EMPLOYMENT TRIBUNALS

Claimant: **Mrs Z Windle**

Respondents: **(1) The Chief Constable of West Yorkshire Police**
(2) The Chief Constable of South Yorkshire Police
(3) Claire Cuttell
(4) Police Sargeant Greenwood

Heard at: **Leeds**
On: **22-25 August and (deliberations only) 5 September 2022**

Before: **Employment Judge Maidment**
Members: **Ms J Lee**
Ms GM Fleming

Representation
Claimant: **In person**
Respondent: **Mr D Jones, Counsel**

RESERVED JUDGMENT

The claimant's complaints that she was subjected to detriments on the ground that she made protected qualifying disclosures fail and are dismissed.

REASONS

Issues

1. This claim is being determined on a part-remission back by the Employment Appeal Tribunal. Since that remission back there has been a further preliminary hearing on 25 February 2022 conducted by Regional Employment Judge Robertson. He identified the scope of remission as follows: "Whether the conduct complained of in complaints 5, 6 and 7 amounted to detrimental treatment and, if so, whether it was on grounds of the protected disclosures; and whether the conduct complained of in complaints 3 and 4, which was found to be detrimental, was on the grounds of the protected disclosures."

2. The claimant made 5 accepted qualifying protected disclosures. She alleges that she was subjected to the following detriments because she made the protected disclosures:

   2.1. Detriment 3 – the respondents cancelled the claimant's work bookings for 30 April 2019 and 4 May 2019 or asked for cancellation of the bookings by the contractor, Capita

   2.2. Detriment 4 – the respondents suspended the claimant from receiving further bookings via Capita or requested that Capita suspend her from further bookings after 4 May 2019

   2.3. Detriment 5 – the fourth respondent wrongly disseminated to [Claire Cuttell], Superintendent Humpage, Elizabeth Thirkettle, Beverley Bedford and Stephanie Leavers an email from PC Sanders which was marked "protected"

   2.4. Detriment 6 – having made a complaint to the claimant's professional body, the NRPSI, the third and fourth respondents deliberately refused to cooperate and properly follow-up the NRPSI's complaints investigation. Whilst indicating that they had further information to provide, they failed to provide it. This meant that the claimant was subjected to a formal investigation by her professional body for longer than was necessary.

   2.5. Detriment 7 – the engaging in excessive email correspondence without justification between the third respondent, the fourth respondent, Warwickshire Police, Greater Manchester Police, Capita and others. The claimant says that the correspondence was overzealous in the number of communications and its extending beyond her vetting status to her CTC and DBS clearances.

3. It is not in dispute that detriments 3 and 4 were detriments. The issue for the tribunal is whether the claimant was subjected to them on the grounds of the protected disclosures. The claimant contends that the respondents could have continued to offer her work notwithstanding she did not have the requisite vetting clearance and she was singled out not to be offered any work, because she had made protected disclosures.

4. The issues for the Tribunal in respect of detriments 5, 6 and 7 are whether the conduct amounted to detrimental treatment and, if so, whether the claimant was subjected to it on the grounds of the protected disclosures.

5. The parties agreed that there was no challenge as to the first tribunal's factual findings. Within the findings of fact below, those set out in italics are of the original tribunals whereas this tribunal's further findings and summary of evidence is set out in ordinary typeface.

6. Whilst it might have been expected that a part-remission back would have resulted in this tribunal having a more reduced scope of enquiry than the first, the reality of the situation is that the tribunal has heard all of the same evidence before the initial tribunal and the case has been conducted very much as if a complete rehearing. Issues have, however, emerged before this tribunal which it is far from clear emerged in argument (or at least to the same extent) before the first.

7. It is noted that not all of the claimant's complaints have been remitted. In particular, one of the detriments complained of by the claimant was that the third respondent made a complaint of professional misconduct against the claimant to her professional body the NRPSI. The complaint asserted that the claimant was defrauding the taxpayer to get more money by not being booked via Capita. Secondly, it asserted that the claimant had breached confidentiality/the GDPR. Whilst found to be a detriment, the original tribunal concluded that the referral to NRPSI was not materially influenced by the claimant's protected disclosures. That finding stands and the tribunal's assessment of any detrimental treatment subject to the remission is be viewed against that background.

8. The tribunal had before it an agreed bundle of documents numbering some 557 pages. The only addition to the bundle which had been before the first tribunal was a policy document on the use of interpreters.

Evidence

9. Having identified the issues with the parties, the tribunal took some time to privately read into relevant documentation and the witness statements exchanged between the parties which indeed were, with one exception as regards the claimant's evidence, those before the first tribunal.

10. The claimant firstly gave evidence on her own behalf relying on her written witness statement, a supplementary witness statement and a (new) additional supplementary witness statement dealing with the more recently disclosed policy document. The tribunal then heard, on behalf of the respondent, from Claire Cuttell, formerly a Senior Category Manager employed by South Yorkshire Police and from the now retired Sgt Julie Greenwood of West Yorkshire Police.

11. Each side relied upon their respective written submissions which were supplemented orally after all evidence had been heard.

12. Having considered all relevant evidence, the tribunal makes the factual findings set out below.

Facts

13. The claimant is a professional interpreter and translator registered on the National Register of Public Service Interpreters (NRPSI).

14. The third respondent is a Senior Category Manager within the regional procurement team employed by the second respondent as the lead force for a collaboration agreement for the provision of procurement services for the first respondent, the second respondent, North Yorkshire Police and Humberside Police.

15. The fourth respondent is a Police Sergeant and is the regional Specific Point of Contact (SPOC) for language services and operational lead for the first respondent.

16. In 2016 the regional police forces agreed to collaborate to procure a language service. The contract was awarded to Language Empire. It was decided not to extend the contract which was allowed to end on 31 March 2019.

17. The claimant's position was that Language Empire was a disreputable company, including in circumstances where it had not paid its interpreters and had sought to divert work from other suppliers in what she regarded as fraudulent circumstances. Certainly, the position of the respondents was that Language Empire had not provided the service which had been promised to them. The police force respondents had their own concerns that unqualified and unvetted interpreters were being sent on police jobs by Language Empire. That formed a significant part of their decision not to allow Language Empire to continue to provide interpreting services.

18. The claimant, before the tribunal, did not object to her being described as a serial complainant. She said that arising out of earlier complaints, the respondents were well aware of her, but her case was that they wouldn't have taken any action against her, but for her subsequent protected disclosures. The tribunal has been referred in particular to a complaint by the claimant to the PCC in December 2018. This involved alleged errors made at Bradford Crown Court by interpreters supplied by Language Empire. The claimant's complaint

was effectively made as a member of the public – she had never accepted work from Language Empire. Sgt Greenwood was charged with investigating this complaint and made a report on 20 December 2018 explaining some, in her view, inaccuracies in the claimant's account of events.

19. Ms Cuttell confirmed that the decision to end Language Empire's contract had been taken before any complaint made by the claimant and not because of them. When put to her by the claimant that her complaints must have been an annoyance, Ms Cuttell said that no complaint was annoying and that she definitely didn't disagree with what the claimant was saying in terms of the quality of interpreters supplied by Language Empire. The tribunal accepts that to be the case. She made a referral of the claimant's earlier complaints to the police force's legal services. She described this as being part of risk management and a step she would take wherever there was any suggestion of media interest (this had been indeed suggested by the claimant).

20. *From 1 April 2019 an agreement was entered into with Capita Translation and Interpreting for the provision of interpreting services to the police forces within the collaboration agreement.*

21. *The claimant registered with Capita and provided interpretation services to the first and second respondent.* She registered in February 2019 and filled in the Capita forms to "onboard her", including an application for police vetting.

22. *A Language Services Framework had been developed by Eastern Shires Purchasing Organisation (ESPO). This framework was utilised by the Regional Procurement Team on behalf of the four Police Forces in the collaboration.*

23. *The ESPO framework provides that, to carry out police work, interpreters are required to hold the appropriate vetting clearance. The vetting requirement for interpreters is the Non-Police Vetting Level 3 (NPPV3) clearance.*

24. Ms Cuttell's position in the procurement team of Senior Category Manager would not ordinarily have required her to become involved in day-to-day operational matters regarding the interpreter contract. She had, however, become very involved in managing the Language Empire contract, including putting them on a service improvement plan, working with them to improve their recruitment and checking that they were adhering to the contract. This had included weekly telephone calls and monthly face-to-face meetings. She was very conscious that the failings of performance by Language Empire should not be repeated with Capita which led to an arrangement that she would retain

significant in-depth involvement in the Capita contract for its first 6 months. She, indeed, did.

