected disclosures 7 and 8. Therefore, at the very least, protected disclosures 7 and 8 have clearly had a material influence on the decision to dismiss.

146. This tribunal is in little doubt, given the above, that Protected Disclosures 2-10 (individually and collectively) have had a material influence on the decision to disengage the claimant from his role with the respondent. And even if we are wrong on that, Ms Wood's actions of 18 December 2018, alongside the other discussions recorded above, would have led this tribunal to conclude that Protected Disclosures 7 and 8 materially influenced the decision to disengage and the claimant.

147. Given our findings that placing the claimant on hold was no more than an administrative step as a means to action disengagement, with disengagement of him being inevitable following the decision of Mr Zeiderman on 06 December 2018, the causal link is likewise established between the protected disclosures and this detriment. This is for the same reasons as that advanced above.

148. In respect of the detriment of not having the right of appeal, the tribunal does not find that this was materially influenced by a combination of the protected disclosures or by any individual disclosure. The tribunal was satisfied that Ms Mallaburn was simply applying the process as it applied to inspectors engaged on a causal worker agreement, as she genuinely believed this to be the contract under which the claimant was engaged. This did not provide for a right to appeal a decision where a casual worker was disengaged on 4 weeks' notice. The respondent satisfied the burden placed on it with regards this detriment, and that the decision not allowing the claimant the right of appeal was not materially influenced by the protected disclosures, either individually or collectively.

Were the claims brought in time?

149. The claim form was presented on 16 July 2019. This was after ACS Early Conciliation was started on 22 May 2019, and concluded on 21 June 2019. This would mean that any detriment before 23 January 2019 would be potentially out of time.

150. The claimant was disengaged from his role with the respondent on 28 February 2019. This is in time.

151. The claimant was notified that his role with the respondent was being placed on hold on 14 January 2019. However, this part of a series of similar acts, namely the act of disengaging the claimant. Therefore, this part of the claim must be considered from that date, namely 28 February 2019, and is also brought in time.

Remedy

152. The claimant does not pursue damages for any pecuniary losses in this claim. And limited his claim to an award for injury to feelings and a declaration only.

153. The claimant describes in his witness statement, and was not challenged on, how the detriments above affected him.

a. He describes that he was "shocked" when he received the email form Ms Mallaburn placing him on hold in light of allegations made about hm following the Focus Group Meeting. And was further shocked when he understood that Mr Zeiderman had made the decision to disengage him

before Ms Mallaburn's communications with him.

b. He was "confused and concerned" about the allegations made against him that led to disengagement and being placed on hold.
c. The claimant was "extremely concerned" when he considered that his protected disclosures were the reason behind his disengagement.
d. The claimant became concerned about what he describes as "snide remarks and falsehoods" said abut him by officials of the Respondent in emails.
e. That he considered that he was being subject to some form of "character assassination" behind his back.

154. Under cross-examination the claimant explained that the damage to his reputation was his loss. This was a clear concern to the claimant. This is against the backdrop of the claimant having an untarnished reputation with either his employing Trust or the respondent at the time the decision to disengage him was made.

155. The claimant can only have been exposed to the detrimental treatment from the date of his knowledge of the treatment (and not from when he considered there was a connection to him having made Protected Disclosures). This was from 14 January 2019, when Ms Mallaburn wrote to the claimant placing him on hold and giving some reasoning behind that decision.

156. The consequences of the detrimental treatment (which overlaps) must have also started on 14 January 2019, and have continued up until the release of this decision. As it is at this point where any damage to reputation is, at least to a degree, resolved.

157. It must be the case that the injury to feelings in this case is in the middle bracket of **Vento**, this a serious case but not one that merits an award in the upper band. The tribunal has considered a number of matters in considering what award to make for injury to feelings, including the matters above. Although not one is determinative.

158. There is evidence throughout this case (referenced in the findings of fact) that the decision to disengage the claimant in this case (and the placing him on hold) has had a serious impact on the claimant's reputation causing him injury to feelings. There were suggestions of misconduct by the claimant by Ms Wood and Mr Zeiderman which involved correspondence with third parties, where no evidence of this existed, and vague assertions of a breach of undefined values of the respondent (at least insofar as the decision as communicated to the claimant is concerned) used in an attempt to justify the decisions made in this case, after the event. This is against the backdrop of the respondent being the regulator of the claimant's employing Trust. Where appointment to undertake work for the respondent is a badge of expertise and of good-standing in the community of medical practitioners. Where disengaging him and/or placing him on hold would inevitably impact upon his reputation among his peers, his employing Trust and the wider community. We accept the evidence of the clamant that this caused damage to his reputation, caused him shock, confusion and concern. And in consequence injured his feelings.

159. In these circumstances, this tribunal awards the claimant the sum of £23,000 for injury to feelings.

Employment Judge **Mark Butler**
Date__24 August 2022___

JUDGMENT SENT TO THE PARTIES ON
25 August 2022

FOR THE TRIBUNAL OFFICE

Notes
Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

Public access to employment tribunal decisions
Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990 ARTICLE 12

Case number: **2410174/2019**

Name of case: **Dr S Kumar** v **The Care Quality Commission**

Interest is payable when an Employment Tribunal makes an award or determination requiring one party to proceedings to pay a sum of money to another party, apart from sums representing costs or expenses.

No interest is payable if the sum is paid in full within 14 days after the date the Tribunal sent the written record of the decision to the parties. The date the Tribunal sent the written record of the decision to the parties is called **the relevant decision day**.

Interest starts to accrue from the day immediately after the relevant decision day. That is called **the calculation day**.

The rate of interest payable is the rate specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as **the stipulated rate of interest**.

The Secretary of the Tribunal is required to give you notice of **the relevant decision day**, **the calculation day**, and **the stipulated rate of interest** in your case. They are as follows:

the relevant decision day in this case is: 25 August 2022

the calculation day in this case is: 26 August 2022

the stipulated rate of interest is: **8% per annum**.

Mr S Artingstall
For the Employment Tribunal Office

GUIDANCE NOTE

1. There is more information about Tribunal judgments here, which you should read with this guidance note: www.gov.uk/government/publications/employment-tribunal-hearings-judgment-guide-t426

   If you do not have access to the internet, you can ask for a paper copy by telephoning the Tribunal office dealing with the claim.

2. The payment of interest on Employment Tribunal awards is governed by The Employment Tribunals (Interest) Order 1990. Interest is payable on Employment Tribunal awards if they remain wholly or partly unpaid more than 14 days after the **relevant decision day**. Sums in the award that represent costs or expenses are excluded. Interest starts to accrue from the day immediately after the **relevant decision day**, which is called **the calculation day**.

3. The date of the **relevant decision day** in your case is set out in the Notice. If the judgment is paid in full by that date, no interest will be payable. If the judgment is not paid in full by that date, interest will start to accrue from the next day.

4. Requesting written reasons after you have received a written judgment does **not** change the date of the **relevant decision day**.

5. Interest will be calculated as simple interest accruing from day to day on any part of the sum of money awarded by the Tribunal that remains unpaid.

6. If the person paying the Tribunal award is required to pay part of it to a public authority by way of tax or National Insurance, no interest is payable on that part.

7. If the Secretary of State has claimed any part of the sum awarded by the Tribunal in a recoupment notice, no interest is payable on that part.

8. If the sum awarded is varied, either because the Tribunal reconsiders its own judgment, or following an appeal to the Employment Appeal Tribunal or a higher court, interest will still be payable from **the calculation day** but it will be payable on the new sum not the sum originally awarded.

9. The online information explains how Employment Tribunal awards are enforced. The interest element of an award is enforced in the same way.