25. Under the Language Empire contract interpreters ought not to have been used unless they had NPPV3 vetting. However, as at September 2018, only around 30% of the interpreters they used were vetted up to that level.

26. "Lessons learned" meetings were set up to avoid repeated failures once the contract passed to Capita. Ms Cuttell flagged, with the vetting service undertaken by Warwickshire police force, the need to process vetting applications more quickly. The Capita contract specifically required interpreters to be vetted to NPPV3 level, but Ms Cuttell was clear that the respondents could not take it at face value that that was what Capita were delivering. She had to do her own due diligence to ensure that Capita delivered what they were being paid for. This was to be done by periodic dip samples (a continuance of the dip sampling when the contract had been held by Language Empire) being taken of interpreters who had been supplied, in particular, during the first 6 months of the contract to ensure that they had been properly vetted. The tribunal has not been provided with any evidence of such dip samples from 1 April 2019.

27. Sgt Greenwood was the specific point of contact for the interpreters' contract, but she ensured that Ms Cuttell was alerted to any issues with a possible regional impact where it might be necessary for Capita to be held to account.

28. At the time the Capita contract went live, an assurance had been given by Capita that they had sufficient registered (and vetted) interpreters for the languages required. From February-April 2019 the respondent had monitored Capita's recruitment and vetting. The only concern related to languages which were classified as rare.

29. Capita agreed to perform services pursuant to a framework agreement with ESPO, the existence of which avoided the need for the respondent police forces to go through a process of competitive tendering, which was particularly attractive to them given the urgent need for an alternative service provider.

30. This framework was adapted to ensure its appropriateness for an arrangement with the respondent police forces. It referred to a linguist as being vetted to work on police bookings if they had "passed the NPPV level 3 or higher security vetting". Despite such wording, Sgt Greenwood was clear that the contract required NPPV3 vetting as did the National Police Chiefs Council. The tribunal concludes that higher security vetting referred to a different strand of vetting,

for example if an individual worked with counter terrorism, but this was separate and not in replacement for NPPV3 vetting.

31. Essentially, Capita operated an online portal which could be used by police officers to book interpreters in the chosen language. Such booking would generate an automatic email to all Capita registered interpreters, who, by definition, should have been vetted to NPPV3 standard. It was then for each contacted interpreter to decide whether or not to apply for the available assignment. Sgt Greenwood had access to the portal, but could not view through it the personal details or vetting status of any registered interpreter.

32. Sgt Greenwood updated an existing policy document to reflect the new agreement with Capita. This provided that Capita would ensure that the interpreter had the necessary experience and vetting. A separate section dealt with circumstances where Capita was "unable to provide a service". This provided that in such "exceptional circumstances" where Capita were unable to provide a service from their normal pool of interpreters, they would take action to obtain an interpreter from other sources. This was to be done in liaison with the Officer In Charge ("OIC") of the investigation which required the services of an interpreter. It was anticipated that the requested level of interpreter in terms of qualification, experience or vetting might not be able to be provided. In such circumstances Capita were to communicate this to the OIC, who would make a decision whether or not to use the particular interpreter offered. Ms Cuttall and Sgt Greenwood described how the OIC would conduct his/her own risk assessment balancing the urgency of the need for the interpreter against the risk of using someone who did not possess, for example, the ideal level of experience or vetting which was ordinarily required. The policy continued that if other methods were not appropriate, as a last resort, Capita would make an attempt to source an interpreter from the NRPSI database of interpreters. Again, it was noted that such interpreters may not be vetted to the NPPV3 standard and that officers had to ensure that they carried out appropriate due diligence on the individual offered.

33. The tribunal notes that the policy referred to the National Police Chiefs Council Directive of August 2016 requiring interpreters to hold NPPV3 vetting. The tribunal has not seen that document. It has, however, seen an earlier directive to Chief Constables dated 7 December 2015 which provided that any interpreter currently vetted to NPPV2 could continue to provide services, but on expiry (the tribunal was told that vetting clearance expired after a period of 5 years) should be vetted to NPPV3 level. Sgt Greenwood told the tribunal that this directive related to a change from the police requiring level 3 not level 2 vetted interpreters. As at December 2015 police interpreters wouldn't have had level 3 vetting.

34. The tribunal further notes that the claimant at all material times had Home Office Counter Terrorism Clearance. However, again that did not constitute any form of police clearance. It was a different strand of vetting for a different organisation and could not be compared to NPPV3 vetting.

35. *On 29 March 2019 the claimant sent an email to the Office of the Chief Constable of West Yorkshire Police in which she referred to Capita taking over the interpretation contract from Language Empire and raising concerns that the police should ensure that unqualified individuals used by Language Empire were not supplied by Capita to the police forces. She referred to a named "unqualified bilingual" whose "lack of qualifications and inability to interpret had compromised Crown Court trials in the Yorkshire area". The claimant referred to a number of cases and indicated that "the use of unqualified bilinguals can have a catastrophic impact on the administration of justice and cause the taxpayer to incur significant and unjustifiable costs." She said that she was raising these concerns as a taxpayer and a citizen living in the area and she said that she considered them to be of significant public interest.*

36. The claimant completed her first assignment for Capita and West Yorkshire Police on 2 April 2019. The claimant told the tribunal that Capita had a register of interpreters for police work who had been vetting at NPPV3 level. She did not have that level of vetting, but was told that Capita would pay for her to obtain it and, in the meantime, she would be put on a secondary list of interpreters who were to be used as a last resort if no one with the required NPPV3 vetting was available. The claimant said that there were a lot of interpreters on Capita's secondary list. Vetting was taking some months to complete.

37. *On 3 April 2019 the Staff Officer to the Chief Constable of West Yorkshire wrote to the claimant acknowledging her email of 29 March 2019 and indicating that it had been forwarded to the Head of Criminal Justice.*

38. *On 3 April 2019 the claimant sent a further email to the first respondent with the subject of "complaint against the procurement department". Within that email the claimant stated:*

> *"Regrettably, given the procurement department's conduct, which falls far below of what members of the public and taxpayers should expect from a department of such importance, I have no alternative but to submit a formal complaint to the Chief Constable against the procurement department and its staff responsible for the interpreter contract.*
>
> *…*

I ask for an urgent investigation into the procurement team's actions and once I have had a response, I shall consider whether this matter needs to be referred to the National Audit Office and the Home Office…"

39. This email was copied to the third respondent on 4 April 2019.

40. The claimant suggested that Ms Cuttell was upset by such communication given that she had been tasked to act as regional contract manager for the Language Empire contract and had been involved in then securing the services of Capita to provide the service from 1 April 2019. It is noted that the Learning Empire contract commenced in 2016 and predated Ms Cuttell's involvement. Ms Cuttell had been forwarded a previous complaint made by the claimant in 2018, where the claimant had said that she was considering approaching the media. On 16 October 2018, Ms Cuttell had asked that no information be shared with the claimant at that time referring to a need to keep communication to a minimum until there was an agreed strategy with the legal team. Indeed, the claimant's actions did result in negative publicity for the interpreting service including in the Yorkshire Evening Post. Ms Cuttell had forwarded the claimant's complaint to legal services.

41. The claimant attended Trafalgar House, Bradford for a second interpreting assignment on 7 April. This prompted a further disclosure from the claimant in which she alleged malpractice on the part of Capita albeit she also believed that the complaint was about the respondents acting negligently in their awarding and overseeing of contracts.

42. Indeed, on *9 April 2019 the claimant sent a further email to the Office of the Chief Constable of West Yorkshire in which she referred to:*

"…shocking malpractice perpetrated by your new supplier Capita TI Ltd."

43. The claimant referred to the new supplier providing:

"…an even worse service than Language Empire at the expense of justice and the taxpayer by supplying unqualified bilinguals who do not even speak the correct language."

44. The claimant went on to refer to a specific incident and that she was appalled that an interpreter had been used who spoke no Slovak and had no interpreting

qualifications who had been sent to take a written statement from a victim of alleged domestic assault.

45. On 9 April 2019 Superintendent Humpage, Criminal Justice and Custody Services sent an email to the third respondent indicating that she had allocated the complaint raised by the claimant to the fourth respondent to investigate.

46. In fact, Sgt Greenwood was absent on leave and the complaint was dealt with by Beverley Bedford, business manager at West Yorkshire Police. Sgt Greenwood continued to be copied into correspondence about the claimant's disclosures but said that she did not have to do anything personally. Sitting next to Superintendent Humpage's office, she accepted that she was well aware of the claimant raising issues of concern.

47. Ms Cuttell emailed Superintendent Humpage and Stephanie Leaver of West Yorkshire Police's legal services on 10 April asking if that complaint could be addressed as part of the same response that Ms Leaver was drafting. She said that she was also going to alert the regional stakeholders to make them aware in case "she starts to target them now as well". The tribunal notes that Ms Cuttell in evidence also said that she "targeted" her frustration at the supplier. It is clearly a term she was prone to use and the tribunal draws no adverse inference. On reflection, in the context of the claimant possibly contacting other forces, she believed that "target" was probably the wrong word to use saying that she simply wanted to try to ensure that all 4 stakeholders gave the same information in response to any questions. She should, she said, perhaps have used the more neutral term "contact". However, if one force was alerted to a potential problem, her job was to alert others.

48. Claire Cuttell, the third respondent, stated that the claimant had been submitting complaints regarding the actions of the procurement department for a number of years and that, since this matter had arisen, she had become aware of at least six formal complaints the claimant had raised against the third respondent. This meant that the fact that the claimant had raised further complaints regarding the department in March and April 2019 did not come as a surprise to the third respondent. The third respondent also said that she welcomed such issues being raised in order that they could be addressed with the provider as the ramifications of using an interpreter within a policing environment who is not appropriately qualified could be very serious.

49. The third respondent was concerned that the claimant, within her email of 9 April 2019, had disclosed the name of the individual who had been in custody and the details of the particularly serious and sensitive offence for which the individual had been arrested. She was also concerned that the email had been

sent to a generic [police] *group email address which could have been seen by a number of different people and it had been sent from a non-secure personal email address. There were data protection issues, a danger that the investigation could be jeopardised, and the safety of individuals put at risk. She therefore took advice from the first respondent's in-house legal team and it was suggested that she should contact NRPSI.*

50. *On 10 April 2019 the third respondent spoke to a member of the NRPSI's Professional Standards Department and was advised that the disclosure of information did represent a breach of the code of conduct as a linguist was not permitted to share such details with anyone other than those directly involved in making the appointment.*

51. The claimant's position was that Ms Cuttell, as a senior procurement manager, should have known how GDPR was to be applied. She did not consider this to have been a genuine request for advice by Ms Cuttell. Indeed, she termed it as malicious.

52. *On 17 April 2019 the third respondent completed an NRPSI online complaint form, in this she stated:*

> *"Following Dr Windle's attendance to the booking on 7th April, Dr Windle proceeded to contact the staff officer to complain about another linguist that attended the booking on behalf of a contracted service provider. Within the email to the staff officer, Dr Windle disclosed details of the detained suspect and the offences for which the suspect is detained. Whilst these details have been disclosed to police personnel, the personnel contacted are not involved in the associated investigation nor involved in the custody process; this therefore poses risk to the investigation. No details of arrests made should leave the custody setting without authorisation for the circulation of details. Sharing of such details could jeopardise investigations and put people within the organisation in positions whereby there is a conflict of interest. There is also concern that there is a breach of GDPR, which is also being investigated internally."*

53. On 18 April, Sgt Greenwood emailed Ms Cuttell and others in relation to a further assignment where she concluded saying that the claimant was "available on the register and there is nothing to say why she or anyone else cannot be selected above anyone else on that list". The tribunal notes that a search of the NRPSI register of interpreters would reorder the names of interpreters on each search to ensure fairness amongst the interpreters in their

chance of selection for work. The claimant undertook a police assignment through Capita on 19 April.

54. *On 23 April 2019 the fourth respondent sent an email to the third respondent and others. This was in reply to redacted emails on the subject of "Concerns" regarding Language Line". In that email the fourth respondent stated:*

> *"Sorry all – just getting up to date with emails following leave. If we consider suspending Dr Windle from any Police duties, I think we should take this up with Legal first, bearing in mind that she has previously taken WYP to court for loss of earnings. I believe both Mick Preston and Rachel London both had to give evidence at that court case."*

55. *Also on 23 April 2019 the fourth respondent sent an email to the third respondent. This referred to an incident at Stainbeck Police Station and an email which had been sent by a Police Officer* [PC Sanders] *which referred to the claimant having been booked by Capita after a lot of trying and that the claimant said that Capita had been pestering her all day and that she didn't want to do it*

> *"as Capita pay peanuts and this is why they can't get interpreters"*

56. PC Sanders *said that the claimant wanted her to feed this back. The fourth respondent stated:*

> *"What is very interesting are the comments Dr Windle made to the Officer as below. We thought that she was purposely ignoring calls from Language Empire before they refused to use her (we didn't have any direct evidence to report the matter to NRSPI) but below clearly states that she has been trying to avoid Capita in order to charge more money for her services by being approached by the Police direct.*
> *As part of the complaint made to NRSPI, could this be included?*
> *Let me know your thoughts please."*

57. Ms Cuttell told the tribunal that there had been a long-standing concern that interpreters were not answering calls from the contracted supplier so that they could be used then on an exceptional basis (off contract) and charge more. The situation described by the claimant was, she said, the only instance where there was written evidence that this was a potential practice. If it was a practice, it

was a concern for Ms Cuttell. Before the tribunal, the claimant said that she had no criticism of PC Sanders emailing Sgt Greenwood (the claimant accepted that she had asked PC Sanders to provide some feedback), although the content of PC Sander's communication was not entirely accurate. The claimant had not said that she had wished she had waited. When PC Sanders had contacted her directly to offer her the job, the claimant had said that she had already been booked for the job through Capita and had not suggested that she might do the work "off contract".

58. The claimant maintains that Sgt Greenwood was wrong when on 23 April she forwarded PC Sanders' earlier email as referenced above. She told the tribunal that Sgt Greenwood had no right to share information about her beyond the protected disclosures which were being investigated. She said that this was also a GDPR breach (the email was marked "protect") and an intrusion into her privacy. On cross-examination the claimant was referred to guidelines regarding marking correspondence as "protect" which were said to be applicable where a disclosure would cause embarrassment or inconvenience to an individual or where there were commercially sensitive issues. She accepted that those circumstances might apply to this communication. The email was sent to Superintendent Humpage, who was Sgt Greenwood's line manager. The claimant accepted that she had previously asked for matters to be sent to Superintendent Humpage, but said that that was about her protected disclosures, not this "hearsay". The email was sent also to Ms Cuttell. When put to the claimant that Ms Cuttell was in charge of procurement and that the email raised issues about Capita's conduct and the operation of its contract, the claimant's position before the tribunal was that Ms Cuttell was responsible only for non-operational aspects of the contract. She felt that her own permission was required before this email was sent to Ms Cuttell.

59. The email was also then copied into Beverley Bedford, business manager, who managed aspects of the interpreter contract including the payment of invoices, Elizabeth Thirkettle, who worked with and deputised for Ms Cuttell and Stephanie Leaver, as already referred to, a solicitor employed by West Yorkshire Police dealing with commercial issues and who had been involved in issues relating to the previous Language Empire and the new Capita contracts. Ms Cuttell told the tribunal that it was not unusual to copy a number of people into an email and that she thought it important to do so in case anyone involved in the contract had a query to answer from a member of the senior management team. Sgt Greenwood was of the view that the issues were relevant to all those to whom she sent the email. The interpreter contract was certainly on the Chief Constable's radar given the Yorkshire Post's earlier story about Language Empire.

60. The tribunal notes that, from the claimant's perspective, this Stainbeck job was urgent and qualified as an exceptional circumstance in which she could be used, albeit not an interpreter vetted at NPPV3 level. Had she not been utilised,

then the PACE clock, requiring a suspect to be charged within 24 hours or released, would have expired. PC Sanders had tried to go off contract to obtain an interpreter, but the claimant agreed that she had already been offered the job by Capita on the basis that she was "on contract". As an individual without NPPV3 vetting however, the claimant was not on the Capita police register and should not have been offered by Capita on the basis that she was. PC Sanders had no understanding that there was any requirement for her to complete any form of risk assessment in circumstances where Capita had offered the claimant under the primary contractual arrangement – effectively guaranteeing NPPV3 vetting.

61. The tribunal finds that Capita had been trying to offer the claimant the Stainbeck assignment during the course of 23 April. The claimant received the job offer electronically at 0425, again an indication that she was on the primary register of Capita's vetted interpreters. The claimant was, however, engaged during the morning as an interpreter at Sheffield Court. In the absence of any acceptance of the assignment, Sgt Greenwood sought Capita's assistance in obtaining an interpreter from the NRPSI register and was passed 4 names by Nadia Greenwood of Capita. 5 minutes after doing so, Nadia Greenwood was able to contact Sgt Greenwood again saying that she could ignore the list provided as "one of our registered interpreters" had just call back and had been assigned the job. This was a reference to the claimant who had by now picked up the offer of the assignment through the Capita portal.

62. Sgt Greenwood responded saying that she had also checked the NRPSI register and had provided PC Sanders with the first 5 names on the list. Indeed, she had done so with the claimant's name at the top of that list (as Sgt Greenwood confirmed to Ms Cuttell in her 23 April email). However, she was perturbed that the list of names she had obtained from NRPSI was different to the list provided by Nadia Greenwood. She asked what search had been made or if any interpreters had been discounted for any reason. Nadia Greenwood responded on 24 April to check if Sgt Greenwood had added the "police cleared filter" when making the search. She said that she had just performed another search without the filter and could see the results which Sgt Greenwood had mentioned. However, those individuals did not have the NPPV3 clearance. She said that if the decision was made to assign a non-police cleared interpreter, they would approach those registered with Capita before those on NRPSI.

63. *On 25 April 2019 the fourth respondent checked the Warwickshire Police portal as that was where the national vetting contract was held. The portal did not show any results for the claimant. The fourth respondent checked with Warwickshire police and was told that there was no record of the claimant. The fourth respondent also contacted Greater Manchester Police as they had held the vetting contract before Warwickshire Police and the fourth respondent indicated that the vetting lasts for five years.*

64. *On 25 April 2019 the fourth respondent sent an email to Sergeant Humpage stating:*

> *"Just to keep you in the loop regarding Dr Windle.*
> *Warwickshire have confirmed that she is not vetted with them. I have been advised to contact Manchester who may have done some Northern vetting before the National vetting began. NSPRI shows that she only has a DBS clearance and there is no mention of police clearance which would be NPPV2 or NPPV3 (we require 3 – level 2 is a lower scale of vetting).*
> *I have updated Claire and will update everyone once GMP reply to me."*

65. Sgt Greenwood responded to Capita on 25 April that she had now done the search applying the police cleared filter and found that it did bring up other possibilities. She said that the issue she had was that the claimant didn't appear on that list and that Capita had assigned her to the job at Stainbeck. She continued that she had checked the claimant's name on the NRPSI register and she was shown as having a DBS check and Home Office clearance, but no police clearance. She said that she had checked the Warwickshire police portal, but there was no trace of the claimant and, because she knew that portal was not always accurate, she had emailed Warwickshire asking them to check their records. Sgt Greenwood's evidence was that she was not convinced that the claimant did not have the requisite vetting. She asked whether Nadia Greenwood was confident that the claimant had NPPV3 clearance and could therefore work on police assignments.

66. Sgt Greenwood had emailed Tony Staley of the Warwickshire vetting unit about the claimant on 25 April asking if the claimant had NPPV3. She referred to the NRPSI register showing that the claimant had a "basic DBS" (in fact she had an enhanced DBS) and Home Office clearance. Mr Staley reverted on 29 April saying that he could find no record of the claimant. Sgt Greenwood responded saying that she had also tried contacting the Greater Manchester Police ("GMP") because she knew that they did some vetting before the national contract with Warwickshire Police came into place. Sgt Greenwood's evidence to the tribunal was that she did not trust the Warwickshire portal to be accurate and since the GMP had previously carried out vetting she thought it was worth checking with them whether the claimant appeared on their records in circumstances where at this stage she thought that the claimant was vetted at NPPV3 level. The tribunal has seen a communication with GMP to that effect.

67. Nadia Greenwood responded on 29 April saying that the claimant had Counter Terrorism Clearance. From the job notes it appeared that the Capita person

making the assignment did not flag this with the officer, a reference to PC Sanders, "which was an error from our side. We have since submitted her for NPPV3 clearance. Please accept our apologies that the correct process wasn't followed on this booking." Sgt Greenwood replied asking who the claimant was CTC cleared with and saying that her understanding was that there would still need to be NPPV3 clearance.

68. The fourth respondent was sent an email by Capita indicating that the claimant needed the NPPV3 in addition to her Home Office clearance

69. Nadia Greenwood confirmed that that clearance had been issued by the Home Office and that it was "not additional to NPPV3 unfortunately."

70. Ms Greenwood emailed Ms Cuttell on 29 April saying that GMP had confirmed that they did not hold any vetting for the claimant and that Warwickshire had no trace of the claimant either. She referred to what the NRPSI register showed. She said that the bottom line was that the claimant currently did not have the required vetting to work with the police. She described that there were 2 issues with that situation. Firstly, Capita had allowed a non-vetted interpreter to carry out a police assignment, which was said in itself to raise issues in how they make sure an interpreter has vetting and how many others are carrying out assignments without being vetted. Secondly, the claimant had made complaints about contractors/the police using unvetted (the claimant in fact had referred to "unqualified") interpreters whilst she had carried out an assignment on behalf of Capita without having NPPV3 in place herself. She asked whether this was something Ms Cuttell wished to "tag on" to the NRPSI complaint. She queried whether this did not reflect well on Capita and therefore might cause the force some embarrassment. Finally, she said that she would now (the reference to "not" in the email is accepted as a typographical error) like to carry out a dip sample by obtaining names of interpreters who carried out recent assignments so that she could check on the Warwickshire portal to see if there were any others without vetting. She stated: "this was a massive concern with LE [Learning Empire] and although this is only one incident, I fear that we may have the same issues with Capita."

71. Sgt Greenwood did not in fact undertake any dip sample. None had been undertaken by the end of April as this was the first month of the contract. Sgt Greenwood had been involved in due diligence before the contract commenced to ensure that there were sufficient NPPV3 vetted interpreters on Capita's books. She was going to do a dip sample, but realised that there were others available who should do this and she was effectively taking on too much work herself. The matter was left for Beverley Bedford, but there is no evidence that she completed any dip sample at this time either. Ms Bedford had come into her role on the commencement of the Capita contract and did not have knowledge of the earlier issues with Language Empire. Ordinarily it would be

the contract manager who would do the dip sampling, but Ms Bedford had asked Sgt Greenwood if she could continue to bear responsibility for vetting. There was a conversation then that really Ms Bedford should now do the dip sampling on the new contract in place and Sgt Greenwood and Ms Bedford having quite specific and different roles. Sgt Greenwood had initially said that she would do the dip sample herself because she had been taking responsibility for vetting, but this preceded the discussion with Ms Bedford when Ms Bedford said that she would do it. Again, Sgt Greenwood said she had no idea if Ms Bedford had ever carried out the dip sample. She couldn't recall any other dip samples but said that if someone else had been found not to have been vetted they would be removed from the police list. She couldn't specifically recall any instruction to Capita not to use anyone other than the claimant.

72. *On 24 April 2019 an email was sent to the third respondent from NRPSI Professional Standards Manager acknowledging the complaint about the claimant and stating that:*

> *"Breach of confidentiality sounds serious and we are very keen to put it through our full disciplinary process.*
> *In order to build up the case for the Professional Conduct Committee (PCC) we need to provide them with as much evidence as possible. You mentioned on the form that you would be able to provide the redacted emails that were sent by Dr Windle. It would really help if you could do that."*

73. *On 26 April 2019 the third respondent provided NRPSI with a redacted copy of the claimant's email of 9 April 2019.*

74. The claimant completed her final police assignment through Capita on 28 April.

75. *On 29 April 2019 Greater Manchester Police indicated to the fourth respondent that they held no vetting record for the claimant.*

76. At 0811 on 30 April Sgt Greenwood emailed Nadia Greenwood asking that she ensure that the claimant was not used on police assignments until she had NPPV3. Sgt Greenwood told the tribunal that the intention of her email was for the claimant to be taken off Capita's "police list" not that she could never do any assignments through Capita. If she was taken off the list, she would not get any automatically generated offers of assignments on the assumption that she had NPPV3 vetting. If there were exceptional circumstances, she understood that the claimant could still be used as an interpreter. She confirmed that there had been no request for any further explanation from Capita. She considered that this was because this was the language they used in communications with each

other and, when Nadia Greenwood said that the request had been actioned, their mutual understanding was that that meant that the claimant was already off the "gold standard list".

77. Indeed, Nadia Greenwood replied at 0932 saying "already actioned". She said that the claimant was on another booking that afternoon and again on 4 May but had been removed from those assignments. The claimant's evidence is that she received a phone call from Capita on the morning of 30 April who told her that "an awkward woman from procurement" had requested that she not be used. The claimant's evidence was that Capita did not understand the instruction, as Sgt Greenwood said she meant it, because others in the same position as the claimant were used in exceptional circumstances. There is no evidence, however, before the tribunal of the usage of other interpreters. The claimant had been pre-booked for the 30 April and 4 May assignments – whilst the claimant sought to maintain that there might have been no one else available and she could have been being used as a last resort, it is more likely than not, given the advance nature of the bookings, that the claimant had been allocated these assignments by Capita on the basis that she was on the primary police register and therefore had NPPV3 vetting.

78. *On 2 May 2019 the third respondent emailed Capita indicating that, until the claimant had NPPV3 clearance, she would not be booked for any jobs. Capita confirmed that the claimant had been removed from future bookings.* Ms Cuttell's evidence was that if exceptional circumstances arose, where no vetted interpreter was available, and she had been contacted by Sgt Greenwood to that effect, Ms Cuttell would not have stood in the claimant's way in carrying out such an assignment.

79. *On 6 May 2019 the claimant presented a claim to the Employment Tribunal claiming detriment for making a protected disclosure contrary to section 47B of the Employment Rights Act 1996. This claim was made against the first second and third respondent.*

80. *On 9 May 2019 Superintendent Humpage, Head of the first respondent's Criminal Justice Department, wrote to the claimant. In that letter she provided a response to the issues raised by the claimant on 29 March 2019, 3 April 2019 and 9 April 2019.*

81. She stated in reply to the claimant that the issues raised had been thoroughly investigated. It was said that the Capita contract included strict requirements to ensure the appropriate level of qualification and experience of interpreters. She said that it was a strict contractual requirement of the agreement with Capita that all interpreters were appropriately vetted. She expressed satisfaction at the

procurement process conducted with regard to the appointment of both Language Empire and Capita.

82. *On 9 May 2019 the claimant sent an email to Superintendent Humpage informing her of a response she had received from the National Audit Office. Within that email the claimant referred to the judgment that had been issued against Language Empire and referred to the fraudulent nature of Language Empire and her belief that the procurement department failed to discharge its duty of due diligence when awarding and maintaining the Language Empire contract. She raised further concerns with regard to the management of the contract with Capita.*

83. *On 14 May 2019 the NRPSI Professional Standards Manager wrote to the third respondent requesting further details with regard to the complaint made by the fourth respondent in respect of the claimant's conduct on 23 April 2019.*

84. The claimant confirmed that at this point she had no issue with how the respondents had cooperated with the NRPSI investigation. The claimant then contacted Ms Ghanem of NRPSI on 16 May saying that PC Sanders was referred to as making a complaint, but she had seen no copy. PC Sanders' email, the claimant said, was not a complaint, but rather just information intended for Sgt Greenwood. Ms Ghanem responded on 17 May saying that she had asked for the complaint, but Ms Cuttell was out of the office until 21 May. Again, at this point the claimant did not see any deliberate refusal or unreasonable delay on the respondents' part save that she maintained that all of the relevant information should have been made available in the first place at the time the complaint was made to NRPSI.

85. *On 18 May 2019 the claimant wrote to the second respondent's Freedom of Information Officer indicating a potential breach of the Freedom of Information Act 2000. In that letter it was indicated:*

> *"I have identified three unqualified bilinguals being used in two languages alone. There can be no doubt that unqualified individuals were being supplied regularly to police interviews at the time procurement provided the response to the FOI request and provided incorrect and misleading information to the request. Given the extent of this problem, it is my contention that the procurement department acted in bad faith and intentionally misled the public when providing the response to the bona fide FOI request.*
> *The FOI response therefore either indicates failure to manage the contract and its performance adequately, or*

deliberate deception intending to mislead the public in contravention of the Freedom of Information Act 2000.…"

86. On 22 May 2019, Ms Cuttell emailed Mick Gillick of Warwickshire police asking for an explanation of the difference between the levels of NPPV3 and Home Office "SC/CTC" vetting. She asked if it was ever acceptable to not have NPPV3, but be Home Office security cleared. She stated: "at first, we assumed that this HO SC clearance was a higher level that superseded the NPPV3 and so continued to permit the linguist to work, however we have been informed by our provider that this is not the case. As a result, we have requested that the NPPV3 vetting be submitted to Warwickshire for processing." He responded that when vetting was carried out for SC level there was no access to the police national database which meant that the person carrying out the vetting was unsighted on police intelligence. He said that if anyone wanted unrestricted access to police premises/systems "they NEED NPPV. For this reason there is nothing higher than NPPV." He referred to having failed people (for NPPV3 vetting) who possessed "SC". The tribunal does not consider that Mr Gillick's reference to unrestricted access undermines his assertion of the need for interpreters to be NPPV vetted.

87. The claimant understood that she could not be provided with work on the basis that she was on Capita's primary police register. She ought not to have been on it. Her position, however, was that she could still be used as a last resort if no one else was available, just as she had been previously. If not, then all other interpreters who did not have NPPV3 vetting should have been treated in a similar manner to her. They should have all been told that they would not be used. Everyone's status should have been checked.

88. She considered that Ms Cuttell advised only on procurement and was not involved in operational matters. Sgt Greenwood managed the contract and it was, therefore, inappropriate for her to speak to or message Ms Cuttell.

89. The claimant told the tribunal that she considered Sgt Greenwood's emails regarding her vetting status to be harassment and an obsessive dissemination of information about her "for no justifiable reason on an industrial scale". She described the correspondence as malicious. She felt that she herself was under police investigation, comparing Sgt Greenwood to the KGB.

90. On 4 June the claimant chased Ms Ghanem of NRPSI regarding her request for PC Sanders' complaint. Ms Ghanem replied on 5 June saying she had just returned from annual leave to find an email from Ms Cuttell saying that Sgt Greenwood had made a complaint verbally. Sgt Greenwood was said to be willing to provide a statement and Ms Ghanem said that she had asked for a

"confirmation statement that includes the date of her complaint and the content of it."

91. *On 6 June 2019 the third respondent informed the fourth respondent that the NRPSI had asked that the fourth respondent to provide a statement in relation to the feedback provided in respect of the claimant's comments about ignoring calls and the rates of pay.*

92. Sgt Greenwood replied the following day saying that she had taken the previous afternoon off and would seek advice regarding providing a statement, asking whether this had to be formal or just an email. She said that she would look at the policy for providing formal statements to an external organisation. Ms Cuttell reverted to her on 10 June saying that an email would be fine. Sgt Greenwood responded promptly on the same day saying that she would do the email, albeit referring to herself as not being "on top of my game at the moment" and having difficulty getting everything done.

93. However, before any statement was produced by Sgt Greenwood, o*n 12 June 2019 the NRPSI Registrar reviewed the complaint and decided to dismiss it. It was indicated that the file had been kept open beyond normal procedural deadlines to facilitate further evidence to be supplied by the complainant which, in the event, did not arrive.* Neither Ms Cuttell nor Sgt Greenwood had been made aware of those deadlines*. In the report it was stated:*

> *"In this case we find no shortcomings given the Information Commissioner helpline has confirmed that the GDPR did not apply, particularly as the code of conduct advises Registrants to disclose all potential issues and organisations as well as individuals who are subject to the GDPR ought to disclose information in the interest of justice; see section 6 of the GDPR.*
> *With regard to the second complaint there has been no evidence supplied and it is based on hearsay.*
> *Therefore the Registrar has decided that the complaint does not warrant referral to the Professional Conduct Committee."*

94. *On 24 June 201*[9] *the claimant presented a further claim to the Employment Tribunal bringing a claim pursuant to section 47B. This included a claim against the fourth respondent. An order was made on 3 July 2019 that the claims be heard together and case management orders were made at a Preliminary Hearing on 21 August 2019. The issues were identified including the alleged protected disclosures and detriments.*

95. On 26 July, Ms Cuttell emailed Nadia Greenwood referring to Capita having temporarily removed the claimant from "your register" whilst her vetting was processed. She asked for an update as to whether the claimant's vetting had now "cleared". Ms Cuttell's evidence was that this was a reference to removal from the police register of those who had obtained the requisite vetting, not from any reserve list of interpreters who could be called upon in exceptional circumstances. Ms Cuttell, in cross examination, said that she had from time to time made enquiries about the vetting status of other interpreters.

96. On 5 August Nadia Greenwood of Capita emailed Ms Cuttell regarding further recruitment of interpreters, when they would be vetted to NPPV3 level and ready to be deployed. She referred to the time it was taking for vetting to come through.

97. On 9 August NRPSI emailed Ms Cuttell in response to a perceived practice of interpreters engineering assignments being allocated "off contract" to earn more money. Ms Cuttell had suggested that this was a breach of NRPSI's code of conduct. NRPSI confirmed that its interpreters were self-employed professionals who made their own decisions how they sought and fulfilled engagements. They could decide on how their services ought to be valued and public sector clients could make a conscious decision to contact interpreters directly and negotiate fair engagement fees. NRPSI did not recognise such actions as unprofessional or bringing the profession into disrepute.

98. The claimant's NPPV3 vetting came through on 20 August 2019. *On 23 August 2019 Capita informed the third respondent that the claimant had received NPPV3 clearance along with* 4 *other interpreters and it was indicated that all interpreters would now receive* "*job offers for bookings*" *in the West Yorkshire region.* The tribunal has heard no evidence of the circumstances of the other 4 interpreters whose vetting was confirmed to Ms Cuttell by Capita on that date. The tribunal is unaware whether these individuals had also been suspended from police work or whether they had provided services in the meantime when no one with vetting clearance was available. Ms Cuttell's evidence was that these listed interpreters could now be booked for police jobs with reference to the "gold standard" required in terms of vetting for non-exceptional interpreting assignments. When put to Ms Cuttell that Capita's understanding was that there was a complete bar on the claimant carrying out any police work, Ms Cuttell accepted that her email of 2 May about the claimant not being given assignments was open to interpretation, but that the understanding from day one was that the contract specifically required NPPV3 vetting. The respondent had had issues with unvetted interpreters in the past and she was ensuring that they were moving towards a "gold standard" contract. She was asking that the claimant not be booked in advance for police jobs. She did not understand that Capita would risk their reputation by not assigning the claimant to exceptional circumstance assignments where no one else was available. Ms Cuttell said that throughout, the reference to "any jobs" was to "police jobs". If there were

exceptional circumstances and no one else was available, she did not object to the claimant being used. That was a decision down to the OIC having carried out a necessary risk assessment.

99. On 28 August 2019 Capita acknowledged the claimant's interest in an assignment. It was stated that, if the claimant was successful in being assigned to the job, she would receive a separate job confirmation email from Capita.

100. On 7 September 2019 Capita indicated that the claimant had not been assigned to the job in which she had expressed interest. The claimant said that she did not know why Capita had not offered her the assignment and that this was exceptional. She had not previously received acknowledgement of interest and then not been awarded the job.

101. The claimant told the tribunal that, if more than one qualified interpreter applied, then Capita picked the most appropriate person – she maintained that that would be herself based on her ability (in the context of the languages she was fluent in). *The claimant confirmed that she did not bring any claim in this regard but she was suspicious and it was evidence providing background information. She also said that she had removed herself from the Capita registration.*

102. On 22 October 2019 the claimant presented a further claim to the Employment Tribunal. This was a claim of detriment on the ground that she had made a protected disclosure within the meaning of section 47B. All three claims were listed to be heard together at this hearing. The claimant confirmed that the protected disclosures upon which she relies are those identified at the Preliminary Hearing on 21 August 2019. She also confirmed that she did not allege any detriment to have taken place after 18 May 2019.

103. On 8 November 2019 the claimant wrote to Capita indicating that she was informing them that she did not wish to work for Capita and requesting that all her data be deleted from Capita's portal and database.

104. The tribunal must make a finding as to whether or not the respondents instructed Capita not to provide the claimant as an interpreter in any, including exceptional, circumstances or whether she was not to be provided with pre-booked work under contract and where the respondents required NPPV3 vetting for any interpreter used. To put it another way, was the claimant excluded from the primary or gold standard register, but allowed to carry on providing her services from a secondary "B" list? The tribunal's findings are that there was no such "B" list in reality. Simply, if there were exceptional

circumstances and no one on the police vetted Capita register was available, Capita was allowed to go off contract, subject to the approval of the OIC, and provide an interpreter without the NPPV3 vetting.

105. The tribunal has referred to Sgt Greenwood's email of 30 April referring to the claimant being given no police assignments until she had NPPV3 vetting. Sgt Greenwood told the tribunal that, by this message to Capita, she meant that the claimant was not to be provided for non-exceptional 'under contract' work. The claimant, she said, could still be utilised in exceptional circumstances if no vetted interpreter was available. Ms Cuttell on 2 May messaged Capita to say that the claimant was not to be booked for any jobs. Again, her evidence was that she did not regard this message as excluding the claimant from providing off contract work in exceptional circumstances. The claimant does not accept that that was their meaning and maintains that she was excluded from all work with the respondent police forces.

106. The tribunal has found Sgt Greenwood and Ms Cuttell to be straightforward and reliable witnesses who have sought to assist the tribunal. The tribunal has no basis for questioning the honesty of their evidence. The claimant's evidence in her initial witness statement was that Capita had explained to her that she could still be engaged (without any differentiation between pre-booked and exceptional work) whilst awaiting NPPV3 clearance. She referred to other law enforcement agencies having no issue with the level of her security clearance. She maintained that she had a higher security vetting than NPPV3. Before this tribunal, there has been an acceptance by the claimant that under the Capita contract she could not have been given anything other than exceptional work, as an effective "last resort", until she had been NPPV3 cleared.

107. The tribunal has no evidence from Capita as to how it interpreted the emails from Sgt Greenwood and Ms Cuttell. The tribunal notes the volume of work the claimant had undertaken in April through Capita. All of the assignments were pre-booked through Capita's automated system and where the claimant was on Capita's register as an interpreter who could be used under its contract with the respondents. The tribunal has no evidence of the likely demand at any point in time for off contract emergency services of an interpreter in Czech or Slovak. It appears that there were only 4 interpreters in those languages within even a quite distant location who then might be utilised by the respondents, but the tribunal can make no evidence based estimation upon the number of times interpreters might be required in those languages on an emergency basis. The fact that the claimant was not used from 30 April is not sufficient for an inference to be drawn that Capita had decided not to use her on exceptional work (where no vetted interpreter was available).

108. Certainly, the tribunal concludes that the focus of Sgt Greenwood and Ms Cuttell was on the historic issue of interpreters having been booked under

contract for police work without the requisite level of vetting. There was a primary focus on ensuring that this did not continue under the new contract with Capita. The respondents had worked with Capita to ensure that a sufficient pool of vetted interpreters was registered and at a capacity which was likely to fulfil the respondents' needs in terms of required languages. The previous failing of Language Empire to come up to the service standards weighed heavily on their thinking. The Capita contract was to be subjected to a non-typical level of scrutiny, as illustrated by Ms Cuttell continuing to have a level of day-to-day operational knowledge and involvement in how it was performing, which she would ordinarily have left to others. That interpreters held NPPV3 vetting was a specific contractual requirement with Capita. The claimant was clearly wrongly on the Capita register for routine assignments under the contract as illustrated by her being automatically advised of available assignments and Capita's apology when it was discovered that the claimant did not possess NPPV3 level vetting. Again, the claimant agreed in evidence that she was not NPPV3 vetted. The claimant was supplied on the Stainbeck job in circumstances where the OIC, PC Sanders, did not understand that the issue ever arose requiring her to make a risk assessment and exercise a discretion as to whether or not the claimant could carry out the work. That was because, in the way the claimant had been represented to PC Sanders, the claimant would have been assumed to possess the NPPV3 clearance.

109. Sgt Greenwood and Ms Cuttell referred to the type of language they used with Capita when they spoke of the need for interpreters. Ordinarily a reference to "assignments" and "jobs" would be on the understanding that this was 'under contract' with the assumption then that any interpreter supplied would be vetted at the required level. Their evidence is corroborated by them being informed on 23 August that the claimant and 4 other interpreters had received clearance and would now receive "job offers for bookings". Ms Cuttell had on 26 July emailed Capita referring to the claimant having been temporarily removed from "your register". When Ms Cuttell wrote this, there was in her mind only one register, i.e. one where all the interpreters were NPPV3 cleared. The tribunal concludes that when both Sgt Greenwood and Ms Cuttell asked for the claimant not to be supplied, they had in their mind only as an interpreter on Capita's police vetting cleared register. Sgt Greenwood did not have in her mind at the time the issue of exceptional work when no one on the police register was available. Nor was that in Ms Cuttell's mind. Her focus was on a potential failing of Capita in respect of 'on contract' work.

Applicable law

110. Pursuant to Section 47B of the Employment Rights Act 1996: "A worker has the right not to be subjected to any detriment by an act, or any deliberate failure to act, by his employer done on the ground that the workers made a protected disclosure."

111. Section 48(2) provides that on a complaint to an Employment Tribunal

"… it is for the employer to show the ground on which any act, or deliberate failure to act, was done."

112. As regards the meaning of "detriment" the Tribunal refers to the case of **Chief Constable of West Yorkshire Police –v- Khan [2001] 1 WLR** where it was said that the term has been given a wide meaning by the Courts and quoting the case of **Ministry of Defence –v- Jeremiah [1980] QB 87** where is was said that *"a detriment exists if a reasonable worker would or might take the view that the [treatment] was in all the circumstances to his detriment".* There does not have to be any economic loss inflicted upon an employee for him or her to have suffered a detriment. The Tribunal was also referred to **Derbyshire & others –v- St Helen's Metropolitan Borough Council [2007] ICR 841** where the case of **Shamoon –v- Chief Constable of The Royal Ulster Constabulary [2003] ICR 337** was quoted with approval. In **Shamoon**, Lord Hope stated as follows:

> *"… the word 'detriment' draws this limitation on its broad and ordinary meaning from its context and from the other words with which it is associated… the Court or Tribunal must find that by reason of the act or acts complained of a reasonable worker would or might take the view that he has thereby been disadvantaged in the circumstances in which he had thereafter to work.*
>
> *But once this requirement is satisfied the only other limitation that can be read into the words is that indicated by Brightman LJ as he put it in the **Ministry of Defence –v- Jeremiah [1980] QB 87** one must take all the circumstances into account. This is a test of materiality. Is the treatment of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment? An unjustified sense of grievance cannot amount to 'detriment' ….."*

113. The issue of causation is crucial. The Tribunal refers to the case of **NHS Manchester v Fecitt and others [2001] EWCA Civ 1190** and in particular the judgment of Elias LJ. His view was that section 47B will be infringed if the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's treatment of the whistleblower. He said:

> *"Once an employer satisfies the Tribunal that he has acted for a particular reason – here, to remedy a dysfunctional situation – that necessarily discharges the burden of showing that the proscribed reason played no part in it. It is only if the Tribunal considers that the reason given is false (whether consciously or unconsciously) or that the Tribunal is being given something less than the whole story that it is legitimate to infer discrimination in accordance with the **Igen** principles".*

114. Whether detriment is on the ground that the claimant made a protected disclosure therefore involves an analysis of the mental processes (conscious

or unconscious) of the relevant decision makers. It is not sufficient to demonstrate that "but for" the disclosure, the employer's act or omission would not have taken place.

115. Having applied the facts as found to the legal principles, the tribunal reaches the conclusions set out below.

Conclusions

Detriment 3 – the respondents cancelled the claimant's work bookings for 30 April 2019 and 4 May 2019 or asked for cancellation of the bookings by the contractor, Capita

Detriment 4 – the respondents suspended the claimant from receiving further bookings via Capita or requested that Capita suspend her from further bookings after 4 May 2019

116. The tribunal has found that the prearranged assignments on 30 April and 4 May 2019 were cancelled and that Sgt Greenwood and Ms Cuttell told Capita that the claimant should not be used until she was NPPV3 cleared, their intention being that this bar applied to the claimant being provided in non-exceptional circumstances from the Capita police register of interpreters who had been vetted to the contractually required standard.

117. It is said, on behalf of the respondents, that the claimant's protected disclosures are unlikely to have provoked any of the respondents to wish to exclude the claimant from interpreting work. That is put on the basis that the claimant and the respondents were essentially both on the same side and wanting to ensure that Capita performed in accordance with the new contract and that there was no repeat of the service issues which had occurred when the interpreting service was provided by Language Empire. The claimant's criticisms, it is said, were not personal and the tribunal is pointed, in particular, to Ms Cuttell's evidence that she welcomed being alerted to problems with the contract.

118. Whilst that may well be the case, Ms Cuttell and Sgt Greenwood had invested a lot of work and energy in obtaining a new service provider, had been assured that the difficulties previously experienced had been ameliorated and expected Capita to deliver on its commitments. They believed that properly qualified and vetted interpreters would now be sent on police work. Furthermore, the claimant hardly gave the new contract a chance to bed in or for the respondents to overcome any teething problems, raising her complaints in fact before the commencement of the new contract and then almost immediately thereafter and when she had completed only her first assignment. The claimant was a serial complainant – a description she does not object to. The tribunal is right to be sceptical as to the respondents' submission.

119. The claimant was keen to put to Ms Cuttell and Sgt Greenwood that she had not been penalised when she had raised earlier complaints (seeking to contrast that with her experience after making the protected disclosures). That does not necessarily help the claimant's case in that, if the respondent had not retaliated previously, would it be likely to have done so now in circumstances where there were common themes in the claimant's complaints about the interpreting service? On the other hand, the claimant was very much an individual on everyone's radar as a complainer. In making her disclosures she was causing additional work for a number of senior employees of the relevant police forces who had many other pressing responsibilities and who again might have expected not to have had to address issues of the type the claimant raised so soon into the new contract.

120. One of the claimant's disclosures did lead to a complaint being made about the claimant to NRPSI, but, as found by the first tribunal, the referral of the claimant to NRPSI was not on the grounds of her protected disclosures.

121. The claimant then, following the protected disclosures, continued to be provided with work carrying out pre-booked assignments on 2, 7, 19, 23 and 28 April 2019. Certainly, there was no knee-jerk reaction to the claimant's disclosures of her being suspended from police work.

122. On 18 April Sgt Greenwood was emailing to say that the claimant could be given work.

123. The tribunal is clear that it was the circumstance of the booking at the Stainbeck police station, which formed the background/genesis of the claimant not being provided with pre-booked police work. The tribunal's findings are clear that the claimant had been contacted by Capita for this assignment on the basis that she was on its primary register of properly vetted interpreters suitable to be given police work. She was not contacted to carry out this work on an exceptional basis, but as one of Capita's registered interpreters. That is what Nadia Greenwood of Capita told the respondents. As the tribunal has described, it transpired that the claimant ought not at that point in time to have been on such register given her lack of NPPV3 clearance.

124. There was no "digging around" to expose the claimant's non-vetted status. Capita had thought that it was going to be unable to supply an interpreter from its register. This had led to searches elsewhere including on the NRPSI register to see if other interpreters might be available off contract. The NRPSI register with the police filter applied disclosed that the claimant did not have the

requisite police vetting. Capita realised that it had made a mistake in having supplied the claimant or pre-booked work on the basis and believing that she had NPPV3 vetting. It apologised and recognised that this should not have happened.

125. The respondents then effectively suspended the claimant from 'on contract' pre-booked interpreting work for the police until she was NPPV3 vetted. They did so for the reason that the contractual arrangement and standard, which the respondents were striving to ensure was complied with, was that only those with NPPV3 vetting could be supplied for such work.

126. Clearly, from her email to Ms Cuttell of 29 April, Sgt Greenwood was concerned that the claimant might not be the only interpreter who had been supplied through Capita inaccurately on the basis that they were properly vetted – the "bottom line" was said to be the claimant not having the vetting to work with the police. She wanted to carry out a dip sample. This does not suggest that she was seeking to simply target the claimant.

127. There is, however, no evidence that such a sample occurred, but also no evidence that there were any other interpreters who were being supplied by Capita on pre-booked assignments, who did not have the requisite vetting. Certainly, there is no evidence that the respondent was aware of any such individuals, yet treated them differently from the claimant. The respondents are unlikely to have done so, the tribunal concludes. They genuinely did not want any unvetted interpreters to be supplied "under contract". Subsequently, at the same time as Capita informed the respondents of the claimant now being vetted and that she would now receive job offers for bookings, 4 other individuals were put forward as being in a similar situation. However, the tribunal has no evidence as to whether those individuals had ever been supplied on pre-booked work when not vetted or, for instance, whether these were simply new fully onboarded recruits. If the claimant was the only interpreter treated in the manner she was, it was because her non-vetted status was revealed only as a result of the circumstances of the Stainbeck assignment on 23 April, where no other interpreters were revealed to be in a similar position to the claimant. She was the only interpreter treated in this manner because she was the only person on the respondent's radar as having been supplied in breach of the Capita contract.

128. In any event, it is clear that the stance which the respondents, through Sgt Greenwood and Ms Cuttell, took - that the claimant was not to be given pre-booked assignments until she was NPPV3 cleared - was never going to result in anything more than a temporary suspension of the claimant's services being provided for such work. There was no question in anyone's mind but that the claimant would ultimately be cleared and, once cleared, would be eligible to be assigned by Capita to police assignments on that basis.

129. The respondents cancelled the work bookings for 30 April and 4 May or, more accurately, gave instructions which inevitably resulted in their cancellation, because they, accurately, believed that the claimant was not eligible to be provided with routine pre-booked work due to her lack of sufficient vetting. In no sense whatsoever was the claimant removed from those assignments because of her protected disclosures. Similarly, the continued suspension from receiving further bookings (which the tribunal has found was intended to apply to the claimant's automatic notification of job offers for pre-booked work) was because of the claimant lacking the necessary vetting clearance to perform such work under the Capita contract. Again, the decision of Ms Cuttell and Sgt Greenwood was untainted by any reaction to the claimant's protected disclosures.

Detriment 5 – the fourth respondent wrongly disseminated to Claire Cuttell, Superintendent Humpage, Elizabeth Thirkettle, Beverley Bedford and Stephanie Leavers an email from PC Sanders which was marked "protected"

130. The claimant has no issue with PC Sanders' email being forwarded to Ms Cuttell. However, it was forwarded by Sgt Greenwood with comments on the claimant's conduct and asking if this could be included in the existing complaint made about the claimant to NRPSI. Given that content, the information ought to have been kept to as narrow a group as reasonably possible. Ms Cuttell was involved in the NRPSI complaint already and Ms Leavers had been consulted about it. The claimant might reasonably, however, have concluded that it was unfavourable for Ms Bedford and Ms Thirkettle to have also been provided with information which was suggestive of the claimant effectively playing the system and that this should be part of a complaint to the claimant's professional body. The tribunal is mindful of the relatively low hurdle in terms of detrimental treatment and concludes that the wider dissemination of information contained in the Sanders' email and the comments made by Sgt Greenwood when it was forwarded amounts to detrimental treatment.

131. The 'protected' status given to the email was appropriate in accordance with the respondent police forces' policies, but did not involve any enhanced privacy issues in terms of the claimant's identity or her involvement in the relevant issues being raised.

132. The tribunal then considers why Sgt Greenwood included all of these colleagues into her forwarding of the Sanders' email. Again, clearly she recognised that Ms Cuttell was dealing with the NRPSI complaint and Ms Leavers had been involved in advising on it. Ms Bedford had a role in the management of the contract which was closely related to Sgt Greenwood's own involvement. Ms Thirkettle was Ms Cuttell's deputy who she considered needed

to be aware of what was going on in case of Ms Cuttell's absence at any stage. There was a sensitivity within the respondents regarding the performance by Capita of the interpreter contract and an appreciation that senior officers might take an active interest in it, particularly given the risk of adverse publicity. Sgt Greenwood was concerned at how some interpreters might be avoiding work under contract to enhance their earnings, as had been a genuine concern of the respondents for some time. The wider dissemination of the email was to ensure, in Sgt Greenwood's mind, that all those who might have an interest in the matter or become involved in answering questions about it were fully appraised of the situation. In no sense whatsoever was her dissemination of the email on the grounds of the claimant's protected disclosures. This was not in any sense a retaliation against the claimant arising out of any upset caused by her disclosures where, for instance, there was any concern of any of the respondents being exposed, publicly or otherwise. Sgt Greenwood was influenced only by her consideration as to who in her view ought properly to be kept into the loop as individuals involved in the operation of the Capita contract (again, where there were genuine concerns about the way in which some interpreters may have been operating) and the existing conduct issues which had arisen in respect of the claimant, which were being pursued, as the first tribunal concluded, not for any reason relating to the claimant's protected disclosures.

Detriment 6 – having made a complaint to the claimant's professional body, the NRPSI, the third and fourth respondents deliberately refused to cooperate and properly follow-up the NRPSI's complaints investigation. Whilst indicating that they had further information to provide, they failed to provide it. This meant that the claimant was subjected to a formal investigation by her professional body for longer than was necessary.

133. On the facts, there was no deliberate refusal by either Sgt Greenwood or Ms Cuttell to cooperate with and follow up on the NRPSI complaints' investigation. They were seeking to and in the process of providing the information requested (and in a timely manner). There was no delay other than caused by absences from the workplace and the need to find time within ordinary duties to complete a further task. The tribunal struggled to understand that there was anything meaningful remaining to be provided. The relevant information did come from PC Sanders which had been disclosed. Any statement of Sgt Greenwood would not have been able to do much more than explain how the information came to be provided to her. The NRPSI investigation was in fact brought to a quick and abrupt close by NRPSI without allowing time for any further statement to be provided and in circumstances where Sgt Greenwood and Ms Cuttell had not been told of any particular deadline. There was nothing in their actions which caused the investigation to hang over the claimant for longer than was necessary.

134. The claimant's primary complaint in fact appeared to be that all of the information ought to have been provided at the outset. However, again, all of

the information was in essence contained within PC Sanders' email which had been submitted.

135. The tribunal does not conclude that the claimant was treated to her detriment in the respect alleged.

136. Had this conduct by Sgt Greenwood and Ms Cuttell been found to surmount the necessary hurdle to be detrimental treatment, the tribunal concludes that the reason for any delay (and indeed again that is at its very highest what had occurred) was in no sense whatsoever influenced by the claimant's protected disclosures and due solely to availability to react and action requests in the context of individuals who had a significant ordinary workload beyond dealing with this matter.

Detriment 7 – the engaging in excessive email correspondence without justification between the third respondent, the fourth respondent, Warwickshire Police, Greater Manchester Police, Capita and others. The claimant says that the correspondence was overzealous in the number of communications and its extending beyond her vetting status to her CTC and DBS clearances.

137. The claimant in evidence has referred to 70 emails, but has directed the tribunal to significantly fewer specific distinct emails. Nevertheless, the tribunal has considered all of the emails which were sent relating to the claimant's vetting status. Warwickshire police were contacted because they were the force responsible for vetting. Greater Manchester Police were contacted as they had previously conducted vetting and might have had a more historical record of the claimant being vetted.

138. The tribunal does not regard the communications as excessive. Not every possible individual was copied into every communication. Thought appears to have been given as to the appropriate people to be copied in each individual case. Nor were the communications without justification, because Sgt Greenwood was trying to find out if the claimant may have been appropriately vetted in circumstances where she had expected that she would have been. If the claimant had been found to be appropriately vetted, then she would not have been removed from Capita's primary register. The claimant had been put forward for an assignment without police clearance, where Sgt Greenwood had no knowledge of what vetting had taken place other than what was recorded on the public NRPSI register. There was in some of the communications no need, when asking a narrow question regarding vetting, to have referred to the claimant being CTC vetted or having DBS clearance, including in circumstances where there was on one occasion an inaccurate reference to basic DBS clearance rather than the enhanced clearance the claimant possessed. However, such information was not confidential to the claimant and it was being provided to those within the police who were responsible for police

vetting as potential pointers or factors which may have clarified the claimant's status. The respondents wanted to know if the vetting that the claimant had undertaken might be of assistance to her in qualifying her for pre-booked police work.

139. On balance (and again mindful of the low hurdle) the tribunal does not believe that the communications complained of (in context) amounted to detrimental treatment. No reasonable employee could have considered them to be so or viewed them in the way the claimant described.

140. This allegation, however, is really about the motivation for the communications and the detriment is difficult to separate from the reason they were sent. The tribunal is completely satisfied that in no sense whatsoever did the respondents engage in this communication on the grounds of the claimant's protected disclosures. The reason for the level of communication was a determined effort to get to the bottom of the claimant's vetting status and, again, to keep people, who were genuinely considered to have an interest/responsibility in the issue, in the loop. The respondents could have taken a number of indicators at face value as evidencing the claimant's lack of clearance and inability to carry out work under the Capita contract. That they did not do so was of potential benefit to the claimant in circumstances where the respondents thought that the claimant might well have the requisite vetting and be able to be utilised from the Capita register. Those enquiries might have been beneficial to the claimant. If the enquiries had not been made, then there was an inevitability of the claimant not being able to be allocated to pre-booked police assignments. The respondents wanted to understand whether any vetting the claimant might have possessed could be regarded as having any equivalence to NPPV3 which again might have had the result of benefiting the claimant. They were seeking not to penalise the claimant, but to determine if there was a basis upon which she could not be penalised i.e. by not being booked on assignments

Employment Judge Maidment

Date 26 September 2022